

NO. 11-35940

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL EZRA RHOADES,
Petitioner-Appellant,

vs.

BRENT REINKE, *et al.*,
Respondent-Appellees.

Appeal from the United States District Court
for the District of Idaho
The Honorable Ronald E. Bush

PETITIONER-APPELLANT'S EXCERPTS OF RECORD

VOLUME IV OF VI

CAPITAL HABEAS UNIT

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Filed October 14, 2011

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345-453

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PAUL EZRA RHOADES,

Plaintiff,

vs.

BRENT REINKE, in his official capacity
as Director, Idaho Department of Correction;

RANDY BLADES, in his official capacity
as Warden, Idaho Maximum Security
Institution;

DOES 1-50, UNKNOWN
EXECUTIONERS, in their official
Capacities as Employees and/or Agents of
Idaho Department of Correction.

Defendants.

) **CASE NO. 11-445-REB**

)
)
) **DEFENDANTS' 12(b)(6) MOTION TO**
) **DISMISS**

COMES NOW Defendants Brent Reinke and Randy Blades, by and through their attorneys of record and hereby file this Motion to Dismiss. This motion is supported with Defendants' Memorandum in Support of Defendants' 12(b)(6) Motion to Dismiss and the affidavit of Sheryll Byrne filed contemporaneously.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of October, 2011, I caused to be served a true and correct copy of the foregoing DEFENDANTS' 12(b)(6) MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PAUL EZRA RHOADES,)	CASE NO. 11-445-REB
)	
Plaintiff,)	
)	MEMORANDUM IN SUPPORT OF
vs.)	DEFENDANTS' 12(b)(6) MOTION TO
)	DISMISS
BRENT REINKE, in his official capacity)	
as Director, Idaho Department of Correction;)	
)	
RANDY BLADES, in his official capacity)	
as Warden, Idaho Maximum Security)	
Institution;)	
)	
DOES 1-50, UNKNOWN)	
EXECUTIONERS, in their official)	
Capacities as Employees and/or Agents of)	
Idaho Department of Correction.)	
)	
Defendants.)	
_____)	

Come now Defendants Brent Reinke and Randy Blades (hereinafter “Defendants”), by and through their attorneys of record and hereby submit this Memorandum in Support of Defendants’ 12(b)(6) Motion to Dismiss. Based on the reasons stated below, together with the pleadings and documents on file in this action, the Plaintiff has failed to state a claim for relief and has failed to exhaust the prison grievance system prior to commencing this action. Therefore, dismissal of this action is required.

INTRODUCTION

Plaintiff is incarcerated at the Idaho Maximum Security Institution (“IMSI”) under the sentence of death for a crime committed in Bonneville County and Bingham County, Idaho. The Plaintiff’s Petition for Certiorari to the United States Supreme Court was denied on October 11, 2011. The Ninth Circuit filed its mandates on October 13, 2011. The State of Idaho will seek a death warrant for the execution of the Plaintiff on both death sentences.

The Plaintiff filed this § 1983 suit claiming his constitutional rights under the First, Eighth and Fourteenth Amendments of the U.S. Constitution are being violated. The Plaintiff claims his right to be free from cruel and unusual punishment under the Eighth Amendment is being violated because the 2006 IDOC Standard Operating Procedure 135.02.01.001 (hereinafter “2006 SOP”), and the 2011 IDOC Standard Operating Procedure 135.02.01.001 (hereinafter “2011 Draft SOP”) do not contain the safeguards to protect him from cruel and unusual punishment. The Plaintiff also claims that if he is executed under another SOP he has been denied the right to due process. Finally, the Plaintiff claims his rights and his counsels’ rights are being violated by not allowing defense counsel to witness his execution.

The Idaho Department of Correction (“IDOC”) has two documents that govern executions, a policy which states the general intent of the Board of Correction, and a standard

operating procedure or “SOP” describing specific procedures to be followed. The IDOC currently has in effect Policy 135 Execution Procedures which was adopted January 1994 and revised October 13, 2011. The IDOC had in effect from January 1, 1994 until October 13, 2011, the 2006 Standard Operating Procedure Execution Procedures. On October 13, 2011, the IDOC approved and adopted a revised IDOC SOP Execution Procedures 135.02.01.001 outlining the current execution protocol in great detail which is modeled after the Arizona Department of Corrections’ execution protocol¹. On October 14, 2011, the IDOC made minor revisions to Standard Operating Procedure 135.02.01.001 adopted on October 13, 2011 and adopted IDOC Standard Operating Procedure 135.02.01.001 (hereinafter “SOP 135”)²

Other relevant policies to this litigation are Directive 401.06.03.069 Participation – Executions which was adopted on June 1, 1995 and revised May 3, 1999. Additionally at all times relevant to this litigation, the IDOC has had in effect Standard Operating Procedure 316.02.01.001 Grievance and Informal Resolution Procedure for Offenders which was adopted on September 1, 1995 and reviewed on May 2, 2008.

While the IDOC had been in the process of updating SOP 135, the University of California, Berkeley School of Law, Death Penalty Clinic made a public records request for the IDOC’s execution protocol and was provided the 2011 Draft SOP on May 11, 2011. *See Complaint*, Ex. 1. The 2011 Draft SOP provided to Berkeley law was a 10-page draft that has

¹ The Arizona Department of Corrections Execution Procedures can be found at: http://www.azcorrections.gov/Zoya_dept_orders_1.aspx.

² Attached is a courtesy copy of the approved and adopted and revised Policy 135 and SOP 135 and can be found at:

http://www.idoc.idaho.gov/content/about_us/policies_and_forms/policy/general_administration Attached as a courtesy are the 3 pages approved on October 13, 2011 to compare with the revision of October 14, 2011. The minor revisions made on October 14, 2011 were made to: Section 6, page 10 changing “Execution Escort Team” to “execution team or specialty teams”; Appendix A, p. 4, Note at top of page, changing “Medical Team” to “Injection Team”; and Appendix A, p.7 changing “gm” to “grams” in the first sentence.

since been extensively revised by the IDOC. What has been adopted by the IDOC is the October 14, 2011. SOP 135 which is a 34-page document with several Appendix A-G1 outlining a comprehensive execution protocol consistent with the U.S. Supreme Court decision in *Baze v. Rees*, 553 U.S. 35, 47, 128 S.Ct. 1520, 1529 (2008), and the recent Ninth Circuit decision in *Dickens v. Brewer*, 631 F.3d 1139 (9th Cir. 2011).

The Plaintiff's claims fail as a matter of law and are moot. The 2006 SOP is no longer in effect and was replaced by the revised SOP 135, rendering Plaintiff's claims with respect to the 2006 SOP moot. The 2011 Draft SOP was never adopted and SOP 135 also renders moot any claims regarding the 2011 Draft SOP. Further, Plaintiff fails to state claims as a matter of law with respect to his claims regarding the 2006 SOP and the 2011 Draft SOP. Additionally, the Plaintiff has failed to exhaust his administrative remedies with respect to his claim that he and his counsels' rights are being violated because defense counsel is not an execution witness. Furthermore, the Plaintiff's claims regarding the right to have defense counsel present is moot because SOP 135 allows the Plaintiff to choose his counsel as one of his execution witnesses. The Plaintiff's Complaint should be dismissed.

ARGUMENT

I. THE PLAINTIFF HAS FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES PRIOR TO FILING HIS LAWSUIT AGAINST THE DEFENDANTS

A. Standard For Motion To Dismiss

The Ninth Circuit Court of Appeals has stated that a motion to dismiss for failure to exhaust administrative remedies should be treated as "an unenumerated Rule 12(b) motion rather than a motion for summary judgment." *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003).

In deciding a motion to dismiss for a failure to exhaust nonjudicial remedies, the court may look beyond the pleadings and decide disputed issues of fact. If the

district court concludes that the prisoner has not exhausted nonjudicial remedies, the proper remedy is dismissal of the claim without prejudice.

Id. at 1119-20 (citations and footnote omitted.) Therefore, a motion to dismiss for failure to exhaust administrative remedies is a unique form of a Rule 12(b) motion, and is one that the Court may properly consider matters outside the pleadings.

B. Prison Litigation Reform Act

Pursuant to the Prison Litigation Reform Act (“PLRA”), “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). In *Porter v. Nussle*, 534 U.S. 516 (2002), the United States Supreme Court expressly stated that “the PLRA’s exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.” *Id.* at 532. The Supreme Court has also held that where an inmate seeks money damages for a prison conditions claim, he or she must complete the prison administrative process for the claims, even if the process does not provide for money damages. *Booth v. Churner*, 532 U.S. 731 (2001). The prison administrative process is sufficient if it “could provide some sort of relief on the complaint.” *Id.* at 734.

If a plaintiff has failed to exhaust his administrative remedies, his claims are subject to dismissal without prejudice upon motion of the defendants. *See Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003). An inmate must exhaust his administrative remedies prior to filing suit; exhaustion cannot be accomplished during a suit or after a suit has been filed. *See McKinney v. Carey*, 311 F.3d 1198 (9th Cir. 2002) (suit dismissed without prejudice where prisoner attempted to exhaust administrative remedies during pendency of suit.) “A stay of the suit pending

exhaustion does not satisfy the plain language of the statute.” *Mubarak v. California Dept. of Corrections*, 315 F. Supp.2d 1057, 1060 (S.D. Cal. 2004). Additionally, “[a] grievance obviously cannot exhaust administrative remedies for claims based on events that have not yet occurred. Nor does a grievance exhaust administrative remedies for all future complaints of the same general type.” *Ross v. County of Bernalillo*, 365 F.3d 1181, 1188 (10th Cir. 2004).

“Proper” exhaustion of administrative remedies is required, meaning “a prisoner must complete the administrative review process in accordance with the applicable procedural rules, including deadlines, as a precondition to bringing suit in federal court. *Woodford v. Ngo*, 548 U.S. 81, 88 (2006).

In *Woodford v. Ngo*, 126 S. Ct. 2378 (2006), the Supreme Court recently reiterated that proper exhaustion of the grievance process is required under the PLRA. As explained by the Court: “The benefits to exhaustion can be realized only if the prison grievance system is given a fair opportunity to consider the grievance. The prison grievance system will not have such an opportunity unless the grievant complies with the system’s critical procedural rules.” *Id.* at 2388. The Supreme Court specifically rejected any notion that prisoners get to decide whether or not to follow the grievance process.

For example, a prisoner wishing to bypass the available administrative remedies could simply file a late grievance without providing any reason for failing to file on time. If the prison then rejects the grievance as untimely, the prisoner could proceed directly to federal court. ... We are confident that the PLRA did not create such a toothless scheme.

Id.

In *Jones v. Bock*, 127 S. Ct. 910 (2007), the Supreme Court addressed several issues. Specifically, the Court reemphasized that “[t]here is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought.” *Id.* at 918-19 (citing *Porter v.*

Nussle, 534 U.S. at 524). The Court also confirmed “that failure to exhaust is an affirmative defense under the PLRA.” *Jones*, 127 S. Ct. at 921. The Supreme Court further clarified that “[t]he level of detail necessary in a grievance to comply with the grievance procedures will vary from system to system and claim to claim, but it is the prison’s requirements, and not the PLRA, that define the boundaries of proper exhaustion.” *Jones*, 127 S. Ct. at 923 (emphasis added). As established below, Plaintiffs has failed to comply with the PLRA’s exhaustion requirement and therefore dismissal of his claims are required.

C. The Grievance Process

The IDOC offender grievance process is set forth in Standard Operating Procedure (“SOP”) 316.02.01.001. *Affidavit of Sheryll Byrne*, Ex. B. The grievance process may be used by inmates for most things that affect offenders during incarceration. *Byrne Aff.*, Ex. B, p.3. Issues that cannot be grieved are DOR’s, alternative sanctions, sentences, previously grieved issues and outside problems. *Id.* at pp.3-4.

The IDOC grievance process is a three-step process. *Byrne Aff.*, ¶ 4. An offender must complete all three steps in order to exhaust the administrative grievance process. *Id.*, ¶ 10. The first step in the process requires the offender to attempt to resolve the issue informally by submitting a “concern form” addressed to the staff person most capable of responding to and, if appropriate, resolving the issue. *Id.*, ¶ 5. The staff person must respond to the offender’s concern within seven (7) business days of its receipt. *Id.* If the issue is not resolved informally, the offender may then proceed to the second step of the grievance process and file a grievance form. *Id.*, ¶ 6.

In order to satisfy the second step of the grievance process the offender must file a grievance form. *Id.* The grievance must be filed within thirty (30) days of the incident or problem that is being grieved. *Id.* The reviewing authority may grant an extension of time. *Id.*

The grievance form must contain specific information including the nature of the complaint, dates, places, and names. *Id.* at ¶ 7. The offender must suggest a solution to the issue and can only raise one issue per grievance. *Id.* The Grievance Coordinator will determine if the form is filled out correctly. *Id.* If the form is completed correctly the grievance is entered into the Corrections Integrated System (“CIS”) database and then assigned to the staff member most capable of responding. *Id.* If the form is completed incorrectly it is returned to the offender using the Grievance/Disciplinary Offense Report (DOR) Transmittal Form. *Id.* The Grievance Coordinator will assign the correctly completed grievance to the staff member most capable of responding to and, if appropriate, resolving the issue. *Id.* Staff must answer and return the grievance form to the Grievance Coordinator within ten (10) working days. *Id.* Once the staff member responds to the grievance, the response is sent to the Grievance Coordinator who logs the information into the CIS database. *Id.* The Grievance Coordinator then forwards the grievance and response to a “reviewing authority,” who is usually a deputy warden. *Id.* Within fourteen (14) days of receiving the grievance from the Grievance Coordinator, the reviewing authority must review the grievance, the staff member’s response and, as needed any applicable rules, policies, SOPs, and deny, modify or grant the offender’s suggested solution. *Id.* The reviewing authority then returns the grievance to the Grievance Coordinator. *Id.* The Grievance Coordinator then forwards the printed grievance and the offender’s original attachments to the offender via institutional mail. *Id.* A copy of the printed grievance and copies of all the attachments are filed in the facility administration area. *Id.*

If the offender is not satisfied with the response to his grievance, he may proceed to the third step by filing a grievance appeal. *Id.*, ¶ 8. The grievance appeal must be filed within five (5) days of receiving the response. *Id.* Once the Grievance Coordinator receives the appeal, it is

entered into an electronic database and is forwarded to the “appellate authority”, who is typically the facility head. *Id.*, ¶ 9. The appellate authority must respond within fourteen (14) days and return it to the Grievance Coordinator, who will log the response in CIS. *Id.* The grievance coordinator will forward the printed grievance and the offender’s original attachments to the offender. *Id.* The grievance coordinator will then file a copy of the printed grievance, the original Grievance/Appeal form, and copies of all attachments in the facility administration area. *Id.*

Upon completion of all three steps, i.e., the offender concern form, the grievance form and the grievance appeal, the offender grievance process is exhausted. *Id.*, ¶ 10.

D. The Plaintiff Has Failed To Exhaust The IDOC Grievance Process With Respect to His Claim That He Has A Right To Have Counsel Present At His Execution And His Counsel Has A Right To Be Present

The simple fact is that the Plaintiff failed to exhaust the IDOC grievance process on his §1983 claim that his Eighth and Fourteenth Amendment rights are being violated by excluding his counsel as a witness to his execution prior to filing his lawsuit as required by the PLRA. The Plaintiff also failed to exhaust the IDOC grievance process with respect to his § 1983 claim that his counsel has a First Amendment right to be present at his execution.

The Plaintiff has submitted a total of six (6) grievances since 2002. *Bryne Aff.*, ¶ 15. The grievances submitted by the Plaintiff are on issues regarding conditions of confinement, administration, mail and administrative segregation. *Id.*, ¶¶ 14-15. The Plaintiff has filed no grievances with the Grievance Coordinator at IMSI regarding his claim that excluding his counsel as a witness violates his statutory right to counsel and his counsel’s constitutional right to witness the execution. *Bryne Aff.*, ¶ 16.

Clearly the Plaintiff is aware of how the IDOC grievance process works as demonstrated by the six (6) grievances he has submitted since 2002. The Plaintiff has access to IDOC policies

and SOPs, specifically the 2006 SOP. Plaintiff's counsel has a copy of the 2011 Draft SOP and therefore the Plaintiff has access to the Draft SOP through his counsel. The Plaintiff at no time has filed any grievances with the Grievance Coordinator claiming that he has a constitutional right to have counsel present or that his counsel has a constitutional right to be present during his execution. *Bryne Aff.*, ¶ 16. The Plaintiff alleges that he is a third party beneficiary and can raise the claim that his counsel has a right to be present even though he is not a party to the lawsuit. If Plaintiff wants to make his claim as a third party beneficiary he is required to exhaust his administrative remedies pursuant to the PLRA.

In *Porter v. Nussle*, 534 U.S. 516 (2002), the United States Supreme Court expressly stated that "the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Id.* at 532. If a plaintiff has failed to exhaust his administrative remedies, his claims are subject to dismissal without prejudice upon motion of the defendants. *See Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003). Therefore, because the Plaintiff has failed to exhaust the prison grievance process as set forth in the IDOC policy and pursuant to the PLRA before filing his claims with respect to his right to have counsel present and his counsel's right to be present during an execution prior to filing this lawsuit, the Plaintiff's claims against the Defendants should be dismissed.

II. PLAINTIFF'S CLAIMS AGAINST THE DEFENDANTS SHOULD BE DISMISSED BECAUSE HIS CLAIMS ARE MOOT

All of the Plaintiff's claims are moot. "A claim is considered moot if it has lost its character as a present, live controversy, and if no effective relief can be granted." *Evonc v. Horsley*, 1995 WL 44599, *1 (N.D. Cal. 1995). "A moot action is one in which the parties lack a

legally cognizable interest in the outcome.” *Reimers v. Oregon*, 863 F.2d 630, 632 (9th Cir. 1989).

The Plaintiff’s claims with respect to the 2006 SOP and the 2011 Draft SOP, and denial of due process regarding an execution pursuant to a policy/SOP that has not been reviewed and heard by the Plaintiff are moot due to the approval and adoption of SOP 135 on October 14, 2011. SOP 135 is a completely revised execution procedure for the IDOC that addresses the complaints made by the Plaintiff. Outlined in the revised SOP 135 is the detailed execution procedures and protocols for the IDOC that comply with the *Baze* and *Dickens* opinions. Specifically, SOP 135 includes safeguards to protect the Plaintiff from cruel and unusual punishment. SOP 135 outlines the training or experience that is required for the different teams involved in the IDOC execution process. SOP 135 outlines the witnesses to the execution. The condemned is allowed a spiritual advisor and two witnesses of his choice, which can include his attorney. Because the IDOC has adopted SOP 135, which is very detailed in its execution procedures and different from the 2006 SOP and the 2011 Draft SOP and addresses the claims asserted by the Plaintiff, the Plaintiff’s claims with respect to the 2006 SOP and the 2011 Draft SOP are moot. With respect to the Plaintiff’s claim that he has been denied due process with the adoption of a new or revised SOP, the Plaintiff has the opportunity to review and be heard on SOP 135 because there is currently no execution date scheduled.

Because the claims alleged in Plaintiff’s Complaint are moot, this case should be dismissed.

III. PLAINTIFF’S CLAIMS AGAINST THE DEFENDANTS SHOULD BE DISMISSED FOR FAILURE TO STATE A CLAIM

Plaintiff’s claims against the Defendants should be dismissed because the Plaintiff’s claims against the Defendants fails to state a claim and fails to state a claim as a matter of law.

A. Applicable Standard for Motions To Dismiss

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal of claims on grounds that a plaintiff has failed to state a claim for which relief can be granted. The U.S. Supreme Court recently re-examined the standard applied to motions to dismiss in *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). There, the Court held:

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true to “state a claim to relief that is plausible on its face.” *Id.* at 570, 127 S. Ct. 1955. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.* at 556, 127 S. Ct. 1955. The plausibility standard is not akin to a “probability requirement,” but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Ibid.* Where a complaint pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of the line between possibility and plausibility of ‘entitlement to relief.’”

Id. at 557, 127 S. Ct. 1955. 129 S. Ct. 1937, citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955 (2007).

The plausibility standard of *Iqbal* and *Twombly* contrasts with the proposition that a complaint should not be dismissed for failure to state a claim unless “it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99 (1957). Under *Conley*’s “no set of facts” standard, as pointed out in *Twombly*, “a wholly conclusory statement of claim would survive a motion to dismiss whenever the pleadings left open the possibility that a plaintiff might later establish some “set of [undisclosed] facts to support recovery.” 550 U.S. at 561, 127 S. Ct. at 1968. In *Twombly*, the Supreme Court held that the “no set of facts” standard had “earned its retirement” after “puzzling the profession for 50 years,” and that it was “best forgotten as an incomplete, negative gloss on an accepted pleading standard.” 550 U.S. at 563, 127 S. Ct. at 1969. The proper standard, according to the Supreme Court, is not the “no set of facts” standard, but rather one that requires the pleading of “enough facts to state a claim to relief that is plausible on its face,” that is, claims that are plausible as opposed to those which are simply conceivable. *Id.* at 570, 127 S. Ct. at 1974. Notably, the Supreme Court *rejected* the notion that a claim that stopped short of being plausible as opposed to simply possible should be allowed to survive pending discovery which might flesh it out or weed it out later. *Twombly*, 550 U.S. at 560, 127 S. Ct. at 1967. The better approach, the Court observed, was to require, *at the pleading stage*, that the allegations be of sufficient plausibility to suggest that a claim actually exists, thus avoiding potentially enormous discovery expenses where discovery may reveal no relevant evidence. *Id.* This approach was summarized succinctly by the Tenth Circuit:

[t]he court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted under Rule 8(a)(2).

Phillips v. Bell, 2010 WL 517629, p. 3 (10th Cir. 2010), citing *Smith v. United States*, 561 F.3d 1090, 1098 (10th Cir. 2009), cert. denied, 130 S. Ct. 1142, 2010 WL 154973 (2010).

Under *Twombly* and *Iqbal*, a claim is not entitled to an assumption of truth where it is no more than a conclusion. *Iqbal*, 129 S. Ct. at 1950. Legal conclusions must be supported by factual allegations. *Id.* Bare assertions that amount to nothing more than a formulaic recitation of the elements of a cause of action are conclusory, and thus not entitled to be assumed true. *Id.* at 1951. A complaint does not suffice "if it tenders naked assertions devoid of further factual enhancement." *Id.* at 1949.

B. Applicable Standards Governing §1983 Actions and Challenges To The Method of Execution

Plaintiff's Complaint is based on 42 U.S.C. § 1983 for the alleged violations of the Plaintiff's First, Eighth and Fourteenth Amendment constitutional rights to due process and the right to be free from cruel and unusual punishment. Therefore, as a threshold matter, it is important to understand the requisite showing that the Plaintiff must make in order to establish a violation of his constitutional rights pursuant to 42 U.S.C. § 1983.

42 U.S.C. § 1983 creates a cause of action against a person who, acting under color of state law, deprives another of rights guaranteed under the Constitution. Section 1983 does not create any substantive rights; rather it is the vehicle whereby plaintiffs can challenge actions by governmental officials. To prove a case under section 1983, the plaintiff must demonstrate that (1) the action occurred "under color of state law" and (2) the action resulted in the deprivation of a constitutional right or federal statutory right.

Jones v. Williams, 297 F.3d 930, 934 (9th Cir. 2002) (citations omitted).

In order for a person acting under color of state law to be liable under section 1983 there must be a showing of personal participation in the alleged rights deprivation: there is no respondeat superior liability under section 1983.

Id. (emphasis added). “Liability under section 1983 arises only upon a showing of personal participation by the defendant.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (emphasis added).

It is fundamental to our legal system that the State shall not deprive “any person of life, liberty, or property, without due process of law.” *U.S. CONST. amend. XIV, § 1*. To determine whether an individual's due process rights under the Fourteenth Amendment have been violated, a court must engage in a two-step analysis. First, it must decide whether the individual's threatened interest is a liberty or property interest under the Fourteenth Amendment. *Schevers v. State*, 129 Idaho 573, 575, 930 P.2d 603, 605 (1996). Only if it finds a liberty or property interest will the court reach the next step, in which it determines the extent of due process procedural protections. *Id.*

The Supreme Court has stated:

that capital punishment is not prohibited under our Constitution, and that the States may enact laws specifying that sanction. “[T]he power of the State to pass laws means little if the State cannot enforce them.” (citations omitted). State efforts to implement capital punishment must certainly comply with the Eighth Amendment, but what that Amendment prohibits is wanton exposure to ‘objectively intolerable risk’ (citations omitted) not simply the possibility of pain.

Baze v. Rees, 553 U.S. 35, 61-62, 128 S.Ct. 1520, 1537 (2008).

The Eighth Amendment to the Constitution provides that cruel and unusual punishment shall not be inflicted. The risk of some pain is inherent in any method of execution, but “[t]he Constitution does not demand the avoidance of all risk of pain in carrying out executions.” *Baze*, 553 U.S. at 47, 128 S.Ct. at 1529. In order to for the infliction of pain to qualify as cruel and unusual punishment in violation of the Eighth Amendment, “the risk must be ‘*sure or very likely*

to cause serious illness and needless suffering,’ and give rise to sufficiently *imminent* dangers.” 553 U.S. at 50, 128 S.Ct. at 1531 (quoting *Helling v. McKinney*, 509 U.S. 25, 33, 34-35, 113 S.Ct. 2475 (1993)(*emphasis original*)). Further, to prevail on an Eighth Amendment claim of cruel and unusual punishment “there must be ‘a substantial risk of serious harm’, an ‘objectively intolerable risk of harm’ that prevents prison officials from pleading that they were “subjectively blameless for purposes of the Eighth Amendment.” *Id.*, See *Farmer v. Brennan*, 511 U.S. 825, 824, 846, and n. 9, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). An execution that may result in pain does not establish “objectively intolerable risk of harm” that qualifies as cruel and unusual punishment. *Id.* An isolated mishap does not suggest cruelty or that the procedure gives rise to a “substantial risk of serious harm.” *Id.* An Eighth Amendment claim cannot succeed “simply by showing one more step the State could take as a failsafe for other, independently adequate measures.” *Baze*, 553 U.S. at 61, 128 S.Ct. at 1537.

In *Baze, supra*, the U.S. Supreme Court held that the Kentucky three-drug lethal injection protocol does not violate the Eighth Amendment. The plurality held that the Kentucky protocol is constitutional because it contains sufficient safeguards to prevent improper anesthetization, and thus does not give rise to a “substantial risk of serious harm” and is not “sure or very likely to cause serious pain and suffering.” *Baze*, 553 U.S. at 49-50, 128 S.Ct. at 1530-31. In the Kentucky protocol there were several safeguards in place to ensure that an adequate dose of sodium thiopental is delivered to the condemned prisoner. *Baze*, 553 U.S. at 55, 128 S.Ct. at 1533. The Kentucky protocol the Court noted included a written requirement that members of the IV team must have at least one year of professional experience as a certified medical assistant, phlebotomist, EMT, paramedic, or military corpsman; the execution team participates in at least 10 practice sessions per year; the IV team must establish both primary and backup

lines and to prepare two sets of the lethal injection drugs before the execution commences; the IV team has one hour to establish both the primary and backup IV's; the warden and deputy warden are present in the execution chamber to watch for signs of IV problems. *Id.* The Court further found that the use of a three-drug protocol “cannot be viewed as posing an ‘objectively intolerable risk’ when no other State has adopted the one-drug method and petitioners proffered no study showing that it is an equally effective manner of imposing a death sentence.” 553 U.S. at 57, 128 S.Ct. at 1535.

The Supreme Court also found that Kentucky's decision to include pancuronium does not offend the Eighth Amendment. 553 U.S. at 58, 128 S.Ct. at 1535. Significantly the method of execution adopted by Kentucky is “believed to be the most humane available, one it shares with 35 other states.” 553 U.S. at 62, 128 S.Ct. at 1537. As such, Kentucky's adoption of safeguards to protect against asserted risks cannot be viewed as probative of the wanton infliction of pain under the Eighth Amendment. *Id.*

Following *Baze*, the Ninth Circuit Court of Appeals in *Dickens v. Brewer*, 631 F.3d 1139 (9th Cir. 2011), was presented with the issue of whether “Arizona's protocol creates an unconstitutional risk that an inmate will be improperly anesthetized and thus experience extreme pain and suffering while dying.” 631 F.3d at 1141. The Ninth Circuit stated the “Arizona Protocol falls within this safe harbor—it incorporates even more safeguards against maladministration than Kentucky's protocol, including requirements that the Medical Team monitor the inmate with a microphone and camera and physically confirm unconsciousness.” *Id.* at 1146; *see Baze* 553 U.S. at 55, 128 S.Ct. at 1520 (describing the safeguards in the Kentucky protocol). *Dickens*, however, asked the court to look beyond the protocol's facial constitutionality and consider whether there is a substantial risk that it will be implemented in an

unconstitutional manner. *Id.* In order for the evidence presented by Dickens to affect the court's analysis, the court said Dickens "must raise issues of fact as to whether there is a substantial risk that he will be improperly anesthetized despite the Protocol's safeguards, including those added through amendment." *Id.* The evidence must show more than a single accident, mistake or failure to follow the protocol. *Id.* Dickens could not meet this burden. Although Dickens presented evidence of a previous execution, the court held there was no evidence that Arizona might fail to follow the protocol even though in the previous execution the chemicals were administered more quickly than planned. *Id.* at 1148-49. The court also stated it was mere speculation to conclude that "Arizona might fail to follow the Protocol in the future or even that a material issue of fact ha[d] been raised with respect to the effect of past compliance." *Id.* at 1149. In short, the Ninth Circuit held that the Arizona Protocol satisfied constitutional standards in that it contains more safeguards than the Kentucky protocol approved in *Baze* and Dickens failed to present any evidence that Arizona will fail to follow it in future executions. *Id.*

C. Plaintiff Has Failed To State A Claim As A Matter of Law

1. 2006 IDOC SOP 135

The Plaintiff alleges the 2006 SOP violates his Eighth Amendment Right against cruel and unusual punishment because it does not incorporate the safeguards present in the *Baze* case. *Complaint*, p. 47. Specifically the Plaintiff alleges that (1) there is no training and experience required for those who initiate the IV, *id.*; (2) there is no provision in the SOP for practice sessions, *id.*; (3) there is no provision for primary and backup IV lines or backup lethal injection sets, *id.*; (4) the warden and/or deputy warden is not required to be in the execution chamber, *id.* at 48; (5) there is no provision to redirect the flow of chemicals to the backup IV if the prisoner

is not unconscious, *id*; (6) execution of the Plaintiff pursuant to the 2006 SOP would be cruel and unusual punishment in violation of his rights, *id*.

Aside from the fact that the SOP Plaintiff challenges is no longer the controlling SOP for execution procedures, the Plaintiff fails to state a claim for relief. The IDOC has adopted SOP 135 which is modeled after the Arizona protocol approved in *Dickens*. SOP 135 addresses all of the Plaintiff's concerns relating to the 2006 SOP. Because all of the safeguards that are in place in SOP 135 that are in the Arizona protocol, as a matter of law, the Plaintiff fails to state a claim for relief. As noted by the Ninth Circuit the Arizona protocol "falls within this safe harbor—it incorporates even more safeguards against maladministration than Kentucky's protocol." *Dickens*, 631 F.3d at 1146. For Plaintiff to succeed he must raise issues of fact as to whether there is a substantial risk that he will be improperly anesthetized despite the SOP 135's safeguards. *Id*. In this case the Plaintiff made allegations that the 2006 SOP was lacking adequate safeguards. *Complaint*, pp. 47-48. SOP 135, however, which was adopted and approved on October 14, 2011, includes all of the measures Plaintiff complains were previously lacking. Accordingly, Plaintiff's complaints regarding the 2006 SOP are not only moot, they fail to state a claims as a matter of law and are adopted from the Arizona Protocol.

2. 2011 IDOC Draft SOP 135

Regarding the 2011 Draft SOP, the Plaintiff alleges (1) it does not require any training or experience in starting, maintaining or injecting chemicals via an IV or consciousness checks, *Complaint*, p.29; (2) any thiopental obtained by the Defendants was illegally obtained and manufactured without safeguards, *id*. at p. 33; (3) his right against cruel and unusual punishment would be violated under the 2011 Draft SOP because it does not contain the procedural

safeguards that *Baze* requires, specifically relevant training, experience, redundancy, and consciousness check, *id.* at pp. 38-47.

The assertions are anything more than mere conclusory allegations in his Complaint with regarding a **Draft SOP** that was never adopted or implemented by the IDOC. Although Plaintiff was able to obtain the draft document through a public records request, it is clearly marked “Confidential Draft” and has no date indicating its adoption or approval *Complaint*, Exhibit 1. While the letter from William Loomis for the IDOC, that accompanies the draft states that the draft is a substantially finalized version, Mr. Loomis goes on to state that it is subject to further revision. *Id.* at Ex. 2. Because Plaintiff’s allegations are based on pure speculation and are conclusory statements about a draft SOP that was not adopted or approved by the IDOC, his claims with respect to the 2011 Draft SOP should be dismissed for failing to state a claim for relief

3. Alleged Illegal Acquisition of Thiopental

The Plaintiff alleges his rights will be violated because he believes that any thiopental that may be used in his execution was illegally obtained and manufactured without adequate safeguards to ensure its identity and quality. *Complaint*, p. 33. The Plaintiff further alleges that any thiopental which may be used in an execution has deteriorated due to improper storage or age. *Id.* The Plaintiff fails to state a claim for relief on this basis.

In *Cook v. Brewer*, 649 F.3d 915 (9th Cir. 2011), the court held that the Plaintiff failed to state a claim that the Arizona Department of Correction intended to use imported, non-Food and Drug Administration approved sodium thiopental to carry out his execution. Cook made speculative and conclusory allegations which were insufficient to state a facially plausible claim. *Cook*, 649 F.3d at 916. Cook alleged the sodium thiopental “(1) has officially reported issues

with lack of efficacy in the United Kingdom; (2) is made for animal use, not human use; (3) has documented reports of problems in its use in three executions in the United States; and (4) was unlawfully ‘imported in a manner nearly identical to the process used in Georgia—a process that has resulted in the Drug Enforcement Administration seizing Georgia’s supply of the substance.’” *Id.* at 917 (quotations and alterations omitted). The court held Cook’s allegations did not state a facially plausible claim that the sodium thiopental will cause him needless pain. *Id.* The court further held there was no basis to question the numerous safeguards in Arizona’s lethal injection protocol that ensure an inmate’s unconsciousness after the administration of the sodium thiopental. *Id.*; *See Cook v. Brewer*, 637 F.3d 1002, 1007-08 (9th Cir. 2011).

Under *Twombly* and *Iqbal*, claims like the Plaintiff’s are not entitled to an assumption of truth where they are based on conclusions unsupported by factual allegations. *Iqbal*, 129 S. Ct. at 1950. Plaintiff’s claims are, at best, bare assertions that amount to nothing more than a formulaic recitation of the elements of a cause of action and, as such, they are not entitled to an assumption of truth and are inadequate to support any legitimate grounds for relief. Plaintiff’s Complaint should, therefore, be dismissed.

CONCLUSION

Based on the foregoing reasons, the Defendants respectfully request that the Court enter an order dismissing the Plaintiff’s claims because they are moot, because Plaintiff has failed to properly exhaust, and because Plaintiff has failed to state a claim as a matter of law.

DATED this 14th day of October, 2011.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

/s/ Krista L. Howard
KRISTA L. HOWARD
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of October, 2011, I caused to be served a true and correct copy of the foregoing MEMORANDUM IN SUPPORT OF DEFENDANTS' 12(b)(6) MOTION TO DISMISS with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

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Teresa Hampton, Teresa_Hampton@fd.org

/s/ Krista L. Howard
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Attorneys for Defendants

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

PAUL EZRA RHOADES,)
)
Plaintiff,)
)
vs.)
)
BRENT REINKE, in his official capacity)
as Director, Idaho Department of Correction;)
)
RANDY BLADES, in his official capacity)
as Warden, Idaho Maximum Security)
Institution;)
)
DOES 1-50, UNKNOWN)
EXECUTIONERS, in their official)
Capacities as Employees and/or Agents of)
Idaho Department of Correction.)
)
Defendants.)

CASE NO. 11-445-REB

AFFIDAVIT OF SHERYLL BYRNE

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

SHERYLL BYRNE, being duly sworn upon her oath, deposes and says:

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

2. I am employed with the Idaho Department of Correction ("IDOC") at the Idaho Maximum Security Institution ("IMSI"). I have been employed with the IDOC for approximately 2 years. I am currently an Administrative Assistant 1 and have been the Grievance Coordinator at IMSI and have held this position for 2 years.

3. As the IMSI Grievance Coordinator, I am personally familiar with the IDOC Grievance Process. The IDOC Grievance Process is contained generally in IDOC Policy 316 Offender Grievance Process which was adopted in August 1990. The grievance procedure is contained in IDOC Division of Prisons Standard Operating Procedure 316.02.01.001 ("SOP 316") which was adopted in September 1995. Pursuant to the IDOC's organizational structure, policies have general application to the entire Department, and are considered to be a broad statement of policy on a particular subject. Division SOPs (and previously Division Directives) on the other hand, provide specific information and guidance on how a particular policy is executed within a particular Division. Attached hereto as Exhibit A is a true and correct copy of Policy 316 (version 2.0), which was reviewed and approved March 31, 2008. Attached hereto as Exhibit B is a true and correct copy of SOP 316 (version 3.0), which was reviewed and approved on May 2, 2008.

4. At all times, the IDOC grievance procedure has consisted of a three-step process. That process requires the inmate to (1) seek an informal resolution of the matter by completing

an Offender Concern Form; (2) complete a Grievance Form if an informal resolution cannot be accomplished; and finally (3) file an appeal of the response to the grievance.

5. The inmate grievance process begins with an Offender Concern Form. (Ex. B, pp. 3-4). The Offender Concern Form must be addressed to the staff member most capable of responding to and, if appropriate, resolving the issue. (Ex. B, p. 4). For example, if an inmate has a problem with a particular correctional officer, the Offender Concern Form should be addressed to that officer. The staff member should respond with seven (7) days of receiving the Offender Concern Form. (*Id.*)

6. If the issue cannot be resolved informally, an inmate may obtain and file a Grievance Form. (Ex. B., pp. 4-5). The Grievance Form is required to be submitted within thirty (30) days of the incident or problem that is the basis for the grievance; however, an extension of time may granted by the reviewing authority. (Ex. B., p. 5).

7. The Grievance Form must contain specific information including the nature of the complaint, dates, places, and names. (Ex. B., p. 5). The inmate must suggest a solution to the issue and can only raise one specific issue per grievance. (*Id.*) Upon receipt of a grievance, the Grievance Coordinator enters the grievance information into the Corrections Integrated System ("CIS"), which is an electronic database used to log offender grievances and grievance appeals. (Ex. B., p. 6). The Grievance Coordinator determines if the grievance form is completed correctly. (*Id.*) If the form is completed correctly the grievance is entered into the CIS and then assigned to the staff member most capable of responding. (Ex. B., pp. 6-7.) If the form is completed incorrectly it is returned to the offender using the Grievance/Disciplinary Offense Report (DOR) Transmittal Form. (Ex. B., p.6) The Grievance Coordinator assigns the correctly completed grievance to the staff member most appropriate to respond to and, if appropriate,

resolve the grievance issue. (Ex. B., p. 7). Staff must answer and return the grievance to the Grievance Coordinator within ten (10) days. (Ex. B., p. 7). Once the staff member responds to the grievance, the response is sent to the Grievance Coordinator—who logs the information in the CIS database. (*Id.*) The information is then forwarded by the Grievance Coordinator to a “reviewing authority,” who is usually a deputy warden. (Ex. B., p. 7). Within fourteen (14) days of receiving the grievance from the Grievance Coordinator, the reviewing authority must review the grievance, the staff member’s response and, as needed, any applicable rules, policies, SOPs, etc., and deny, modify, or grant the offender’s suggested solution. (Ex. B., p.8.) The reviewing authority then returns the grievance to the Grievance Coordinator. (*Id.*) Upon receipt of the grievance from the reviewing authority, the Grievance Coordinator logs the reviewing authority’s response in the CIS database. (*Id.*) A copy of the response is then printed, attached to the original grievance paperwork submitted by the offender, and returned to the offender via institutional mail. (*Id.*) The Grievance Coordinator then files a copy of the original Grievance Form, and any attachments submitted with the grievance, in the facility administration area. (*Id.*)

8. If the inmate is not satisfied with the response to his grievance, he may, within five (5) days of receiving the response, file an appeal. (Ex. B., p. 9).

9. When the Grievance Coordinator receives an appeal, she is required to enter the appeal into the CIS database and forward it to the “appellate authority,” who is typically the facility head. (Ex. B., p. 9). At IMSI, the appellate authority is the Warden, except as to medical grievances, in which case the contract medical provider acts as the appellate authority. (Ex. B., pp. 11-12). The appellate authority must draft a response within fourteen (14) days of receipt of the grievance appeal, and must return it to the Grievance Coordinator, who will log the response in CIS. (Ex. B., p.10.) The grievance coordinator will forward the printed grievance and the

offender's original attachments to the offender. (Ex. B., p.10.) The grievance coordinator will then file a copy of the printed grievance, the original Grievance/Appeal form, and copies of all attachments in the facility administration area. (*Id.*)

10. Upon completion of all three steps, i.e., the Offender Concern Form, the Grievance Form, and the Grievance Appeal, the inmate grievance process is exhausted.

11. I am the custodian of the grievances and grievance logs at the IMSI. The grievances and grievance logs are kept in the ordinary course of the IMSI's regularly conducted business activities. Additionally, grievances that were submitted prior to November 1, 2007 are logged into a searchable Excel computer database. By using this database, I am able to search for grievances by various categories, including but not limited to: an inmate's name, an inmate's IDOC number, grievance number, or a particular year. Grievances submitted after November 1, 2007 are logged in the CIS.

12. Prior to November 2007, the IDOC did not require the Grievance Coordinator to keep copies or a log of any unprocessed grievances until November 2007, when the revised SOP 316 was issued. (*See* Ex. B, Appx. B-Grievance Transmittal Form). Since the end of November 2007, all grievances are logged, even if they are not processed. The inmate grievance process is exhausted only when the grievance submitted by an inmate follows the grievance procedure and all steps are completed within the required timelines and guidelines of SOP 316.

13. At the request of IDOC counsel I have reviewed the Excel database and CIS for grievances submitted by offender Paul Rhoades, IDOC # 26864, for the period of January 1, 2002 through October 3, 2011. Upon review of the Excel database, inmate Rhoades did not submit any grievances from 2002 to the present with respect to having a constitutional right to

have counsel present during his execution as a witness or his counsel's constitutional right to be present during his execution.

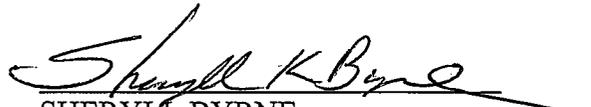
14. I have access to the IDOC CIS in the ordinary course of business. I have reviewed offender Rhoades Grievance Listing from November 25, 2008 through October 3, 2011, 2011. Offender Rhoades has submitted approximately five (5) grievances on different issues regarding conditions of confinement, administration and mail that have been logged in the IDOC CIS database. Attached as Exhibit C is a true and correct copy of the CIS Grievance Listing for offender Rhoades showing grievances submitted between the dates of November 25, 2008 to the present.

15. As the Grievance Coordinator at IMSI I have access to the archived grievance logs that were kept in the ordinary course of business prior to the implementation of the CIS. In reviewing the grievance logs since January 1, 2002 only one other grievance was submitted by inmate Rhoades in 2004 regarding his classification as administrative segregation. Between the archived grievance logs and the CIS database offender Rhoades has submitted a total of six (6) grievances to present date.

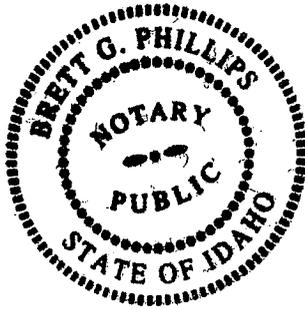
16. Offender Rhoades has not submitted any grievances with respect to his claim that he has a constitutional right to have his counsel present during his execution or with respect to his claim that his counsel has a constitutional right to be present as a witness or counsel to Rhoades during his execution.

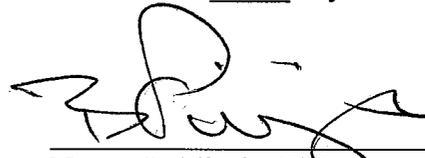
17. Further your affiant sayeth naught.

DATED this 13th day of October, 2011.


SHERYLL BYRNE

SUBSCRIBED AND SWORN To before me this 13th day of October, 2011.



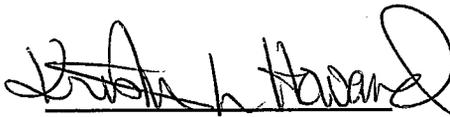

Notary Public for Idaho
Residing at Boise, ID
Commission Expires: 7-24-12

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of October, 2011, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF SHERYLL BYRNE with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to the following persons:

Oliver W. Loewy, oliver_loewy@fd.org

Teresa Hampton, Teresa_Hampton@fd.org


KRISTA L. HOWARD

Idaho Department of Correction 	Policy	Control Number: 316	Version: 2.0	Page Number: 1 of 2
		Title: Offender Grievance Process		Adopted: 8-17-1990 Reviewed: 3-31-2008 Next Review: 3-31-2010

This document was approved by Brent Reinke, director of the Idaho Department of Correction, on 3/31/08 (signature on file).

BOARD OF CORRECTION IDAPA RULE NUMBER

None

POLICY STATEMENT

It is the policy of the Idaho Board of Correction that the Idaho Department of Correction (IDOC) and its contractors provide a process that enables each offender to resolve problems and find answers to questions concerning the operation of the Department as it relates to offenders.

PURPOSE

The purpose of this policy is to communicate the Board's management philosophy regarding the offender grievance process.

SCOPE

This policy applies to all procedures created under the authority of this policy and to IDOC facilities, assigned staff, and offenders under the jurisdiction of the IDOC.

RESPONSIBILITY

The director of the IDOC and the chiefs of the Divisions of Prisons and Community Corrections are responsible for overseeing the development, implementation, and monitoring of standard operating procedures (SOPs) that provide guidance on or establishes the following:

- Methods for informal resolution of problems and complaints;
- Guidelines that help offenders understand how to use the process ;
- Methods of monitoring the number of grievances, the operational area being grieved, and the administrative decisions;
- Guidelines that prohibit retaliation against offenders for participating in the grievance process.
- Guidelines to ensure timely resolution of issues.

EXHIBIT A

Control Number: 316	Version: 2.0	Title: Offender Grievance Process	Page Number: 2 of 2
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- Guidelines that allow offenders to use the process to resolve issues that are within the control of the Department, but do not allow use of the process for issues that are beyond the Department's control.
- Instructions to ensure that issues regarding the disciplinary hearings are handled using the Department's disciplinary hearing appeal process.
- Processes to ensure that offenders entering the Department are made aware of the offender grievance process.
- Guidelines that provide offenders access to the offender grievance standard operating procedure and related forms.
- Methods that promote a clear understanding of the offender's complaint.
- Guidelines that promote a proposed solution from the offender.
- Guidelines that limit staff access to offender grievances to a need-to-know basis.

REFERENCES

None

– End of Document –

COPY

Idaho Department of Correction 	Standard Operating Procedure Division of Prisons Inmate Management	Control Number: 316.02.01.001	Version: 3.0	Page Number: 1 of 13
		Title: Grievance and Informal Resolution Procedure for Offenders		Adopted: 9-1-1995 Reviewed: 5-2-2008 Next Review: 5-2-2010

This document was approved by Pam Sonnen, chief of the Division of Prisons, on 5/2/08 (signature on file).

BOARD OF CORRECTION IDAPA RULE NUMBER

None

POLICY STATEMENT NUMBER 316

Offender Grievance Process

POLICY DOCUMENT NUMBER 316

Offender Grievance Process

DEFINITIONS

Standardized Definitions List

None

PURPOSE

The purpose of this standard operating procedure (SOP) is to increase the safety and security of Idaho Department of Correction (IDOC) correctional facilities by providing offenders a process to voice complaints about policies, division directives, SOPs, field memorandums, conditions of confinement, employee actions, actions of other offenders, medical, and other incidents occurring within the jurisdiction of the Department.

An effective grievance process gives offenders the ability to voice concerns, helps IDOC staff increase adherence to policy and procedure, and aids in the discovery of unworkable, impractical, or inconsistent practices.

SCOPE

This SOP applies to all Division of Prisons correctional facilities, assigned staff, and offenders.

Note: Concerns and grievances directed to the deputy attorney generals (DAGs) do not fall within the scope of this SOP. See section 2 of this SOP for further details.

RESPONSIBILITY

Facility heads are responsible for:

EXHIBIT B

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- Implementing this SOP,
- Ensuring staff members practice the requirements contained herein, and
- Appointing a staff member to serve as the grievance coordinator.

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GENERAL REQUIREMENTS

1. Grievance Process Overview

An offender grievance is a written complaint regarding a problem or action that affects either an offender or the offender population as a whole. An offender must write and file his own *Offender Concern* or *Grievance/Appeal Form* unless he is unable to write a grievance due to illiteracy, the inability to write the English language, or is physically unable to complete it. (Note: Under these circumstances, an offender is allowed to write a grievance on another offender's behalf.)

The offender problem solving procedure has three (3) components:

- Concerns (Using Appendix A, *Offender Concern Form*)
- Grievances (Using Appendix C, *Grievance/Appeal Form*)
- Grievance Appeals (Using Appendix A, *Offender Concern Form* and Appendix C, *Grievance/Appeal Form*)

2. General Information

Problem solving should occur at the lowest, appropriate level. First, offenders should discuss issues with staff before using an *Offender Concern Form*. Second, offenders must try to solve the problem informally using Appendix A, *Offender Concern Form*. If the problem cannot be solved after using a concern form, the offender can then file a grievance.

Note: The DAGs are not a part of the concern or grievance process, and offenders must not be allowed to file concerns or grievances with the DAGs.

It is important that offenders understand that IDOC staff members are prohibited from reprisal or retaliation against anyone for any reason for filing a grievance or participating in the grievance procedure; this includes the use of concern forms. Offenders can file a grievance against any employee who uses reprisal or retaliation.

3. What Problems Can and Cannot Be Grieved

Most things that affect offenders during incarceration can be grieved. A list can be seen in section 8, Handling Requirements and Grievance Categories.

The following issues **cannot** be grieved:

Disciplinary Offense Reports (DORs)

- DOR hearing process including findings and sanctions. There is a separate process for the disciplinary procedure review or appeal process, which can be found in SOP 318.02.01.001, Disciplinary Procedures.

Alternative Sanctions

- Alternative sanctions that an offender agreed to

Sentence

- Length of sentence

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- Commission of Pardons and Parole and court decisions. Sentencing and parole decisions must be resolved with the court or by the Commission of Pardons and Parole. (**Note:** Offenders can use an *Offender Concern Form* and grievance procedure regarding problems with IDOC's calculation of their sentence.)

Previously Grievated Issues

- After an issue has been reviewed at the appellate level, the administrative remedies available to offenders have been exhausted. Additional grievances forms on previously grievated and appealed issues will be rejected.

Outside Problems

- Problems that are beyond the control of the IDOC

4. Information for Offenders

Offender Concern Forms

A description of the problem must be written within the appropriate area on the *Offender Concern Form* (no attachments). If staff decides it is necessary to obtain more information, a staff member may interview the offender or request additional explanation.

Offenders must deliver *Offender Concern Forms* to the unit officer. The unit officer will sign the concern form and hand the bottom copy to the offender.

Note: Addressing the concern form to the appropriate staff member is essential (i.e., sending a concern form that should go to a property officer to a warden or deputy warden will only delay the process).

Staff members should respond to *Offender Concern Forms* within seven (7) days. If a staff member does not respond within seven (7) days, the offender can elect to send another *Offender Concern Form* to another staff member or use the grievance process. If the offender decides to use the grievance process, he must write "no response" in the staff response section of the offender's copy of the concern form and attach it to the *Grievance/Appeal Form* (Appendix C).

Note: Issues that are confidential such as unethical staff behavior can be reported directly to the warden by sealing the *Offender Concern Form* or letter in an envelope and placing the envelope in the grievance lock box. The offender must place his name and living unit information in the upper left-hand corner of the envelope. Additional reporting options can be found in SOP 325.02.01.001, Prison Rape Elimination.

Grievance Forms

All offenders can use the grievance process regardless of their classification or housing status.

Offenders must avoid using grievances for problems that should be resolved informally. Overloading the grievance system slows the process and reduces staff members' ability to consider the problems being grievated.

The following guidelines must be followed or the grievance will be rejected:

- A copy of the *Offender Concern Form* with the staff response that shows the offender's attempt to resolve the issue informally must be attached. (**Note:** If the staff

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member did not respond, write "No Response" in the staff response section of the yellow copy of the concern form and attach it to the *Grievance/Appeal Form*.)

- An offender cannot have more than three (3) open grievances, including appeals, in the system. (**Note:** "Open" means awaiting response from the review or appellate authority.)
- An offender can only raise one (1) specific issue per grievance.
- The grievance must contain specific information such as dates, places, and names.
- The description of the problem must be written within the appropriate area on the *Grievance/Appeal Form*. If staff decides it is necessary to obtain more information, a staff member may interview the offender or request additional written explanation.
- *Offender Concern* and *Grievance/Appeal Forms* must be handwritten and legible. Concern or grievance forms that are difficult to read or understand may be returned with instructions regarding needed changes.
- Grievances must be submitted within 30 days of the incident. (**Note:** The review authority may extend this time limit.)
- The offender must suggest a solution to the issue.
- The offender submitting the *Grievance/Appeal Form* must sign the form.

Note: Grievance coordinators may return grievances that do not meet these guidelines; however, grievance coordinators will consult with the review or appellate authority anytime there is a question regarding the acceptance or rejection of a grievance. (See process steps in section 5 below.)

5. Procedure for Filing an Offender Grievance

Table 5.1: Filing Grievances

Functional Roles and Responsibilities	Step	Tasks CIS steps are in bold
Offender	1	If informal problem solving is unsuccessful, do the following: <ul style="list-style-type: none"> • Complete Appendix C, <i>Grievance/Appeal Form</i>. At the top of the form, check the box next to "grievance". • Attach the <i>Offender Concern Form(s)</i> that were used in an attempt to resolve the issue. (Note: Supporting documentation such as copies of property inventories should be attached. Refer to <u>section 4</u> for additional details.)
Offender	2	Within 30 days of the incident, do the following: <ul style="list-style-type: none"> • Submit the <i>Grievance/Appeal Form</i>, placing it in the lockbox designated for grievances, appeals, etc. (Note: The review authority may extend the deadline for filing.)
Designated Idaho Department of Correction (IDOC) Staff	3	Collect the forms from lockbox (at a minimum Monday through Friday, except state-observed holidays) and submit them to grievance coordinator.

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Functional Roles and Responsibilities	Step	Tasks CIS steps are in bold
<p>Grievance Coordinator (at the facility where the offender currently resides)</p>	<p>4</p>	<p>In the Corrections Integrated System (CIS), under the “grievance detail” screen, level one (1), fill in the appropriate fields. (See the note box directly below this table.)</p> <p>(Note: If the issue the offender is grieving occurred at a facility other than where the offender is currently housed, the grievance coordinator must fax the <i>Grievance/Appeal Form</i> and attachments to the grievance coordinator at the facility where the issue occurred. All data entries must be done at the facility where the issue occurred. The original grievance form will be filed in a pending file at the facility where the offender is housed.)</p>
<p>Grievance Coordinator</p>	<p>5</p>	<p>Determine if the <i>Grievance/Appeal Form</i> is completed correctly.</p> <ul style="list-style-type: none"> • If the form is completed correctly or after a previously incomplete form is corrected, proceed to step 6. • If the form is not completed correctly, return the form to the offender using Appendix B, <i>Grievance/Disciplinary Offense Report (DOR) Transmittal Form</i>. • In CIS, under the “offender section,” within the “grievance detail” screen, note that the grievance was returned to the offender and also state why. In the disposition drop-down box, leave the disposition field blank.
<p>Grievance Coordinator</p>	<p>6</p>	<p>If the <i>Grievance/Appeal Form</i> is acceptable, do the following:</p> <ul style="list-style-type: none"> • In CIS, under the “offender section,” within the “grievance detail” screen type verbatim—the offender’s written statements. <ul style="list-style-type: none"> • Double-space and enter the information provided by the offender that describes how he tried to resolve the problem informally. • Double-space and enter the offender’s suggested resolution. • In the “disposition” field, select “pending.” • Select the “received date” and “due date back” fields.

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Functional Roles and Responsibilities	Step	Tasks CIS steps are in bold
Grievance Coordinator	7	<ul style="list-style-type: none"> Assign the grievance to the staff member most capable of responding to and, if appropriate, resolving the issue. (Note: Grievances involving health care issues must be assigned to a medical contract provider employee.) In CIS, enter the staff member's user ID in the "forwarded to" field, and enter the date forwarded in the "forwarded date" field. Attach a portable document format (PDF) version of the grievance to an email and send the email to the staff member assigned to respond to the grievance, notifying him of the assignment. The grievance coordinator should discuss the assignment with the review authority as needed.
Assigned Staff Member	8	Within 10 days, review the issue described in the grievance and determine if policies, SOPs, division directives, field memorandums, and best correctional practices were followed. (Note: If the response cannot be completed within 10 days, notify the grievance coordinator so, if appropriate, another staff member can be assigned. A notification of the delay will be sent to the offender.)
Assigned Staff Member	9	Reply to the grievance coordinator's email by including a clear and professional response to the grievance/appeal form.
Grievance Coordinator	10	<p>In CIS, under the "grievance detail" screen</p> <ul style="list-style-type: none"> Copy and paste the response received from the assigned staff member (via email) into the "staff section." (Note: The response should be copied as written—no modifications are permitted, including spelling corrections.) Select the "level two (2)" radio button. Click on the date fields, enter the review authority's user ID in the "forwarded to" field, and enter the date forwarded in the "forwarded date" field. Notify the review authority (via email) of the grievance assignment.

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Functional Roles and Responsibilities	Step	Tasks CIS steps are in bold
Review Authority (See section 10)	11	Within 14 days of receiving the <i>grievance</i> from the grievance coordinator, <ul style="list-style-type: none"> • Review the grievance, the staff response and, as needed, any applicable rules, policies, SOPs, etc., and deny, modify, or grant the offender's suggested solution and then forward the grievance to the grievance coordinator. • In CIS, under the "grievance detail" screen <ul style="list-style-type: none"> • Select the "level two (2)" radio button; • In the "review authority" text field, record your finding; • In the "grievance disposition" field, select "denied," "modified," or "granted"; and • Click on the "save" button. • Notify the grievance coordinator (via email) that the grievance review process has been completed.
Grievance Coordinator	12	<ul style="list-style-type: none"> • From CIS: <ul style="list-style-type: none"> • Place the cursor in the "returned date" field, and the date will auto-fill; • Select the "response sent to inmate date," and the date will auto-fill; • Print the grievance; • Forward the printed grievance and the offender's original attachments to the offender; and • File a copy of the printed grievance, the original <i>Grievance/Appeal Form</i>, and copies of all attachments in the facility administration area.

For further assistance with CIS, see your designated CIS super user.

Note: For step-by-step instructions on how to prepare the grievance in Corrections Integrated System (CIS) see the "grievance section" in the *CIS EZ Guide* or contact your designated CIS super user.

6. Appeal Process

If the offender is not satisfied with the reviewing authority's response, the offender may file an appeal using the process detailed in table 6.1 below.

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Table 6.1: Filing an Appeal

Functional Roles and Responsibilities	Step	Tasks CIS steps are in bold
Offender	1	Within five (5) days of receiving a grievance response, submit in the appropriate lockbox the original grievance with an <i>Offender Concern Form</i> attached explaining why the finding should be changed .
Grievance Coordinator	2	<ul style="list-style-type: none"> • In the Corrections Integrated System (CIS), under the “grievance detail” screen, for the grievance enter the reason(s) for the offender’s appeal under the “offender grievance description” text box. • Select “level three (3),” complete the date fields, and enter the appellate authority’s user ID in the “forwarded to” field. • In the “disposition” field, select “pending.” • Notify the appellate authority (via email) of the grievance appeal. (Note: <u>Grievances involving health care issues must be sent to the medical contractor regional manager. Copies of all materials will be maintained at the sending facility. If the medical contractor does not have access to CIS, send him a copy of the grievance, and when complete, the grievance coordinator must enter the information into the “grievance” fields in CIS.</u>)
Appellate Authority (See <u>section 10</u>)	3	<p>Within 14 days,</p> <ul style="list-style-type: none"> • Review the issue, staff response, and review authority’s finding; • In CIS, under the “grievance detail” screen <ul style="list-style-type: none"> • Select the “level three (3)” radio button; • In the “appellate authority” text field, record your finding; • In the “grievance disposition” field, select “denied,” “modified,” or “granted”; • Select your name from the “appellate authority” drop-down box; and • Click on the “save” button. • Notify the grievance coordinator that the appeal has been completed. (Note: If an extension is required, the offender must receive written notification.)

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Functional Roles and Responsibilities	Step	Tasks CIS steps are in bold
Grievance Coordinator	4	<ul style="list-style-type: none"> • In CIS, under the “grievance detail level 3” screen <ul style="list-style-type: none"> • Place the cursor in the “returned date” field, and the date will auto-fill; • Input the response sent to inmate date; • From CIS, print the grievance; • Forward the printed grievance and the offender's original attachments to the offender; and File a copy of the printed grievance, the original <i>Grievance/Appeal Form</i> , and copies of all attachments in the facility administration area.

For further assistance with CIS, see your designated CIS super user.

Note: (Regarding Medical Grievances) -- When the grievance review authority or appeal authority completes the grievance, the medical contract provider will return the original grievance and the offender's original attachments to the facility grievance coordinator and will forward a copy of grievance and copies of all pertinent documents (summaries, medical records, etc.) to the Department's medical services manager.

7. Notifying Offenders of Grievance Procedures

Facility heads will ensure that this SOP is readily available to all offenders housed in their facility.

Within two (2) working days after arriving at an IDOC Reception and Diagnostic Unit (RDU), each offender will receive both written (Appendix D, *Grievance and Informal Resolution Process for Offenders Offender Handout*) and verbal instructions regarding the grievance procedure, including a question and answer period. Appropriate provisions will be made for those speaking other languages and for the disabled or those requiring special accommodations.

8. Handling Requirements and Grievance Categories

Each facility will provide a locked box in which offenders will submit grievances and appeals.

Response to grievances should be returned to the offender in a sealed envelope or folded and secured.

Grievance Categories and Codes

- Access to Courts (ATC)
- Administration (Admin)
- Classification (Class)
- Commissary (Com)
- Complaint Against Staff (CAS)
- Conditions of Confinement (COC)

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- Food (Food)
- Mail (Mail)
- Medical (Med)
- Programs (PRG)
- Property (PRP)
- Security (SEC)

9. Guidelines for Staff

Staff members should try to solve problems with offenders at the lowest, appropriate level.

When staff members recognize that a problem exists, but it is beyond the scope of their authority, they should work through their chain of command to achieve a solution.

The time limit for staff to respond to an *Offender Concern Form* is seven (7) days. Staff members' response on *Offender Concern* and *Grievance/Appeal Forms* must be clear, concise, and professional. Concern forms will be a half (½) sheet printed on three (3)-part No Carbon Required (NCR) paper using the following colors:

- **White** original (filed as identified in facility field memoranda).
- **Pink** copy is returned to the offender after a staff member signs for receipt. (This copy is proof the concern was sent.)
- **Yellow** copy is returned to offender with staff response.

Note: NCR paper or carbonless copy paper is used to make a copy of the original document by handwriting on the top document.

In most cases, the grievance process must be exhausted before an offender can file a lawsuit against the Department. Therefore, offenders cannot be disciplined for using the grievance/concern process or for the content contained therein. Reprisal or retaliation against offenders is prohibited.

Offender grievances will be treated as confidential and staff will only view them on a need to know basis.

If staff learns that an offender is having difficulty understanding the informal resolution and grievance process, the offender should be given a copy of Appendix D, *Grievance and Informal Resolution Process for Offenders Offender Handout*. If the offender is illiterate, a staff member can explain the procedures, read, or have Attachment D read to the offender.

10. Review and Appellate Authorities

The grievance process has two (2) decision-making authorities: review authority and appellate authority.

For Prison and CWC Issues

Review Authority: The deputy warden or, in facilities without a deputy warden, the second-in-command.

Appellate Authority: The facility head.

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Note: The review or appellate authority will forward grievances that are beyond his control to the division chief. In addition, the review or appellate authority will notify the IDOC Office of Professional Standards of any issue that could result in involvement of that office.

For Health Care or Medical Contract Provider Issues

Review Authority: An employee of the medical contract provider.

Appellate Authority: The medical contractor regional manager.

11. Review and Appellate Authority Options: Grant, Modify, or Deny

Review and appellate authorities have three (3) options: Grant, Modify, or Deny.

Grant: The review or appellate authority determined that a change or correction is needed and that the offender's suggested solution is being approved or granted.

Example:

The problem: The mailroom overcharged me \$2 dollars in postage.

I suggest the following solution: Credit my inmate trust account \$2 dollars.

If the review authority discovers that the offender was overcharged \$2 dollars, the appropriate decision is to grant the offender's grievance and implement the offender's solution just as it was written.

Modify: The review or appellate authority determined that a change or correction is warranted but that the offender's solution will not work. A modified response could include such things as staff training, even if the issue cannot be corrected.

Example:

The problem: Security confiscated my television, but they had no reason to do so.

I suggest the following solution: The Department should buy me a new television and credit my inmate account \$150 dollars.

If the review authority discovers that the confiscation of the television was an error, then the situation should be corrected; however, the offender's solution is inappropriate. Therefore, the review authority should modify the offender's solution. For example, the decision might be to return the confiscated television to the offender but not credit money to the offender's account.

Deny: The review or appellate authority determined that no change is justified.

Example:

The problem: Security confiscated my television.

I suggest the following solution: The Department should buy me a new television and credit my inmate account \$150 dollars.

If the review or appellate authority determines that the television was taken because the offender did not own the television, then the appropriate response is to deny the suggested solution stating something like "There is no evidence that you own the

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television. Staff confiscated the television in accordance with SOP 320.02.01.001, Property: State-issued and Offender Personal Property.”

12. Documentation

The grievance coordinator will enter grievance information into the Corrections Integrated System (CIS).

The grievance coordinator will maintain hard copies of grievances for five (5) years.

REFERENCES

Appendix A, Offender Concern Form

Appendix B, Grievance/Disciplinary Offense Report (DOR) Transmittal Form

Appendix C, Grievance/Appeal Form

Appendix D, Grievance and Informal Resolution Process for Offenders Offender Handout

Department Policy 318, Disciplinary Procedures

Standard Operating Procedure 318.02.01.001, Disciplinary Procedures

Standards for Adult Correctional Institutions, Fourth Edition, Standard 4-4284

– End of Document –

IDAHO DEPARTMENT OF CORRECTION
Offender Concern Form

Offender Name: _____ IDOC Number: _____

Institution, Housing Unit, & Cell: _____ Date: _____

To: _____
(Address to appropriate staff: Person most directly responsible for this issue or concern)

Issue/Concern: _____

(Description of the issue must be written only on the lines provided above.)

Offender signature: _____

Staff Section

Staff signature: _____ Associate ID #: _____
(Staff member acknowledging receipt)

Reply: _____

Responding staff signature: _____ Associate ID # : _____ Date: _____

Pink copy to offender (after receiving staff's signature),
Original and Yellow copy to responding staff (after completing the reply, yellow copy returned to offender)

Appendix A
316.02.01.001 v3.0

This is a half-page form. Cut page above the line and discard the bottom portion of this page.

IDAHO DEPARTMENT OF CORRECTION
Grievance/Disciplinary Offense Report (DOR) Transmittal Form

Facility: _____ Date: _____

To: Offender Name: _____ IDOC Number: _____

Institution, Housing Unit, & Cell: _____

From: _____

The attached form is being returned without action being taken because:

- You did not attach an answered or signed *Offender Concern Form* that shows your attempts to resolve the issue informally.
- You have three (3) grievances in the system, which is the maximum number you are allowed.
- You have raised more than one (1) issue.
- The grievance does not contain specific information such as dates, places, and names.
- Your description of the problem is not written within the appropriate area on the form.
- The form is typed. Forms must be handwritten.
- You did not file the grievance or Disciplinary Offense Report (DOR) appeal within the time limit.
- You agreed to the alternative sanctions.
- Your administrative remedies have been exhausted on this issue. Previous grievance or DOR appeal number: _____ was on this same topic.
- You did not sign the form.
- You did not suggest a solution.
- You cannot grieve a DOR, but must use the disciplinary appeal process.
- You cannot grieve the length of your sentence or a decision that is under the jurisdiction of the court or Commission of Pardons and Parole.
- This problem is beyond the Idaho Department of Correction's (IDOC's) control.
- Other (must be approved by the review or appellate authority): _____

IDAHO DEPARTMENT OF CORRECTION

Grievance/Appeal Form

Grievance Appeal

Offender's Name: _____ IDOC Number: _____

Institution, Housing Unit, & Cell: _____ Date: _____

For Administrative Use	
Facility: _____	Date Answer Sent: _____
Date Received: _____	Grievance Number: _____
Date Answer Due: _____	Grievance Category Code: _____
Offender Section	
The problem is:	
I have tried to solve this problem informally by:	
I suggest the following solution for the problem:	
Offender's signature:	

Appendix C
316.02.01.001 v3.0

This is a half-page form. Cut page above the line and discard the bottom portion of this page.

Appendix C
316.02.01.001 v3.0

IDAHO DEPARTMENT OF CORRECTION
Grievance and Informal Resolution Process for Offenders Offender Handout



What if I have a problem while incarcerated?

Sometimes problems happen. If you have a problem, take the following step.

- To learn more, read standard operating procedure (SOP) 316.02.01.001, Grievance and Informal Resolution Procedure for Offenders. Just ask a staff member for the SOP on the grievance procedures for offenders.

Know the Rule

The first step is to know and follow the rules. The IDOC uses policies, directives, and standard operating procedures. For now let's just call them all rules. You can read most of the rules that affect you.

If staff followed the rule, asking for a change won't work.

Talk to Staff

Second, talk to staff. Staff can show you the rule, answer your question, or tell you who can answer your question.

Write an Offender Concern Form

Write your problem on an *Offender Concern Form* and address it to the proper staff member. For example, a property question is sent to the property officer. Give the concern form to the unit officer. The unit officer signs the concern form and gives you a copy. Keep the copy.

The staff member should respond within seven (7) days. If you think the response is wrong or if there is no response after seven (7) days, you can file a grievance.

File a Grievance

To file a grievance, fill out the *Grievance/Appeal Form* and attach the *Offender Concern Form* that has the staff response. (If you didn't get a response write "no response" on the copy of the concern form that the unit officer signed and attach it to the grievance form.)

Put the grievance form in the lock box.

File an Appeal

If you think the answer on the grievance is wrong, you can file an appeal. After you get the *Grievance/Appeal Form* back with an answer, you must file the appeal within five (5) days. Write why you think the answer is wrong on a concern form and attach the *Offender Concern Form* to the grievance form. Put both in the lock box. This is the last step in the problem solving process.

Grievance Listing  

Begin Date: End Date:

Search By : Search Arguments :

Offender Grievances 

Sort By:

Grievance Number	Offender Number	Offender Name	Received Date	Category	Status
  IM 090000456	26864	RHOADES, PAUL EZRA	07/08/2009	CONDITIONS OF CONFINEMENT	RETURNED W/O ACTION
Description: RETURNED					
  IM 090000424	26864	RHOADES, PAUL EZRA	06/23/2009	CONDITIONS OF CONFINEMENT	DENIED
Description: Placing me in ad seg due to my death sentence, the only reason cited in my restrictive housing order, un-constitutionally (federal & state) negates my liberty interest in avoiding ad seg here, my rights to due process, against cruel & unusual punishment & against ex post facto laws bec.:prison rules don't allow me to achieve a less burdensome classification; ad seg isn't the least restrictive way to meet prison interests; & I.C.S 19-2705(1)mandates individualized housi					
  IM 090000153	26864	RHOADES, PAUL EZRA	02/24/2009	ADMINISTRATION	DENIED
Description: That executing me by lethal injection pursuant to IDOC protocol or by firing squad, for which no IDOC protocol exists, would violate my state and federal constitutional rights. US jConst amends VIII & XIV: Bate v. Rees; Idaho Const. Art. I, SS6 & 13. This is due to a variety of reasons, which are outlined in my attached concern form and for which there is insufficient space to repeat here. Also, my original and technically and allegedly defective grievance form is attac					
  IM 080000486	26864	RHOADES, PAUL EZRA	12/24/2008	ADMINISTRATION	RETURNED W/O ACTION
Description: Grievance was returned to Rhoades. He is grieving the execution process, which is beyond the IDOC's control. KR 12-24-08					
  IM 080000433	26864	RHOADES, PAUL EZRA	11/25/2008	MAIL	DENIED
Description: Mailroom confiscated The Angolite Prison News Magazine 11-21-08 stating cause to be information about another offender. The next night 11-22-08 I received Prison Legal News Magazine. This issue received after concern sent about Angolite. Both the Angolite and Prison Legal News contain such information. Sending concern to Sgt. Wright at South Boise Complex mailroom asking why double standard as to which magazine allowed. Both contain information about offenders, PLN a					

Record(s) displayed/found:1-5/5

Page (s):1

Source File: w_dio_s4_1.jsp

EXHIBIT C

Idaho Department of Correction 	Policy	Control Number: 135	Version: 2.0	Page Number: 1 of 2
		Title: Executions		Adopted: 5-27-1998 Reviewed: 10-13-2011 Next Review: 10-13-2013

This document was approved by Brent Reinke, director of the Idaho Department of Correction, on 10/13/11 (signature on file).

Open to the general public: Yes No

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

BOARD OF CORRECTION IDAPA RULE NUMBER 135

Executions

POLICY STATEMENT

It is the policy of the Idaho Board of Correction that the Idaho Department of Correction (IDOC) is always cognizant that the execution of an offender is one of the most serious responsibilities of the IDOC and that the execution of an offender must be approached with the highest regard for the dignity of all involved.

It is also the policy of the Board that the IDOC carry out scheduled executions in a manner that is consistent with professional correctional standards, and that those members of the general public who have a legitimate mission be accommodated to the degree possible within reasonable safety and security standards, and budget restrictions.

PURPOSE

The purpose of this policy is to communicate the Board's philosophy in regards to carrying out the execution of an offender for which there is a death warrant.

SCOPE

This policy applies to all procedures created under the authority of this policy and to all employees and contractors of the IDOC who are involved in the execution process.

RESPONSIBILITY

The director of the IDOC and the chief of the Operations Division are responsible for (1) overseeing the implementation of this policy, and (2) the development and implementation of a standard operating procedure (SOP) that provides guidance and procedure on the following, at a minimum:

- Monitoring court appellate activities;
- IDOC staff conduct and professionalism;
- Execution team responsibilities;

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- Execution process disruptions;
- Pregnant females;
- Stay of executions;
- Public information and media access;
- External security;
- Execution witnesses/attendees;
- The offender's conditions of confinement;
- Pre- and post-execution responsibilities;
- Execution procedures;
- IDOC staff briefings; and
- Execution timelines.

REFERENCES

None

– End of Document –

Idaho Department of Correction 	Standard Operating Procedure Operations Division General Administration	Control Number: 135.02.01.001	Version: 2.9	Page Number: 1 of 34
		Title: Execution Procedures		Adopted: 5-18-1998 Reviewed: 10-14-2011 Next Review: 10-14-2013

This document was approved by Kevin Kempf, chief of the Operations Division, on 10/14/11 (signature on file).

Open to the general public: Yes No

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

BOARD OF CORRECTION IDAPA RULE NUMBER 135

Executions

POLICY CONTROL NUMBER 135

Executions

DEFINITIONS

Standardized Terms and Definitions List

None

PURPOSE

The purpose of this standard operating procedure (SOP) is to establish specific procedures for administration of capital punishment in accordance with the Idaho Code and the constitutions of the United States of America and the state of Idaho.

SCOPE

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

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

RESPONSIBILITY

Director of the IDOC

The director of the IDOC shall be responsible for:

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

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

Chief of the Operations Division

The chief of the Operations Division shall be responsible for:

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

Deputy Chief of the Bureau of Prisons

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

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

Idaho Maximum Security Institution (IMSI) Warden

The IMSI warden shall be responsible for:

- Providing, planning, directing, and implementing all pre-execution and post-execution activities.
- Establishing post orders that contain detailed guidelines related to the execution of a condemned offender. (Orders must be approved by the deputy chief of the Bureau of Prisons and will not be open to public disclosure and will be restricted from distribution and disclosure to staff except those on a need to know basis.)
- Creating and maintaining a log documenting the events leading up to the execution date.
- Selecting staff to serve on the Execution Escort Team;
- Issuing all the orders to facilitate an execution at IMSI;

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- Approving the spiritual advisor for the offender if one is requested;
- Creating a permanent record of the execution activities;
- Ensuring that all of the equipment such as electrical, plumbing, heating and cooling (HVAC) units in the execution chamber are tested periodically to ensure they are in working order; and
- Ensuring that an annual training schedule is established and identifying dates for periodic on-site practice by command staff and the specialty teams (see section 5).

Idaho Maximum Security Institution (IMSI) Deputy Warden of Security

The IMSI deputy warden of security shall be responsible for internal security at IMSI. In addition to the regular posts, the IMSI deputy warden of security shall be responsible for scheduling staff for additional security to begin 48 to 24 hours prior to the execution up to and including a 'level C response' in accordance with the ICS.

Idaho State Correctional Institution (ISCI) Warden

The ISCI warden shall be responsible for establishing a field memorandum to identify authority and guidelines to coordinate media activity and providing logistic and communication support at the IDOC's south Boise complex.

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

South Idaho Correctional Institution (SICI) Warden

The SICI warden shall be responsible for establishing a field memorandum to identify authority and guidelines to coordinate and implement external security measures, including guidelines for other law enforcement and support agencies operating on the IDOC's south Boise complex.

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

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GENERAL REQUIREMENTS

1. Introduction

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

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

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

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

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

- Faithfully adheres to the letter and intent of Idaho Code, sections 19-2705, 19-2713, 19-2714, 19-2715, 19-2716, and 19-2718;
- Is handled in a manner that minimizes its impact on the safety, security, and operational integrity of the prison in which it occurs;
- Reasonably addresses the right of the offender to not suffer cruelly during the execution;
- Accommodates the public's right to obtain certain information concerning the execution and strives to minimize the impact on the community and the state;
- Reasonably addresses the privacy interests of victims and their families;
- Provides contingency planning to identify and address unforeseen problems;

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- Maintains lines of communication for stays of execution, commutations, and other circumstances up to the time that the offender is executed;
- Provides opportunity for citizens to exercise their First Amendment rights to demonstrate for or against capital punishment in a lawful manner; and
- Ensures there is an appropriate response to unlawful civil disobedience, trespass and other violations of the law by any person attempting to impact the execution or the operation of the prison.

2. Monitoring Appellate Activities

The deputy chief of the Bureau of Prisons in conjunction with the deputy attorneys general (DAGs) who represent the IDOC will monitor the appellate process of those offenders under the sentence of death. When it appears that an offender may be within one year or less of exhausting his appeals, the deputy chief of the Bureau of Prisons will notify the director of the IDOC, chief of the Operations Division, and the IMSI warden of the possibility of the issuance of a death warrant within the next year.

The IMSI warden and the deputy chief of the Bureau of Prisons will begin the planning and preparation process when an offender is determined to be possibly within this one year timeframe.

3. Staff Conduct and Professionalism

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

- Restraint and courtesy when interacting with offenders, witnesses, demonstrators, attorneys, news media, state of Idaho and local law enforcement and any member of the public regarding the implementation of the death penalty;
- All assigned duties are performed proficiently and professionally; and
- Conduct that appropriately reflects the gravity of the execution process.

The names of the individuals on the specialty teams (see section 5) will be treated with the highest degree of confidentiality. Any staff member who is aware of the identity of any of the individuals serving on either team must maintain strict confidentiality of the team members' identity. Disclosure of any team member's identity by staff will result in disciplinary action up to and including dismissal. (See SOP 205.07.01.001, *Corrective and Disciplinary Action*).

4. Attempted Disruption of Execution Process

The IDOC is required by Idaho Code to carry out the execution of an offender under sentence of death. The IDOC will take those actions necessary to fulfill this requirement and prevent the disruption of an execution or disruption to the safe and orderly operation of its correctional facilities to include, but not limited to the following:

- Filming, taping, broadcasting or otherwise electronically documenting the execution of an offender;
- Trespassing and otherwise entering upon IDOC property without authorization;
- Participating in unlawful demonstrations or unlawfully attempting to disrupt, prevent and otherwise interfere with an execution; and/or

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- Unlawfully threatening, intimidating and otherwise attempting to influence authorized persons involved in the execution process.

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

The IDOC will ensure that adequate law enforcement officers from Ada County Sheriff's Department and/or Idaho State Police are present to ensure the safe control of citizens on IDOC property, including officers stationed at the Execution Unit.

5. Specialty Teams

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

When the DAGs assigned to the IDOC indicates that it appears that an offender is within one year of exhausting his appeals, the IMSI warden will identify and select an Execution Escort Team.

Execution Escort Team Selection

When the DAGs who represent the IDOC indicate that it appears that an offender is within one year of exhausting his appeals, the IMSI warden, in conjunction with the deputy chief of the Bureau of Prisons shall identify qualified personnel to assemble an Execution Escort Team. The deputy chief of the Bureau of Prisons will designate the Execution Escort Team leader and at least one alternate Execution Escort Team leader. The Execution Escort Team leader reports to and takes direction from the IMSI warden.

- Strictly voluntary (staff may withdraw at any time without prejudice);
- Has displayed a high degree of professionalism;
- Has displayed an ability to maintain confidentiality;
- Has had no personnel disciplinary action in the past 12 months;
- Has at least one year of satisfactory employment with the IDOC;
- Has no blood relationship or legal relationship to the victim's family; and
- Has no blood relationship or legal relationship to the condemned offender or offender's family.

Medical Team Members – Selection and Training

When the DAGS who represent the IDOC indicate that it appears that an offender is within one year of exhausting his appeals, the IMSI warden, in conjunction with the deputy chief of the Bureau of Prisons shall identify qualified personnel to assemble a Medical Team. The deputy chief of the Bureau of Prisons will designate the Medical Team leader and at least one alternate Medical Team leader. The Medical Team leader reports to and takes direction from the IMSI warden.

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The Medical Team leader has direct oversight of the Medical Team and the Injection Team. The deputy chief of the Bureau of Prisons, IMSI warden, and the Medical Team leader shall ensure that all team members thoroughly understand all provisions of this SOP and are well trained in the execution procedures.

The Medical Team shall be responsible for inserting the IV catheters, ensuring the line is functioning properly throughout the procedure, mixing the chemicals, preparation of the syringes, monitoring the offender (including the level of consciousness), and supervising the administration of the chemicals.

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

- Emergency medical technician;
- Licensed practical nurse (LPN) or registered nurse (RN);
- Military corpsman;
- Paramedic;
- Phlebotomist;
- Physician assistant;
- Physician; or
- Other medically trained personnel including those trained in the United States Military.

Injection Team Selection

When the DAGs who represent the IDOC indicate that it appears that an offender is within one year of exhausting his appeals, the deputy chief of the Bureau of Prisons shall identify qualified personnel to assemble an Injection Team. The deputy chief of the Bureau of Prisons will appoint an Injection Team leader and at least one alternate Injection Team leader. The Injection Team leader reports directly to and takes direction from the Medical Team leader.

The Injection Team members shall be responsible for administering the chemicals as described in appendix A, *Execution Chemicals Preparation and Administration*.

The Injection Team shall consist of volunteers, whose primary duties include administering intravenous fluid drip (IV) as part of their training and experience.

Injection Team members must meet the following criteria:

- Must have at least one year of medical experience as a certified medical assistant, phlebotomist, emergency medical technician, paramedic, or military medical corpsman;
- Has no blood relationship or legal relationship to the victim's family; and
- Has no blood relationship or legal relationship to the condemned offender or offender's family.

The deputy chief of the Bureau of Prisons will verify candidates' professional licensure or certification and will complete criminal background checks before approving medical and injection team members. Selection of the team members shall include a review of the proposed team member's professional qualifications, training, experience, professional license(s) and certification(s), criminal history, and personal interview. Licensing and

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criminal history reviews shall be conducted, prior to contracting, annually and upon the issuance of a death warrant.

Specialty Team Training

The IMSI warden shall ensure an annual training schedule is established and identify dates for periodic on-site practice by command and the specialty teams. All training sessions shall be documented and submitted to the IMSI warden.

- The schedule shall include a minimum of 10 training sessions for the Execution Escort Team, Injection Team, and Medical Team annually;
- After receiving a death warrant, the teams will train weekly before the scheduled execution date;
- Team members must participate in a minimum of four (4) training sessions prior to participating in an actual execution; and
- Prior to any scheduled execution the Execution Escort Team, Medical Team, and Injection Team, shall conduct a minimum of two (2) rehearsal sessions during the 48 hours before the scheduled execution.

6. Licensed Physician on Site during Execution

A licensed physician will be on-site staged near the Execution Unit. The physician will have access to an on-site medical crash cart, including applicable medications, and defibrillator. The physician must be a medical doctor licensed by the Idaho Board of Medicine. The physician will not be a part of the execution team or specialty teams and will not participate in the execution in any way.

The physician will provide the following services:

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

Emergency Medical Personnel and Ambulance Service

Emergency medical technicians and ambulance service will be staged near the Execution Unit to provide emergency medical assistance and transport to anyone requiring such care during the process.

7. Death Warrants and Pregnant Females

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

8. Stay of Execution

Upon receipt of notification that the court has issued a stay of execution, the director of the IDOC shall advise the chief of the Operations Division, deputy chief of the Bureau of Prisons, and IMSI warden.

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

Deputy Chief of the Bureau of Prisons

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

IMSI Warden

- If the stay is issued after the offender has been moved to the execution chamber, and the stay is anticipated to be for more than two (2) hours, inform the Medical Team to remove the catheters;
- Direct the Execution Escort Team to remove the offender from the Execution Unit and return him to a designated cell;
- Ensure that all chemicals and medical supplies are handled in accordance with appendix A, *Execution Chemicals Preparation and Administration*; and
- If applicable, return offender's property.

Director of the IDOC

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

Chief of the Operations Division

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

IDOC Public Information Officer (PIO)

Issue a press release to the media.

9. General Timelines

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

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

- Issuance of the death warrant;
- 30 days prior to the execution;
- 21 days prior to the execution;
- Seven (7) days prior to the execution;
- Two (2) days prior to the execution;
- 24 hours prior to the execution;

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- 12 hours prior to the execution;
- Execution procedures; and
- Post-execution activities.

10. Public Information and Media Access

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

The IDOC PIO will act as the IDOC's liaison with all media agencies requesting access to the IDOC's south Boise complex or information regarding the execution. The IDOC PIO will notify all news media of the following IDOC rules that must be adhered to:

- Tobacco is not allowed within any IDOC facility;
- Weapons of any kind are not allowed on IDOC property;
- Cameras, video cameras, or recording devices are not allowed inside IMSI or the execution chamber;
- Cameras, video cameras, and recording devices are allowed in the media center and at the area(s) designated for media on the IDOC's south Boise complex;
- Are subject to search (metal detector and random pat search);
- Must arrive at the facility at the designated time; and
- Must enter IDOC property as instructed.

Media Center

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

The term "news media representative" shall be defined as a person whose primary employment is gathering or reporting news for:

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

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

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Media Witnesses to the Execution

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

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

The following media witness seats are selected by random drawings:

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

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

Random Drawing

The IDOC PIO will conduct the random drawing for three (3) media seats at approximately three (3) hours before the scheduled execution.

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

Media Staging

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

News media representatives who have confirmed their plans to witness the execution must arrive at the media center between 0400 and 0430 hours and must be present to be included in the lottery drawing.

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

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

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

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11. External Security

Temporary Flight Restriction

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

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

IDOC's South Boise Complex Security Zones

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

- **Inner perimeter zone:** the respective facilities fences
- **Controlled perimeter zone:** an extended perimeter around the four (4) facilities
- **Restricted zones:** areas designated for the media
- **Extended zones:** areas designated for observers/demonstrators.

At the designated time, the SICI warden will control access to the IDOC's south Boise complex to include IMSI, ISCI, SICI, and SBWCC.

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

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

12. Those Present at Execution

A total of 30 occupants, including the condemned offender, is the limit in the Execution Unit at one time. Persons allowed in the Execution Unit are as follows.

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

- Execution Escort Team members (up to four [4] total);
- The Medical Team;
- The Injection Team;
- A physician (one total);
- The director of the IDOC;
- A representative from the Idaho Board of Correction (one total);
- The chief of the Operations Division;
- The IMSI warden (or designee) (one total);
- The Ada County coroner (one total);

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- The prosecuting attorney from the county of conviction (one total);
- The sheriff from the county of conviction (one total);
- The sentencing judge (one total);
- A representative from the Idaho governor's office (one total);
- ~~The Idaho attorney general (or his representative) (one total);~~
- Members of the victim's family (two [2] total);
- A spiritual advisor of the offender's choosing (one total);
- Friends (approved visitors and/or attorney of record) or members of the offender's family (two [2] total); and
- Members of the news media in accordance with section 10 (up to four [4] total).

The Execution Unit includes areas such as viewing areas, chemical room, execution chamber, and staging areas. The persons in each area are as follows:

State of Idaho Witness Area

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

Condemned Offender's Witness Area

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

Execution Chamber

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

- Execution Escort Team members; (up to two [2] total);
- The director of the IDOC; and
- The IMSI warden.

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Note: The coroner and a physician will be located in a staging area near the execution chamber as determined by the IMSI warden.

Chemical Room

- Only members of the Medical Team and Injection Team; and
- The IMSI warden.

13. Upon Receipt of a Death Warrant

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

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

Functional Roles and Responsibilities	Step	Tasks
Director of the IDOC	1	<ul style="list-style-type: none"> • Immediately notify the warden of the facility in which the offender is housed and the IMSI warden; and • Immediately forward the death warrant to the warden of the facility in which the offender is housed.
Director of the IDOC	2	Notify the: <ul style="list-style-type: none"> • Idaho Board of Correction; • Executive director of the Idaho Commission of Pardons and Parole; • Idaho governor's office; and • IDOC PIO.
Facility Warden	3	Begin a log to provide a comprehensive chronological history of every aspect of the execution procedure.
Facility Warden	4	Serve the death warrant on the offender.
Facility Warden	5	Immediately segregate the offender from the general offender population (see section 15).
Facility Warden	6	Place the offender under constant observation by two (2) staff members for 24 hours a day, seven (7) days a week. Note: An observation logbook will be immediately established to record staff's observation of the offender's activities and behavior until the offender is executed or a stay of execution is received. Entries will be chronological. Each day will be recorded beginning at midnight as M/DD/YYYY. During the final four (4) hours before the execution, staff shall record each entry noting the time in hours and minutes, and make entries a minimum of once every 30 minutes.
Facility Warden	7	Notify the facility health authority and clinician that the offender has been placed in solitary confinement under a death warrant.

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Functional Roles and Responsibilities	Step	Tasks
Facility Warden	8	<ul style="list-style-type: none"> Notify the sentencing court that the death warrant has been served; Retain the original death warrant; Place a copy of the death warrant in the offender's central file; Provide the offender with a copy of the death warrant; and Forward a copy of the death warrant to the lead DAG who represents the IDOC.
Facility Warden	9	Within 24 hours after the death warrant is served, appoint a staff member (normally an IMSI deputy warden) to relieve the warden of all duties except those duties related to the execution procedure until there is a stay of execution or the execution process has been completed.

14. Briefings

The facility warden shall ensure that at a minimum, a weekly briefing will occur for all involved staff commencing after the death warrant is served until the facility has returned to normal operations. The CISM team members will be available to speak with interested and affected staff, individuals, or groups who have been identified by the facility warden or other staff.

At a minimum, briefings will be conducted as follows:

- Immediately after the death warrant is served;
- Prior to a clemency hearing as determined by the facility warden;
- Daily during the week leading up to the execution; and
- The day after the execution.

15. Conditions of Confinement

Immediately following the service of a death warrant, the offender will be moved to a predetermined isolation cell in accordance with Idaho Code, section 19-2705. The isolation cell will be supplied a fresh mattress and pillow that has been thoroughly inspected, and clean bedding. An unclothed body search will be conducted and the offender will be given clean clothes and different shoes.

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

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

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

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

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The offender will be provided access to a television set that will be enclosed in a security containment system.

Property

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

The offender's personal property shall be inventoried. The offender will be allowed to keep not more than six (6) cubic feet of legal papers and religious materials, a pencil and paper, books or periodicals, and commissary food items. All remaining property will be boxed, sealed and removed from the cell. It will be stored pending receipt of written instructions from the offender regarding disposition of property or otherwise disposed of as outlined in directive 312.02.01.001, *Death of an Inmate*.

Commissary

The offender will be allowed to purchase food items from the commissary until the delivery date of commissary is within seven (7) days of the execution, the IMSI warden can extend this time frame at his discretion. Non-food purchases will not be allowed. The spending limit will be the same as established in SOP 320.02.01.001, *Property: State-issued and Offender Personal Property*. However, the IMSI warden can increase or decrease this amount with approval of the deputy chief of the Bureau of Prisons.

Last Meal

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

Hygiene Items

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

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

Access to the Offender

Access will be limited to the following:

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

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

Visitation

Visitation will be limited to the following:

- Spiritual adviser of the offender's choosing;
- Approved visitors;
- Members of the offender's immediate family, specifically the offender's:
 - ◆ Mother or father, including step parents;

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

All visitations must be in accordance with SOP 604.02.01.001, *Visiting*, and the guidelines established herein this SOP.

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

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

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

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

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

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

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

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

Spiritual Advisor

The offender can request a spiritual advisor of his choosing. The spiritual advisor must be approved by the facility warden before visitation can occur. The spiritual advisor cannot be an IDOC staff member or the staff member of a contract facility. The spiritual advisor will normally be an approved religious volunteer or member of the clergy. The

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spiritual advisor may be a contract provider for volunteer and religious activities in accordance with the requirement of that contract.

Healthcare

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

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

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

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

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

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

After serving the death warrant until 21 days prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the director of the IDOC, chief of the Operations Division, and the deputy chief of the Bureau of Prisons.

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

Director of the IDOC

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

Chief of the Operations Division

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

IDOC PIO

- Issue a news release announcing the date and time of the execution;
- Send appendix C, *State Witness Notification and Agreement*, to the following and establish a deadline for the return of all forms:
 - ◆ Coroner of the county of conviction;

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- ◆ Sheriff of the county of conviction;
 - ◆ Prosecuting attorney of the county of conviction;
 - ◆ Sentencing judge;
 - ◆ Idaho governor's office;
 - ◆ Idaho attorney general; and
 - ◆ Idaho Board of Correction.
- Send appendix B, *Media Notification and Agreement*, to media liaisons and establish a deadline for the return of all forms.
 - Facilitate up to one telephone interview with the offender per day with Idaho media from the day the death warrant is issued until the day before the execution (excluding weekends and state of Idaho and federal holidays). The offender and his attorney of record may select the order in which the interviews occur. The offender may refuse any or all media requests for interviews.

Deputy Chief of the Bureau of Prisons

- Notify facility heads at all IDOC correctional facilities of the pending execution and provide instruction to the facility heads regarding staff briefings and expectations;
- Request that all IDOC facility heads develop incident action plans (IAP) for their respective facilities for facility management during the period leading up to and following the execution. The IAPs must be submitted to the deputy chief of the Bureau of Prisons at least 21 days before the scheduled execution date;
- Contact the IDOC contract monitor and Correctional Alternative Placement Program (CAPP) and Idaho Correctional Center (ICC) facility heads to discuss their respective IAPs for facility management during the period leading up to and following the execution. The CAPP and ICC facilities must submit their IAPs to the IDOC 21 days before the execution date;
- Identify and assign team leaders and members, and activate the teams;
- Finalize arrangements with the Ada County Coroner's Office for the disposition of the body, security for the Ada County medical examiner's vehicle, and the custodial transfer of the body;
- Establish the four (4) security areas of the IDOC's south Boise complex and provide that information to facility heads and other staff as needed see section 11;
- Confirm with the IMSI warden that the training schedule has been activated ensuring that staff members participating in the execution have received adequate training, written instruction and practice, and that all training has been documented;
- Discuss preparations at IMSI with the IMSI warden;
- Confirm with all IDOC south Boise complex facility wardens that the training schedule has been activated ensuring that staff members participating in the execution have received adequate training, written instruction and practice, and that all training has been documented;
- Contact the CISM team;

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- Notify the IDOC victim services coordinator of the court's issuance of a death warrant;
- If warranted, request through the appropriate authority that the Federal Aviation Administration (FAA) place a 24 hour temporary flight restriction (TFR) surrounding the IDOC's south Boise complex consisting of the following:
 - ◆ **Radius:** Three (3) nautical miles
 - ◆ **Altitude:** 500 feet from the surface;
- Evaluate the execution teams' composition and the IMSI warden's recommendations and approve or deny each team member;
- Ensure state of Idaho and local law enforcement is periodically briefed and adequately prepared for the execution;
- Establish the agenda, schedule meetings, and lead the discussion with state of Idaho and local law enforcement and applicable IDOC staff regarding community safety, traffic control, and crowd control;
- Ensure that personnel from law enforcement agencies who have not participated in practice sessions or who have not previously been involved in the execution process are briefed and their responsibilities explained;
- With input from all IDOC south Boise complex facility wardens, invite state of Idaho and local law enforcement liaisons to participate in periodic briefings about the execution and its impact on the community including access restrictions, crowd control, additional security precautions that may be warranted, and other pertinent information. Collaborate with each agency to determine each agency's role and each jurisdiction's responsibilities;
- Schedule tabletop and simulation exercises with state of Idaho and local law enforcement identifying areas and activities for improvement and incorporate the findings into future simulations;
- If it is determined that any IDOC staff member, contractor, volunteer, or other offender under IDOC jurisdiction is a family member, has a legal or other significant relationship with the condemned offender, the condemned offenders family, the victim, or the victim's family, contact the applicable manager to discuss potential issues and ensure that appropriate management and/or support plans are developed.

IDOC Victim Services Coordinator

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

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

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- Notify the IDOC victim services coordinator in the county in which the crime originated.

IMSI Warden

- Begin an execution log to be kept in the IMSI warden's office. This log will provide a comprehensive and chronological history. The IMSI warden will document every aspect of the execution proceeding until the offender has been executed or has received a stay of execution order. When the process has been completed either by execution or stay, the log will be placed in the offender's central file.
- Appoint a staff member to serve as liaison between the condemned offender, the offender's family, and the IMSI warden (if the offender does not speak English ensure an interpreter is obtained and available to communicate with offender).
- Discuss with the offender the options available for the disposition of his body after it has been released by the coroner. Advise the offender that he cannot donate his body for organ donation.
- Inform the offender that he can request a spiritual advisor and ask if the offender would like to request a spiritual advisor now.
- Inform the offender that a total of two (2) adult family members, friends, and or attorney of record may be present at the execution. The offender can decline any of these individuals who want to witness the execution. No minors (see section 16) or other offenders can witness the execution.
- Outline how conditions of confinement will be modified over the next 30 days and briefly describe the relevant aspects of the execution process.
- Offer the offender the opportunity to contact his attorney of record by phone and to speak with a facility volunteer and religion coordinator (VRC) or spiritual advisor.
- Advise the offender he may request a last meal. The meal can be his choice from the IDOC standard food service menu.
- Provide the offender with a copy of appendix E, *Summary of Procedures*. (Attach the signed original to the IMSI warden's execution log.)
- Ensure that the offender's file is reviewed thoroughly to determine if there are any IDOC staff members, contractors, or volunteers who are family members, have a legal relationship, or any other significant relationship with the condemned offender, the victim, or victim's family. Or if there are any offenders under IDOC jurisdiction who are family members have a legal or any other significant relationship with the condemned offender, the victim, or victim's family. If any such persons are identified, relay that information to the deputy chief of the Bureau of Prisons.
- Notify the commissary provider of the restrictions placed on the offender's commissary purchases.
- Within two (2) business days of receiving a death warrant, send appendix F, *Offender's Family/Friend Witness Notification and Agreement*, to the offender's family by certified mail citing the date of execution and informing them of their liaison person. The notification will inform them that if they choose to receive the remains that they are responsible for making arrangements for the offender's burial, or the state of Idaho will have the remains cremated.

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- Inform the offender and the offender's family that disposition of remains information must be received seven (7) days before the execution date and that if the offender does not provide information for disposal of his remains, his remains will be disposed of in accordance with directive 312.02.01.001, *Death of an Inmate*. (Give the offender a copy of directive 312.02.01.001.)
- Review the current specialty team rosters and recommend retention or replacement of staff, and if replacement is recommended, supply the names of replacement individuals to the deputy chief of the Bureau of Prisons.
- Ensure the assigned Medical Team members physically evaluate the offender to predetermine appropriate venous access locations.
- Ensure that all of the equipment such as electrical, audio, plumbing, HVAC units in the execution chamber are tested periodically to ensure they are in working order.
- Assign a staff member to test and perform maintenance as needed to all utilities (HAVC units, plumbing, electrical etc.) in the Execution Unit and establish a schedule for testing and reporting unit status during the time leading up to the execution date.
- Ensure that communication devices with inter-operability capability and restricted frequencies are available and will be on site before the execution date.
- Ensure that a tool control audit is conducted in the Execution Unit and correct any deficiencies in tool control procedures
- Request that the IDOC health authority develop a medical emergency response plan that provides adequate emergency response in the Execution Unit.
- Ensure that execution chemicals and other medical supplies have been purchased and/or that sources have been established

Note: when chemicals are received, immediately start a chain of custody document and secure the chemicals in a safe. Access to the safe must be limited and controlled. The IMSI warden will establish in a field memorandum the individuals who have access to the safe. The chain of custody form must be updated each time the safe is opened.

- If chemicals are on site, check the expiration dates on each item to ensure they will not expire before the execution date. If any item will expire before the execution date, immediately contact the deputy chief of prisons;
- Consult with Medical Team members regarding the equipment for the procedure and ensure all equipment necessary to properly conduct the procedure is on site, immediately available for use and functioning properly. The chemicals shall be stored in a secured locked area that is monitored to ensure compliance with manufacturer specifications;
- Ensure that all backup medical equipment, including a backup electrocardiograph, crash cart, defibrillator, and two (2) complete sets of backup chemicals, are on site, immediately available for use and functioning properly;
- Ensure the chemical room and execution chamber are equipped with one synchronized clock each. The synchronized clocks will be the official time keeping devices for the execution procedures;

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- If medical supplies are on site, check applicable sterilization dates on each item to ensure they are useable on the execution date; and
- Ensure that healthcare services staff obtain the offender's current weight and enter that information into the IMSI warden's execution log.

IMSI Warden's Offender Liaison

Meet with the condemned offender at least once each working day and forward all of the offender's questions and concerns directly to the IMSI warden.

IMSI Deputy Warden (Acting as Facility Head)

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

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

Twenty-one (21) to seven (7) days prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the director of the IDOC, chief of the Operations Division, and the deputy chief of the Bureau of Prisons.

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

Chief of the Operations Division

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

Deputy Chief of the Bureau of Prisons

- Brief director of the IDOC and chief of the Operations Division;
- Continue to conduct tabletop and live exercises with the previously identified teams;
- Contact the coroner's office and determine the protocol regarding the transfer of the offender's body to the coroner's possession following the execution and forward that information to the IMSI warden;
- Review IDOC, CAPP, and ICC facility IAPs, and continue discussion and preparation with facility heads;
- Contact the CISM team leader and ensure the team (s) is making appropriate preparations;
- Take steps to resolve outstanding equipment and inventory issues; and
- Convene a meeting with state of Idaho and local law enforcement agencies to discuss any changes or modifications to crowd control, traffic control, and community safety.

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IDOC PIO

- Finalize the media packet with the chief of Operations Division and the director of the IDOC, and prepare copies of the media packet for distribution;
- Address media specific inquiries;
- Forward all completed media notification and agreements (appendix B) to the deputy chief of the Bureau of Prisons (or designee) for background investigation;
- Compile a list of state of Idaho and media witnesses including pool reporters, and submit the list and all completed state witness notification and agreements (appendix C) and media notification and agreements (appendix B) to the deputy chief of the Bureau of Prisons;
- Arrange telephone interviews with the offender up to one day prior to the execution; and
- Notify members of the media regarding the status of their witness applications.

IMSI Warden

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

IMSI Warden's Offender Liaison

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

IMSI Deputy Warden (Acting as Facility Head)

- Ensure that the necessary action steps have been taken regarding the IMSI management plan including staffing, meals, and contingency plans to ensure the safe and orderly operation of the facility during the time leading up to the execution.
- Brief the deputy chief of the Bureau of Prisons on the status of the management plan.
- Continue to monitor IMSI activities and brief the deputy chief of the Bureau of Prisons if any concerns or problems arise.

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

Seven (7) days to two (2) days prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the director of the IDOC, chief of the Operations Division, and the deputy chief of the Bureau of Prisons.

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

Chief of the Operations Division

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

Deputy Chief of the Bureau of Prisons

- Brief director of the IDOC and chief of the Operations Division;
- Stand up the ICS command center;
- Continue tabletop and live exercises;
- Confirm staffing levels and necessary vehicles for regular operations and the execution are appropriate and ready;
- Ensure local law enforcement agencies are fully briefed;
- Gather all information regarding media, potential media witnesses, and those who will be present at the execution; and
- In conjunction with the IDOC Leadership Team and IMSI warden, finalize the media plan, potential media witnesses, and those who will be present at the execution.

IDOC PIO

- Gather the names of those planning to be present in the Execution Unit;
- Complete a list of the media representatives that want to be on or near the IDOC's south Boise complex and/or be in the media center, but not present at the execution;
- Forward the lists of media agencies, media staff members, and potential media witnesses to the director of the IDOC, chief of the Operations Division, deputy chief of the Prisons Bureau, and IMSI warden;
- Conduct a preliminary briefing with potential media witnesses and media representatives serving as pool reporters.

Medical Team Leader

- Ensure serviceability of all medical equipment including electrocardiogram (EKG) machines and/or defibrillator, and the availability of graph paper;
- Ensure heart monitor lead lines are sufficient in length; and
- Ensure a mild sedative is available.

IMSI Warden

- With technical assistance, review lethal substances, amounts, methods and the offender's physical and historical characteristics.
- Ensure teams have completed adequate training and practice.

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- Meet with the condemned offender as needed.
- Address any unresolved questions or issues.
- Meet with the deputy chief of the Prisons Bureau to review preparations and concerns.
- Confirm preventive maintenance of the execution chamber is current.
- Test equipment, lighting, audio, HVAC units, etc. in the execution chamber.
- Confirm that the inventory of equipment, necessary supplies, and backup materials are on-site.
- Recheck the medical supplies and chemicals to ensure that each item is ready, expiration dates have not been exceeded, items are properly packaged, and if applicable sterilized.
- At least three (3) days before the scheduled execution date, obtain technical assistance for the purpose of reviewing the lethal substances, the amounts, the methods of delivery and injection, and the offender's physical and historical characteristics to evaluate compliance with this SOP and the appropriate facility field memorandum. The individual(s) conducting the technical review and the IMSI warden will meet with the director of the IDOC to review their findings. The director of the IDOC will make the final determination regarding compliance with this SOP and the appropriate facility field memorandum.

IMSI Warden's Offender Liaison

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

IMSI Deputy Warden (Acting as Facility Head)

- Review staffing to ensure there is adequate coverage near the execution date;
- Review use of force inventories, less than lethal weapons and munitions to ensure that adequate supplies are in place if needed for emergency response;
- Ensure that audio/video equipment is ready and operational if needed;
- Brief shift commanders, unit sergeants, and case managers;
- Ensure that proper tool and key control procedures are being followed;
- Ensure that transportation vehicles that are not assigned to the execution process are available if needed for IMSI operational needs;
- Meet with maintenance staff to review any problems or concerns with infrastructure;
- Meet with the facility health authority to ensure that an adequate emergency response plan is in place for the time frame near the execution.
- Brief the IMSI warden and the deputy chief of the Prisons Bureau regarding the emergency plan preparedness and any issues or concerns.

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19. Two (2) Days Prior to the Execution

Two (2) days prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the director of the IDOC, chief of the Operations Division, and the deputy chief of the Bureau of Prisons.

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

Chief of the Operations Division

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

Deputy Chief of the Bureau of Prisons

- Schedule and conduct IDOC south Boise complex simulation exercises, modifying practices as warranted;
- Ensure that contracted services have planned their activities to coincide with the incident action plans for modified operational status related to the scheduled execution;
- Contact IDOC, CAPP, and ICC facility heads to monitor their preparation and status;
- Contact facility heads at outlying facilities to monitor their preparation and status; and
- Confirm adequate staffing, equipment, and materials are in place for regular operations and the execution.

IMSI Warden

- Conduct at least two (2) rehearsal sessions with the Execution Escort Team, Medical Team, Injection Team, and command staff;
- Confirm that escort, medical, and injection teams are scheduled and will be on-site at the time established by the IMSI warden;
- Restrict access to the execution chamber to those with expressly assigned duties;
- Ready the execution chamber for the offender; and
- Verify execution inventory and equipment checks are completed and open issues resolved.

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

Twenty-four (24) to 12 hours prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the director of the IDOC, chief of the Operations Division, and the deputy chief of the Bureau of Prisons.

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

Deputy Chief of the Bureau of Prisons

- Activate the following teams:
 - ◆ Command

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

IDOC PIO

Establish the media center.

IDOC Health Authority

Conduct a review of the offender's healthcare.

IMSI Warden

- Ensure the final preparation of Execution Unit is complete. Each room receives a final evaluation specific to its functions including security, climate control, lighting, sound and sanitation;
- Ensure the chemical room clock is accurately set and working;
- Ensure that all the offender's remaining property, except one religious item, is removed and inventoried, and that the offender has completed a disposition sheet for his property;
- Ensure that witness areas are in order;
- Ensure that appropriate restraints are ready;
- Ensure that transportation vehicles are ready;
- Ensure that communication devices are ready;
- Ensure that the Medical Team leader checks the electrocardiograph instruments to confirm they are functioning properly;
- Ensure that the crash cart and defibrillator are in place and functioning properly;
- Ensure that food service is prepared to serve offender his last meal request; and
- Check medical supply and chemical inventory.

IMSI Deputy Warden (Acting as Facility Head)

- Activate the IMSI management plan.

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

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

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21. Twelve (12) Hours Prior To the Execution

Twelve (12) hours prior to the execution, the following activities will occur. If any of the activities identified in this section cannot be achieved within this timeframe, the responsible party will notify the director of the IDOC, chief of the Operations Division, and the deputy chief of the Bureau of Prisons.

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

Deputy Chief of the Bureau of Prisons

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

Restricting Access to IDOC Property

During the final twelve hours prior to the execution, access to the IDOC's south Boise complex is limited. Restrictions shall remain in effect until normal operations resume after the execution or a stay of execution is issued.

Access is limited to the following:

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

Population Management

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

Condemned Offender Activities

- Ensure the offender receives the last meal by approximately 1900 hours prior to the scheduled execution. (All eating utensils and remaining food and beverage shall be removed upon completion of the meal.)
- Phone calls are concluded by 2100 hours. (Telephone calls shall be terminated at 2100 hours the day prior to the execution, excluding calls with the offender's attorney of record and others approved by the IMSI warden.)
- Visitation shall be terminated at 2100 hours the night prior to the execution, excluding visits from the offender's attorney of record and others as approved by the IMSI warden.

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- No later than 2300 hours the night before the execution, the facility healthcare services staff will offer the offender a mild sedative.
- No later than five (5) hours prior to the execution, the offender shall be offered a light snack. (All eating utensils and remaining food shall be removed upon completion of the meal.)
- No later than four (4) hours prior to the execution, the facility healthcare services staff will offer the offender another mild sedative.

22. Final Preparations

Witness Briefing

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

Procedures to Carry out the Execution

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

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

23. Pronouncement of Death

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

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

24. Return of Service on the Death Warrant

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

25. Following the Execution

Deputy Chief of the Bureau of Prisons

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

IMSI Warden

- Ensure that the assigned members of the Injection Team will return all unused materials to the safe in the execution chamber;
- Gather all documents, recordings, EKG tape, etc. and deliver them to the DAG who represents the IDOC for review and storage;

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- Upon completion or long-term stay, the IMSI warden will inventory the items, complete the chain of custody, and secure the items in the administration safe;
- Retrieve all secured materials;
- Destroy all used materials in accordance with safe disposal practices and document the disposition of each drug on the inventory sheet; and

Execution Chamber and Receiving Area Cleaning

Under the supervision of a person designated by the IMSI warden, the execution chamber and receiving housing shall be cleaned and secured. Facility staff trained in infectious diseases preventive practices will utilize appropriate precautions in cleaning the execution chamber.

Resuming Normal Operations

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

IDOC staff shall be deactivated at the direction of ICS Command

Debriefing

Within 48 hours, the deputy chief of the Bureau of Prisons and IMSI warden will debrief the director of the IDOC and chief of the Operations Division and other Leadership Team staff as the director deems appropriate regarding the process and if applicable make recommendations to revise the standard operation procedure or other related processes or documents.

REFERENCES

Appendix A, *Execution Chemicals Preparation and Administration*

Appendix B, *Media Notification and Agreement*

- Appendix B (Fill-in version)

Appendix C, *State Witness Notification and Agreement*

- Appendix C (Fill-in version)

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

- Appendix D (Fill-in version)

Appendix E, *Summary of Procedures*

- Appendix E (Fill-in version)

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

- Appendix F (Fill-in version)

Appendix G1, *Sequence of Chemical Form-1*

Appendix G2, *Sequence of Chemical Form-2*

Directive 312.02.01.001, *Death of an Inmate*

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

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

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

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

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

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

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

Standard Operating Procedure 205.07.01.001, *Corrective and Disciplinary Action*

Standard Operating Procedure 319.02.01.001, *Restrictive Housing*

Standard Operating Procedure 320.02.01.001, *Property: State-issued and Offender Personal Property*

Standard Operating Procedure 604.02.01.001, *Visiting*

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IDAHO DEPARTMENT OF CORRECTION
Execution Chemicals Preparation and Administration

A. Modifications to Protocols and Procedures

There shall be no deviation from the procedures, protocols, and chemicals in this procedure without prior consent from the director of the IDOC.

B. Preparation of Chemicals

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

The Medical Team leader will supervise the syringe preparation, assigning a Medical Team member to prepare each chemical and the corresponding syringe. The assigned Medical Team members shall prepare their designated chemical and syringes for a total of three (3) complete sets of chemicals. One full set of syringes is used in the implementation of the death sentence and two (2) full sets are to be available and ready for use as backup.

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

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

After the Medical team prepares all syringes with the proper chemicals and labels as provided in the applicable chemical chart, the Medical Team leader shall attach two (2) complete sets of the prepared and labeled syringes to the 3-Gang, 3-Way Manifold in the order in which the chemicals are to be administered. The syringes will be attached to the 3-Gang, 3-Way Manifold in a manner to ensure there is no crowding, with each syringe resting in its corresponding place in the shadow box which is labeled with the name of the chemical, color, chemical amount and the designated syringe number.

The syringes shall be affixed in such a manner to ensure the syringe labels are clearly visible. Prior to attaching the syringes to the 3-Gang, 3-Way Manifold, the flow of each gauge on the manifold shall be checked by the Medical team leader running heparin/saline solution through the line to confirm there is no obstruction.

After all syringes are prepared and affixed to the 3-Gang, 3-Way Manifold in proper order, the Injection Team leader shall confirm that all syringes are properly labeled and attached to the manifold in the order in which the chemicals are to be administered as designated by the applicable Chemical Chart. Each chemical shall be administered in the predetermined order in which the syringes are affixed to the manifold.

C. Approved Chemicals

The director of the IDOC has approved the following lethal injection chemicals and methods as described in Chemical Chart 1:

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

Chemical Chart 1		Chemical Chart 1	
BACKUP SET 2		BACKUP SET 3	
Syringe No.	Label	Syringe No.	Label
1B (complete 1-4)	1.25 g Sodium Pentothal, GREEN	1C (complete 1-4)	1.25 g Sodium Pentothal, GREEN
2B (complete 1-4)	1.25 g Sodium Pentothal, GREEN	2C (complete 1-4)	1.25 g Sodium Pentothal, GREEN
3B (complete 1-4)	1.25 g Sodium Pentothal, GREEN	3C (complete 1-4)	1.25 g Sodium Pentothal, GREEN
4B (complete 1-4)	1.25 g Sodium Pentothal, GREEN	4C (complete 1-4)	1.25 g Sodium Pentothal, GREEN
5B (flush)	60mL Heparin/Saline, BLACK	5C (flush)	60mL Heparin/Saline, BLACK
6B (complete 6-7)	60mg Pancuronium Bromide, BLUE	6C (complete 6-7)	60mg Pancuronium Bromide, BLUE
7B (complete 6-7)	60mg Pancuronium Bromide, BLUE	7C (complete 6-7)	60mg Pancuronium Bromide, BLUE
8B (flush)	60mL Heparin/Saline, BLACK	8C (flush)	60mL Heparin/Saline, BLACK
9B (complete 9-10)	120mEq Potassium Chloride, RED	9C (complete 9-10)	120mEq Potassium Chloride, RED
10B (complete 9-10)	120mEq Potassium Chloride, RED	10C (complete 9-10)	120mEq Potassium Chloride, RED
11B (flush)	60mL Heparin/Saline, BLACK	11C	60mL Heparin/Saline, BLACK

Syringe Preparation

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

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

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

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

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

Alternative Method

In the event of an unavailability of a sufficient quantity of sodium pentothal from available resources, a sufficient quantity of pentobarbital will be acquired and administered replacing the sodium pentothal as described in Chemical Chart 2:

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

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

Syringe Preparation (Alternative Method)

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

Syringes 3A, 6A, 9A, 3B, 6B, 9B, 3C, 6C and 9C each contain 60 ml. of a heparin/saline solution, at a concentration of 10 units of heparin per milliliter, and shall have a **BLACK** label which contains the name of the chemical, chemical amount and the designated syringe number.

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

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

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

Note: The chemical amounts as set forth in Chemical Charts 1 and 2 are designated for the execution of persons weighing 500 pounds or less. The chemical amounts will be reviewed and may be revised as necessary for an offender exceeding this body weight.

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

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

IV Setup Procedure

After all syringes are prepared and affixed in proper order, the Injection Team leader shall confirm that all syringes are properly labeled and attached in the order in which the chemicals are to be administered as designated by the Chemical Chart. Each chemical shall be administered in the predetermined order in which the syringes are affixed to the 3-Gang, 3-Way Manifold.

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

Note: Should a stay delay the execution beyond 24 hours of the scheduled execution, another three (3) complete sets of syringes shall be prepared when the execution is rescheduled in accordance with the process set forth in this procedure.

D. Chemical Delivery Procedures

The Injection Team recorder is responsible for completing the applicable *Sequence of Chemicals Form*, (appendix G1 or G2). The recorder shall document on the form the amount of each chemical administered and confirm that it was administered in the order set forth in the chemical chart. Any deviation from the written procedure shall be noted and explained on the form.

E. Movement and Monitoring of Offender

Prior to moving the offender from the isolation cell to the execution table, the director of the IDOC will confer with the attorney general or designee and the Idaho governor (or designee) to confirm there is no legal impediment to proceeding with the lawful execution and there are no motions pending before a court which may stay further proceedings.

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

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

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

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

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

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

A microphone will be positioned to enable the Medical Team, Injection Team leader and if applicable, to hear any utterances or noises made by the offender throughout the procedure. The Medical Team

leader will confirm the microphone is functioning properly, and that the offender can clearly hear from their affixed position and be heard in the chemical room.

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

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

~~The IMSI warden will offer the offender an eye covering.~~

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

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

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

F. Intravenous Lines

The assigned Medical Team members shall determine the best sites on the offender to insert a primary IV catheter and a backup IV catheter in two (2) separate locations in the peripheral veins utilizing appropriate medical procedures. The insertion sites in order of preference shall be: arms, hands, ankles and feet, as determined medically appropriate by the Medical Team leader. Both primary and backup IV lines will be placed unless in the opinion of the Medical Team leader it is not possible to reliably place two (2) peripheral lines.

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

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

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

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

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

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

Should it become necessary to use an alternate means of establishing an IV line because, in the opinion of the Medical Team leader, it is not possible to reliably place a peripheral line in the offender, a Medical Team member may utilize a central line catheter in the offender's femoral vein in the thigh if, in the opinion of a qualified Medical Team member, such a line may be reasonably placed. The Medical Team member responsible for placing a central line catheter in the offender's femoral vein shall have at least one year of regular and current professional experience conducting that procedure. The Medical Team member will place the central line catheter in the offender's femoral vein utilizing appropriate medical procedures which includes the use of an ultrasound to assist in properly inserting the catheter and anesthetic such as Lidocaine. The Medical Team member shall ensure the catheter is properly secured with the use of tape or adhesive material, properly connected to the IV line and out of reach of the offender's hands. This line shall be utilized for the administering of all chemicals.

Upon successful insertion of the catheter into the offender's femoral vein, a Medical Team member will inject a solution of heparin/saline into the catheter to ensure patency of the catheter.

G. Administration of Chemicals

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

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

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

After the sodium pentothal/or pentobarbital and heparin/saline have been administered and before the Injection Team members begin administering the pancuronium bromide, the Medical Team leader shall confirm the offender is unconscious by direct examination of the offender. The Medical Team leader, dressed in a manner to preserve his anonymity, will enter into the room where the IMSI warden and offender are located to physically confirm the offender is unconscious by using all necessary medically appropriate methods. The Medical Team leader will also confirm that the IV line remains affixed and functioning properly.

No further chemicals shall be administered until the Medical Team leader has confirmed the offender is unconscious, has verbally advised the IMSI warden and three (3) minutes have elapsed since commencing the administration of the sodium pentothal/or pentobarbital.

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

If deemed appropriate, the IMSI warden may instruct the Injection Team to administer an additional 5 grams of sodium pentothal/or pentobarbital followed by the heparin/saline flush from Backup Set 2.

Upon administering the sodium pentothal/or pentobarbital and heparin/saline from Backup Set 2, the Medical Team shall confirm the offender is unconscious by sight and sound, utilizing the audio equipment, camera and monitor. The Medical Team leader will again physically confirm the offender is unconscious using proper medical procedures and verbally advise the IMSI warden of the same. Throughout the entire procedure, the Medical Team members, the Injection Team members and the IMSI warden shall continually monitor the offender using all available means to ensure that the offender remains unconscious and that there are no complications.

Only after receiving oral confirmation from the Medical Team leader that the offender is unconscious and three (3) minutes have elapsed since commencing the administration of the sodium pentothal/or pentobarbital and heparin/saline from Backup Set 2, will the IMSI warden instruct the Injection Team leader to proceed with administering the next chemicals.

When instructed, the Injection Team leader will instruct the assigned Injection Team members to begin administering the full doses of the remaining chemicals (pancuronium bromide and potassium chloride), each followed by a heparin/saline flush as set forth in the applicable Chemical Chart.

If after administering the potassium chloride and subsequent heparin/saline flush, the electrical activity of the offender's heart has not ceased, the additional potassium chloride and heparin/saline flush contained in Backup Set 2 shall be administered.

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

If all electrical activity of the heart ceases prior to administering all the chemicals, the team members shall continue to follow this protocol and administer all remaining chemicals in the order and amounts set forth in the applicable Chemical Chart.

When all electrical activity of the heart has ceased as shown by the EKG, the Medical Team leader will advise the Ada County coroner and the IMSI warden that the procedure has been completed. The Medical Team leader will ensure that the EKG runs a print-out strip for two (2) minutes after the last chemical injection.

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

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

H. Documentation of Chemicals and Stay

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

Upon completion of the execution or when a stay exceeding 24 hours is granted, the Injection Team leader shall properly dispose of all unused chemicals according to applicable state of Idaho and federal law in the presence of the Injection Team recorder.

The Injection Team recorder shall observe the disposal of all chemicals that were not administered and document, in the applicable *Sequence of Chemicals Form* (appendix G1 or G2), the chemical name, syringe identification code, amount disposed, date disposed, and the time. Time will be marked based on the approved chemical room clock. The Injection Team leader and the Injection Team recorder each will sign the *Sequence of Chemicals Form*.

All logs, the Sequence of Chemicals Form, the list of identifiers, and the EKG tape shall be submitted to the attorney general assigned to the IDOC for review and storage.

I. Contingency Procedure

An automated external defibrillator (AED) will be readily available on site in the event that the offender goes into cardiac arrest at any time prior to dispensing the chemicals; trained medical staff shall make every effort to revive the offender should this occur, unless the offender has signed a do not resuscitate (DNR).

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

If at any point any medical or Injection Team members determine that any part of the execution process is not going according to procedure, they shall advise the Medical Team leader who shall immediately notify the IMSI warden. The IMSI warden, in consultation with the director of the IDOC may consult with persons deemed appropriate and will determine to go forward with the procedure, start the procedure over at a later time within the 24-hour day, or stand down.



IDAHO DEPARTMENT OF CORRECTION
"Protecting Idaho through Safety, Accountability,
Partnerships And Opportunities for Offender Change"

C.L. "Butch" Otter
Governor

Brent D. Reinke
Director

News Media Representatives,

The district court in the County of _____ has issued a death warrant for _____. The execution date is set for _____ at _____ in the County of Ada at the Idaho Maximum Security Institution. The Idaho Department of Correction (IDOC) will permit up to four members of the news media to witness the execution.

News media representatives witnessing the execution will be selected by random drawing approximately 3 hours before the execution. To be eligible for the drawing process, you must be present at the media center located at the South Boise Complex at the time of the drawing. The IDOC public information officer will provide news media representatives specific scheduling details prior to the scheduled execution date.

To be eligible to enter the drawing, you must read the attached document and agree to the terms and conditions listed in it.

Please sign the agreement and return it to IDOC's public information office by _____.

Sincerely,

Jeffrey F. Ray
Public Information Officer

1299 NORTH ORCHARD · SUITE 110 · BOISE · IDAHO · 83706 · PHONE (208) 658-2000 · FAX (208) 327-740

IDAHO DEPARTMENT OF CORRECTION

Media Notification and Agreement

All news media representatives must agree to the following conditions while on Idaho Department of Correction property to be eligible for the media lottery, and if selected, as a media witnesses to an execution.

- I agree to dress in professional attire. Shorts, tank tops, t-shirts and hats are specifically prohibited. Shoes are required.
I agree to be searched prior to entering the facility in the same manner that is required of all visitors to IDOC institutions. I understand and agree that I may be searched more than once.
I agree that I will not bring any personal property, including but not limited to, cell phones, cameras, electronic recording devices, drawing materials, paper, pens/pencils, tobacco, or weapons of any kind. (A pen and a paper will be provided to you.)
I understand and agree that absolutely no video, audio, or digital recording of any event inside the execution chamber is allowed.
I agree to obey all directives issued by IDOC staff while inside the institution.
I agree to undergo a background check as required of all visitors to IDOC institution.
I agree to participate in a news conference immediately following the execution and share all of the information I gathered in the course of witnessing the execution.

Full Name: _____
Date of Birth: _____ Social Security Number: _____
News Agency and Job Title: _____
Agency Address: _____
Email address: _____
Contact Telephone Number: _____

I agree to abide by the conditions listed above.

(Print name)

(Signature)

(Date)



IDAHO DEPARTMENT OF CORRECTION
"Protecting Idaho through Safety, Accountability,
Partnerships And Opportunities for Offender Change"

C.L. "Butch" Otter
Governor

Brent D. Reinke
Director

State Witnesses,

The district court in the County of _____ has issued a death warrant for _____. The execution date is set for _____ at _____ in the County of Ada at the Idaho Maximum Security Institution.

Idaho Board of Correction IDAPA rules identify representatives from the following agencies that can be present at an execution:

- Coroner of the county of conviction (1)
- Sheriff of the county of conviction (1)
- Prosecuting attorney of the county of conviction (1)
- Sentencing judge (1)
- Governor's office (1)
- Board of Correction (1)
- Attorney General's Office (1)

If you plan to be present at this execution, please sign and return the attached agreement to IDOC's public information office by _____.

Sincerely,

Jeffrey F. Ray
Public Information Officer

1299 NORTH ORCHARD · SUITE 110 · BOISE · IDAHO · 83706 · PHONE (208) 658-2000 · FAX (208) 327-740

IDAHO DEPARTMENT OF CORRECTION
State Witness Notification and Agreement

Officials present at an execution must agree to the following conditions.

- I agree to dress in professional attire.
- I agree to be searched prior to entering the facility in the same manner that is required of all visitors to IDOC institutions. I understand and agree that I may be searched more than once.
- I agree that I will not bring any personal property in to an IDOC facility, including but not limited to, cell phones, cameras, electronic recording devices, drawing materials, paper, pens/pencils, tobacco, or weapons of any kind. (If requested, pen and a paper will be provided to you.)
- I understand and agree that absolutely no video, audio or digital recording of any event inside the execution chamber is allowed.
- I agree to obey all directives issued by IDOC staff while inside the institution.

Full Name: _____
Agency and Job Title: _____
Agency Address: _____
Email address: _____
Contact Telephone Number: _____

I agree to abide by the conditions listed above.

(Print name)

(Signature)

(Date)



IDAHO DEPARTMENT OF CORRECTION
"Protecting Idaho through Safety, Accountability,
Partnerships And Opportunities for Offender Change"

C.L. "Butch" Otter
Governor

Brent D. Reinke
Director

Victim Friends and Family,

The district court in the County of _____ has issued a death warrant for _____. The execution date is set for _____ at _____ in the County of Ada at the Idaho Maximum Security Institution.

The Idaho Department of Correction extends its deepest condolences during this difficult time. Please don't hesitate to contact the IDOC victim services coordinator if you have questions.

Idaho Board of Correction rules allow up to two members of the victim's family to witness the execution. If you would like to witness the execution, please complete the attached form and return it by _____.

You will be separated from family members of the condemned offender.

The Idaho Department of Correction victim services coordinator, Vicky Southwick, will be your liaison with the department. Here is her contact information:

vsouthwi@idoc.idaho.gov
208-658-2037

Sincerely,

Kevin Kempf
Chief of the Division of Operations

1299 NORTH ORCHARD · SUITE 110 · BOISE · IDAHO · 83706 · PHONE (208) 658-2000 · FAX (208) 327-740

**IDAHO DEPARTMENT OF CORRECTION
Summary of Procedures**

1. has been assigned as a liaison for you and your family. The liaison will be the primary contact for you and your family and will be your liaison with the warden. A certified letter is being sent to your family informing them of this contact liaison.
2. You may have one spiritual advisor of your choosing. The spiritual advisor must be approved by the warden in advance.
3. Your spiritual advisor and a total of two friends, attorney, and/or members of your family may be invited to be present at the execution. You may decline any of these individuals who request to be present at the execution. Minors, other offenders, and/or department staff cannot attend the execution at your request.
4. For the last meal, you can select a meal from the established IDOC menu. The last meal will be provided at approximately 1900 hours the day prior to the scheduled execution.
5. As soon as possible but no later than , the following items, which are attached to these instructions, must be completed and turned in to the warden:
 - Disposition of your inmate account
 - Disposition of your remains
 - Disposition of your property
 - Last meal request
 - Spiritual advisor and witness request
6. Your body may not be used for organ donation. Once the coroner has released your remains, they may be handled in one of the following manners:
 - Your family may take possession of your remains and make private burial or cremation arrangements at their own expense;
 - A non-family member may claim your remains once the IDOC has determined that no family exists, the family refuses to claim your remains, or you have made prior arrangements with a non-family member to take possession of your remains; or
 - Your body will be cremated and stored for up to one year. If no person claims your ashes, they will be disposed of at a location determined by the IDOC.
7. Following this meeting, your property will be inventoried in your presence, boxed, sealed and removed from the cell. You may keep six cubic feet of legal materials, religious materials, a pencil and paper, books and/or periodicals, and commissary food items. You will not possess any appliances or other property unless the warden has pre-approved each specific property item in writing.
8. After an unclothed body search has been conducted, you will be issued a clean set of clothing and taken to an isolation cell where you will receive limited hygiene supplies (bar soap, toothpaste and toothbrush), a towel and a washcloth. You will be provided with a secure department television. Your bedding, towel, washcloth and clothing will be exchanged daily.
9. You will be allowed to purchase food items from the commissary. The last order placed must be received no later than seven (7) days before the execution date.
10. All medications will be unit-dosed and issued in liquid form if available. No medication, including over-the-counter medication, will be dispensed or maintained as keep-on-person.
11. You will be provided daily outdoor exercise, showers, and phone calls.

Appendix E

135.02.01.001

(Appendix last updated 10/13/11)

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000445

12. You are allowed contact visits with your attorney of record and agents of your attorney of record.
13. You are allowed non-contact visits with the following:
 - Immediate family and approved visitors; and
 - Spiritual advisor
14. When you are within seven (7) days of the scheduled execution, visits with approved visitors, who are not immediate family will cease. (Your attorney of record will continue to have contact visits.)
15. When you are within seven (7) days of the scheduled execution, you may have contact visits approved by the warden with your spiritual advisor and members of your immediate family.
16. You may be provided the opportunity to have telephone interviews with the media. You and/or your attorney may choose to decline any or all media requests. You may also recommend the order in which the media interviews occur.
17. At approximately twelve and again at approximately four hours prior to execution you will be offered a mild sedative.
18. You will be transported by gurney to the execution chamber. You may bring one pre-approved religious item.
19. An intravenous (IV) drip will be inserted with normal saline. You will be given the opportunity to have your eyes covered during the execution. You will be provided a brief opportunity to make a last statement.
20. You will be executed by lethal injection.

Date: _____

Delivered by (print): _____

Job Title: _____

Signature: _____



IDAHO DEPARTMENT OF CORRECTION
"Protecting Idaho through Safety, Accountability,
Partnerships And Opportunities for Offender Change"

C.L. "Butch" Otter
Governor

Brent D. Reinke
Director

The district court in the County of _____ has issued a death warrant for _____. The execution date is set for _____ at _____ in the County of Ada at the Idaho Maximum Security Institution.

The Idaho Department of Correction extends its deepest condolences to you and your family during this difficult time. I have appointed _____ to serve as liaison between you and the department. You will find the liaison's contact information below.

Mr. _____ can request the disposition of his body. The liaison will discuss this with you in further detail as soon as we receive your contact information.

Idaho Board of Correction rules allow two members of the offender's family to witness the execution. If family members would like to witness the execution, please complete the attached form and return it to the IDOC liaison by _____. Please note that the offender may decline to have any or all family members present at the execution.

Sincerely,

Randy Blades
Warden IMSI

Liaison contact information:

1299 NORTH ORCHARD · SUITE 110 · BOISE · IDAHO · 83706 · PHONE (208) 658-2000 · FAX (208) 327-740

IDAHO DEPARTMENT OF CORRECTION
Offender's Family/Friend Witness Notification and Agreement

Individuals present at an execution must agree to the following conditions.

- I agree to dress in professional attire.
- I agree to be searched prior to entering the facility in the same manner that is required of all visitors to IDOC institutions. I understand and agree that I may be searched more than once.
- I agree that I will not bring any personal property, including but not limited to, cell phones, cameras, electronic recording devices, drawing materials, paper, pens or pencils, tobacco, and/or any type of weapon. (If requested, pen and a paper will be provided to you.)
- I understand and agree that absolutely no video, audio or digital recording of any events inside the execution chamber is allowed.
- I agree to obey all directives issued by IDOC staff while inside the institution.

I would like to present at the execution: Yes No

I will not be present at the execution but would like to receive notification when it has been completed: Yes No

Full Name (print): _____

Address: _____

Relationship to the offender: _____

Email address: _____

Contact Telephone Number: _____

I agree to abide by the conditions listed above.

(Print name)

(Signature)

(Date)

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

Offender: _____

Number: _____

Court Case #: _____

Warrant of Death Issued By: _____

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

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

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

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

Offender: _____ Number: _____
 Court Case #: _____
 Warrant of Death Issued By: _____

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

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

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

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criminal history reviews shall be conducted, prior to contracting, annually and upon the issuance of a death warrant.

Specialty Team Training

The IMSI warden shall ensure an annual training schedule is established and identify dates for periodic on-site practice by command and the specialty teams. All training sessions shall be documented and submitted to the IMSI warden.

- The schedule shall include a minimum of 10 training sessions for the Execution Escort Team, Injection Team, and Medical Team annually;
- After receiving a death warrant, the teams will train weekly before the scheduled execution date;
- Team members must participate in a minimum of four (4) training sessions prior to participating in an actual execution; and
- Prior to any scheduled execution the Execution Escort Team, Medical Team, and Injection Team, shall conduct a minimum of two (2) rehearsal sessions during the 48 hours before the scheduled execution.

6. Licensed Physician on Site during Execution

A licensed physician will be on-site staged near the Execution Unit. The physician will have access to an on-site medical crash cart, including applicable medications, and defibrillator. The physician must be a medical doctor licensed by the Idaho Board of Medicine. The physician will not be a part of the Execution Escort Team, and will not participate in the execution in any way.

The physician will provide the following services:

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

Emergency Medical Personnel and Ambulance Service

Emergency medical technicians and ambulance service will be staged near the Execution Unit to provide emergency medical assistance and transport to anyone requiring such care during the process.

7. Death Warrants and Pregnant Females

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

8. Stay of Execution

Upon receipt of notification that the court has issued a stay of execution, the director of the IDOC shall advise the chief of the Operations Division, deputy chief of the Bureau of Prisons, and IMSI warden.

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

IV Setup Procedure

After all syringes are prepared and affixed in proper order, the Injection Team leader shall confirm that all syringes are properly labeled and attached in the order in which the chemicals are to be administered as designated by the Chemical Chart. Each chemical shall be administered in the predetermined order in which the syringes are affixed to the 3-Gang, 3-Way Manifold.

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

Note: Should a stay delay the execution beyond 24 hours of the scheduled execution, another three (3) complete sets of syringes shall be prepared when the execution is rescheduled in accordance with the process set forth in this procedure.

D. Chemical Delivery Procedures

The Injection Team recorder is responsible for completing the applicable *Sequence of Chemicals Form*, (appendix G1 or G2). The recorder shall document on the form the amount of each chemical administered and confirm that it was administered in the order set forth in the chemical chart. Any deviation from the written procedure shall be noted and explained on the form.

E. Movement and Monitoring of Offender

Prior to moving the offender from the isolation cell to the execution table, the director of the IDOC will confer with the attorney general or designee and the Idaho governor (or designee) to confirm there is no legal impediment to proceeding with the lawful execution and there are no motions pending before a court which may stay further proceedings.

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

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

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

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

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

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

A microphone will be positioned to enable the Medical Team, Injection Team leader and if applicable, to hear any utterances or noises made by the offender throughout the procedure. The Medical Team

If deemed appropriate, the IMSI warden may instruct the Injection Team to administer an additional 5 gm of sodium pentothal/or pentobarbital followed by the heparin/saline flush from Backup Set 2.

Upon administering the sodium pentothal/or pentobarbital and heparin/saline from Backup Set 2, the Medical Team shall confirm the offender is unconscious by sight and sound, utilizing the audio equipment, camera and monitor. The Medical Team leader will again physically confirm the offender is unconscious using proper medical procedures and verbally advise the IMSI warden of the same. Throughout the entire procedure, the Medical Team members, the Injection Team members and the IMSI warden shall continually monitor the offender using all available means to ensure that the offender remains unconscious and that there are no complications.

Only after receiving oral confirmation from the Medical Team leader that the offender is unconscious and three (3) minutes have elapsed since commencing the administration of the sodium pentothal/or pentobarbital and heparin/saline from Backup Set 2, will the IMSI warden instruct the Injection Team leader to proceed with administering the next chemicals.

When instructed, the Injection Team leader will instruct the assigned Injection Team members to begin administering the full doses of the remaining chemicals (pancuronium bromide and potassium chloride), each followed by a heparin/saline flush as set forth in the applicable Chemical Chart.

If after administering the potassium chloride and subsequent heparin/saline flush, the electrical activity of the offender's heart has not ceased, the additional potassium chloride and heparin/saline flush contained in Backup Set 2 shall be administered.

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

If all electrical activity of the heart ceases prior to administering all the chemicals, the team members shall continue to follow this protocol and administer all remaining chemicals in the order and amounts set forth in the applicable Chemical Chart.

When all electrical activity of the heart has ceased as shown by the EKG, the Medical Team leader will advise the Ada County coroner and the IMSI warden that the procedure has been completed. The Medical Team leader will ensure that the EKG runs a print-out strip for two (2) minutes after the last chemical injection.

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

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

H. Documentation of Chemicals and Stay

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

Upon completion of the execution or when a stay exceeding 24 hours is granted, the Injection Team leader shall properly dispose of all unused chemicals according to applicable state of Idaho and federal law in the presence of the Injection Team recorder.

The Injection Team recorder shall observe the disposal of all chemicals that were not administered and document, in the applicable *Sequence of Chemicals Form* (appendix G1 or G2), the chemical name, syringe identification code, amount disposed, date disposed, and the time. Time will be marked based on the approved chemical room clock. The Injection Team leader and the Injection Team recorder each will sign the *Sequence of Chemicals Form*.