

APPENDIX A

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAROLD R.J. STENSON,
Plaintiff,
vs.
ELDON VAIL, Secretary of
Washington Department of
Corrections (in his official capacity),
et al.,
Defendants.

No. CV-08-5079-LRS

**ORDER GRANTING
STAY**

In the captioned action, Plaintiff has filed a complaint for injunctive and equitable relief under 42 U.S.C. Section 1983, alleging violations of his Fifth, Eighth, and Fourteenth Amendment rights. This complaint was filed on November 21, 2008. Plaintiff moves for an order temporarily restraining the Defendants from scheduling or carrying out his execution until the conclusion of the captioned action. (Ct. Rec. 5). Telephonic hearing was conducted on November 24 and November 25.

On or about October 29, 2008, Plaintiff commenced an action in the Thurston County Superior Court for the State of Washington which, like the captioned action, seeks declaratory and injunctive relief under the Eighth and Fourteenth Amendments “to be free from arbitrary and capricious Washington Department of Corrections (“DOC”) protocols and procedures” regarding lethal injection. On November 21, 2008, the Thurston County Superior Court entered an order which declined to dismiss Plaintiff’s claims related to lethal injection (although the court did dismiss Plaintiff’s claims related to hanging). The superior

ORDER GRANTING STAY- 1

1 court, however, denied Plaintiff's motion for preliminary injunction, finding
2 Plaintiff had not demonstrated a likelihood of success on the merits. The superior
3 court certified this decision for immediate review pursuant to Washington Rules of
4 Appellate Procedure (RAP) 2.3(b). Pursuant thereto, Plaintiff has filed an
5 interlocutory appeal with the Washington Supreme Court asking it to grant
6 discretionary review and stay the execution currently scheduled for 12:01 a.m. on
7 December 3, 2008.

8 Because of the ongoing and pending proceedings in the Washington courts,
9 a serious question is raised whether, pursuant to *Younger v. Harris*, 401 U.S. 37,
10 49-53, 91 S.Ct. 746 (1971), this federal court should abstain and dismiss the
11 captioned federal action. Important state interests are involved in the litigation
12 before the Washington courts. On the other hand, a federal plaintiff must "have a
13 full and fair opportunity to litigate his constitutional claim" in the course of state
14 proceedings. *Ohio Civil Rights Comm'n v. Dayton Christian Schools, Inc.*, 477
15 U.S. 619, 627, 106 S.Ct. 2718 (1986). This court should not abstain unless a
16 plaintiff's constitutional claims can be "timely decided by a competent state
17 tribunal." *Gibson v. Berryhill*, 411 U.S. 564, 577, 93 S.Ct. 1689 (1973). At this
18 juncture, considering the December 3, 2008 execution date, there is considerable
19 uncertainty whether Plaintiff's constitutional claims will be timely decided on
20 their merits by the Washington courts. **ACCORDINGLY, PENDING**
21 **FURTHER ORDER OF THIS COURT, PLAINTIFF'S EXECUTION,**
22 **WHETHER BY HANGING OR LETHAL INJECTION, IS STAYED, AND**
23 **PROCEEDINGS IN THE CAPTIONED ACTION ARE STAYED.** Plaintiff's
24 Motion For Temporary Restraining Order (Ct. Rec. 5) and Motion For Preliminary
25 Injunction (Ct. Rec. 12) are **STAYED**.

26 While this stay has the same effect as a temporary restraining order or
27 preliminary injunction and is based on the policy rationale and reasoning
28 underlying those remedies, this court is not labeling it as such in recognition that it

ORDER GRANTING STAY- 2

1 has not made a final decision on the propriety of *Younger* abstention. At this time,
2 this court is not making any determination regarding likelihood of success on the
3 merits and its stay is not intended to reverse the Thurston County Superior Court's
4 denial of a preliminary injunction. It is still possible that Plaintiff will be afforded
5 a full and fair opportunity to litigate the merits of his federal constitutional claims
6 in the Washington courts, the venue he initially chose for adjudication of those
7 claims. There are a number of different scenarios which could play out with
8 regard to the action commenced in Thurston County Superior Court. Regardless
9 of what the Washington Supreme Court does, or beyond that what the U.S.
10 Supreme Court may do regarding the superior court's denial of the motion for
11 preliminary injunction, the fact remains that the superior court has not dismissed
12 the federal constitutional claims related to lethal injection and has yet to adjudicate
13 those claims on their merits.

14 Of course, in the meantime, Plaintiff or Defendants may seek an
15 interlocutory appeal to the Ninth Circuit Court of Appeals regarding the propriety
16 of this stay order. To the extent a right of an interlocutory appeal does not exist
17 pursuant to 28 U.S.C. Section 1292(a)(1), **THE COURT CERTIFIES THIS**
18 **MATTER FOR AN IMMEDIATE APPEAL TO THE NINTH CIRCUIT**
19 **COURT OF APPEALS ON THE BASIS THAT THIS STAY ORDER**
20 **“INVOLVES A CONTROLLING QUESTION OF LAW AS TO WHICH**
21 **THERE IS A SUBSTANTIAL GROUND FOR DIFFERENCE OF OPINION**
22 **AND THAT AN IMMEDIATE APPEAL FROM THE ORDER MAY**
23 **MATERIALLY ADVANCE THE ULTIMATE TERMINATION OF THE**
24 **LITIGATION.” 28 U.S.C. §1292(b).**

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ORDER GRANTING STAY- 3

APPENDIX B

FILED

UNITED STATES COURT OF APPEALS

NOV 26 2008

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DAROLD J. STENSON,

Plaintiff - Appellee,

v.

ELDON VAIL, Secretary of Washington
Department of Corrections (in his official
capacity), et al.,

Defendant - Appellant.

No. 08-35974

D.C. No. 2:08-cv-05079-LRS
Eastern District of Washington,
Spokane

ORDER

Before: SCHROEDER, KLEINFELD, and BEA, Circuit Judges

The State of Washington's motion to vacate the district court's stay of execution is denied as moot in light of the existing stay entered by the state court.

The denial is without prejudice to renewal of the motion under changed circumstances. The Clerk's November 25, 2008 scheduling order is vacated.

APPENDIX B

APPENDIX C

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<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:

[PROPOSED] ORDER DENYING
DEFENDANTS' MOTION TO DISMISS OR
TRANSFER - 1
68695-0001/LEGAL14959452.1

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

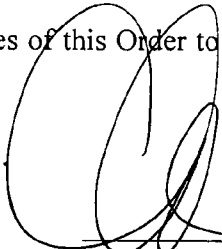
1. Defendants' argument that this case should be dismissed because it is a collateral attack on the judgment is denied. Plaintiff requests judicial review of the method of execution for the Plaintiff and others which is broader than, and not directed at, a specific provision of the judgment or sentence.
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
SARA J. OLSON, WSBA #33003
John J. Samson
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

APPENDIX D

1 EXPEDITE
2 No Hearing Set
3 Hearing is Set:

Date:

Time:

The Honorable Chris Wickham

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**STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT**

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 PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION (PROPOSED)

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

1. There are three criteria for preliminary injunctive relief as established in Tyler 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.

21 DATED this 21 day of November, 2008.

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CHRIS WICKHAM
Judge, Thurston County Superior Court

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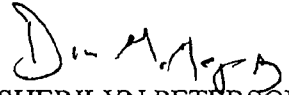
Presented by:

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

APPENDIX E

SCANNED -2

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FILED JUDGE KENNETH WILLIAMS
CLALLAM CO CLERK
2008 NOV 25 P 2:00
BARBARA CHRISTENSEN

ORIGINAL

SUPERIOR COURT OF WASHINGTON FOR CLALLAM COUNTY

DAROLD STENSON,
Petitioner,
vs.
STATE OF WASHINGTON,
Respondent.

NO. 93-1-00039-1

(PROPOSED) ORDER GRANTING
PETITIONER'S MOTION FOR
STAY OF EXECUTION

THE COURT having considered Darold Stenson's Motion for a Stay of Execution, and the records and files herein, the Court hereby

ORDERS a stay of execution.

DONE this 25th day of November, 2008.

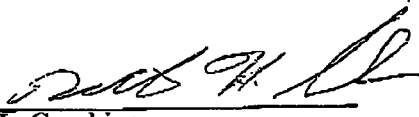

THE HONORABLE KENNETH WILLIAMS
CLALLAM COUNTY SUPERIOR COURT JUDGE

(PROPOSED) ORDER GRANTING
PETITIONER'S MOTION FOR
STAY OF EXECUTION

FEDERAL PUBLIC DEFENDER
1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
(206) 553-1100

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Presented by:



Robert H. Gombiner
WSBA # 16059
Attorney for Darold Stenson

(PROPOSED) ORDER GRANTING
PETITIONER'S MOTION FOR
STAY OF EXECUTION

FEDERAL PUBLIC DEFENDER
1601 Fifth Avenue, Suite 700
Seattle, Washington 98101
(206) 553-1100

APPENDIX F

ME 11/21

LOG I.D. NUMBER
0924742



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

LEVEL 1 - INITIAL GRIEVANCE
NIVEL 1 - QUEJA INICIAL

Name: NOMBRE:	Last APELLIDO	First PRIMER NOMBRE	Middle 2DO NOMBRE	DOC Number NUMERO DOC	Facility/FACILIDAD	Unit/Cell UNIDAD/CELDA
STENSON, David				232018	WSP	10111
Community Corrections Office OFICINA DE CORRECCIONES EN LA COMUNIDAD			Date Typed FECHA ESCRITA	REMEDY/REMEDIO		Pending/PENDIENTE
			11/14/08	08		04

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		1st David Stenson 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 COOINADOR 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-Coordinador de Quejas
Canary- Grievant-Quejante Pink- Grievance Coordinator-Coordinador de Quejas Gold- Grievant-Quejante

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

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 STEWSON	FIRST MARCO	MIDDLE R. J.	DOC NUMBER 232-118
PROGRAM ASSIGNMENT none listed	WORK HOURS none	FACILITY/OFFICE W.S.P.	UNIT/CELL S.H.4. H-10

I WANT TO GRIEVE: *The DOC's policy and procedures 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 W.S.P.*

MANDATORY SIGNATURE Daniel R. Stevson DATE 10-16-08

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-E 05	DATE RECEIVED 10-20-08
<input type="checkbox"/> The complaint was resolved informally. <input type="checkbox"/> Additional information and/or rewriting is needed. (See below.) Return within five (5) days or by: Due Date: _____ <input type="checkbox"/> No rewrite received. Date: _____	

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

TYPE	CATEGORY	AREA	SPEC	REMEDY	RESOLUTION	DATE OF RESPONSE	COORDINATOR'S SIGNATURE
01	02	010	688	08	08	10/21/08	L. Young
						11/4/08	L. Young

Distribution: WHITE-Grievance Program Manager DOC 05-185 (Rev. 2/05/07) CANARY-Grievance Coordinator PINK-Grievant

* This will be accepted per the Grievance Program Manager. DOC 550.100

LOG I.D. NUMBER
0827712



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 <i>STENSON</i>	FIRST <i>DAROLD</i>	MIDDLE <i>R.D.</i>	DOC NUMBER <i>232013</i>
PROGRAM ASSIGNMENT <i>Work Release</i>	WORK HOURS <i>10:00-11:00</i>	FACILITY/OFFICE <i>WSP</i>	UNIT/CELL <i>JMU B5</i>

MAILING ADDRESS: STATE OF WASHINGTON, ZIP CODE: TELEPHONE NUMBER:

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

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

MANDATORY SIGNATURE: *Darold R.D. Stenson* DATE: *10-23-08*

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 *10/21/08*.
 - The formal grievance/appeal paperwork is being prepared.

LOCATION CODE <i>WSP-E04</i>	DATE RECEIVED <i>10/29/08</i>
<input type="checkbox"/> The complaint was resolved informally. <input type="checkbox"/> Additional information and/or rewriting is needed. (See below.) Return within five(5) days or by: _____ Due Date: _____ <input type="checkbox"/> No rewrite received. Date: _____	

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

TYPE	CATEGORY	AREA	SPEC	REMEDY	RESOLUTION	DATE OF RESPONSE	COORDINATOR'S SIGNATURE
				<i>OS</i>	<i>OS</i>	<i>10/21/08</i>	<i>L. Young</i>
				<i>OS</i>	<i>OS</i>	<i>11/14/08</i>	<i>L. Young</i>

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.
 PAGE 05/0575
 WSP HEALTH SERVICES
 DOC 550.100
 5701

APPENDIX G

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

APPENDIX H

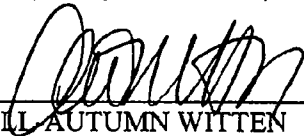
I, DELL-AUTUMN WITTEN, make the following declaration:

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

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON		
	REVISION DATE 10/25/08	PAGE NUMBER 1 of 12	NUMBER DOC 490.200
	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

 <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).

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON		
	REVISION DATE 10/25/08	PAGE NUMBER 3 of 12	NUMBER DOC 490.200
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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.

