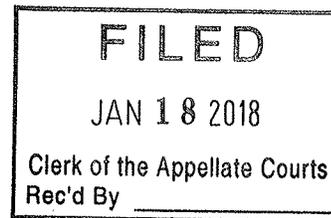


IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE,)
)
Movant,)
)
v.)
)
ABU ALI ABDUR'RAHMAN)
)
Defendant.)

No. M1988-00026-SC-DPE-PD



RESPONSE TO NOTICE

COMES NOW Abu Ali Abdur'Rahman, by counsel, and responds to the Notice filed on behalf of the State of Tennessee on January 11, 2018 and urges the Court to refrain from scheduling a new execution date for the reasons set forth below. This response is filed pursuant to Article VI, clause 2 of the United States Constitution; the Eighth and Fourteenth Amendments to the United States Constitution; Article 1, §§ 8 and 16 of the Tennessee Constitution; and Tennessee Supreme Court Rule 12(E).

1. Mr. Abdur'Rahman's post-conviction case has been reopened pursuant to an order of the trial court, a copy of which is attached hereto as *Exhibit 1*. The trial court held that it would conduct a hearing on Mr. Abdur'Rahman's *Foster/Batson* claim. That hearing has not yet been set. Mr. Abdur'Rahman's counsel is currently in settlement discussions with District Attorney General Glenn Funk, and the parties have agreed to take no further action in the post-conviction case until the settlement discussions are completed. It would be premature to

schedule an execution date in Mr. Abdur'Rahman's case until those settlement discussions are completed and, if the case is not settled, until Mr. Abdur'Rahman can take further action in the post-conviction case to effect a stay of execution pursuant to T.C.A. § 40-30-120(c)-(e).

2. The judgment under which Mr. Abdur'Rahman was sentenced to death, a copy of which is attached hereto as *Exhibit 2*, provides that his death sentence "shall be served consecutively to ... the defendant's federal sentence No. CR 57-72-R." Mr. Abdur'Rahman's "federal sentence No. CR 57-72-R" refers to his life sentence in *United States v. James Lee Jones, Jr., No. 57-72-R*, United States District Court, Eastern District of Virginia – Richmond Division, that was filed on September 11, 1972. Mr. Abdur'Rahman has not served out his federal sentence. Accordingly, pursuant to the plain language of the judgment imposing Mr. Abdur'Rahman's death sentence, his death sentence cannot be executed at this time.

3. The State of Tennessee has adopted an entirely new and untested lethal injection protocol which Mr. Abdur'Rahman intends to challenge. On January 11, 2018, the State of Tennessee filed a notice with this Court advising that the petition for writ of certiorari filed by Mr. Abdur'Rahman and others was denied by the United States Supreme Court on January 8, 2018.¹ While it is true that Mr. Abdur'Rahman's petition was denied, petitioners have until February 2, 2018, to file a petition for rehearing. Petitioners intend to file a petition for

¹ Counsel for the State mailed the service copy of the notice to counsel for Mr. Wright. The Notice was received on January 16, 2018.

rehearing in light of public records received which indicate that the petitioners' position that the State intends to obtain pentobarbital illegally is well founded. Specifically, on July 20, 2017, the State of Tennessee received an email from its pharmacist which states, "I have some news on the pento. It's not good. I had the DEA invite me over to discuss it. I can call you tomorrow to fill you in on the details." Exhibit 3, July 20, 2017, email.

4. On January 16, 2018 Mr. Abdur'Rahman learned that the State of Tennessee adopted an entirely new lethal injection protocol on January 8, 2018 that the state would use in his execution. Public records and the adoption of this new protocol suggest that Tennessee does not have access to pentobarbital. This new three drug protocol uses a combination of drugs never before used in this state. *See* "Protocol B" pp. 40-41, Exhibit 4, January 8, 2018 lethal injection protocol. The new combination uses midazolam (a benzodiazepine which has no analgesic effect), vecuronium bromide (a paralytic which stops movement and breathing creating the feeling of suffocation), and potassium chloride (which creates the searing sensation of being burned from the inside and eventually stops the heart).

5. Public records reveal that the State of Tennessee is fully aware that the first drug, midazolam, is not effective in preventing the pain and suffering caused by the second and third drugs because it was warned by its supplier. On September 7, 2017, the supplier wrote:

Here is my concern with Midazolam. Being a benzodiazepine, it does not elicit strong analgesic effects. The subjects may be able to feel pain from the administration of the second and third drugs. Potassium chloride

especially. It may not be a huge concern but can open the door to some scrutiny on your end.

Exhibit 5, September 7, 2017 email. As discussed below, the use of midazolam in lethal injection protocols is controversial and has been associated with numerous problematic executions, including the botched executions of Joseph Wood in Arizona and Clayton Lockett in Oklahoma.

6. This Court has recognized that when the state adopts a new execution protocol a petitioner is entitled to timely challenge the protocol through fair procedures in Tennessee courts.

The principles of constitutional adjudication and procedural fairness require that decisions regarding constitutional challenges to acts of the Executive and Legislative Branches be considered in light of a fully developed record addressing the specific merits of the challenge. The requirement of a fully developed record envisions a trial on the merits during which both sides have an opportunity to develop the facts that have a bearing on the constitutionality of the challenged provision.

State of Tennessee v. West, No. M1987-000130-SC-DPE-DD (Tenn. Nov. 29, 2010)(*per curiam*), p. 3 (Exhibit 6). When Mr. West challenged a revised execution protocol in 2010, this Court stayed executions to allow Mr. West and similarly situated petitioners to challenge that protocol in the Chancery Court and on appeal. *Id.* (ordering stay pending chancery court ruling in 90 days and “throughout the pendency of any appeal of the trial court’s final judgment in the declaratory judgment action . . .”). After the 2010 protocol was abandoned by the State, Mr. West and others (including Mr. Abdur’Rahman) challenged the revised lethal injection protocol in September 2013. This Court reaffirmed the right of Mr. West and others to challenge the new and untested protocol in court. Further, this Court

recognized that the litigation required stays of execution pending resolution of constitutional challenges to the new protocol in the chancery court, and on appeal as well. *See e.g., State v. Irick*, No. M1987-00131-SC-DPE-DD (Tenn. Sept. 25, 2014)(*per curiam*)(granting stay of execution to allow resolution of interlocutory appeal and chancery court declaratory judgment action in accordance with expedited schedule)(exhibit 7); *State v. Zagorski*, No. M1996-00110-SC-DPE-DD (Tenn. Oct. 22, 2014)(*per curiam*)(same)(Exhibit 8); *State v. West*, No. M1987-00130-SC-DPE-DD (Tenn. Nov. 26, 2014)(*per curiam*)(same)(Exhibit 9); *State v. Johnson*, No. M1987-00072-SC-DPE_DD (Tenn. Dec. 22, 2014)(same)(Exhibit 10); *State v. Miller*, No. E1982-00075-SC-DDT-DD (Tenn. Mar. 31, 2015), p. 2 (granting stay of execution pending “final disposition of the declaratory judgment action” challenging the new protocol)(Exhibit 11); *Abdur’Rahman, Hall, Strouth, & Sutton v. State of Tennessee*, Nos. M1988-00026-SC-DPE-PD, E1997-00344-SC-DDT-DD, E1997-00348-SC-DDT-DD, E2000-00712-SC-DDT-DD (Tenn. Apr. 10, 2015)(*per curiam*), p. 2 (vacating “execution dates pending the conclusion of that [declaratory judgment] action, through appeal of the trial court’s final judgment.”)(Exhibit 12).

7. While properly recognizing a death-sentenced petitioner is entitled to meaningfully challenge a revised execution protocol in chancery court and on appeal, this Court has also acknowledged that the chancery court should promptly decide any challenge presented by a petitioner. In *West v. Schofield*, No. M2014-00320-SC-R11-CV (Tenn. Mar. 10, 2015)(*per curiam*)(Exhibit 13), this Court required the chancery court to commence a trial within 120 days, conclude such

trial within 150 days, and enter a decision within 30 additional days. *See also State v. West*, No. M19870000130-SC-DPE-DD (Tenn. Nov. 29, 2010)(*per curiam*)(requiring challenge to initial revision to be adjudicated by chancery court within 90 days)(Exhibit 14).

8. Tennessee deliberately chose to revise its execution protocol to include as the first drug, midazolam, despite knowledge of the substantial harm that drug will cause. It is the most controversial protocol ever adopted by this State. Petitioner's forthcoming challenge will raise serious and substantial claims that the protocol is cruel and unusual. The experiences of other states reveal that midazolam is ineffective in preventing the sensation of suffocation and searing, burning pain caused by the other two drugs. News reports of executions involving midazolam in Alabama, Arizona, Arkansas, Ohio, and Oklahoma indicate the inmates are noticeably sensate and move during the execution after administration of the drugs.

9. Midazolam is associated with the 2014 botched execution of Joseph Wood in Arizona. A veteran reporter who had witnessed five other executions where midazolam had not been used describes what happened:

At the start of Wood's execution, none of [the lawyers] concerns seemed warranted.

Then at 2:05, Wood's mouth opened. Three minutes later it opened again, and his chest moved as if he had burped. Then two minutes again, and again, the mouth open wider and wider. Then it didn't stop. He gulped like a fish on land. The movement was like a piston: The mouth opened, the chest rose, the stomach convulsed. And when the doctor came in to check on his consciousness and turned on the microphone to announce that Wood was still sedated, we could hear the

sound he was making: a snoring, sucking, similar to when a swimming-pool filter starts taking in air, a louder noise than I can imitate, though I have tried.

It was death by apnea. And it went on for an hour and a half. I made a pencil stroke on a pad of paper, each time his mouth opened, and ticked off more than 640, which was not all of them, because the doctor came in at least four times and blocked my view.

I turned to my friend Troy Hayden, the anchor and reporter from Fox 10 News, who was sitting next to me. Troy and I witnessed another execution together in 2007, and he had seen one before that, so he also knows what it looks like.

"I don't think he's going to die," I said.

A moment later, Troy turned to me and whispered, "I think you're right."

Michael Kiefer, *Reporter Describes Arizona Execution: 2 Hours, 640 Gasps*, Arizona Republic, azcentral.com (July 23, 2014),

<https://www.azcentral.com/story/news/arizona/politics/2014/07/24/arizona-execution-joseph-wood-eyewitness/13083637/> (last visited January 17, 2018).

10. The Arizona protocol in Wood's execution is not identical to the newly minted Tennessee protocol. Because Arizona did not use a paralytic, the ineffectiveness of midazolam as an anesthetic was plainly visible. Tennessee's protocol, which uses a paralytic, will mask the inmate's movements and thus create a danger that the inmate will feel the torturous sensation of suffocation from the paralytic and the burning from the third drug.

11. When Alabama executed Ronald Bert Smith using Midazolam, "Smith heaved and coughed for about 13 minutes" continuing to gasp and cough even after the first of two consciousness checks. Kent Faulk, *Alabama Death Row Inmate*

Ronald Berth Heaved, Coughed For 13 Minutes During Execution, AL.com, (December 8, 2016),

http://www.al.com/news/birmingham/index.ssf/2016/12/alabama_death_row_inmate_is_se.html (last checked January 17, 2018).

12. Again, in Alabama, after the administration of midazolam and two consciousness checks, Torrey McNabb raised his right arm and grimaced causing “family members and attorneys [to] audibly [express] concern that he was not yet unconscious” at the point of the injection of the remaining drugs. *Alabama Executes Montgomery Co-Killer Torrey Twane McNabb*, AL.com (October 20, 2017), http://www.al.com/news/birmingham/index.ssf/2016/12/alabama_death_row_inmate_is_se.html (last checked January 17, 2018).

13. Oklahoma infamously botched the execution of Clayton Lockett in 2014 using a protocol initiated by Midazolam. In that case, prison officials were unable to execute Lockett. Reporters describe the scene that unfolded just after Lockett was declared unconscious:

Three minutes later, “the violent reaction” began, she said. First, she saw his foot kick. Then his body bucked, he clenched his jaw and he began rolling his head from side to side, trying to lift his head up, grimacing and clenching his teeth. “He mumbled some things we didn’t understand,” Branstetter said. “The only thing I could make out was when he said ‘man.’”

It looked like he was trying to get up, she said.

“He looked like he was in pain to me,” Branstetter said. “How much pain, nobody knows but him.”

A prison official looked under the sheet and announced that they were going to close the blinds temporarily. The beige blinds went back down and never went back up. “Reporters exchange shocked glances,” Branstetter wrote in her account. “Nothing like this has happened at an execution any of us has witnessed since 1990, when the state resumed executions using lethal injection.”

Dean Sanderford, one of Lockett’s attorneys, called the execution “the most awful thing I’ve ever seen.”

Some of the younger reporters in attendance, who had not witnessed executions before, “were quite shaken, to say the least,” Branstetter said the following day.

“Nobody was crying, but...afterwards, there were some reporters whose hands were shaking, who were quite disturbed by what they had seen,” she said.

The reporters sat in silence for several minutes — the exact time wasn’t clear because the clock on the wall in the execution chamber was now hidden behind the blinds — before Patton announced to them that he has halted the execution.

Mark Berman, *What It Was Like Watching Botched Oklahoma Execution*, WashingtonPost.com (May 2, 2014), https://www.washingtonpost.com/news/post-nation/wp/2014/05/02/what-it-was-like-watching-the-botched-oklahoma-execution/?utm_term=.cb62695258e8 (last visited January 17, 2018). When Oklahoma executed Abu Ali Warner a year later using midazolam, his last words were “my body is on fire” – indicating that he was sensate and able to feel the searing pain as the potassium burned through his veins. Andrew Buncombe, *Abu Ali Warner Execution: Oklahoma Inmate's Last Words Are 'My Body Is On Fire' As State Carries Out First Death Penalty In Nine Months*, Independent.com (January 16, 2015), <https://www.washingtonpost.com/news/post-nation/wp/2014/05/02/what->

it-was-like-watching-the-botched-oklahoma-execution/?utm_term=.cb62695258e8
(last visited January 17, 2018).

14. Kenneth Williams was “coughing, convulsing, lurching, [and] jerking” during what was described as a “horrifying” execution in Arkansas. Midazolam was used for that execution. Phil McCausland, *Arkansas Execution of Kenneth Williams ‘Horrifying’: Lawyer*, nbcnews.com (April 27, 2017), <https://www.nbcnews.com/storyline/lethal-injection/arkansas-executes-kenneth-williams-4th-lethal-injection-week-n752086> (last visited January 17, 2018).

15. Executions in Ohio also reveal evidence that midazolam is not an appropriate drug for use in lethal injections. Gary Otte was executed in Ohio on September 13, 2017. Witnesses observed that Otte’s stomach moved abnormally and that he was crying – both signs that he was sensate. Eric Heisig, *Attorney For Executed Parma Murderer Says She Believes Inmate Suffered Pain During Lethal Injection*, cleveland.com (September 13, 2017), http://www.cleveland.com/metro/index.ssf/2017/09/attorney_for_executed_parma_m_u.html (last visited January 17, 2018).

16. Where Tennessee’s own advisor admits that midazolam does not prevent an inmate from feeling the horrendous pain of the paralytic and potassium chloride, and where recent experience in several states confirms that midazolam does not, in fact, prevent an inmate from feeling pain, petitioners have a serious challenge to Tennessee’s brand new lethal injection protocol that must be carefully examined and reviewed by the chancery court and on appeal.

17. Given the State's adoption of a new lethal injection protocol just last week, this Court should not set any execution dates. Mr. Abdur'Rahman and others intend to challenge the new protocol in chancery court. Mr. Abdur'Rahman requires some amount of time to consult with experts and prepare his legal arguments. Mr. Abdur'Rahman requests the time necessary to investigate, draft, and file such an important challenge, a period Mr. Abdur'Rahman estimates at no less than thirty days. Respectfully, thirty days seems to be a reasonable amount of time given the circumstances and the complex science and medicine involved.

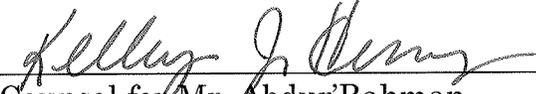
18. As with the previous *West* litigation, this Court should establish an expedited schedule for the litigation in this case similar to that in the previous *West* litigation, *e.g.*, order the chancery court to commence a trial within 120 days of the filing of the new legal challenge, to conclude the trial within 30 days, and to issue a final order within 30 days thereafter. *West v. Schofield*, No. M2014-00320-SC-R11-CV (Tenn. Mar. 10, 2015)(per curiam)(Exhibit 15.)

Respectfully Submitted,

BRADLEY MACLEAN
ATTORNEY AT LAW
1702 Villa Place
Nashville, TN 3212
Phone: (615) 943-8716
Email: brad.maclean9@gmail.com

FEDERAL PUBLIC DEFENDER FOR THE
MIDDLE DISTRICT OF TENNESSEE

KELLEY J. HENRY, BPR#21113
Supervisory Asst. Federal Public Defender
810 Broadway, Suite 200
Nashville, TN 37203
Phone: (615) 736-5047
Fax: (615) 736-5265

BY: 
Counsel for Mr. Abdur'Rahman

CERTIFICATE OF SERVICE

I, Kelley J. Henry, hereby certify that a true and correct copy of the foregoing document was sent to the following via first-class mail on this the 18th day of January, 2017, to:

Jennifer L. Smith
Deputy Attorney General
500 Charlotte Avenue
Nashville, TN 37243-1401


Kelley J. Henry
Supervisory Asst. Federal Public Defender

Exhibit 1

IN THE CRIMINAL COURT FOR DAVIDSON COUNTY, TENNESSEE
DIVISION V

ABU ALI ABDUR'RAHMAN, Petitioner)		FILED
)		
v.)	No. 87-W-417	SEP 28 2016
)	(capital case)	
)	(post-conviction)	
STATE OF TENNESSEE, Respondent.)	(habeas corpus)	MDW
)		

ORDER GRANTING "MOTION TO REOPEN POST-CONVICTION PETITION" IN
PART AND DENYING IN PART

I. Introduction

This matter is before this Court on Petitioner's June 24, 2016, motion to reopen his petition for post-conviction relief. Petitioner, Abu-Ali Abdur'Rahman, by and through counsel, has filed this motion to reopen pursuant to Tenn. Code Ann. § 40-30-117(a)(1) claiming he is entitled to relief petition based upon new rules of law as announced in (1) the majority opinion in *Foster v. Chatman*, 578 U.S. ___, 136 S. Ct. 1737 (2016), (2) Justice Breyer's dissent in *Glossip v. Gross*, 576 U.S. ___, 135 S. Ct. 2726 (2015), and (3) the majority opinion in *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015). After reviewing the motion and the relevant authorities and for the reasons stated within this order, Petitioner's Motion to Reopen filed on June 24, 2016 and Petitioner's Writ of Habeas Corpus filed on September 23, 2016 is hereby DENIED as to the second and third issues. However, this Court will hold an evidentiary hearing in order to make a determination as to issue one, whether Petitioner is entitled to relief under *Foster v. Chatman*.

II. Evidentiary Hearing

This Court will hold an evidentiary hearing to determine whether Petitioner is entitled to relief under *Foster* based upon the prosecution's discriminatory practices during jury selection. Petitioner previously raised a challenge to the prosecution's use of peremptory strikes against African-American jurors on direct appeal.¹ However, Petitioner now raises this challenge again because Petitioner has now obtained a copy of the prosecution's trial file which includes notes from the jury selection process.

This Court seeks to determine whether *Foster* created a new rule of law or whether the "motivated in substantial part by discriminatory intent" test in *Snyder v. Louisiana* announced this new rule at issue.² If *Snyder* controls, this Court must determine whether Petitioner waived his claim by failing to file the motion to reopen for eight years.

III. Procedural History³

Trial and Sentencing

A Davidson County Jury convicted Petitioner of premeditated and felony first degree murder, assault with intent to commit murder, and armed robbery. After the guilty verdicts were returned, the jury sentenced Petitioner to death, finding three aggravating circumstances. The Tennessee Supreme Court affirmed Petitioner's convictions and sentence. See *State v. Jones*, 789 S.W.2d 545 (Tenn. 1990), *cert denied*, 498 U.S. 908 (1990).

Post-Conviction

Mr. Abu-Ali Abdur'Rahman subsequently filed a petition for post-conviction relief.

¹ See *State v. Jones*, 789 S.W. 2d 545 (Tenn. 1990).

² *Snyder v. Louisiana*, 552 U.S. 472 (2008).

³ The Hon. Walter Kurtz presided over the petitioner's trial and both post-conviction proceedings.

The post-conviction court denied the petition. The Court of Criminal Appeals affirmed the judgment of the post-conviction court. The Supreme Court denied Petitioner's writ of certiorari. *State v. Jones*, 789 S.W. 2d 545 (Tenn. 1990); *Jones v. Tennessee*, 516 U.S. 1122 (1996).

Federal Habeas Corpus Proceedings

Mr. Abdur'Rahman filed a timely petition for writ of habeas corpus in the United States District Court for the Middle District of Tennessee. The District Court denied relief via on January 21, 1998. See *Abdur'Rhman v. Bell*, 990 F.Supp. 985 (M.D. Tenn. 1998).

In a subsequent petition for writ of habeas corpus in the United States District Court for the Middle District of Tennessee, the District Court issued a writ vacating the death sentence because of Petitioner's ineffective assistance of counsel during the sentencing phase. See *Abdur'Raham v. Bell*, 999 F.Supp 1073 (M.D. Tenn. 1998). The Sixth Circuit Court of Appeals then vacated the District Court's writ. See *Abdur'Rahman v. Bell*, 226 F.3d 696, 715 (6th Cir. 2000).

Petitioner then filed a motion for relief from the District Court judgment denying the writ of habeas corpus. After a series of appeals and remands, the Sixth Circuit Court of Appeals remanded to the United States District Court for the Middle District of Tennessee to decide on Mr. Abdur'Raham's petition for writ of habeas corpus. The courts ultimately denied habeas corpus. See *In re Abdur'Rahman*, 392 F.3d 174 (6th Cir. 2004), *cert. granted sub nom. Bell v. Abdur'Rahman*, 545 U.S. 1151 (2005); *Abdur'Raham v. Bell*, 493 F.3d 738 (6th Cir. 2007); *Rahman v. Bell*, No. 3:96-0380, 2009 WL 211133 (M.D. Tenn. Jan. 26, 2009), *aff'd*, 649 F.3d 468 (6th Cir. 2011).

Petitioner then filed a Motion for Relief from Judgment in the United States

District Court for the Middle District of Tennessee. The District Court denied the motion, which the Sixth Circuit Court of Appeals affirmed. *Rahman v. Carpenter*, No. 3:96-0380, 2013 WL 3865071 (M.D. Tenn. Jul. 25, 2013), *aff'd*, 805 F.3d 710 (6th Cir. 2015).

IV. Applicable Law

The Tennessee Supreme Court has summarized the statutes governing motions to reopen:

Under the provisions of the Post-Conviction Procedure Act, a petitioner “must petition for post-conviction relief . . . within one (1) year of the final action of the highest state appellate court to which an appeal is taken” Tenn. Code Ann. § 40-30-202(a). Moreover, the Act “contemplates the filing of only one (1) petition for post-conviction relief.” Tenn. Code Ann. §40-30-202(c). After a post-conviction proceeding has been completed and relief has been denied, . . . a petitioner may move to reopen only “under the limited circumstances set out in 40-30-217.” *Id.* These limited circumstances include the following:

(1) The claim in the motion is based upon a final ruling of an appellate court establishing a constitutional right that was not recognized as existing at the time of trial, if retrospective application of that right is required. Such motion must be filed within one (1) year of the ruling of the highest state appellate court or the United States Supreme Court establishing a constitutional right that was not recognized as existing at the time of trial; or

(2) The claim in the motion is based upon new scientific evidence establishing that the petitioner is actually innocent of the offense or offenses for which the petitioner was convicted; or

(3) The claim in the motion seeks relief from a sentence that was enhanced because of a previous conviction and such conviction in the case in which the claim is asserted was not a guilty plea with an agreed sentence, and the previous conviction has subsequently been held to be invalid, in which case the motion must be filed within one (1) year of the finality of the ruling holding the previous conviction to be invalid; and

(4) It appears that the facts underlying the claim, if true, would establish by clear and convincing evidence that the petitioner is entitled to have the conviction set aside or the sentence reduced.

(Citing Tenn. Code Ann. § 40-30-217(a)(1)-(4))(now Tenn. Code Ann. § 40-30-117(a)(1)-(4)). The statute further states:

The statute of limitations shall not be tolled for any reason, including any tolling or saving provision otherwise available at law or equity. Time is of the essence of the right to file a petition for post-conviction relief or motion to reopen established by this chapter, and the one-year limitations period is an element of the right to file the action and is a condition upon its exercise. Except as specifically provided in subsections (b) and (c) [of section 102], the right to file a petition for post-conviction relief or a motion to reopen under this chapter shall be extinguished upon the expiration of the limitations period. Tenn. Code Ann. § 40-30-102(a).

Harris v. State, 102 S.W.3d 587, 590-91 (Tenn. 2003). *Foster* was decided May 23, 2016, *Obergefell* was decided June 26, 2015, and *Glossip* was decided June 29, 2015, so Petitioner's motion is timely.

The post-conviction statutes further provide that

a new rule of constitutional criminal law is announced if the result is not dictated by precedent existing at the time the petitioner's conviction became final and application of the rule was susceptible to debate among reasonable minds. A new rule of constitutional criminal law shall not be applied retroactively in a post-conviction proceeding unless the new rule places primary, private individual conduct beyond the power of the criminal law-making authority to proscribe or requires the observance of fairness safeguards that are implicit in the concept of ordered liberty.

Tenn. Code Ann. § 40-30-122. Furthermore, as Petitioner asserts, the United Supreme Court's opinion in *Montgomery v. Louisiana*, 577 U.S. ____, 136 S. Ct. 718, 729 (2016) provides that "when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule."

A motion to reopen "*shall be denied* unless the factual allegations, if true, meet the requirements of [Tenn. Code Ann. § 40-30-117](a)." Tenn. Code Ann. § 40-30-117(b) (emphasis added).

V. Analysis

Petitioner's Claims under Glossip v. Gross Dissent

In *Glossip v. Gross*, 135 S. Ct. 2726 (2015), the Supreme Court concluded Oklahoma's three-drug lethal injection protocol did not violate the Eighth Amendment's protection against cruel and unusual punishment. Four justices wrote a dissent addressing the particular controversy at issue in *Glossip* (namely, the constitutionality of Oklahoma's lethal injection protocol), but in a separate dissent, joined by Justice Ginsburg, Justice Breyer argued for a reexamination of whether the death penalty itself should be held to be unconstitutional. See *id.* at 2755-80 (Breyer, J., dissenting). This dissent forms the basis for one of Petitioner's issues in the current motion to reopen. Specifically, Petitioner argues,

In *Glossip v. Gross*, 576 U.S. ___, 135 S. Ct. 2726 (2015) (Breyer, J., dissenting), Justices Breyer and Ginsburg concluded that the death penalty likely constitutes a prohibited cruel and unusual punishment, which violates the Eighth and Fourteenth Amendments (and in turn violates Article I §§ 8 & 16 of the Tennessee Constitution). Abu-Ali Abdur'Rahman relies on all of the arguments and evidence in Justice Breyer's dissent to support his argument that the death sentence in his case is unconstitutional. Mr. Abdur'Rahman expressly incorporates all of Justice Breyer's *Glossip* opinion as factual, legal, and evidentiary support for his request for an evidentiary hearing and for post-conviction relief given the unconstitutionality of the death penalty in this case. See *Glossip*, 576 U.S. at ___, 135 S. Ct. at 2755-2780 (incorporated by reference, and attached as Exhibit 3).

Mr. Abdur'Rahman's death sentence is unconstitutional for of the reasons that Justice Breyer explained: it is unreliable (*Glossip*, 576 U.S. at ___, 135 S. Ct. at 2756-2759 (Breyer, J., dissenting)); arbitrary, given its disproportionality (*id.*, 135 S. Ct. at 2759-2764); cruel in light of its excessive delays and its failure to serve any legitimate penological objective (*id.*, 135 S. Ct. at 2764-2772); and highly unusual or rare. *Id.*, 135 S. Ct. at 2772-2776. This motion relies on every specific point that Justice Breyer made on these issues, though Mr. Abdur'Rahman will not recite them all in detail. Although Justice Breyer's conclusions are sufficient in and of themselves to entitle Mr. Abdur'Rahman to an evidentiary hearing and vacation of his death sentence, in this motion Mr. Abdur'Rahman delineates specifically how, in light of specific facts, Justice

Breyer's statements make the death penalty unconstitutional as applied to Mr. Abdur'Rahman and in Tennessee, entitling him to relief.⁴

Initially, this Court concludes the *Glossip* dissent is not a "final ruling of an appellate court" that would entitle Petitioner to relief. The final ruling of the Supreme Court in *Glossip* affirmed Oklahoma's lethal injection protocol. Justice Breyer's separate dissenting opinion has no precedential value and cannot be considered "a new substantive rule of constitutional law [which] controls the outcome of a case[.]" *Montgomery*, 136 S. Ct. at 729 (describing a new substantive rule of constitutional law as one that controls the outcome of a case). In short, Petitioner's *Glossip* claim must be denied because "the facts underlying the claim, if true, would [not] establish by clear and convincing evidence that the petitioner is entitled to have the conviction set aside or the sentence reduced." Tenn. Code Ann. § 40-30-117(a)(4). *See also Edmund Zagorski v. State*, No. M2016-00557-CCA-R28-PD, slip op. at 2 (Tenn. Crim. App. May 4, 2016) (order denying relief in appeal of motion to reopen decision based upon *Obergefell* opinion and *Glossip* dissent), *perm. app. filed* (Tenn. June 28, 2016).

This Court also notes Petitioner makes several arguments regarding what he views as the unreliability of the death penalty generally and as applied in his case in particular. Petitioner's claims regarding the unreliability of his convictions and sentences are, in large part, related to issues which either were or could have been litigated on direct appeal or post-conviction. A motion to reopen is not the proper means of raising such claims. To the extent Petitioner asserts trial and post-conviction counsel may have been deficient in failing to raise those claims identified in the current motion, such

⁴ Motion to reopen at 24-25

claims are more appropriate for federal habeas claims under *Martinez v. Ryan*⁵ and related cases. The case-specific “unreliability” claims are, therefore, denied as not cognizable for relief in a motion to reopen.

Petitioner’s general assertions concerning the death penalty in Tennessee being unreliable, arbitrary, cruel, and highly unusual or rare are hardly new. Mindful of evolving standards of decency, the United States Supreme Court has concluded that executing certain classes of persons—such as the intellectually disabled⁶ and persons committing capital offenses as juveniles⁷—is unconstitutional. However, both the federal and state supreme courts have repeatedly concluded the death penalty itself does not violate the United States and Tennessee constitutions. See, e.g., *Glossip v. Gross*, 135 S. Ct. 2726 (2015) (majority opinion); and *Keen v. State*, 398 S.W.3d 594, 600 n.7 (Tenn. 2012). Whatever the merits may or may not be of the concerns set forth in the *Glossip* dissent, binding precedent, which is clearly contained in the majority opinion of the same case, requires this Court to find Petitioner’s claim here does not rely upon a new substantive rule of constitutional law as required by the statute.

Petitioner’s Claims under Obergefell v. Hodges

⁵ In *Martinez*, the United States Supreme Court concluded that ineffective assistance of trial counsel claims will not be viewed as procedurally defaulted (i.e., waived) in a federal habeas corpus proceeding “if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.” *Martinez v. Ryan*, 566 U.S. ____, 132 S. Ct. 1309, 1320 (2012). Tennessee’s courts have concluded *Martinez* and its progeny do not create the right to effective post-conviction counsel in this state, see *David Edward Niles v. State*, No. M2014-00147-CCA-R3-PC (Tenn. Crim. App. June 1, 2015), *perm. app. denied*, (Tenn. Sept. 17, 2015), and cannot form the basis for reopening post-conviction proceedings, see *Oscar T. Berry v. State*, No. M2013-01927-CCA-R3-PC (Tenn. Crim. App. June 26, 2014), *no perm. app. filed*. As stated above, the federal courts have rejected Petitioner’s *Martinez* claims.

⁶ See *Atkins v. Virginia*, 536 U.S. 304 (2002).

⁷ See *Roper v. Simmons*, 543 U.S. 551 (2005).

Petitioner also asserts he is entitled to relief under the United States Supreme Court's opinion in *Obergefell v. Hodges*, 576 U.S. ___, 135 S. Ct. 2584 (2015), which concluded the right to marry is a fundamental right under the Due Process and Equal Protection Clauses of the Fourteenth Amendment and therefore is guaranteed to all couples regardless of sex. Specifically, Petitioner argues the *Obergefell* opinion "give[s] full recognition to the right to life by recognizing that the states lack any power to deny an individual his or her fundamental rights of personhood—[rights] which obviously includes the right to life."⁸ This Court disagrees.

The government's inability to deny any person his fundamental rights under the state or federal constitution is hardly a novel concept. Petitioner's assertion the death penalty denies him his fundamental right to life is also not a new claim. Numerous death row inmates have raised the claim in Tennessee's courts, and both the Tennessee Supreme Court⁹ and the Court of Criminal Appeals¹⁰ have denied these claims.

⁸ Motion to reopen at 18 (some alterations added).

⁹ See *State v. Mann*, 959 S.W.2d 503, 536 (Tenn. 1997) (appendix); and *State v. Bush*, 942 S.W.2d 489, 524 (Tenn. 1997) (appendix). See also *State v. Freeland*, 451 S.W.3d 791, 825 (Tenn. 2014) (appendix); *State v. Sexton*, 368 S.W.3d 371, 427 (Tenn. 2012) (appendix); *State v. Hester*, 324 S.W.3d 1, 80 (Tenn. 2010); *State v. Holton*, 126 S.W.3d 845, 871-72 (Tenn. 2004) (appendix); and *Nichols v. State*, 90 S.W.3d 576, 604 (Tenn. 2002).

¹⁰ See *Cauthern v. State*, 145 S.W.3d 571, 629 (Tenn. 2004). See also *Robert Faulkner v. State*, No. W2012-00612-CCA-R3-PD (Tenn. Crim. App. Aug. 29, 2014); *Akil Jahi a.k.a. Preston Carter v. State*, No. W2011-02669-CCA-R3-PD (Tenn. Crim. App. Mar. 13, 2014); *David Ivy v. State*, No. W2010-01844-CCA-R3-PD (Tenn. Crim. App. Dec. 21, 2012); *Steven Ray Thacker v. State*, No. W2010-01637-CCA-R3-PD (Tenn. Crim. App. Mar. 23, 2012); *Gerald Lee Powers v. State*, No. W2009-01068-CCA-R3-PD (Tenn. Crim. App. Feb. 22, 2012); *John Michael Bane v. State*, No. W2009-01653-CCA-R3-PD (Tenn. Crim. App. July 21, 2011); *Christa Gail Pike v. State*, No. E2009-00016-CCA-R3-PD (Tenn. Crim. App. Apr. 25, 2011); *Vincent Sims v. State*, No. W2008-02823-CCA-R3-PD (Tenn. Crim. App. Jan. 28, 2011); *Detrick Cole v. State*, No. W2008-02681-CCA-R3-PD (Tenn. Crim. App. Mar. 8, 2011); *Perry Anthony Cribbs v. State*, No. W2006-01381-CCA-R3-PD (Tenn. Crim. App. July 1, 2009); *Tyrone Chalmers v. State*, No. W2006-00424-CCA-R3-PD (Tenn. Crim. App. June 25, 2008); *Anthony Darrell Hines v. State*, No. M2006-02447-CCA-R3-PC (Tenn. Crim. App. Jan. 29, 2008); *James A. Dellinger v. State*, No. E2005-01485-CCA-R3-PD (Tenn. Crim. App. Aug. 28, 2007), *aff'd in part, rev'd in part on other grounds*, 279 S.W.3d 282 (Tenn. 2009); *William R. Stevens v. State*, No. M2005-00096-CCA-R3-PD (Tenn. Crim. App. Dec. 29, 2006); *Farris Genner Morris, Jr., v. State*, No. W2005-00426-CCA-R3-PD (Tenn. Crim. App. Oct. 10, 2006); *David Keen v. State*, No. W004-02159-CCA-R3-PD (Tenn. Crim. App. June 5, 2006); *Kevin B.*

Petitioner argues *Obergefell's* conclusions regarding fundamental rights, human dignity, and the prohibition against the diminishment of one's personhood apply in all circumstances, not just the right to marry. However, this Court is not aware of any state or federal appellate opinion extending *Obergefell* to criminal law in general or capital punishment in particular. The *Obergefell* opinion does not state explicitly that the Supreme Court's holding applies to areas of the law beyond the right to marry.

In addition and as previously referred to above, the Court of Criminal Appeals has already denied relief in a similar case. In October 2015, Edmund Zagorski, convicted in Robertson County of two counts of first degree murder and sentenced to death,¹¹ filed a motion to reopen his post-conviction proceedings based upon the *Obergefell* opinion and the *Glossip* dissent discussed above. The post-conviction court denied the motion following a hearing, and on appeal the Court of Criminal Appeals affirmed the trial court:

The Appellant argues that his post-conviction petition should be reopened in light of the United States Supreme Court's ruling in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), and Justice Breyer's dissenting opinion in *Glossip v. Gross*, 135 S. Ct. 2726 (2015). The *Obergefell* case held that "same-sex couples may exercise the fundamental right to marry" and that "under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and liberty." *Obergefell*, 135 S. Ct. at 2604-05. The Appellant argues that the death penalty, which has been imposed against him, "denies his fundamental right to life, denies him inherent human dignity, and unconstitutionally diminishes his personhood — all of which are prohibited by *Obergefell*." The death penalty, however, has not been ruled unconstitutional by the United States Supreme Court or the Tennessee Supreme Court. Accordingly, the trial court did not abuse its discretion in holding that *Obergefell* simply has no bearing on the Appellant's case. Moreover, the Appellant's reliance upon a dissenting opinion in *Glossip* offers him no avail. In order to succeed in reopening

Burns v. State, No. W2004-00914-CCA-R3-PD (Tenn. Crim. App. Dec. 21, 2005); *Kennath Henderson v. State*, No. W003-01545-CCA-R3-PD (Tenn. Crim. App. June 28, 2005); *Byron Lewis Black v. State*, No. 01C01-9709-CR-00422 (Tenn. Crim. App. Apr. 8, 1999); *State v. Ricky Thompson*, No. 03C01-9406-CR-00198 (Tenn. Crim. App. Jan. 24, 1996).

¹¹ See *State v. Zagorski*, 701 S.W.2d 808 (Tenn. 1985).

a previously filed petition, the claim asserted must be "based upon a final ruling of an appellate court." § 40-30-117(a)(1). The majority opinion in *Glossip* concluded that the method of execution utilized by the State of Oklahoma does not constitute cruel and unusual punishment under the Eighth Amendment. 135 S. Ct. at 2731. Accordingly, the trial court did not abuse its discretion in denying relief to the Appellant based upon his reliance on Justice Breyer's dissent. Finally, the Appellant's reliance on *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), is misplaced. The Supreme Court held that "when a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule." *Id.* at 729. The issue in *Montgomery* dealt with juvenile offenders sentenced to life without the possibility of parole. As the trial court correctly noted, however, "the death penalty for the [Appellant] has not been eliminated" in this case. Again, the death penalty is currently a constitutionally acceptable form of punishment in this state and country.

For these reasons, the trial court did not abuse its discretion in denying the motion to reopen. The Appellant's application for permission to appeal is, therefore, denied.

Edmund Zagorski v. State, No. M2016-00557-CCA-R28-PD, slip op. at 2 (Tenn. Crim. App. May 4, 2016) (order denying relief in appeal of motion to reopen decision), *perm. app. filed* (Tenn. June 28, 2016).

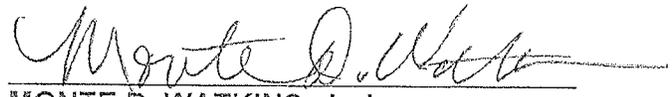
Under existing precedents, this Court must conclude that while *Obergefell* indeed states a new rule of constitutional law related to same-sex marriage, that new rule does not alter the long-standing precedent under which the death penalty does not deny an inmate his fundamental right to life. *Obergefell* does not entitle Petitioner to relief, and, therefore, the motion to reopen should be denied as to this issue.

VI. Conclusion

An evidentiary hearing is hereby ordered to make a determination as to issue one. For the reasons stated above, Mr. Abdur-Rahman's motion to reopen his petition for post-conviction relief is DENIED as to issues two and three. Petitioner is indigent, so any costs associated with these proceedings are taxed to the State.

IT IS SO ORDERED.

Entered this the 7th day of October, 2016.



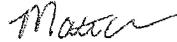
MONTE D. WATKINS, Judge
Criminal Court Division V

CERTIFICATE OF SERVICE

I hereby certify the foregoing has been served upon the following persons
by U.S. Mail on this, the 7th day of October, 2016:

Deputy District Attorney General Roger Moore
Washington Square, Suite 500
222 Second Avenue North
Nashville, TN 37201

Mr. Bradley A. MacLean
454 Mariner Point Drive
Clinton, Tennessee 37716



Clerk / Deputy Clerk

Exhibit 2

Exhibit 3

[Redacted]

From: [Redacted]
Sent: Thursday, July 20, 2017 5:05 PM
To: [Redacted]
Subject: RE: Update

*** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. ***

Hello [Redacted]

I hope you're doing well.

Sorry for the dormancy. We've been busy expanding.

I have some news on the pento. It's not good. I had the DEA invite me over to discuss it. I can call you tomorrow to fill you in on the details. Are you available?

Regards,

[Redacted]

This document may contain information covered under the Privacy Act, 5 USC 552(a), and/or Health Insurance Portability and Accountability Act (PL104-191) and its various implementing regulations and must be protected in accordance with those provisions. Healthcare information is personal and sensitive and must be treated accordingly. If this correspondence contains healthcare information it is being provided to you after appropriate authorization from the patient or under circumstances that do not require patient authorization. You, the recipient, are obligated to maintain it in a safe, secure, and confidential manner. Redisclosure without additional patient consent or as permitted by law is prohibited. Unauthorized redisclosure or failure to maintain confidentiality subjects you to appropriate sanction. If you have received this correspondence in error, please notify the sender at once and destroy any copies you have made.

From: [Redacted]
Sent: Thursday, July 20, 2017 12:19 PM
To: [Redacted]
Subject: Update

Has there been any positive progress on your end? Thx Hope all is well.

[Redacted]

Exhibit 4

LETHAL INJECTION EXECUTION MANUAL

EXECUTION PROCEDURES

FOR

LETHAL INJECTION

This manual contains a summary of the most significant events and departmental procedures to be followed in the process of carrying out the orders of the Tennessee Supreme Court regarding the imposition of death by lethal injection. It contains a detailed listing of some of the duties and responsibilities of certain key departmental personnel. In addition, the manual covers institutional perimeter security prior to, during, and subsequent to an execution.

It will be used as a guideline for the Warden to assure that operational functions are properly planned with the staff who have designated responsibilities in performing a judicially ordered execution by lethal injection.

SECTION VIII (PERIMETER SECURITY) IS

CONFIDENTIAL

AND IS NOT FOR PUBLIC RELEASE.

TABLE OF CONTENTS LETHAL INJECTION

I.	Introduction	
	Commissioner's Statement	6
II.	Definitions	
	Definitions	8
	Diagram of Capital Punishment Unit	10
III.	Duties of Management and Administrative Personnel	
	Riverbend Maximum Security Institution Personnel	12
	Warden	13
	Associate Warden of Security	14
	Lethal Injection Recorder	15
	Death Watch Supervisor	16
	Institutional Chaplain	17
	Security Systems Technicians	18
	Physician	19
	IV Team	20
	Facility Maintenance Supervisor	21
	Extraction Team	22
	Escort Officer(s)	23
	Central Office Personnel	24
	Commissioner	25
	Assistant Commissioner of Prisons	26
	Director of Communications and Public Relations	27
	Director of Office of Investigation and Compliance	28
	Director of Religious, Victim and Volunteer Services	29
IV.	Selection and Training of Staff	
	Execution Team Member Selection Criteria, Lethal Injection	31
	Training of Execution Team Members	32
V.	Procurement, Preparation, Introduction of the Lethal Injection Chemical, and Procedures of Accountability	
	Chemicals Used in Lethal Injection	34
	Protocol A: Procurement, Storage, Accountability, and Transfer of the Chemical	35

TABLE OF CONTENTS LETHAL INJECTION CON'T

Protocol B: Procurement, Storage, Accountability, and Transfer of the Chemical	37
Protocol A: Lethal Injection Chemical Set-up and Preparation	39
Protocol B: Lethal Injection Chemical Set-up an Preparation	40
IV Line Set-up	42
Insertion of a Catheter and Connection of IV Lines	43
Chemical Administration and IV Monitoring	45
VI. Death Watch Procedures	
Staff Responsibilities and Special Procedures	48
Execution Team	52
Death Watch Supervisor	54
Control Monitor	57
Floor Officer Monitor	61
Day 1	63
Day 2	63
Day 3- Execution Day	64
Protocol A: Day 3 – Evening Schedule	65
Protocol B: Day 3 – Evening Schedule	68
Post Execution	72
Contingency Issues	73
VII. Victim Services	
Victim Services	75
VIII. Perimeter Security – CONFIDENTIAL – Not for Public Release	
Perimeter Security Assignments	78
Perimeter Aerial Diagram	82
IX. Forms	
Notification Letter to Sheriff's Office to Witness Execution of Inmate	84
Notification Letter to Inmate's Family to Witness Execution	85
Physician's Inventory Checklist	86
IV Team Inventory Checklist	87
Protocol A: Chemical Preparation Time Sheet	88
Protocol B: Chemical Preparation Time Sheet	89
Day of Execution – Lethal Injection Execution Recorder Checklist	91
Protocol A: Lethal Injection Chemical Administration Record (Red)	94
Protocol A: Lethal Injection Chemical Administration Record (Blue)	95

TABLE OF CONTENTS LETHAL INJECTION CONT

Protocol B: Lethal Injection Chemical Administration Record (Red)	96
Protocol B: Lethal Injection Chemical Administration Record (Blue)	97
News Release	98
Affidavit Concerning Method of Execution	99
Application for News Media Representative	100
Affidavit to Select Defense Counsel Witness to Execution	105
Lethal Injection Chemical Bin Card Form	106
Form Pharmacist Contract	107

I. INTRODUCTION

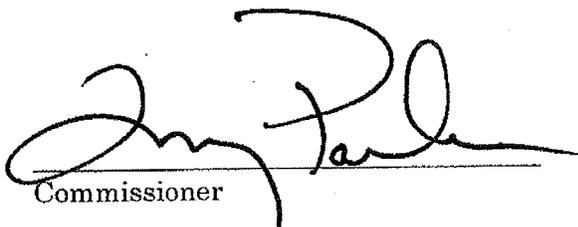


RIVERBEND MAXIMUM SECURITY INSTITUTION



The Tennessee Department of Correction is responsible for the incarceration of convicted felons serving sentences ranging from one year to death. Individuals sentenced to death are executed at Riverbend Maximum Security Institution. Upon the exhaustion of an inmate's appeals, the execution process shall begin.

In the capacity as Commissioner of the Tennessee Department of Correction, it is my duty by law to oversee the humane and constitutional execution of individuals sentenced to death by judicial authority in Tennessee. Tennessee law establishes lethal injection as the primary method for carrying out a death sentence and authorizes the Department to promulgate rules and regulations for the procedures for lethal injection. This manual explains the procedures for lethal injection. It will be reviewed annually, or as needed, by a designated panel.


Commissioner

1/8/18
Date

II. DEFINITIONS



RIVERBEND MAXIMUM SECURITY INSTITUTION

DEFINITIONS

The definitions listed below pertain only to the Lethal Injection Process within this manual.

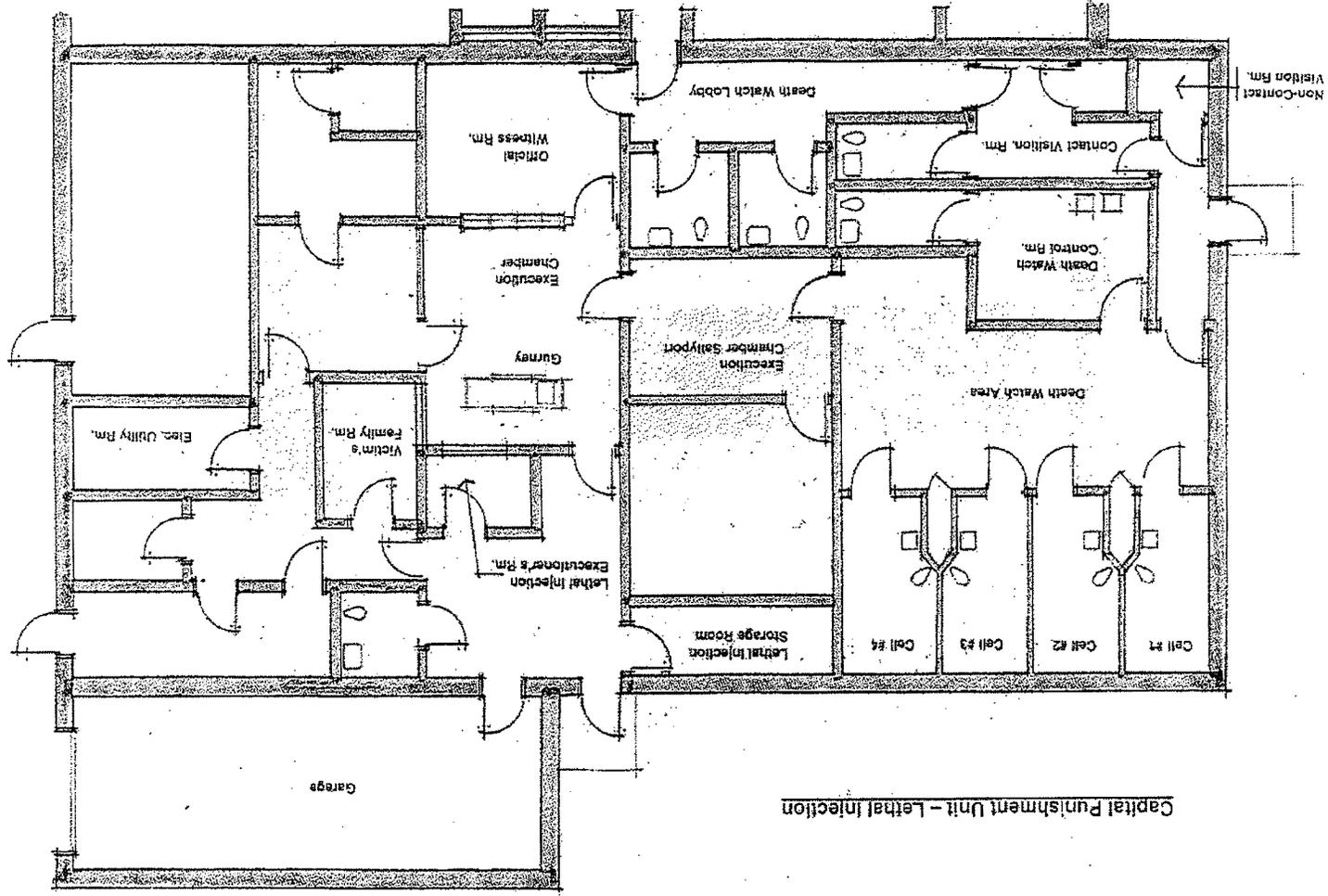
Bin Card	A card used to inventory and account for a lethal injection chemical.
Catheter	A thin flexible tube that is inserted into a part of the body to inject fluid.
Death Watch	A period of time immediately prior to an execution during which special procedures are implemented in order to ensure that the execution is carried out in a safe and orderly manner.
Death Watch Area	An area that includes the inmate's cell(s), contact and non-contact visitation areas, the control room, and the secured monitoring area.
Drip Chamber	A hollow device that provides a visual of the drip/flow.
EMT	Emergency Medical Technician
Execution Team	The Execution Team shall consist of: the Warden, Associate Warden of Security, Executioner, Extraction Team, Death Watch Team, IV Team, Lethal Injection Recorder, Facility Maintenance Supervisor, ITS Security Systems Technician(s), and Escort Officer(s).
Extension Line	The clear tubing used to administer fluids.
Extraction Team	Execution Team members who are responsible for the removal, restraint, and movement of the inmate during the time of execution.
Flash Chamber	A device that precludes blood leakage as a needle is removed from the catheter and an IV unit is coupled to the catheter.
Gurney	A wheeled stretcher for transporting.
IV	Intravenous
Lethal Injection Room	A room where the Executioner administers the lethal injection chemical(s) at the direction of the Warden.
LIC	Lethal Injection Chemical(s)
Pan Tilt Zoom Camera (PTZ)	The camera used by the Execution Team in the Lethal Injection Room. The camera monitors the condemned inmate's IV site(s).
Solution Set	Equipment designed to administer an IV.

DEFINITIONS - CONT

Syringe A medical instrument used to inject fluids into the body or draw them from it.

Tourniquet A compression device used to cut off the flow of blood to a part of the body, most often an arm or leg. It may be a special surgical instrument, a rubber tube, a strip of cloth, or any flexible material that can be tightened to exert pressure.

Note: Whenever the masculine pronoun is used in this manual, it applies equally to a female.



**III. DUTIES OF MANAGEMENT AND ADMINISTRATIVE
PERSONNEL**



RIVERBEND MAXIMUM SECURITY INSTITUTION

**RIVERBEND MAXIMUM SECURITY INSTITUTION
PERSONNEL**

WARDEN

Primary Role

To ensure that the procedures prescribed by law and as outlined in this manual are performed, either by personal performance or by delegation.

Duties:

1. To ensure that the security of the institution is maintained.
2. To ensure that condemned inmates sentenced prior to January 1, 1999, are given the opportunity to select electrocution or lethal injection as a legal means of execution at least 30 days before the execution.
3. To explain to the inmate the procedures and activities which will take place during Death Watch.
4. To control any contact between the condemned inmate and other persons.
5. To coordinate the notification of official witnesses of the date and time to be at the institution to witness the scheduled execution.
6. To coordinate the appointment of execution team staff member(s).
7. To select a person to serve as Executioner.
8. To set the precise hour and minute of execution, subject to approval of the Commissioner and the Department's General Counsel.
9. To ensure that the chemical(s) used for lethal injection has/have been properly acquired, stored, and accounted for.
10. To arrange for the presence of a physician to carry out functions as set forth on page 19.
11. To coordinate with the Medical Examiner for disposition of the body.
12. To keep the Commissioner and Assistant Commissioner of Prisons informed of the progress towards and implementation of the execution.
13. To control activation of closed circuit TV to the victim family witness room.
14. To order the Executioner, either verbally or by gesture, to proceed with execution.
15. To cause the announcement to significant parties and the public of the fact that the sentence of execution has been carried out.

ASSOCIATE WARDEN OF SECURITY

Primary Role

Assist the Warden in performing execution procedures and substitute for the Warden if he is unable to perform his duties.

Duties:

1. To ensure the security of the condemned inmate.
2. To supervise preparation of the Death Watch cell area, Execution Chamber, and the condemned inmate for execution.
3. To coordinate and/or approve, with assistance by assigned security staff, visits and phone calls permitted to the condemned inmate.
4. To provide the final inspection of restraint devices to ensure the condemned inmate is secured on the gurney prior to placing IV catheters in each arm.
5. To ensure that any blinds between the witness room and the Execution Chamber are closed prior to the witnesses entering and opened after the witnesses are seated.
6. To supervise the removal of the body from the Execution Chamber.
7. To coordinate the release of the condemned inmate's body to the authorized recipient or coordinate burial at State expense in the event no one claims the body.

LETHAL INJECTION RECORDER

Primary Role

Assist the Warden in carrying out his duties.

Duties:

1. To coordinate and supervise the movement of the Execution Team to and from the Execution Chamber, and aid in maintaining the team's anonymity.
2. To process applications for the selection of news media representatives to attend executions.
3. To complete the Lethal Injection and Execution Recorder Checklist. (See Section IX Forms)

DEATH WATCH SUPERVISOR

Primary Role

To coordinate all security requirements for the inmate during the Death Watch and to supervise all correctional officers assigned any responsibilities for direct supervision of the inmate during Death Watch, including preparation of the condemned inmate.

Duties:

1. To prepare a duty schedule for officers assigned this detail.
2. To review post orders for correctional officers and to become familiar with all functions of subordinates.
3. To ensure that the condemned inmate personally inventories his personal property and packs away all items he is not permitted to retain. The Death Watch Supervisor, inmate, and one witness will sign the property inventory. The sealed property will be retained in storage in the Property Room until removed by the inmate's designee.
4. To maintain a bound ledger of information related to Death Watch associated activities. This log will contain a record of all visitors, meals served, shaving, handling of mail, inmate behavior, movement, communications, etc.
5. To permit only authorized persons to enter the Death Watch area. The Warden will provide a list of authorized personnel.
6. To maintain a sufficient amount of clothing in the inmate's size in order to provide a change of clothing each time the inmate leaves the cell. The Death Watch Officers will have custody of the clothing to be stored.
7. To ensure that cellular phones, cameras, audio, and video equipment are not taken into the Death Watch area or the Execution Chamber at any time during Death Watch or at the time of execution, unless authorized by the Warden.
8. To coordinate movement of witnesses entering and exiting witness rooms during the execution process.
9. To activate and deactivate the closed circuit TV and audio speaker systems at the prescribed times during the execution process.
10. To ensure the events pertaining to the execution are documented by the Lethal Injection Recorder on the Lethal Injection Execution Recorder Checklist.

INSTITUTIONAL CHAPLAIN

Primary Role

To offer and deliver chaplaincy services to the condemned inmate and the inmate's family as needed.

Duties:

1. To ask the inmate to specify in writing the preferred funeral arrangements and the preferred recipients of personal property. If a legal will is requested, the Chaplain will coordinate with the TDOC Staff Attorney.
2. To say a brief prayer of intercession immediately prior to execution (if requested).
3. To assist in the release of the executed inmate's body to the authorized next-of-kin recipient or mortician through the State Medical Examiner.

SECURITY SYSTEMS TECHNICIANS

Primary Role

To ensure that the closed circuit television and the audio systems between the Execution Chamber and witness room(s) are functioning properly at the scheduled time of execution.

PHYSICIAN

Physician's Primary Role

To pronounce death.

Duties:

1. To be present at the time of execution in the capital punishment garage.
2. As an ultimate and last option, the physician may perform a venous cut-down procedure should the IV Team be unable to find a vein adequate to insert the catheter.
3. To examine the body for vital signs five minutes after the LIC has been injected.
4. To notify the Warden if the inmate is not legally dead.
5. To pronounce death if no vital signs are detected.

IV TEAM

Primary Role

To establish properly functioning IV lines for administration of the lethal injection chemical(s).

Duties:

1. To prepare the IV equipment.
2. To make sure the equipment used is in working order.
3. To locate sites for intravenous use.
4. To make sure vascular access is properly established.
5. To make sure the IV lines are flowing properly.
6. To document the injection of the LIC(s) on the Lethal Injection Chemical Administration Record sheet.

FACILITY MAINTENANCE SUPERVISOR

Primary Role

To assist with the witnesses.

EXTRACTION TEAM

Primary Role

To escort and secure the condemned inmate during the execution process.

ESCORT OFFICER(S)

Primary Role

To accompany and guide witnesses during the execution process.

CENTRAL OFFICE PERSONNEL

COMMISSIONER

Primary Role

To oversee the administration of judicial executions in Tennessee.

Duties:

- 1 Approximately ten minutes prior to the time scheduled for the execution, the Commissioner will establish telephone contact with the Governor's Legal Counsel.
- 2 To communicate to the Warden any circumstances that could alter or delay the execution.
- 3 To arrange for or mandate an Employee Assistance Program (EAP) debriefing as needed.

ASSISTANT COMMISSIONER OF PRISONS

Primary Role

To be stationed at the Command Post or location designated by the Commissioner and to work directly with the Commissioner and perform any assigned duties.

Duties:

1. To serve as liaison to all support units and to conduct an operational debriefing of all security and procedural personnel after the execution.
2. To maintain telephone and/or radio contact with the Warden and other personnel.
3. To coordinate with the Metropolitan Nashville Police Department and Tennessee Highway Patrol and any additional security forces required.

DIRECTOR OF COMMUNICATIONS AND PUBLIC RELATIONS

Primary Role

To coordinate all media operations associated with the execution.

Duties:

1. To provide assistance to the Warden in obtaining telephone communications needed by media representatives.
2. To coordinate all visits by media representatives both prior to and subsequent to an execution.
3. To notify the media of the witness lottery by faxing an advisory to the Associated Press.
4. To attend the media drawing held at RMSI and send out a notification to the Associated Press regarding who was selected.
5. To compile a press kit including guidelines, specifics of the case for which the inmate is being executed, and other related policies and statutes needed for the execution.
6. To communicate with the Governor's communication staff about who will be available to address media inquiries.
7. To coordinate with the Governor's Director of Communications any press releases and public messages.
8. To establish a contact sheet with names, assignments, and contact numbers of each Public Information Officer involved. The Warden will be issued a copy.
9. To coordinate with the Facility Maintenance Supervisor to create a staging area with a podium for news briefings.
10. To establish a schedule for news briefings.

DIRECTOR OF THE OFFICE OF INVESTIGATION AND COMPLIANCE

Primary Role

To coordinate all external security and tactical activities associated with the execution.

Duties:

1. No less than a week before the execution, to schedule a security meeting with participating external agencies.
2. To coordinate security assignments with participating external agencies.
3. In consultation with the Assistant Commissioner of Prisons, to coordinate tactical activities as necessary.
4. To work with the Escort Officer(s) in accompanying witnesses.

DIRECTOR OF VICTIM SERVICES

Primary Role

To work with victims, family members, and other interested parties involved in the execution process.

Duties:

1. To confirm the list of individuals registered for notification.
2. To mail execution notification letters and packets. (See Section IX Forms)
3. To work closely with the victim liaison from the Attorney General's office.
4. To work with the Escort Officer(s) in accompanying witnesses.

IV. SELECTION AND TRAINING OF STAFF



RIVERBEND MAXIMUM SECURITY INSTITUTION

EXECUTION TEAM MEMBER SELECTION CRITERIA LETHAL INJECTION

Certain persons are members of the Execution Team by virtue of their official position (i.e. Warden, Associate Warden of Security). The Warden selects the remaining team and considers at a minimum the following general criteria for other members:

1. Length of service.
2. Ability to maintain confidentiality.
3. Maturity.
4. Willingness to participate.
5. Satisfactory work performance.
6. Professionalism.
7. Staff recommendations to the Warden.
8. Review of personnel files by the Warden prior to selection.

The following positions on the Execution Team are specialized and have specific requirements:

- | | |
|------------------------------------|---|
| 1. Three (3) EMTs – Paramedic | Certified Emergency Medical Technician |
| 2. Three (3) Correctional Staff | Received IV training through the Tennessee Correction Academy by qualified medical professionals. |
| 3. Facility Maintenance Supervisor | A person knowledgeable of the institution's physical plant and equipment. |
| 4. Security Systems Technician(s) | Must be an Electronic Security Systems Specialist 1 or above with audio/visual experience. |

TRAINING OF EXECUTION TEAM MEMBERS

Execution Team

The Execution Team shall consist of: the Warden, Associate Warden of Security, Executioner, IV Team, Extraction Team, Death Watch Team, Lethal Injection Recorder, Facility Maintenance Supervisor, ITS Security Systems Technician(s), and Escort Officers.

Training

1. All Execution Team members must read the *Lethal Injection Execution Manual* when they become members of the Execution Team. Additionally, the Warden or designee holds a class during which the manual is reviewed and clearly understood by all participants. At least annually, the Warden or designee holds an *Execution Manual* review class for all members of the Execution Team.
2. The Execution Team simulates Day 3 (Execution Day) of the Death Watch Procedures and the steps outlined in Section 4 for at least one (1) hour each month. Additional training is held within two weeks before a scheduled execution. A training record is maintained to document all staff members who participate in the training.

The simulation includes all steps of the execution process with the following exceptions:

- A. Volunteers play the roles of the condemned inmate and physician.
 - B. Saline solution is substituted for the lethal chemicals.
 - C. A body is not placed in the body bag.
3. All training that occurs is documented. The documentation includes the times and dates of the training, the participants, and the training content.

Executioner

The Executioner receives initial and periodic instruction from a qualified medical professional.

**V. PROCUREMENT, PREPARATION, INTRODUCTION OF THE
LETHAL INJECTION CHEMICAL, AND
PROCEDURES OF ACCOUNTABILITY**



RIVERBEND MAXIMUM SECURITY INSTITUTION

CHEMICALS USED IN LETHAL INJECTION

The Department will use one of the following protocols as determined by the Commissioner:

Protocol A:

Pentobarbital 100 ml of a 50 mg/mL solution (a total of 5 grams)

Protocol B:

Midazolam 100 ml of a 5mg/ml solution (a total of 500 mg)

**Vecuronium
Bromide** 100 ml of a 1mg/ml solution (a total of 100 mg)

**Potassium
Chloride** 120 ml of a 2 mEq/ml solution (a total of 240 mEq)

PROTOCOL A: PROCUREMENT, STORAGE, ACCOUNTABILITY, AND TRANSFER OF THE CHEMICAL

Procurement

Upon receipt of an order setting an execution date, the Warden or his designee shall contact a physician to obtain a physician's order for the LIC. The Warden or designee shall submit the physician's order to a licensed pharmacy or pharmacist to be filled. A member of the Execution Team checks the supply of the LIC, the concentration, and expiration dates.

Storage of LIC

1. When the LIC is received, a member of the Execution Team and the Warden take the LIC to the armory area of Building 7 at RMSI. The LIC is not stored in the weapon area of the armory due to the occasional employee traffic but rather in the key control section of the armory where there is the least employee need for access. The LIC is placed in an unmovable heavy gauge steel container with security grade locks.
2. All locking devices and storage containers are designed to prevent access to anyone without the proper keys or result in such destruction that entry into the container is unmistakable. There is only one key to access the storage container. That key is issued permanently to the Warden of RMSI. The Warden also has the pattern key to the container in his possession. There are no other duplicates produced. The Warden surrenders the key to no one other than the one member of the Execution Team designated for inventorying the LIC and only for the duration of the count and expiration checking of the LIC. Only the Warden or designee is allowed to access the storage container.
3. The LIC on hand is monitored for expiration dates. All of the LIC boxes/bottles have an expiration date, and all are in tamper-proof containers. As the LIC reaches its expiration date, it shall be disposed of by hazardous waste pick-up.

Accountability of LIC

1. A permanently bound ledger is maintained in the armory/key control area where all employees, including the armory/key control officer(s), sign each time they enter the area. The armory/key control officer performs a visual inspection of each container upon arrival at his workstation to ensure the proper band is in place and that the container has not been compromised in any way.
2. A permanently bound ledger is maintained in the storage area that contains a record of the LIC. An inventory of each lot of the LIC is maintained on a Bin Card form. Any LIC removed for use, disposal due to expiration, or for any other reason is deducted from the inventory. Any LIC received into the storage container is added to the inventory.
3. The storage container has a numbered security band that is broken prior to opening the container. The number of the band is recorded in the ledger. When the storage container is opened for any reason, the band is broken and the justification for entry is recorded in the ledger adjacent to the band number. When the storage container is secured and a new band is placed on the container, a new number is recorded in the ledger.
4. Upon receipt of the LIC, the Warden or designee proceeds to the armory storage area, secures the LIC, and adjusts the inventory appropriately. Prior to the LIC being placed in storage, the expiration date and lot number or other identifying marking is recorded to ensure that the LIC is properly disposed of at the time of expiration.
5. The Warden and the designee jointly verify the inventory of LIC on a semi-annual basis (January/July), at a minimum, and subsequent to each execution. The Warden and the designee make appropriate entries in the ledger with their full signatures that verify the correctness of the LIC count.

Transfer of Location

1. After the LIC is signed out on the appropriate ledger in the armory for execution purposes, the LIC is placed in an inconspicuous container for transport to the Execution Chamber. The Warden's designee is responsible for the delivery of the LIC to the appropriate individuals in the Execution Chamber.
2. If the LIC is not used and not compromised in any way, the LIC is returned to the armory, re-entered on the perpetual inventory ledger, and secured in the refrigerator. The LIC is used only for the execution of the inmate for whom it was ordered.

PROTOCOL B: PROCUREMENT, STORAGE, ACCOUNTABILITY, AND TRANSFER OF THE CHEMICALS

Procurement

Upon direction from the Warden or his designee, a member of the Execution Team checks the supply of chemicals and expiration dates. If he determines that additional chemicals are needed, he contacts the Procurement Officer at RMSI. The RMSI Procurement Officer contacts the Procurement Officer at DeBerry Special Needs Facility (DSNF) to order the needed chemicals. When the chemicals are delivered, the Procurement Officer at DSNF contacts the Procurement Officer at RMSI. One of the members of the Execution Team picks up the chemicals at either the DSNF or RMSI warehouse. A member of the Execution Team checks the supply of the chemicals, the concentration, and expiration dates. The Warden ensures that there are enough lethal injection chemicals kept in inventory at RMSI to carry out three executions.

Storage of LIC

1. The member of the Execution Team and the Warden take the chemicals to the armory area of Building 7 at RMSI. The lethal injections chemicals (LICs) are not stored in the weapon area of the armory due to the occasional employee traffic but rather in the key control section of the armory where there is the least employee need for access. The chemicals are placed in unmovable heavy gauge steel containers with security grade locks.
2. All locking devices and storage containers are designed to prevent access to anyone without the proper keys or result in such destruction that entry into the container is unmistakable. There is only one key to access each storage container. That key is issued permanently to the Warden of RMSI. The Warden also has the pattern key to the container in his possession. There are no other duplicates produced. The Warden surrenders the key to no one other than the one member of the Execution Team designated for inventorying the LICs and only for the duration of the count and expiration checking of the LICs. Only the Warden or designee is allowed to access the storage containers.
3. The chemicals on hand are monitored for expiration dates. All of the chemical boxes and bottles have an expiration date, and all chemicals are in tamper-proof bottles or containers. As the chemicals reach their expiration dates, they are disposed of by hazardous waste pick-up.

Accountability of LICs

1. A permanently bound ledger is maintained in the armory/key control area where all employees, including the armory/key control officer(s), sign each time they enter the area. The armory/key control officer performs a visual inspection of each container upon arrival at his workstation to ensure the proper band is in place and that the container has not been compromised in any way.
2. A permanently bound ledger is maintained in the storage area that contains a record of each LIC. An inventory of each chemical is maintained on a Bin Card form. Any LICs removed for use, disposal due to expiration, or for any other reason are deducted from the inventory. Any LICs received into the storage container are added to the inventory.
3. Each storage container has a numbered security band that is broken prior to opening the container. The number of each band is recorded in the ledger. When the container is opened for any reason, the band is broken and the justification for entry is recorded in the ledger adjacent to the band number. When the container is secured and a new band is placed on the container, a new number is recorded in the ledger.
4. Upon receipt of the LICs, the Warden or designee proceeds to the armory storage area, secures the LICs, and adjusts the inventory appropriately. Prior to the LICs being placed in storage, the expiration date and lot number or other identifying marking is recorded to ensure that the LIC is properly disposed of at the time of expiration.
5. The Warden and the designee jointly verify the inventory of LICs on a semi-annual basis (January/July), at a minimum, and subsequent to each execution. The Warden and the designee make appropriate entries in the ledger with their full signatures that verify the correctness of the LIC count.

Transfer of Location

1. After the LICs are signed out on the appropriate ledger in the armory for execution purposes, the LICs are placed in an inconspicuous container for transport to the Execution Chamber. The Warden's designee is responsible for the delivery of the LICs to the appropriate individuals in the Execution Chamber.
2. In the event the LICs are not used and not compromised in any way, the LICs are returned to the armory, re-entered on the perpetual inventory ledger, and secured in the appropriate container.

PROTOCOL A LETHAL INJECTION CHEMICAL SET-UP AND PREPARATION

1. Prior to an execution, a minimum of two members of the Execution Team bring the LIC from the armory area directly to the Lethal Injection Room. The amount of chemical and saline is sufficient to make two complete sets of three (3) syringes each. One set is color coded red and the back-up set is color coded blue. Each syringe is numbered in the order it is to be administered and labeled with the name of its contents. Only the Warden and one member of the Execution Team have a key to the Lethal Injection Room.
2. The LIC is drawn into syringes by one member of the Execution Team. Another member of the Execution Team observes and verifies that the procedure has been carried out correctly.
3. Only one syringe is prepared at a time. As they are prepared, the two sets of syringes are positioned in specific holding places in two separate trays color coded red and blue. The syringes are numbered, labeled, and placed in the order they will be administered. One member of the Execution Team will perform this procedure while another member of the Execution Team observes and verifies that the procedure has been carried out correctly. The Chemical Preparation Time Sheet will document the preparation of the LIC. (See Section IX Forms)
4. Instructions for preparation of one set of syringes:
 - a. **Pentobarbital:** The member of the execution team draws 50 cc of Pentobarbital (50 mg/mL solution) in each of two syringes, for a total of 5 grams of Pentobarbital. These syringes are labeled **Pentobarbital** with numbers one (1) and two (2), respectively.
 - b. **Saline:** The member of the Execution Team draws 50 cc of saline solution from the IV bag into a syringe, which is labeled **Saline** with the number three (3).
5. The tray is placed on the workstation in the Lethal Injection Room.
6. **THIS PROCESS WILL BE REPEATED FOR THE SECOND SET OF SYRINGES**
7. When the execution is complete, all syringes and any of the prepared but unused LIC are sent to the Medical Examiner's office with the body.

PROTOCOL B LETHAL INJECTION CHEMICAL SET-UP AND PREPARATION

1. Prior to an execution, a minimum of two members of the Execution Team bring the LICs from the armory area directly to the Lethal Injection Room. The amount of chemicals and saline is sufficient to make two complete sets of nine (9) syringes each. One set is color coded red and the back-up set is color coded blue. Each syringe is numbered in the order it is to be administered and labeled with the name of its contents. Only the Warden and one member of the Execution Team have a key to the Lethal Injection Room.
2. The LICs are drawn into syringes by one member of the Execution Team. Another member of the Execution Team observes and verifies that the procedure has been carried out correctly.
3. Only one syringe is prepared at a time. As they are prepared, the two sets of syringes are positioned in specific holding places in two separate trays color coded red and blue. The syringes are numbered, labeled, and placed in the order they will be administered. One member of the Execution Team will perform this procedure while another member of the Execution Team observes and verifies that the procedure has been carried out correctly. The Chemical Preparation Time Sheet will document the preparation of the LIC. (See Section IX Forms)
4. Instructions for preparation of one set of syringes:
 - a. **Midazolam:** The member of the execution team draws 50 cc of Midazolam (5 mg/mL solution) in each of two syringes, for a total of 500 mg of Midazolam. These syringes are labeled **Midazolam** with numbers one (1) and two (2), respectively.
 - b. **Saline:** The member of the Execution Team draws 50 cc of saline solution from the IV bag into a syringe, which is labeled **Saline** with the number three (3).
 - c. **Vecuronium Bromide:** The Vecuronium is in powder form and must be reconstituted with bacteriostatic water. The Vecuronium comes in 10mg vials each of which need to be reconstituted with 10 mL of bacteriostatic water. A total of 10 vials is required to produce 100 mg of the chemical. The member of the execution team draws 50 cc of Vecuronium (1 mg/mL solution) in each of two syringes, for a total of 100 mg of Vecuronium. These syringes are labeled **Vecuronium** with numbers four (4) and five (5), respectively.
 - d. **Saline:** The member of the Execution Team draws 50 cc of saline solution from the IV bag into a syringe, which is labeled **Saline** with the number six (6).

- e. **Potassium Chloride:** The member of the execution team draws 60 cc of Potassium Chloride (50 mL of 2 mEq/mL solution) in each of two syringes for a total of 240 mEq/mL of Potassium Chloride,. These syringes are labeled **Potassium Chloride** with numbers seven (7) and eight (8), respectively.
 - f. **Saline:** The member of the Execution Team draws 50 cc of saline solution from the IV bag into a syringe, which is labeled **Saline** with the number nine (9).
5. The tray is placed on the workstation in the Lethal Injection Room.
 6. **THIS PROCESS WILL BE REPEATED FOR THE SECOND SET OF SYRINGES**
 7. When the execution is complete, all syringes and any of the prepared but unused LIC are sent to the Medical Examiner's office with the body.

IV LINE SETUP

REQUIRED ITEMS: 2 BAGS OF 0.9% SODIUM CHLORIDE
 2 SOLUTION SETS
 2 HEMOSTATS
 EXTENSION SETS
 TAPE

1. Two (2) bags of 0.9% Sodium Chloride Injection USP are hung in the injection room. The expiration dates must be checked.
2. A Solution Set spike is inserted into each bag with the clamp turned to the off position. The drip chamber is compressed until it is approximately 1/3 filled. The Solution Sets are 85 inches long. The length of the Solution Set may be purchased longer or shorter just as long as there is a port near the spiked end.
3. The port nearest the spiked end is opened. This may be done by tearing the plastic and rubber off leaving an open hole.
4. Once the port is opened, an extension is inserted. Extensions can be purchased in different lengths. The extension into the first port should be 18 to 24 inches in length. Extensions are added to each end of the Solution Set until it reaches the desired length. The ends should reach from head to toe of the condemned inmate.
5. Once the desired length is obtained, the lines should be filled with Sodium Chloride. The clamp is opened, allowing the port to fill. When it is filled it is clamped and capped off. The line that goes to the body continues to fill. The clamp is turned off and the line is capped.
6. The line is taped to the port (where the syringe is inserted) in place. The remainder of the line is placed out of the ports in the window. It should be taped in place to keep it from being pinched closed.
7. The Sodium Chloride bag and line on the left goes to the left side of the condemned inmate. The left side of the condemned inmate is nearest the wall / window and requires fewer extensions. **Repeat #5 and #6. IV lines are ready.**

INSERTION OF A CATHETER AND CONNECTION OF IV LINES

Strap Down and Location of the Vein

1. The Extraction Team straps the inmate to the gurney in the Death Watch Area.
2. The Extraction Team moves the gurney into place in the Execution Chamber and straps it to the floor. Members of the team place arm supports on the gurney and restrain the condemned inmate's arms securely to the gurney. The restraints are secure but not tight enough to slow or stop blood circulation.
3. The Extraction Team exits the Execution Chamber after the condemned inmate is in place and secure.
4. The IV Team enters the Execution Chamber with an instrument cart. One member of the IV team remains in the Lethal Injection Room.
5. The member of the IV Team in the Lethal Injection Room activates the phone light in the Execution Chamber.
6. Size, location, and resilience of veins affect their desirability for infusion purposes. The EMT inserts the first catheter into a vein on the right side of the inmate in the antecubital *fossa* area. If a catheter cannot be successfully inserted into the antecubital area, the EMT examines other locations for insertion in the following order:
 - a. Forearm
 - b. Wrist
 - c. Back of the hand
 - d. Top of the foot
 - e. Ankle, lower leg, or other appropriate locations as determined by the EMTs
7. In the unlikely event that none of these veins are usable, the physician is called into the Execution Chamber to perform a cut-down procedure.

Venipuncture and IV Lines

1. The EMT(s):
 - a. Place a tissue towel under the limb or body part to be used to start an IV.
 - b. Place a tourniquet around the limb or body part 6-8 inches above the vein to be used.
 - c. Find the best vein to use according to the succession outlined.
 - d. Swab the area with an alcohol pad.
 - e. Determine the size of the catheter to be used which is determined by the size of the vein, 18 gauge being the largest.
 - f. Insert a catheter into the vein bevel side up at a shallow angle, feeding the plastic catheter sleeve into the vein.

The flash chamber of the catheter fills with blood, which is the first indicator the catheter is inside a vein.

2. An IV Team member attaches the Solution Set line from the right Sodium Chloride bag to the catheter. This is a friction coupling and requires the line to be pushed into the catheter and twisted to secure the connection.
3. An IV Team member in the Execution Chamber signals the IV Team member in the Lethal Injection Room to open the clamp on the right bag of Sodium Chloride, near the spike, to allow a flow of Sodium Chloride into the vein.
4. Members of the IV Team observe the IV for indication of a well-functioning line. The first indicator is that when the clamp is opened, there is a steady flow/drip inside the drip chamber. The second indicator is that the flash chamber becomes clear of blood as the Sodium Chloride begins to flow. When the IV Team is confident that there is a well-functioning line, the IV Team member in the Lethal Injection Room deactivates the telephone indicator light, signaling that there is a successful IV line.
5. A member of the IV Team places the Tegaderm transparent dressing over the catheter and secures the line in place with tape.
6. The second IV is then started on the left side of the condemned inmate and **Steps 1-5 are repeated**, using the left bag of Sodium Chloride.

CHEMICAL ADMINISTRATION AND IV MONITORING

1. All members of the IV Team monitor both catheters to ensure that there is no swelling around the catheter that could indicate that the catheter is not sufficiently inside the vein. The IV Team member in the Lethal Injection Room monitors the catheters by watching the monitor in his room, which displays the exact location of the catheter(s) by means of a pan-tilt zoom camera. The IV Team Members observe the drip chambers in both lines to ensure a steady flow/drip into each Solution Set line.
2. Next, an IV Team member tapes both hands, palms up, to the arm support to prevent movement. The palms will be down should the back of the hand be used for the catheter.
3. When the hands are taped in place, the members of the IV Team leave the Execution Chamber.
4. Designated members of the IV Team enter the Lethal Injection Room and assume their pre-assigned stations.
 - a. One IV Team member observes the process, monitoring the catheter sites for swelling or discoloration, and enters the times of the LIC and Saline administration on the Chemical Administration Record sheet. (See Section IX Forms)
 - b. One IV Team member observes the process and hands the labeled/numbered/colored syringes to the Executioner in the prescribed order.
5. The Executioner selects either the left or right Solution Set line based on the flow/drip inside the drip chamber. If both lines are equal, the left line nearest the Executioner is used.
6. When the Warden gives the signal to proceed with the execution, the Executioner clamps the line near the spike. The Executioner receives the first syringe from the member of the IV Team and inserts and twists it into the extension line.

Protocol A:

<u>#</u>	<u>DRUG SEQUENCE</u>	<u>IDENTIFIER LABEL</u>	<u>VOLUME</u>
1.	PENTOBARBITAL	[DRUG NAME, RED #1]	50 cc
2.	PENTOBARBITAL	[DRUG NAME, RED #2]	50 cc
3.	SALINE FLUSH	[DRUG NAME, RED #3]	50 cc

Protocol B:

<u>#</u>	<u>DRUG SEQUENCE</u>	<u>IDENTIFIER LABEL</u>	<u>VOLUME</u>
1.	MIDAZOLAM	[DRUG NAME, RED #1]	50 cc
2.	MIDAZOLAM	[DRUG NAME, RED #2]	50 cc
3.	SALINE FLUSH	[DRUG NAME, RED #3]	50 cc
4.	VECURONIUM BROMIDE	[DRUG NAME, RED #4]	50 cc
5.	VECURONIUM BROMIDE	[DRUG NAME, RED #5]	50 cc
6.	SALINE FLUSH	[DRUG NAME, RED #6]	50 cc
7.	POTASSIUM CHLORIDE	[DRUG NAME, RED #7]	60 cc
8.	POTASSIUM CHLORIDE	[DRUG NAME, RED #8]	60 cc
9.	SALINE FLUSH	[DRUG NAME, RED #9]	50 cc

7. The Executioner pushes on the plunger of the #1 syringe (red) with a slow, steady pressure. Should there be or appear to be swelling around the catheter or if there is resistance to the pressure being applied to the plunger, the Executioner pulls the plunger back. If the extension line starts to fill with blood, the execution may proceed. If there is no blood, the Executioner discontinues with this line. He starts the process on the other line with the back-up set of syringes starting with syringe #1(blue) and following all of Step 6.
8. An IV Team Member hands the syringes to the Executioner and both IV Team Members observe the correct order of the syringes as the Executioner injects the LIC and saline solution.
9. After the last syringe has been injected, the Executioner closes the extension line with a clamp and opens the line below the spike to allow a drop of 1-2 drops per second in the drip chamber.
10. The Executioner signals the Warden that all of the LIC and saline solution have been administered.

VI. DEATH WATCH PROCEDURES

LETHAL INJECTION



RIVERBEND MAXIMUM SECURITY INSTITUTION

STAFF RESPONSIBILITIES AND SPECIAL PROCEDURES FOR INMATES ON DEATH WATCH

Purpose: The purpose of this operating procedure is to designate staff responsibilities and establish uniform property, privileges, and institutional guidelines for condemned inmates with signed court orders for execution.

Application: All inmates who have exhausted all appeals available to them and have an execution date within the next four days.

1. Housing and Security Assignments

- A. The inmate is transferred to Building 8 (Capital Punishment) three (3) days prior to the scheduled execution.
- B. Correctional officers are assigned to the housing area in a manner consistent with TDOC Policy #506.16.2, which sets forth the guidelines for the Death Watch Supervisor.

2. Middle Tennessee Institutional Notification and Advisement of Law Enforcement Agencies

Upon determination of the execution date and time, the Commissioner, Director of Communications and Community Relations, Assistant Commissioner of Operational Support, Assistant Commissioner of Prisons, Correctional Administrator, Correctional Program Director, Wardens of Tennessee Prison for Women, Deberry Special Needs Facility, and Turney Center may be advised by Riverbend's Warden or his designee. Should circumstances develop which necessitate it, tactical activities are coordinated by the Director of Investigation and Compliance after conferring with the Assistant Commissioner of Prisons. Formulation of security personnel is at the discretion of the Assistant Commissioner of Prisons.

3. State-Issued Property and Possession Limit

The inmate is allowed only the items listed below. Any other item is considered contraband and confiscated in accordance with institutional policy.

- A. Standard issue of outer clothing
- B. One bed
- C. One mattress, pillow, and standard issue of linens
- D. One toothbrush
- E. One tube of toothpaste
- F. One bar of soap
- G. One electric razor (to be issued and used under direct supervision only)
- H. Two towels, one washcloth
- I. Two pairs of shorts and t-shirts (male inmates). Two pairs of panties and bras (female inmates). Underwear will be exchanged daily.
- J. Toilet tissue as needed

- K. Stationery – 12 sheets, 3 stamped envelopes, 3 pencils. Pencils will be in possession of officer when not in use.
- L. Religious materials as issued by institutional chaplain
- M. Legal documents, books, and papers as requested
- N. Medication prescribed by the institutional doctor (to be issued and used under direct supervision only)
- O. One walkman type radio (state owned)
- P. One television outside door in front of cell (state owned)
- Q. Newspapers as requested and available (no more than two in cell at a time)
- R. Feminine hygiene items as necessary and appropriate

4. Commissary Privileges

The inmate has commissary privileges with purchasing and possession limits specified in post orders. Glass, aerosol, and metal containers are not allowed during the final days of pre-execution monitoring.

5. Disposition of Unauthorized or Contraband Items

Contraband items found in the possession of condemned inmates are confiscated and disposed of in accordance with institutional Policy #506.15.1.

6. Package Permits

Package permit privileges are suspended for inmates on Death Watch. Any package already mailed is received and stored with the inmate's other property.

7. Library, Legal Library Services, Periodical Subscriptions

A. The condemned inmate may request legal materials from the law library in writing. Such materials are carefully inspected by the Death Watch Supervisor. There will be no exchanges of communication with inmate legal clerks and the condemned inmate.

B. The inmate may continue to receive periodical subscriptions, but may not order new subscriptions. Periodicals, newspapers, etc., are allowed to accumulate during the final week. Only two periodicals and two newspapers may be retained by the inmate.

8. Diet

Three (3) meals per day are fed to all condemned inmates, except holidays and weekends, which will be two meals just as general population. Special dietary instructions for medical reasons are followed.

9. Recreation

Recreational activities for inmates on Death Watch are suspended.

10. Television and Radio Privileges

Television and radio privileges are the same as routinely provided, except that during the Death Watch period, the television is located outside the inmate's cell.

11. Personal and Legal Phone Calls

The inmate may make unlimited calls to anyone on his pre-approved telephone list. He may make and receive phone calls to legal counsel without restriction.

12. Visitation Privileges

A. Social

1. Only those individuals on the inmate's approved visiting list are allowed visits during the Death Watch.
2. All visits are held in the Death Watch area, and physical contact between the visitor(s) and inmate is not permitted. Visits are between the hours of 9:00 am and 3:00 pm, and limited to two hours duration.
3. The number of visitors allowed to visit at any one time is as flexible as circumstances permit, and is at the discretion of the Associate Warden of Security.
4. A final visit, during which physical contact between the inmate and immediate family is permitted, may be authorized by the Warden. The Warden's decision is based on the individual circumstances of each case.
 - a. Security procedures, including searches, are of the minimum deemed necessary by the Associate Warden of Security.
 - b. Contact visits are supervised by no fewer than two correctional officers chosen by the Death Watch Supervisor with the concurrence of the Associate Warden of Security.

B. Religious

1. Priest(s), or ministers, of recognized religious faiths may visit the inmate in the same manner as provided for social visits in 12 (A).
2. A final visit by the inmate's priest, minister, or spiritual advisor may be permitted by the Warden between 3:00 pm - 5:00 pm, prior to the execution. This visit takes place at the front of the inmate's cell.

- a. The priest, minister, or spiritual advisor may not accompany the inmate into the Execution Chamber.
- b. At the inmate's request, a staff chaplain may visit on request and/or accompany the inmate into the Execution Chamber.

C. Legal Services

1. The attorney of record or other Tennessee licensed attorney representing the inmate may visit up to one (1) hour before the time of execution.
2. The attorney is permitted telephone contact with the condemned inmate during the last hour prior to execution.
3. Visits with attorneys are non-contact and are conducted with provision for the privacy of verbal exchange but under full and continuous observation by at least two correctional officers.

D. Media

1. No media interviews are held with the inmate after placement on Death Watch.
2. Telephone interviews with media representatives are not permitted.
3. **Representatives of the news media are not allowed inside the secure perimeter of the institution during the time of active Death Watch or during an execution for any purpose whatsoever, unless selected as a witness to the execution.**

EXECUTION TEAM

1. The purpose of this operating procedure is to outline the duties and responsibilities of the Execution Team members in carrying out the death sentence by lethal injection.
2. The Execution Team shall consist of: the Warden, Associate Warden of Security, Executioner, IV Team, Extraction Team, Death Watch Team, Lethal Injection Recorder, Facility Maintenance Supervisor, Security Systems Technician(s), and Escort Officer(s). The identity of the Execution Team is confidential.
3. Readily available to the Execution Team are radios with holster, keys, and restraints.
4. The following procedures shall apply:
 - A. The Execution Team's Officer in Charge and/or the Assistant Officer in Charge conducts a training session at least once each month at which time all equipment will be tested. The training includes a simulated execution (i.e. IV lines, IV Drip).
 - B. A week before a scheduled execution, the Officer in Charge and Assistant assembles the Execution Team in the Execution Chamber area to prepare and test all appliances and equipment for the scheduled execution.
 - C. The Warden ensures that the Execution Team carries out the following instructions:
 1. Assemble all other members of the Execution Team in the Execution Chamber before the scheduled execution and review their specific assignments and duties.
 2. Ensure that all equipment is properly placed.
 3. The inmate is removed from the holding cell and placed in the Execution Chamber by the Extraction Team members previously assigned those duties, under the direction of the Assistant Officer in Charge.
 4. When the condemned inmate is secured in place in the Execution Chamber, all members of the Extraction Team will retire to the holding cell area.
 5. When the lethal injection process has been completed, the Warden/designee is advised.
 6. After the physician pronounces the inmate deceased, the designee informs the Commissioner that the sentence has been carried out.

7. The body is removed and placed in a body bag by the Execution Team and Medical Examiner's staff. The LIC and syringes used are placed in the body bag and closed.
8. The body is placed in the Medical Examiner's vehicle.
9. The Execution Team, under the direction of the Officer in Charge, cleans the equipment and Death Watch area. The holding cell is cleaned thoroughly with the mattress and pillow sanitized. Equipment shall be stored in its proper location. An entry is made in the post log documenting the completion of these procedures.
10. The Execution Chamber and Death Watch areas are secured. The Execution Team reports to the Warden's Office for additional instructions.

DEATH WATCH SUPERVISOR

1. The duties and responsibilities of this post are that of observation and supervision of all activities concerning a condemned inmate(s) during pre-execution (Death Watch) monitoring. The post is the entrance area leading into the Death Watch area. The Death Watch Supervisor assumes authority of all personnel assigned to pre-execution monitoring (Death Watch). The duties are the general supervision and control of other security personnel assigned to monitor the condemned inmate during the time under Death Watch to include preparation of the condemned inmate(s) prior to execution. There may be one Floor Officer per shift assigned.
2. This officer must be a Correctional Lieutenant or higher. The officer reports directly to the Warden or Associate Warden of Security. During off-duty hours, he will remain on standby status unless relieved by another Lieutenant or Captain upon orders of the Warden or Associate Warden of Security.
3. Equipment needed: radio with holster, keys, and restraints.
4. Specific duties and responsibilities
 - A. Immediate Action
 1. Upon notification of the assignment (normally when a Death Watch reaches active stage), the Death Watch Supervisor prepares to assume the duty schedule reflected above.
 2. He reviews the post orders for the Control Officer and Floor Officer and becomes familiar with all functions of subordinates.
 3. He ensures that the condemned inmate, upon reaching active Death Watch status, personally inventories and packs away all items he is not permitted to retain. The inmate is permitted to retain a copy of the inventory. The sealed property is retained in storage in Building 8 until ordered removed or surrendered to the inmate's designee.
 4. He is responsible for escorting the condemned inmate to Building 8 and placing him in a cell after strip searching and exchanging his clothing.
 5. He ensures that all significant information is entered on the Supervisor's Log. ALL PERSONS ENTERING THIS AREA FOR ANY PURPOSE WILL SIGN IN AND OUT, and a record of activity must be logged accurately.
 6. He ensures that sufficient clothing in the inmate's size is retained in the preparation area to accommodate an exchange each time the condemned inmate leaves his cell.

B. Subordinate Personnel

1. He supervises all subordinate personnel.
2. He ascertains the phone numbers and addresses of all subordinate personnel in order that they may be contacted after hours.
3. He ensures that all orders and instructions are read and understood by all subordinate personnel.

C. Routine Security Measures, Checks, Logs

1. He maintains or causes to be maintained (by the Control Officer) a "Supervisor's Log" of activities.
2. He personally supervises the feeding of all meals during his shift. He ensures that no inmates are utilized in the feeding of any meal during an active Death Watch, including preparing the trays.
3. He keeps all unauthorized personnel out of the area.
4. He ensures that the security of the area is reported to the Control Room each half-hour during an active Death Watch.
5. He does not permit anyone to enter the condemned inmate's cell except by order of the Warden, Associate Warden of Security or Shift Captain. The only exception is a life-threatening emergency.
6. He ensures that the condemned inmate is handcuffed from behind anytime he leaves his cell. The inmate remains handcuffed until he is returned to his cell. (The inmate may be handcuffed in the front if a restraint belt is used. Restraints may be removed if the inmate is secured in a non-contact visiting room.)
7. Any time the inmate is moved, he will receive a double escort.
8. At least one (1) officer remains in the area, even if it is temporarily vacant.
9. He ensures that the area is kept clean and orderly. The inmate's holding cell is cleaned daily by assigned staff. The inmate is moved to an adjoining cell while the cleaning process is being accomplished.

- D. Normally the inmate receives telephone calls from a special extension plugged in at his cell location. When the telephone is not in use, ensure its security and storage away from the cell.

E. Emergencies and Other Contingencies

1. In the event of self-inflicted or other injury to the inmate, the Death Watch Supervisor takes immediate and decisive action. He contacts the medical clinic immediately to send assistance.
2. He personally supervises the dispensing of any medication on a single unit dosage basis.
3. He immediately notifies the Shift Supervisor, Associate Warden of Security, or Warden in the event of an emergency.

CONTROL MONITOR

1. At the beginning of the Death Watch, the officer assigned to this post will assume his duties.
2. This officer must be a Correctional Corporal or higher. The officer reports directly to the Death Watch Supervisor, Associate Warden of Security, or Warden at the beginning of pre-execution monitoring until relieved or until the execution is stayed or carried out.
 - A. Immediate Action
 1. Upon notification, the officer assumes the duties and responsibilities as described herein and the shift supervisor is alerted of the delegated assignment.
 2. The Control Monitor begins maintenance of the Death Watch Supervisor's log ensuring the recording of significant detailed information.
 3. During pre-execution monitoring, the Control Monitor ensures that only the following persons are authorized to enter the area:
 - a. Warden
 - b. Associate Warden
 - c. Captain/Lieutenant
 - d. Officers to assist in routine functions (i.e., showers, escort, shakedown) as authorized by Death Watch Supervisor
 - e. Any medical or security personnel deemed appropriate in an emergency situation
 - f. Prison Chaplain
 - g. Commissioner
 - h. Assistant Commissioner of Operational Support
 - i. Assistant Commissioner of Prisons
 - j. General Counsel
 4. He ensures the cleanliness of the area as well as the cell area during pre-execution monitoring.
 - B. Routine Security Measures, Security Checks, and Logs
 1. He keeps an accurate chronological log of post activities.
 2. He keeps a sign-in and sign-out log for every person who enters or leaves the Death Watch area.
 3. He maintains close surveillance of subordinate personnel.

4. He keeps all unauthorized personnel out of the area, to include inmates, other employees, and visitors.
5. He reports the security of the post to the Control Room every thirty minutes.
6. He personally ensures that the condemned inmate is handcuffed (behind his back) anytime he leaves his cell. A restraint belt may be used. The handcuffs may be removed when the inmate is receiving non-contact visits.
7. He ensures that when a condemned inmate is moved, he is escorted by two officers designated by the Death Watch Supervisor.
8. He ensures that when the condemned inmate is moved from his cell, he is searched and placed in different clothing. The same clothing may be reused until soiled, so long as it is thoroughly inspected before reissuing.

C. Visiting

1. He ensures that all visiting is non-contact and is held in the visiting area next to the Control Room, unless otherwise directed.
2. He ensures escorts for visiting during pre-execution monitoring are provided by two experienced correctional officers assigned by the Death Watch Supervisor.
3. He ensures that supervision of visiting for condemned inmates in pre-execution monitoring is designated by the Death Watch Supervisor.
4. He ensures that an accurate log of pertinent information to include names of each visitor, time of arrival and departure of each visitor, and inmate is maintained by the officer assigned to a supervised visitation.
 - a. The number of persons authorized and the visiting hours are in accordance with specific instructions issued by the Warden or Associate Warden of Security.
 - b. Allowable commissary items are listed in Section E.

D. He ensures that the inmate is allowed only the items listed below. Any other item is considered contraband and confiscated in accordance with institutional policy.

1. Standard issue of outer clothing

2. One bed
3. One mattress, pillow, and standard issue of linens
4. One toothbrush
5. One tube of toothpaste
6. One bar of soap
7. One electric razor (to be issued and used under direct supervision only)
8. Two towels, one washcloth
9. Two pair of shorts and t-shirts (male inmates). Two pairs panties and bras (female inmates). Underwear will be exchanged daily.
10. Toilet tissue as needed
11. Stationery – 12 sheets, 3 stamped envelopes, 3 pencils (Pencils will be in possession of officer when not in use.)
12. Religious tracts as issued by Institutional Chaplain
13. Legal documents, books, and papers as requested
14. Medication prescribed by institutional doctor (to be issued and used under direct supervision only)
15. One walkman type radio (state owned)
16. One television outside door in front of cell (state owned)
17. Newspapers as requested and available (no more than two in cell at a time)
18. Feminine hygiene items as necessary and appropriate

E. The inmate may order and purchase the following items on the first day of Death Watch status:

1. Soft Drinks (opened by officer and served in a paper cup)
2. Candy bars
3. Cookies, crackers, potato chips

Note: All orders and deliveries are inspected and delivered by the officer. This includes removal of non-transparent candy wrappers. He avoids handling of contents except with a napkin, tissue, or sanitary disposable gloves.

F. Telephone Calls

1. The condemned inmate may receive authorized telephone calls while in pre-execution monitoring status.
2. Specific instructions for each phone call are given by the Warden, Associate Warden of Security or Death Watch Supervisor, and are logged (no exceptions). Each phone call is supervised.
3. The inmate receives telephone calls from a special extension plugged in at his cell location. When the telephone is not in use, the Control Monitor personally ensures its security and storage away from the cell.

G. Emergencies and Other Contingencies

1. If any employee is taken hostage, he is without authority regardless of rank.
2. In the event of self-inflicted or other injury to the inmate, the Control Monitor takes immediate and decisive action. He contacts the medical clinic immediately to send a physician or ranking medical person if a physician is not available.
3. The Control Monitor immediately notifies the Warden, Associate Warden of Security, Death Watch Supervisor, and Shift Supervisor.

FLOOR OFFICER MONITOR

1. The duties and responsibilities of this post are in the direct supervision and monitoring of a condemned inmate's activities during the final days of pre-execution monitoring.
2. This officer may be a correctional officer or higher. The officer reports directly to the Control Monitor. The officer is posted in the area directly in front of the cells. He must remain alert on his post at all times, maintaining direct observation of the condemned inmate.
3. Equipment required: radio with holster and restraints
4. Specific Duties and Responsibilities

A. Immediate Action

Upon notification, the officer assumes the duties and responsibilities as described herein, and the shift supervisor is alerted of the delegated assignment.

B. Routine Security Measures, Security Checks, and Logs

1. The Floor Officer Monitor closely observes the condemned inmate's activities and immediately reports to the Death Watch Supervisor or Control Monitor any unusual circumstances or activities.
2. He ensures that all eating utensils and trays are removed from the cell when not in use.
3. He remains posted at the cell front, but may enter the condemned inmate's cell with the assistance of a second officer if circumstances warrant it.
4. The cell door key(s) remains in the possession of the Control Monitor except as needed.
5. He converses freely with the inmate, but avoids opinionated or inflammatory statements. He does not discuss personal feelings regarding the death penalty. He does not make promises to the inmate. All requests by the inmate not covered herein are referred to the Death Watch Supervisor.
6. He does not leave his post unless properly relieved.
7. He visually inspects and thoroughly examines all items permitted into or out of the inmate's cell. He carefully examines all clothing sent from the clothing room.

8. He performs a very thorough strip search of the inmate any time the inmate enters or exits his cell.
9. He exchanges the inmate's clothing any time the inmate enters or exits the cell. The same clothing may be reused until it becomes soiled.
10. He ensures that the condemned inmate is handcuffed behind his back any time he leaves his cell. The inmate remains handcuffed until he is returned to his cell. The inmate may be handcuffed in front if a restraint belt is used. Restraints may be removed if the inmate is placed in a secure, non-contact visiting room.
11. He ensures that all post orders are being followed. It is expected that all floor officer monitors conduct themselves in a professional manner. A calm, mature atmosphere should be maintained.
12. The officer is responsible for the daily cleanliness of his area and the cell areas. Normally, the day shift is responsible for sweeping and mopping the entire area. However, the officer ensures that the area remains in a state of cleanliness and trash containers are emptied during his tour. All trash is to be personally removed by staff and deposited in the appropriate containers located outside the secure confines of the institution.
13. He maintains or causes to be maintained (by the Control Officer) a Supervisor's Log of Activities.
14. He personally supervises the feeding of all meals during the shift. He ensures that no inmates are utilized in the feeding of any meal to the condemned inmate during an active Death Watch, including preparing the trays.
15. He keeps all unauthorized personnel out of the area.
16. When the inmate on death watch is female, the floor officer monitor ensures that a privacy screen is used to shield the inmate from sight of male staff and visitors while she is showering, using the toilet, or changing clothing.

DEATH WATCH PROCEDURES - LETHAL INJECTION

DAY 1 PROTOCOL A & B

1. Security staff are assigned to posts in the Death Watch area. The supervisor is a Correctional Lieutenant or higher.
2. Death Watch logs are activated during the entire Death Watch period. All activity unique to the Death Watch and execution must be documented. Areas addressed include, but are not limited to: **inmate's behavior, actions, movements, communications initiated and received concerning Death Watch activities.**
3. The condemned inmate is moved to Death Watch status in Building 8.
4. The inmate's property is inventoried and stored as specified in TDOC Policy #504.02.
5. The institutional chaplain begins daily visits with the inmate.
6. The visiting status of the inmate changes to non-contact.
8. Designated personnel test execution-related equipment to include the closed circuit TV, telephones, intercoms, etc.
9. Inmate clothing is obtained and issued as needed.
10. The Chaplain requests instructions for release of the inmate's body in writing. If no recipient is designated, the Warden arranges for a pauper's burial.

DAY 2 PROTOCOL A & B

1. The Food Service Manager is advised of meal needs for TDOC and other agency support staff.
2. The inmate orders his last meal.
3. The Chaplain confirms funeral arrangements with the family, if available.

DAY 3 – EXECUTION DAY PROTOCOL A & B

1. Security Systems personnel test the closed circuit TV system and the audio system.
2. The Food Service Manager prepares and serves the last meal. The inmate may request a special meal. The meal is provided within reason as determined by the Warden. Cost must not exceed \$20.00.
3. The Director of Communications and Public Relations arrives to handle media inquiries.
4. The LIC(s) is/are removed from secured storage and delivered to the Lethal Injection Room.

DAY 3 -EVENING SCHEDULE PROTOCOL A

5:00 pm

1. By prior planning, the Execution Team arrives and reports directly to the Executioner waiting area in Building 8. Their identities are known by the fewest number of staff necessary.
2. Beginning at 5:00 pm, the only staff authorized in the capital punishment unit are:
 - a. Commissioner or designee
 - b. Warden
 - c. Associate Warden
 - d. Lethal Injection Recorder
 - e. Death Watch Supervisor and assigned officers
 - f. Chaplain
 - g. Physician and associate
 - h. Executioner (Executioner waiting area)
 - i. IV Team
 - j. Extraction Team

Any exceptions to the above must be approved by the Warden or Commissioner.

3. The inmate is dressed in cotton trousers, shirt, cotton socks, or cloth house shoes.
4. Official witnesses report to the Administration Building conference room no later than 5:30 pm. They are greeted by Escort Officers, processed through checkpoint, and moved to the Parole Board Room in Building 8, where they remain until final movement to the witness room.
5. Immediate family members of the victim report to the Administration Building no later than 6:15 pm and are greeted by Escort Officers. These witnesses are security cleared and escorted to the conference room in Building 8, where they remain until final movement to the victim family members witness room.
6. The Lethal Injection Recorder or designee and designated EMTs report to the Execution Chamber for preparation. The Lethal Injection Recorder or designee checks the phones in the Execution Chamber.
7. The Medical Examiner's staff and the physician are stationed in the capital punishment garage.

6:30 pm

1. Victim family member witnesses are secured in the Building 8 conference room by the Escort Officers no later than 6:45 pm.
2. Official witnesses are secured in the Building 8 Parole Board Room by the Escort Officers no later than 6:45 pm.

7:00 pm

1. Beginning at 7:00 pm, the only staff authorized to be in the Execution Chamber are the Warden, those TDOC employees designated by him to carry out the execution, the Attorney General/designee, and the Defense Counsel witness.
2. At the command of the Warden or Associate Warden of Security, the Extraction Team approaches the holding cell and asks the condemned inmate to approach the cell door and be handcuffed. After being handcuffed, he is asked by the Extraction Team Leader to step back and place his hands above his head on the wall at the rear of the holding cell. (If the condemned inmate refuses to cooperate, the Extraction Team enters the holding cell and removes the inmate).
3. The Extraction Team places the condemned inmate on the gurney and secures him in restraints.
4. The condemned inmate is moved to the Execution Chamber.
5. The Lethal Injection Recorder or designee records the time the condemned inmate enters the Execution Chamber.
6. The IV Team establishes IV lines into both arms as instructed in Section V of this manual.
7. Official witnesses and victim family members are secured in the appropriate witness rooms.
8. The Attorney General/designee and the Defense Counsel witness will exit the execution chamber and be secured in the official witness room.
9. The closed circuit television camera and audio system are activated.

7:10 pm

1. Blinds to the witness room(s) are opened by the Warden and Associate Warden of Security.
2. The Warden contacts the Commissioner to ensure that no last minute stay or reprieve has been granted.
3. The Warden permits the condemned inmate to make a last statement.
4. The Warden gives the signal to proceed, and the Executioner begins to administer the LIC. The Lethal Injection Recorder documents the time the process begins.
5. After the LIC and a saline flush have been dispensed, the Executioner shall signal the Warden.
6. Following the completion of the lethal injection process, and a five-minute waiting period, all blinds are closed, the closed circuit TV camera is disengaged, and the privacy curtain is closed. The Warden then asks the Physician to enter the room to conduct an examination. The Physician reports his findings to the Warden or designee. If the inmate is not deceased, the procedures on page 73 shall be followed.
7. The inmate is pronounced deceased by the Physician. The Lethal Injection Recorder or designee records the time that death is pronounced.
8. The Warden or designee announces that the sentence has been carried out and invites the witnesses to exit. The Warden announces the following: "The sentence of _____ has been carried out. Please exit."
9. The witnesses are then escorted from the witness rooms by Escort Officers. After the witnesses exit, the Warden or designee notifies the Commissioner that the sentence of death has been carried out.
10. The Commissioner or designee notifies all appropriate State officials that the sentence has been carried out. Media representatives are notified by the TDOC Director of Communications and Public Relations or designee.
11. The Extraction Team removes the restraints.
12. The Medical Examiner staff assists in removal of the body and placement in the Medical Examiner's vehicle, which is in the capital punishment garage.
13. The Medical Examiner's vehicle is cleared to exit the facility.
14. The Lethal Injection Recorder completes the Lethal Injection Execution Recorder Checklist. (See Section IX Forms)

DAY 3 -EVENING SCHEDULE PROTOCOL B

5:00 pm

1. By prior planning, the Execution Team arrives and reports directly to the Executioner waiting area in Building 8. Their identities are known by the fewest number of staff necessary.
2. Beginning at 5:00 pm, the only staff authorized in the capital punishment unit are:
 - a. Commissioner or designee
 - b. Warden
 - c. Associate Warden
 - d. Lethal Injection Recorder
 - e. Death Watch Supervisor and assigned officers
 - f. Chaplain
 - g. Physician and associate
 - h. Executioner (Executioner waiting area)
 - i. IV Team
 - j. Extraction Team

Any exceptions to the above must be approved by the Warden or Commissioner.

3. The inmate is dressed in cotton trousers, shirt, cotton socks, or cloth house shoes.
4. Official witnesses report to the Administration Building conference room no later than 5:30 pm. They are greeted by Escort Officers, processed through checkpoint, and moved to the Parole Board Room in Building 8, where they remain until final movement to the witness room.
5. Immediate family members of the victim report to the Administration Building no later than 6:15 pm and are greeted by Escort Officers. These witnesses are security cleared and escorted to the conference room in Building 8, where they remain until final movement to the victim family members witness room.
6. The Lethal Injection Recorder or designee and designated EMTs report to the Execution Chamber for preparation. The Lethal Injection Recorder or designee checks the phones in the Execution Chamber.
7. The Medical Examiner's staff and the physician are stationed in the capital punishment garage.

6:30 pm

1. Victim family member witnesses are secured in the Building 8 conference room by the Escort Officers no later than 6:45 pm.
2. Official witnesses are secured in the Building 8 Parole Board Room by the Escort Officers no later than 6:45 pm.

7:00 pm

1. Beginning at 7:00 pm, the only staff authorized to be in the Execution Chamber are the Warden, those TDOC employees designated by him to carry out the execution, the Attorney General/designee, and the Defense Counsel witness.
2. At the command of the Warden or Associate Warden of Security, the Extraction Team approaches the holding cell and asks the condemned inmate to approach the cell door and be handcuffed. After being handcuffed, he is asked by the Extraction Team Leader to step back and place his hands above his head on the wall at the rear of the holding cell. (If the condemned inmate refuses to cooperate, the Extraction Team enters the holding cell and removes the inmate).
3. The Extraction Team places the condemned inmate on the gurney and secures him in restraints.
4. The condemned inmate is moved to the Execution Chamber.
5. The Lethal Injection Recorder or designee records the time the condemned inmate enters the Execution Chamber.
6. The IV Team establishes IV lines into both arms as instructed in Section V of this manual.
7. Official witnesses and victim family members are secured in the appropriate witness rooms.
8. The Attorney General/designee and the Defense Counsel witness will exit the execution chamber and be secured in the official witness room.
9. The closed circuit television camera and audio system are activated.

7:10 pm

1. Blinds to the witness room(s) are opened by the Warden and Associate Warden of Security.
2. The Warden contacts the Commissioner to ensure that no last minute stay or reprieve has been granted.
3. The Warden permits the condemned inmate to make a last statement.
4. The Warden gives the signal to proceed and the Executioner begins to administer the first chemical. The Lethal Injection Recorder documents the time the process begins.
5. After 500 mgs of midazolam and a saline flush have been dispensed, the Executioner shall signal to the Warden, and await further direction from the Warden.
6. At this time, the Warden shall assess the consciousness of the condemned inmate by brushing the back of his hand over the condemned inmate's eyelashes, calling the condemned inmate's name, and gently shaking the condemned inmate. Observation shall be documented. The condemned inmate's unresponsiveness will demonstrate that the inmate is unconscious, and the Warden shall direct the Executioner to resume with the administration of the second and third chemicals. If the condemned inmate is responsive, the Warden shall direct the Executioner to switch to the secondary IV line. See Contingency Issues on p. 73
7. Following the completion of the lethal injection process, and a five-minute waiting period, all blinds are closed, the closed circuit TV camera is disengaged, and the privacy curtain is closed. The Warden then asks the Physician to enter the room to conduct an examination. The Physician reports his findings to the Warden or designee. If the inmate is not deceased, the procedures on page 73 shall be followed.
8. The inmate is pronounced deceased by the Physician. The Lethal Injection Recorder or designee records the time that death is pronounced.
9. The Warden or designee announces that the sentence has been carried out and invites the witnesses to exit. The Warden announces the following: "The sentence of _____ has been carried out. Please exit."
10. The witnesses are then escorted from the witness rooms by Escort Officers. After the witnesses exit, the Warden or designee notifies the Commissioner that the sentence of death has been carried out.
11. The Commissioner or designee notifies all appropriate State officials that the sentence has been carried out. Media representatives are notified by the TDOC Director of Communications and Public Relations or designee.

12. The Extraction Team removes the restraints.
13. The Medical Examiner staff assists in removal of the body and placement in the Medical Examiner's vehicle, which is in the capital punishment garage.
14. The Medical Examiner's vehicle is cleared to exit the facility.
15. The Lethal injection Recorder completes the Lethal Injection Execution Recorder Checklist.

POST EXECUTION PROTOCOL A & B

1. The body is transported to the State Medical Examiner for examination and release.
2. The Assistant Commissioner of Prisons conducts an operational debriefing at the appropriate time.
3. The Commissioner arranges for or mandates an EAP debriefing as needed.

CONTINGENCY ISSUES PROTOCOL A & B

IV Line Alternatives

The cut-down procedure is used unless the Physician chooses a different method to find an IV site.

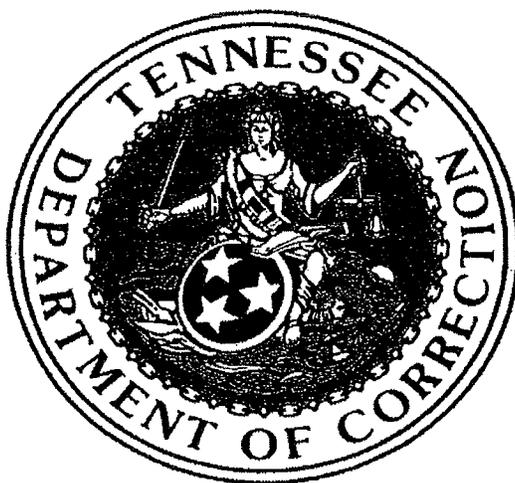
Interruptions of the delivery of the lethal injection drugs in the primary IV line

The Executioner switches to the secondary IV line and, starting with syringe #1 (blue), begins the administration of the second set of syringes using the reserve tray.

Repeating the Lethal Injection Process

If the inmate is not deceased after the initial set of syringes has been injected, the physician returns to the designated waiting area. The curtain is opened, blinds raised, camera activated, and the Warden gives the command to repeat the lethal injection procedure with the second set of syringes (blue). After this procedure is completed, the blinds will once again be closed, closed-circuit TV camera disengaged, and the privacy curtain closed. The Warden will once again ask the Physician to enter the room and check for signs of life.

VII. VICTIM SERVICES



RIVERBEND MAXIMUM SECURITY INSTITUTION

VICTIM SERVICES

Notification

The TDOC Victim Services Director works closely with the victim liaison from the Attorney General's Office, to confirm the list of victims/family members/interested parties registered for notification. Letters and packets are sent to each. The letter is specific to the registrant's permission to view the execution, as mandated by law:

- Victim family members: Those who are permitted to witness the execution. These persons receive a letter, requesting their choice to witness or attend the execution.
- Other victim family members: Extended family members who may wish to *attend* the execution to provide support to those who are permitted to view the execution, but by law, are not personally allowed to view the execution.
- Other interested party/support persons: Persons identified by victim family members who would attend the execution to provide support to those who are permitted to view the execution, with permission granted on a case-by-case basis by the Warden.

Packets include:

- Cover letter
- Official letter
- Official response forms
- Copy of the TN law 40-23-116 Manner of executing sentence of death -- Witnesses
- DVD "The Other Side of Death Row"
- Booklet "What to Expect at an Execution"
- Map
- Media guidelines
- Critical Incident Stress Management flier

These notifications are sent out to correspond in time to the announcement of the media lottery.

The Victim Services Director prepares a list of persons who plan to witness the execution, and of those who plan to attend the execution. The Victim Services Director will communicate any desire to speak to the media to the TDOC Director of Communications and Public Relations.

Accompaniment

The facility provides a private room in the Administration Building for persons viewing and attending the execution to use. Those witnessing or attending the execution are brought to the facility by the Attorney General's Office at a time agreed upon by TDOC Central Office and the Warden. The Victim Services Director meets them at the facility and escorts them to the private room. This room provides a place for witnesses to leave belongings and for attendees to wait for the return of the witnesses.

The Victim Services Director will accompany witnesses through the execution process. A designee will be assigned to remain and wait with any persons who accompany and wait in the Administration Building for witnesses to return.

At the time determined by the Warden/designee, the witnesses are processed through the check-point and taken into the prison facility room(s) next to the visitor galley, where they will remain until escorted into the victim's viewing room for the execution.

After the execution is completed, the witnesses are escorted back to the Administration Building where they are reunited with any persons who were there waiting for them. The TDOC Director of Communications and Public Relations will arrange for witnesses to speak to the media should they desire to do so. Afterward, the entire group will be escorted out of the prison to their awaiting vehicles.

IX. FORMS



RIVERBEND MAXIMUM SECURITY INSTITUTION

NOTIFICATION LETTER TO SHERIFF'S OFFICE TO WITNESS
EXECUTION OF INMATE



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
NASHVILLE, TENNESSEE 37243-0471
TELEPHONE (615) 350-3100 FAX (615) 350-3400

Date _____

John Doe, Sheriff
Tennessee County Sheriff's Department
PO Box 000
City, TN 37209

Dear Sheriff Doe:

Records of the Tennessee Department of Correction reflect that on _____, inmate _____ was convicted of First Degree Murder and sentenced to Death regarding _____ County case # _____. An order has been received scheduling inmate _____'s execution for _____. The execution is scheduled for _____ (CST) on that date.

Pursuant to TCA 40-23-116, the sheriff of the county in which the crime was committed is entitled to be present at the carrying out of such death sentences.

The Tennessee Department of Correction needs to know if you are interested in viewing the legal execution of inmate _____. In order to expedite this process, please sign and date on the respective line below indicating your intentions. Afterwards, fax the letter with your signature to my office at the Riverbend Maximum Security Institution at 615-350-3400. If you plan to attend, provide a telephone number where you may be contacted day or night. Further, you should be at the Riverbend Institution by 5:30 pm on _____ and bring your notification letter with you, along with a picture ID. Upon arrival at the facility, please present the letter to the Checkpoint Officer. If you have any questions regarding this matter, please feel free to contact me by calling 615-350-1103, , extension 3103, for further information.

Warden

ABC:aa

I will attend.	_____	Signature _____	Date _____
		Telephone No. _____	
I will not attend.	_____	Signature _____	Date _____
		Telephone No. _____	

NOTIFICATION LETTER TO INMATE'S FAMILY TO WITNESS
EXECUTION



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
RIVERBEND MAXIMUM SECURITY INSTITUTION
7475 COCKRILL BEND BOULEVARD
NASHVILLE, TENNESSEE 37243-0471
TELEPHONE (615) 350-3100 FAX (615) 350-3400

Date _____

Ms. Mary Jane Smith
PO Box 000
City, TN 37209

Dear Ms. Smith:

Records of the Tennessee Department of Correction reflect that on _____, inmate _____ was convicted of First Degree Murder and sentenced to Death regarding _____ County case # _____. An order has been received scheduling inmate _____'s execution for _____. The execution is scheduled for 7:00 pm on that date.

Pursuant to TCA 40-23-116, members of the condemned inmate's immediate family may be present at the carrying out of such death sentence. Records indicate that you are the _____ of inmate _____; therefore, you are eligible to be present.

The Tennessee Department of Correction needs to know if you are interested in viewing the legal execution of inmate _____. In order to expedite this process, please sign and date on the respective line below indicating your intentions. Afterwards, fax the letter with your signature to my office at the Riverbend Maximum Security Institution at 615-350-3400. If you plan to attend, provide a telephone number where you may be contacted day or night. Further, you should be at the Riverbend Institution by 5:30 pm on _____ and bring your notification letter with you, along with a picture ID. Upon arrival at the facility, please present the letter to the Checkpoint Officer. If you have any questions regarding this matter, please feel free to contact me by calling 615-350-1103, extension 3103, for further information.

Warden

ABC: aa

I will attend. _____ Signature _____ Date _____
Telephone No. _____

I will not attend. _____ Signature _____ Date _____
Telephone No. _____

PHYSICIAN'S INVENTORY CHECKLIST

- _____ (4) 5cc syringes
- _____ (4) Small tubes Betadine ointment
- _____ (12) Pair gloves (sterile), size 7½
- _____ (12) Pair gloves (sterile), size 8
- _____ (2) Prep kits
- _____ (2) BP cuffs
- _____ (2) Stethoscope(s)
- _____ (1) Flashlight with batteries
- _____ (8) Chux
- _____ (4) Cut-down trays
- _____ (2) Lidocaine 2%
- _____ (2) Lidocaine 2% with Epinephrine
- _____ (2) 4-0 vicryl
- _____ (2) 4-0 ethilon sutures
- _____ (1) 5-0 vicryl
- _____ (2) 5-0 ethilon sutures
- _____ (2) PPE size XL
- _____ (1) PPE size XXL
- _____ (2) Faceshields
- _____ (1) Scissors
- _____ (2) Scalpel #11 & #15

IV TEAM INVENTORY CHECKLIST

- _____ Normal saline 1000 cc or more
- _____ Solution set
- _____ Extension tubing sufficient to reach condemned inmate
- _____ Tourniquets – various styles
- _____ Assortment of IV catheters (range 18 gauge to 21 gauge)
- _____ Assortment of surgical tape
- _____ Arm boards
- _____ Tegaderm transparent dressing
- _____ Alcohol pads
- _____ Sharps container
- _____ 4x4 Gauge pads
- _____ Red biohazard bag
- _____ Chux
- _____ Latex-free gloves

PROTOCOL A:
CHEMICAL PREPARATION TIME SHEET

Date _____

RED

5 grams Pentobarbital

Time

2-Syringes prepared by _____ at _____.

Witnessed by _____

Saline

1-Syringe prepared by _____ at _____.

Witnessed by _____

BLUE

5 grams Pentobarbital

Time

2-Syringes prepared by _____ at _____.

Witnessed by _____

Saline

1-Syringe prepared by _____ at _____.

Witnessed by _____

PROTOCOL B:
CHEMICAL PREPARATION TIME SHEET

Date _____

RED

500 mg Midazolam

Time

2-Syringes prepared by _____ at _____.

Witnessed by _____

100 mg Vecuronium Bromide

2-Syringes prepared by _____ at _____.

Witnessed by _____

240 mEq Potassium Chloride

2-Syringes prepared by _____ at _____.

Witnessed by _____

Saline

3-Syringes prepared by _____ at _____.

Witnessed by _____

BLUE

500 mg Midazolam

Time

2-Syringes prepared by _____ at _____.

Witnessed by _____

100 mg Vecuronium Bromide

2-Syringes prepared by _____ at _____.

Witnessed by _____

240 mEq Potassium Chloride

2-Syringes prepared by _____ at _____.

Witnessed by _____

Saline

3-Syringes prepared by _____ at _____.

Witnessed by _____

DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER
CHECKLIST

Inmate Name _____ **Inmate #** _____

Date _____

TIME

- _____ Report to designated area for final briefing
- _____ Extraction Team and IV Team report to Death Watch Supervisor's office for final briefing. IV Team sets up IV system.
- _____ Physician in place
- _____ IV Team in place (EMTs and Officers)
- _____ Medical Examiner in place
- _____ Team Leader in place
- _____ Check blinds and curtains
- _____ Advise Escort Officer to transport Official Witnesses to Parole Room
- _____ Advised by Escort Officer that Official Witnesses are in Parole Room
- _____ Advise Escort Officers (2) to escort Victim's Witnesses to Viewing Room
- _____ Advised by Escort Officers (2) that Victim's Witnesses are in place
- _____ Warden or designee checks to ensure execution is to proceed
- _____ Gurney positioned in Death Watch Area
- _____ Extraction Team enters cell and secures condemned inmate to gurney
- _____ Advise Escort Officer to transport Official Witnesses to Death Watch vestibule
- _____ Advised by Escort Officer that Official Witnesses are in the vestibule
- _____ IV Team enters the Execution Chamber
- _____ IV Team exits the Execution Chamber
- _____ Advise Escort Officer to "Transport Official Witnesses in place"

Recorder's Initials _____

DAY OF EXECUTION – LETHAL INJECTION EXECUTION RECORDER
CHECKLIST (continued)

Inmate Name _____ Inmate # _____

Date _____

TIME

- _____ Advised by Escort Officer that "Witnesses are in place"
- _____ Warden checks with Command Center to proceed
- _____ Warden orders blinds opened, closed circuit TV activated, and audio activated for viewing rooms.
- _____ Warden asks inmate for any last comments
- _____ Warden orders Execution Team to proceed
- _____ Lethal Injection process completed
- _____ Blinds and curtains closed and closed circuit TV deactivated
- _____ Physician enters the Execution Chamber
- _____ Physician pronounces death – exact time
- _____ Audio deactivated to witness rooms
- _____ Advise Escort Officers (2) to remove Victim's Witnesses
- _____ Advise Commissioner or designee in Command Center that execution is completed
- _____ Physician and EMTs depart
- _____ Medical Examiner escorted to chamber to take possession of body. Pictures will be taken of body and Execution Chamber prior to removal of body
- _____ Advised by Escort Officer (2) Victim's Witnesses are at Checkpoint
- _____ Advise Escort Officer to remove Official Witnesses
- _____ Advised by Escort Officer that Official Witnesses are at Checkpoint
- _____ The body removed from the institution

Recorder's Initials _____

**PROTOCOL A:
LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD**

Inmate Name _____ Inmate # _____

Date _____

SET 1 (Red)

	Chemical	Time Begin
Syringe 1	Pentobarbital	_____
Syringe 2	Pentobarbital	_____
Syringe 3	Saline	_____

End Time _____

Recorder Signature _____

Warden _____

**PROTOCOL A:
LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD**

Inmate Name _____ Inmate # _____

Date _____

SET 2 (Blue)

	Chemical	Time Begin
Syringe 1	Pentobarbital	_____
Syringe 2	Pentobarbital	_____
Syringe 3	Saline	_____

End Time _____

Recorder Signature _____

Warden _____

**PROTOCOL B:
LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD**

Inmate Name _____ Inmate # _____

Date _____

SET 1 (Red)

	Chemical	Time Begin
Syringe 1	Midazolam	_____
Syringe 2	Midazolam	_____
Syringe 3	Saline	_____
Syringe 4	Vecuronium Bromide	_____
Syringe 5	Vecuronium Bromide	_____
Syringe 6	Saline	_____
Syringe 7	Potassium Chloride	_____
Syringe 8	Potassium Chloride	_____
Syringe 9	Saline	_____

End Time _____

Recorder Signature _____

Warden _____

**PROTOCOL B:
LETHAL INJECTION CHEMICAL ADMINISTRATION RECORD**

Inmate Name _____ Inmate # _____

Date _____

SET 2 (Blue)

	Chemical	Time Begin
Syringe 1	Midazolam	_____
Syringe 2	Midazolam	_____
Syringe 3	Saline	_____
Syringe 4	Vecuronium Bromide	_____
Syringe 5	Vecuronium Bromide	_____
Syringe 6	Saline	_____
Syringe 7	Potassium Chloride	_____
Syringe 8	Potassium Chloride	_____
Syringe 9	Saline	_____

End Time _____

Recorder Signature _____

Warden _____

State of Tennessee

DEPARTMENT OF CORRECTION

News Release

The Department of Correction reports that pursuant to the order of the Tennessee Supreme Court and in accordance with state law, the capital punishment sentence of _____ has been carried out.

Time of execution was _____ am/pm on _____
(date)

_____ was pronounced dead by attending
(Inmate's name)
physician at _____ am/pm.

Affidavit Concerning Method of Execution

Under Tennessee law, you have the right to have your execution carried out by lethal injection. You also have the option of waiving this right and choosing electrocution as the method of your execution. The purpose of this affidavit is to allow you an opportunity to either waive your right to have your execution carried out by lethal injection or to decline to waive that right. Failure to complete this form will result in the execution being carried out by lethal injection. You will not be given another opportunity to waive your right to have your execution carried out by lethal injection. If you waive your right to have your execution carried out by lethal injection, you may rescind that waiver by contacting the Warden **no later than 14 days prior to the date of the execution** and signing a new affidavit to that effect.

I, _____, TDOC# _____, make the following choice concerning the method of my execution set to be carried out on the ____ day of _____, _____:

_____ I waive the right to have my execution carried out by lethal injection and choose to be executed by electrocution.

Signature of Inmate

_____ I have been given the opportunity to waive my right to have my execution carried out by lethal injection and I decline to waive that right.

Signature of Inmate

I certify that I presented this Affidavit Concerning Execution to inmate _____, TDOC No. _____, and

_____ The inmate refused to sign.

_____ I witnessed the inmate sign this affidavit.

Signature of Warden/Designee

Sworn to and subscribed before me this ____ day of _____, 20__.

Notary Public

My Commission expires _____.



STATE OF TENNESSEE
DEPARTMENT OF CORRECTION
4th FLOOR RACHEL JACKSON BLDG.
320 SIXTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243-0465

APPLICATION FOR NEWS MEDIA REPRESENTATIVE TO ATTEND AN EXECUTION OF A SENTENCE OF DEATH

Name of Inmate Under Sentence of Death _____

Name of News Media Outlet _____

Name of News Media Representative _____

Mailing Address _____

Phone _____ Fax _____

E-Mail Address _____

Indicate the news media pool to which the applicant news media agency is to be assigned.

_____ News Media Agency (print, radio or television) in the county where the offense occurred (if print, also designate Metro or Community below)

_____ Associated Press

_____ Metro Print Media Agency

_____ Community Print News Media Agency

_____ Other Television News Media Agency

_____ Other Radio News Media Agency

PLEASE NOTE: The Department will accept only one (1) application from each news media agency. A person may be named as a News Media Agency Representative on only one (1) application. No news media agency representative selected to witness the execution of a sentence of death shall have exclusive rights to the story. Immediately after the execution of the death sentence is complete, all media representative witness shall make themselves available for a news conference for other news media representatives not selected to attend the execution. Submission of an application constitutes acceptance of this condition.

RULES
OF
DEPARTMENT OF CORRECTION
ADULT SERVICES DIVISION

CHAPTER 0420-3-4
SELECTION OF NEWS MEDIA AGENCY REPRESENTATIVES TO ATTEND
AN EXECUTION OF A DEATH SENTENCE

TABLE OF CONTENTS

0420-3-4-.01	Preface	0420-3-4-.04	Application and Selection Process
0420-3-4-.02	Applicability	0420-3-4-.05	Witness Guidelines
0420-3-4-.03	Definitions		

0420-3-4-.01 PREFACE

Under the authority of T.C.A. §40-23-116, the Department of Correction is authorized to promulgate rules that establish criteria for the selection of news media representatives to attend an execution of a sentence of death.

Authority: T.C.A. §40-23-116. Administrative History: Original rule filed July 28, 1999; November 29, 1999. Repeal and new rule filed November 22, 2000; effective February 6, 2001.

0420-3-4-.02 APPLICABILITY

Pursuant to the authority of T.C.A. §40-23-116, these rules shall apply to all news media agencies and their representatives.

Authority: T.C.A. §40-23-116. Administrative History: Original rule filed July 28, 1999; November 29, 1999. Repeal and new rule filed November 22, 2000; effective February 6, 2001.

0420-3-4-.03 DEFINITIONS

- (1) **Community Print News Media Agency:** A Print News Media Agency other than a Metro Print News Media Agency.
- (2) **General Interest and Coverage:** The handling of a broad range of spot news such as traffic accidents, fires, disasters, governmental events, as well as economic, business, social, sports, and human interest news.
- (3) **Metro Print News Media Agency:** A Print News Media Agency which maintains a full-time presence at the state Capitol, covering day-to-day operations of state government.
- (4) **News Media Agency:** A Print, Radio or Television News Media Agency or The Associated Press.
- (5) **News Media Agency Representative:** A person Regularly Employed by a News Media Agency and designated by such News Media Agency to attend and witness an execution of a death sentence on behalf of the New Media Agency.
- (6) **Print News Media Agency:** A newspaper of general circulation, bearing a title or name, regularly issued at least as frequently as once a week for a definite price, having second class mailing privilege, being not less than four (4) pages, published continuously during the immediately preceding one-year period, which is published for the dissemination of news of general interest, coverage and circulation in an area within Tennessee.

February, 2001 (Revised)

1

SELECTION OF NEWS MEDIA AGENCY REPRESENTATIVES
TO ATTEND AN EXECUTION OF A DEATH SENTENCE

CHAPTER 0420-3-4

(Rule 0420-3-4-.03, continued)

- (7) Radio News Media Agency: The Tennessee Radio Network or a radio broadcast station which regularly disseminates news of general interest and coverage and has either its city of license (as determined by the federal government) or broadcast transmitter located in Tennessee.
- (8) Regularly Employed: Employed on a consistent, continuing basis and not solely for the purpose of witnessing an execution of a sentence of death or otherwise on a temporary or short-term basis.
- (9) Television News Media Agency: A television broadcast station which regularly disseminates news of general interest and coverage and has either its city of license (as determined by the federal government) or broadcast transmitter located in Tennessee.
- (10) Warden: Warden of the Riverbend Maximum Security Institution.

Authority: T.C.A. § 40-23-115; § 40-23-116. Administrative History: Original rule filed November 22, 2000; effective February 6, 2001.

0420-3-4-.04 APPLICATION AND SELECTION PROCESS

- (1) The selection of News Media Agency Representatives shall be by drawing to be held at Riverbend Maximum Security Institution, 7475 Cockrill Bend Industrial Road, Nashville, Tennessee.
- (2) The Public Information Office of the Department of Correction shall notify all News Media Agencies of a scheduled drawing through issuance of an advisory to the Associated Press. An announcement will also be published in the Tennessee Administrative Register, provided, however, in the event the Department has insufficient advance notice of an execution date to meet publication deadlines for the Tennessee Administrative Register, the announcement shall be issued as soon as practicable after the Department receives notice of the execution date.
- (3) The advisory and announcement shall include the following:
 - (a) Deadline date, time and location for receiving applications from a News Media Agency desiring to be included in the open drawing to witness the execution of the death sentence.
 - (b) Date, time, and location where the open drawing will take place.
- (4) To be eligible for the drawing, a News Media Agency shall submit an application on a form provided by the Department of Correction on or before the deadline specified in the advisory and/or notice. The applicant agency shall designate its News Media Agency Representative and the news media pool for which it qualifies under these rules. The Department will accept only one (1) application from each News Media Agency. A person may be named as a News Media Agency Representative on only one (1) application.
- (5) The Warden or designee shall assign an identifying number to each application received. Prior to the commencement of the drawing the Warden or designee shall post a list containing the News Media Agency name, News Media Agency Representative name, number and assigned category of each application which meets the requirements set forth in this rule.
- (6) Procedure for Drawing:
 - (a) From those applications received which meet the requirements set forth in this rule, a total of seven (7) News Media Agencies shall be selected. The agencies shall be selected from the following categories in the following order:
 1. The Associated Press (one application);

February, 2001 (Revised)

2

SELECTION OF NEWS MEDIA AGENCY REPRESENTATIVES
TO ATTEND AN EXECUTION OF A DEATH SENTENCE

CHAPTER 0420-3-4

(Rule 0420-3-4-.04, continued)

2. One News Media Agency in the county where the offense occurred;
 3. One Metro Print News Media Agency;
 4. One Community Print News Media Agency;
 5. Two Television News Media Agencies; and
 6. One Radio News Media Agency.
- (b) In the event more than one qualifying application is received for category (a)(ii), the applications not selected in that category shall be reassigned to appropriate categories.
- (c) If one or more categories cannot be filled due to an insufficient number of qualifying applications in the category, qualifying applications remaining after all other selections have been made shall be combined into one selection pool from which an application shall be drawn to fill each unfilled position.
- (d) After seven (7) News Media Agency Representatives have been selected through the process set out in (a) through (c), all remaining applications shall be combined into one selection pool from which a first alternate and a second alternate shall be drawn. Alternates shall be allowed, in order of selection, to substitute for a News Media Agency Representative selected as a witness who is unable to attend and witness the execution of a death sentence.
- (7) After the drawing the Department of Correction shall promptly issue an advisory to the Associated Press identifying the News Media Agency Representatives selected.
- (8) News Media Agency Representatives shall be subject to the approval of the Warden. The Warden may, in the Warden's discretion, disapprove or exclude a witness for reasons of safety or security. No News Media Agency Representative shall be related to the condemned prisoner or the condemned prisoner's victim or victims or have any personal interest in the case. News Media Agency Representatives must be eighteen (18) years of age or older.
- (9) The Department of Correction will allow no substitution of News Media Agencies or News Media Agency Representatives.
- (10) In the event the execution does not take place within one (1) year of the date of the drawing, the Commissioner, in the Commissioner's sole discretion, may cancel the result of a drawing and, if necessary, direct that a new drawing be held.

Authority: T.C.A. § 40-23-116. Administrative History: Original rule filed November 22, 2000; effective February 6, 2001.

0420-3-4-.05 WITNESS GUIDELINES

- (1) No News Media Agency Representative allowed to witness the execution of a death sentence shall have exclusive rights to the story. Immediately after the execution of the death sentence is complete, all News Media Agency Representatives shall make themselves available for a news conference of other news media representatives and shall remain at the news conference until it is completed.
- (2) The news conference shall be held at a location designated by the warden immediately following the execution.

February, 2001 (Revised)

3

SELECTION OF NEWS MEDIA AGENCY REPRESENTATIVES
TO ATTEND AN EXECUTION OF A DEATH SENTENCE

CHAPTER 0420-3-4

(Rule 0420-3-4-.05. continued)

- (3) Photographic or recording equipment are prohibited at the execution site during the execution.
- (4) News Media Agency Representatives shall abide by all departmental and institutional rules and policies, and the directives of authorized staff. Failure of a witness to do so may result in the witness being excluded and /or removed from the premises. The News Media Agency Representative and the News Media Agency being represented shall be ineligible to attend future executions without the specific approval of the Commissioner.

Authority: T.C.A. § 40-23-116. Administrative History: Original rule filed November 22, 2000; effective February 6, 2001.

Affidavit to Select Defense Counsel Witness to Execution

Under Tennessee law, TCA 40-23-116, you may select one (1) defense counsel to witness your scheduled upcoming execution. The Department of Correction needs to know who you are selecting to be your witness.

I, _____, TDOC# _____, select the following defense counsel witness: _____

Signature of Inmate

Date

I certify that I presented this Affidavit to Select Defense Counsel Witness to Execution to inmate

_____, TDOC# _____, and

_____ The inmate refused to sign.

_____ I witnessed the inmate sign this affidavit.

Signature of Warden/Designee

Date

Sworn to and subscribed before me this _____ day of _____, 20 _____

Notary Public My Commission expires _____

PHARMACY SERVICES AGREEMENT

This PHARMACY SERVICES AGREEMENT ("Agreement") is being made and entered into by and between _____ ("Pharmacy") and _____ ("Department") on this ___ day _____, 2017, and is being made for the purposes and the consideration herein expressed.

WITNESSETH:

WHEREAS, Pharmacy is a pharmacy licensed in the _____ that provides controlled substance and compounded preparations to practitioners for office use; and

WHEREAS, Department is a State of Tennessee governmental agency that is responsible for carrying out sentences of death by means of lethal injection; and

WHEREAS, Department desires to engage Pharmacy to provide Department with certain controlled substances and/or compounded preparations for lethal injection administration by the Department to those individuals sentenced to death; and

WHEREAS, Pharmacy and Department have agreed to enter into this Agreement setting forth the terms under which Pharmacy will provide certain controlled substances and/or compounded preparations to Department for use in lethal injection.

NOW, THEREFORE, in consideration of the covenants and agreements set forth herein, Pharmacy and Department hereby agree as follows:

Article 1
SERVICES

1.1 Controlled substance. Upon a written request, which may be sent electronically via facsimile or electronic mail, by Department, Pharmacy shall provide Department with the requested controlled substance. Quantities of the controlled substance shall be limited to an amount that does not exceed the amount the Department anticipates may be used in the Department's office or facility before the expiration date of the controlled substance and is reasonable considering the intended use of the controlled substance and the nature of the services offered by the Department. For controlled substance, Pharmacy shall dispense all drugs in accordance with applicable licensing regulations adopted by the _____ and the United States Food and Drug Administration that pertain to pharmacies dispensing controlled substance.

1.2 Compounding Preparations. Upon a written request, which may be sent electronically via facsimile or electronic mail, by Department, Pharmacy shall provide Department with the requested compounded preparation. Quantities of the compounded preparation shall be limited to an amount that does not exceed the amount the Department anticipates may be used in the Department's office or facility before the expiration date of the compounded preparation and is reasonable considering the intended use of the compounded preparation and the nature of the services offered by the Department. For compounded

preparations, Pharmacy shall compound all drugs in a clean sterile environment in compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation Departments. In addition, Pharmacy shall compound all drugs in accordance with applicable licensing regulations adopted by the _____ that pertain to pharmacies compounding sterile preparations.

1.3 Limitation on Services. Pharmacy shall only provide controlled substance and compounding preparations that it can prepare to ensure compliance with pharmaceutical standards for identity, strength, quality, and purity of the compounded drug that are consistent with United States Pharmacopoeia guidelines and accreditation Departments. In the event Department requests a controlled substance or compounded preparation which Pharmacy is not able to fill, Pharmacy shall notify Department.

1.4 Recalls. In the event that Pharmacy determines that a recall for any controlled substance or compounded preparation provided hereunder is warranted Pharmacy shall immediately notify Department of the medication and/or preparations subject to the recall. Pharmacy shall instruct Department as how to dispose of the medication or preparation, or may elect to retrieve the medication or preparation from Department. Pharmacy shall further instruct Department of any measures that need to be taken with respect to the recalled medication or preparation.

Article 2 **OBLIGATIONS OF DEPARTMENT**

2.1 Written Requests. All requests for controlled substances and compounded preparations must be in writing and sent to Pharmacy via electronic mail or facsimile. The following shall appear on all requests:

- A. Date of request;
- B. FOR COMPOUNDED PREPARATIONS ONLY: Name, address, and phone number of the practitioner requesting the preparation;
- C. Name, strength, and quantity of the medication or preparation ordered; and
- D. Whether the request needs to be filled on a STAT basis.

2.2 Use of Controlled Substance and Compounded Preparations. Department agrees and acknowledges that all controlled substance and compounded preparations provided by Pharmacy may only be used by Department in carrying out a sentence of death by lethal injection and may not be dispensed or sold to any other person or entity. Department assumes full responsibility for administering any controlled substance or compounded preparations.

2.3 Recordkeeping. Department agrees to maintain records of the lot number and beyond-use date of a controlled substance or compounded preparation to be administered or administered by Department that was prepared by Pharmacy. Department agrees to maintain inventory control and other recordkeeping as may be required by applicable federal and state laws and regulations.

Article 3
TERM AND TERMINATION

3.1 Term. The Effective Date of this Agreement shall be the date first specified above. The term of this Agreement shall be for a period of one (1) year unless sooner terminated by either party pursuant to the terms and provisions hereof. If this Agreement is not terminated by either party prior to the anniversary date of this Agreement or any renewal term, this Agreement shall automatically renew for an additional one (1) year term.

3.2 Termination.

- A. Either party to this Agreement may terminate this Agreement, with or without cause, by providing the other party sixty (60) days prior written notice of said termination.
- B. Pharmacy may immediately terminate this Agreement in the event of any of the following:
1. Department ceases to provide professional services for any reason.
 2. Department's professional license is revoked, terminated, or suspended.
 3. Department declares bankruptcy.
 4. Department fails to comply the terms of this Agreement and fails to cure such breach within 5 business days of receiving notice of the breach.
- C. Department may immediately terminate this Agreement in the event of any of the following:
1. Pharmacy's professional license is revoked, terminated, or suspended.
 2. Pharmacy is excluded or debarred from participation in the Medicare and/or Medicaid programs for any reason.
 3. Pharmacy declares bankruptcy.
 4. Pharmacy fails to comply the terms of this Agreement and fails to cure such breach within 5 business days of receiving notice of the breach.

Article 4
REPRESENTATION

4.1 Representation by TN Attorney General. The Tennessee Attorney General's Office will represent or provide representation to Pharmacy in any civil lawsuit filed against Pharmacy for its acts or omissions arising out of and within the scope and course of this agreement except for willful, malicious or criminal acts or omissions or for acts or omissions done for personal gain. Any civil judgment leveled against Pharmacy arising out of its acts or omissions pursuant to this agreement will be reimbursed by the State in accordance with the terms of T.C.A. § 9-8-112. The Attorney General's Office will advocate before the Board of Claims for full payment of any judgment against Pharmacy arising out of a civil lawsuit in which the Attorney General's Office represents or provides representation to Pharmacy.

Article 5
Miscellaneous

5.1 Amendment. This Agreement may be amended only by mutual agreement and reduced to writing and signed by both parties hereto.

5.2 Payment. Pharmacy agrees to submit invoices within thirty (30) days after rendering services and/or providing controlled substances or compounded preparations to: TDOC Fiscal Director, Rachel Jackson Building, 6th Floor, 320 6th Avenue North, Nashville, Tennessee, 37243. Department agrees to pay an annual fee to Pharmacy in the amount of \$5,000.00 (five thousand dollars).

5.3 Captions. Any caption or heading contained in this Agreement is for convenience only and shall not be construed as either broadening or limiting the content of this Agreement.

5.4 Sole Agreement. This Agreement constitutes the sole and only agreement of the parties hereto and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter herein.

5.5 Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The parties hereto expressly agree that this Agreement is executed and shall be performed in Davidson County, Tennessee, and venue of all disputes, claims and lawsuits arising hereunder shall lie in Davidson County, Tennessee.

5.6 Severability. The sections, paragraphs and individual provisions contained in this Agreement shall be considered severable from the remainder of this Agreement and in the event that any section, paragraph or other provision should be determined to be unenforceable as written for any reason, such determination shall not adversely affect the remainder of the sections, paragraphs or other provisions of this Agreement. It is agreed further, that in the event any section, paragraph or other provision is determined to be unenforceable, the parties shall use their best efforts to reach agreement on an amendment to the Agreement to supersede such severed section, paragraph or provision.

5.7 Notice. Any notices under this Agreement shall be hand-delivered or mailed by certified mail, return receipt requested to the parties at the addresses set forth on the signature page of this Agreement, or such other addresses as the parties may designate to the other in writing from time to time.

5.8 Agreement Subject to State and Federal Law. The parties recognize that this Agreement, at all times, is subject to applicable state, local and federal laws including, but not limited to, the Social Security Act and the rules, regulations and policies adopted thereunder and adopted by the _____, as well as the public health and safety provisions of state laws and regulations. The parties further recognize that this Agreement shall be subject to amendments of such laws and regulations, and to new legislation. Any such provisions of law that invalidate, or otherwise are inconsistent with the terms of this Agreement, or that would cause one or both of the parties to be in violation of the laws, shall be deemed to have superseded the terms of this Agreement; provided, however, that the parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible consistent with the requirements of applicable laws and regulations.

5.9 Compliance With All Applicable Laws. The parties hereto hereby acknowledge and agree that each party shall comply with all applicable rules regulations, laws and statutes including, but not limited to, any rules and regulations adopted in accordance with and the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The parties hereby specifically agree to comply with all privacy and security rules, regulations and provisions of HIPAA and to execute any required agreements required by all HIPAA Security Regulations and HIPAA Privacy Regulations whether presently in existence or adopted in the future, and which are mutually agreed upon by the parties. In addition, in the event the legal counsel of either party, in its reasonable opinion, determines that this Agreement or any material provision of this Agreement violates any federal or state law, rule or regulation, the parties shall negotiate in good faith to amend this Agreement or the relevant provision thereof to remedy such violation in a manner that will not be inconsistent with the intent of the parties or such provision. If the parties cannot reach an agreement on such amendment, however, then either party may terminate this Agreement immediately. This section shall survive the termination of this Agreement.

5.10 Referral Policy. Nothing contained in this Agreement shall require, directly or indirectly, explicitly or implicitly, either party to refer or direct any patients to the other party.

5.11 Assignment. This Agreement is not assignable without the other party's prior written consent.

5.12 Independent Contractor Status. In performing their responsibilities pursuant to this Agreement, it is understood and agreed that Pharmacy and its pharmacists and other professionals are at all times acting as independent contractors and that the parties to this Agreement are not partners, joint-venturers, or employees of one another.

5.13 Non-Waiver. No waiver by one of the parties hereto of any failure by the other party to keep or perform any provision, covenant or condition of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same, or any other provision, covenant or condition.

5.14 Counterparts/Execution. This document may be executed in multiple counterparts, each of which when taken together shall constitute but one and the same instrument. In addition, this Agreement may be executed by facsimile or electronic signature, which shall constitute an original signature.

5.15 No Third-Party Beneficiaries. No provision of this Agreement is intended to benefit any third party, nor shall any person or entity not a party to this Agreement have any right to seek to enforce or recover any right or remedy with respect hereto.

5.16 Confidentiality. Both parties agree to keep this Agreement and its contents confidential and not disclose this Agreement or its contents to any third party, other than its attorneys, accountants, or other engaged third parties, unless required by law, without the written consent of the other party.

IN WITNESS WHEREOF, the parties have hereunto caused their authorized representatives to execute this Agreement as of the date first set forth above.

By: _____
Name: _____

Title: _____

Date: _____

Address: _____

By: _____

Name: _____

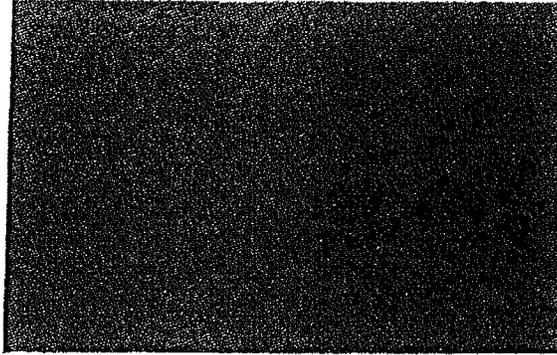
Title: TDOC Commissioner

Date: _____

Address: 320 6th Ave. North, 6th Floor
Nashville, TN 37243

Exhibit 5

The places that it is readily available from do they have disclaimer requirements like what [REDACTED] hit us with on the Pento?



CONFIDENTIALITY: The information contained in this e-mail message, including any attachments, is intended only for the personal, confidential and privileged (either legally or otherwise) use of the individual to which it is addressed. The email message and attachments may contain confidential information that is protected by Attorney/Client privilege and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are notified that any review, use, disclosure, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please contact the sender by reply e-mail immediately and destroy all copies of the original message.

From: [REDACTED]
Sent: Thursday, September 07, 2017 12:58 PM
To: [REDACTED]
Subject: RE: Updtae

***** This is an EXTERNAL email. Please exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email - STS-Security. *****

Hello [REDACTED]

That stuff is readily available along with potassium chloride. I reviewed several protocols from states that currently use that method. Most have a 3 drug protocol including a paralytic and potassium chloride. Here is my concern with Midazolam. Being a benzodiazepine, it does not elicit strong analgesic effects. The subjects may be able to feel pain from the administration of the second and third drugs. Potassium chloride especially. It may not be a huge concern but can open the door to some scrutiny on your end. Consider the use of an alternative like Ketamine or use in conjunction with an opioid. Availability of the paralytic agent is spotty. Pancuronium, Rocuronium, and Vecuronium are currently unavailable. Succinylcholine is available in limited quantity. I'm currently checking other sources. I'll let you know shortly.

Regards,

<image004.jpg>

This document may contain information covered under the Privacy Act, 5 USC 552(a), and/or Health Insurance Portability and Accountability Act (PL104-191) and its various implementing regulations and must be protected in accordance with those provisions. Healthcare information is personal and sensitive and must be treated accordingly. If this correspondence contains healthcare information it is being provided to you after appropriate authorization from the patient or under circumstances that do not require patient authorization. You, the recipient, are obligated to maintain it in a safe, secure, and confidential manner. Redisclosure without additional patient consent or as permitted by law is prohibited. Unauthorized redisclosure or failure to maintain confidentiality subjects you to appropriate sanction. If you have received this correspondence in error, please notify the sender at once and destroy any copies you have made.

Exhibit 6

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

2010 NOV 29 PM 4:04

APPELLATE COURT CLERK
NASHVILLE

STATE OF TENNESSEE V. STEPHEN MICHAEL WEST

Circuit Court for Union County
No. 415A

No. M1987-000130-SC-DPE-DD¹

ORDER

On November 6, 2010, this Court reset the execution date for Stephen Michael West to November 30, 2010, pending an evidentiary hearing and ruling in a declaratory judgment action filed by Mr. West challenging the constitutionality of Tennessee's three-drug protocol for lethal injection. On November 22, 2010, the trial court entered an order granting a declaratory judgment to Mr. West. To date, no appeal has been lodged.

Also on November 22, 2010, Mr. West filed in this Court a "Motion to Vacate or Further Modify Court's Order Scheduling Mr. West's Execution." A transcript of the trial court's ruling was included with the filing, but not a transcript of the evidence. On November 24, 2010, the State filed a response in opposition to Mr. West's Motion and attached to the response a copy of a revised protocol. Later that same day, this Court denied Mr. West's motion to vacate or further modify his execution date because the revised protocol appeared to address the basis of the trial court's conclusion that the previous protocol was unconstitutional. However, we specified that the denial of Mr. West's motion was without prejudice to his ability to seek further relief in this or any other court.

On November 26, 2010, Mr. West filed in this Court a motion to reconsider or in the alternative a renewed motion to vacate or further modify the order scheduling his execution for November 30, 2010. Mr. West forcefully asserts that reconsideration is warranted because he was not afforded an opportunity to reply to the State's response and to address

¹Mr. West styled his motion *Stephen Michael West et al. v. Gayle Ray et al.*, and referred to the number of the declaratory judgment action pending in the Chancery Court for Davidson County. As previously stated, to date no appeal has been lodged in the declaratory judgment action. Because Mr. West's motion asks this Court to modify a scheduled execution, it is more properly filed under the style of the order initially setting Mr. West's execution, listed above.

the trial court on the issues of whether the revised protocol eliminates the constitutional deficiencies in the prior protocol and whether the revised protocol is constitutional. In support of his motion, Mr. West has submitted the transcript of the testimony presented at the two-day hearing in the trial court. This Court has now received and fully reviewed the motion and the transcript.

The evidence presented in this case differs from the evidence presented in *Abdur'Rahman v. State*, 181 S.W.3d 292 (Tenn. 2005). The inmate's primary challenge to the three-drug protocol in *Abdur'Rahman* was that the inclusion of pancuronium bromide in the three-drug protocol rendered the protocol unconstitutional. We determined that the use of the pancuronium bromide did not undermine the constitutionality of the protocol because it was preceded by the administration of a dose of sodium thiopental sufficient to render the inmate unconscious. *Abdur'Rahman v. State*, 181 S.W.3d at 307-08. The inmate in *Abdur'Rahman* did not produce evidence that the required dose of sodium thiopental would fail to render the inmate unconscious.

Proper administration of an adequate amount of sodium thiopental is essential to the constitutionality of Tennessee's three-drug protocol. Chief Justice Roberts has noted that "[i]t is uncontested that, failing a proper dose of sodium thiopental that would render the prisoner unconscious, there is a substantial, constitutionally unacceptable risk of suffocation from the administration of pancuronium bromide and pain from the injection of potassium chloride." *Baze v. Rees*, 553 U.S. 35, 53 (2008). Echoing Chief Justice Roberts, the trial court in this case found that Tennessee's lethal injection protocol was unconstitutional because it "allows . . . death by suffocation while the prisoner is conscious." Following this finding, the trial court also determined feasible and readily available alternative procedures existed to insure unconsciousness and to negate any objectively intolerable risk of severe suffering or pain.²

After the trial court's findings and conclusions, on November 24, 2010, the State revised its three-drug execution protocol to include a process to assess the consciousness of the inmate following the administration of the sodium thiopental and to provide for the administration of additional sodium thiopental should the inmate be conscious following the administration of the first dose of the drug.

²The trial court stated:

It appears to this Court that there are feasible and readily available alternative procedures which could be supplied at execution to insure unconsciousness and negate any objectively intolerable risk of severe suffering or pain. This Court should not say or find which of those it would recommend, but I think the Court's finding of fact regarding the ways – the various ways that unconsciousness can be checked should be left to the State.

The principles of constitutional adjudication and procedural fairness require that decisions regarding constitutional challenges to acts of the Executive and Legislative Branches be considered in light of a fully developed record addressing the specific merits of the challenge. The requirement of a fully developed record envisions a trial on the merits during which both sides have an opportunity to develop the facts that have a bearing on the constitutionality of the challenged provision. Mr. West is correct that the trial court has not been given the opportunity to consider in the first instance whether the revised protocol eliminates the constitutional deficiencies the trial court identified in the prior protocol and whether the revised protocol is constitutional.

Upon due consideration, Mr. West's Motion is GRANTED, and his November 30, 2010 execution is stayed. Additionally, the State is directed to file a motion in the trial court presenting for determination in the first instance the issues of whether the revised protocol eliminates the constitutional deficiencies the trial court identified in the prior protocol and whether the revised protocol is constitutional. *See* Tenn. R. Civ. P. 52.02; 59.04. The trial court shall afford the parties an opportunity to submit argument or evidence on the revised protocol. The trial court shall render its final, appealable judgment expeditiously, but in no event later than ninety (90) days from the date of the entry of this Order.

In any proceedings on remand, the standards enunciated in the plurality opinion in *Baze v. Rees*, 553 U.S. 35, 51 (2008) apply. The burden is on Mr. West to prove that the revised protocol creates an "objectively intolerable risk of harm that qualifies as cruel and unusual." *Baze v. Rees*, 553 U.S. at 52. In order to carry this heavy burden, he must demonstrate that the revised protocol imposes a substantial risk of serious harm, and he must either propose an alternative method of execution that is feasible, readily implemented, and which significantly reduces the substantial risk of severe pain, *Baze v. Rees*, 553 U.S. at 52-53, or demonstrate that no lethal injection protocol can significantly reduce the substantial risk of severe pain.

The stay granted herein shall remain in effect throughout the pendency of any appeal of the trial court's final judgment in the declaratory judgment action and until the State files a motion to reset the execution date pursuant to Tennessee Supreme Court Rule 12.4.

The final resolution of the issues in this case impacts the scheduled executions of Billy Ray Irick, Edmund Zagorski, and Edward Jerome Harbison. Accordingly, entered contemporaneously herewith are orders staying the executions of Mr. Irick, Mr. Zagorski, and Mr. Harbison.

It is so ORDERED.

PER CURIAM

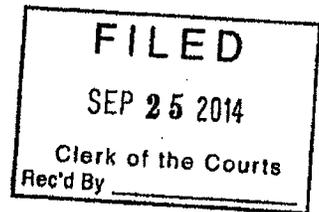
Exhibit 7

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. BILLY RAY IRICK

Criminal Court for Knox County
No. 24527

No. M1987-00131-SC-DPE-DD



ORDER

On September 27, 2013, the Tennessee Department of Correction adopted a new single-drug lethal injection protocol. On October 3, 2013, the State filed a motion to reset the execution date for Billy Ray Irick. On November 20, 2013, Mr. Irick and nine other plaintiffs filed in the Chancery Court for Davidson County a declaratory judgment action challenging the constitutionality of the new lethal injection protocol. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-1627-I. Based on representations that the declaratory judgment action would be tried in July 2014, this Court issued an order on December 11, 2013, setting Mr. Irick's execution date for October 7, 2014. Because of a discovery dispute, the Chancery Court stayed the declaratory judgment proceedings pending a Tenn. R. App. P. 9 interlocutory appeal in the Court of Appeals. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. M2014-00320-COA-R9-CV (filed February 21, 2014).

On September 15, 2014, Mr. Irick filed in this Court a Motion to Alter, Amend or Modify Order Setting Execution Date. On September 16, 2014, the State filed a response in opposition to Mr. Irick's motion. On September 19, 2014, Mr. Irick filed a reply to the State's response.

Mr. Irick asks this Court to reset his execution date from October 7, 2014, to allow sufficient time for the Court of Appeals to resolve the interlocutory appeal and for the Chancery Court to resolve the constitutional issues raised in the declaratory judgment action. The State responds that Mr. Irick is required to demonstrate a likelihood of success on the merits of his declaratory judgment action, and, given the universal approval of identical or similar protocols, he is unable to do so.

Upon due consideration, Mr. Irick's Motion is GRANTED, and this Court's order of December 11, 2013, is vacated. Nevertheless, we agree with the State that this matter should be expedited to eliminate any further unnecessary delays. To this end, any party seeking review of the Court of Appeals' decision in *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. M2014-00320-COA-R9-CV, shall abide by the following expedited schedule. See Tenn. R. App. P. 2.

1. Neither party shall be permitted to file a petition to rehear in the Court of Appeals pursuant to Tenn. R. App. P. 39.
2. Any application for permission to appeal pursuant to Tenn. R. App. P. 11 shall be filed no later than ten (10) days after the date of filing of the Court of Appeals' decision.
3. Any answer in opposition to a Rule 11 application shall be filed no later than seven (7) days after the date of filing of the Rule 11 application.
4. This Court shall render its decision on any Rule 11 application no later than fourteen (14) days after the date of filing of any Rule 11 application.

In addition to the original copy and other required copies of any filing, an electronic copy of the filing shall be submitted to the Clerk of the Supreme Court at the time of the filing by e-mail, in Adobe .pdf format. Copies of all filings shall be served upon the opposing attorney of record contemporaneously with their filing, either by hand delivery, facsimile, or e-mail.

Upon final disposition of any Rule 11 application filed from the Court of Appeals' decision, this Court shall exercise its authority to set a new date of execution, see Tenn. Sup. Ct. R. 12(4)(E) (authorizing this Court to sua sponte set execution dates in certain circumstances and providing that any new date of execution set "shall be no less than seven (7) days from the date of the order setting the new execution date"), and shall establish an expedited schedule for resolution of the declaratory judgment action pending in the Chancery Court, *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-1627-I.

It is so ORDERED.

PER CURIAM

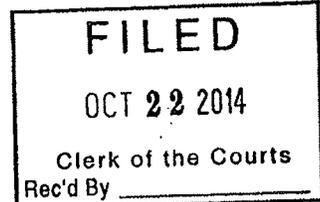
Exhibit 8

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE v. EDMUND ZAGORSKI

Circuit Court for Robertson County
No. 6052

No. M1996-00110-SC-DPE-DD



ORDER

On September 27, 2013, the Tennessee Department of Correction adopted a new single-drug lethal injection protocol. On October 3, 2013, the State filed a motion to reset the execution date for Edmund Zagorski. On November 20, 2013, Mr. Zagorski and nine other plaintiffs filed in the Chancery Court for Davidson County a declaratory judgment action challenging the constitutionality of the new lethal injection protocol. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-1627-I. Based on representations that the declaratory judgment action would be tried in July 2014, this Court issued an order on January 31, 2014, setting Mr. Zagorski's execution date for December 9, 2014. Because of a discovery dispute, the Chancery Court stayed the declaratory judgment proceedings pending a Tenn. R. App. P. 9 interlocutory appeal. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. M2014-00320-COA-R9-CV, 2014 WL 4815957 (Tenn. Ct. App. at Nashville, filed Sep. 29, 2014), *perm. app. granted* (Tenn. Oct. 21, 2014).

On October 9, 2014, Mr. Zagorski filed in this Court a Motion to Vacate Execution Date. Mr. Zagorski asks this Court to reset his execution date from December 9, 2014, to allow sufficient time for this Court to resolve the issues raised in the interlocutory appeal and for the Chancery Court to resolve, on remand, the constitutional issues raised in the declaratory judgment action. On October 20, 2014, the State filed a response; the State does not oppose Mr. Zagorski's motion.

Upon due consideration, Mr. Zagorski's Motion is GRANTED, and this Court's order of January 31, 2014, is vacated. Upon final disposition of the interlocutory appeal in *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. M2014-00320-SC-R11-CV, this Court shall exercise its authority to set a new date of execution, *see* Tenn. Sup. Ct. R. 12(4)(E) (authorizing this Court to sua sponte set execution dates in certain circumstances

and providing that any new date of execution set "shall be no less than seven (7) days from the date of the order setting the new execution date"), and establish an expedited schedule for resolution of the declaratory judgment action in the Chancery Court, *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-1627-I.

It is so ORDERED.

PER CURIAM

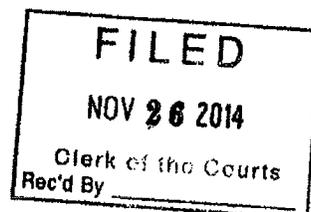
Exhibit 9

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STATE v. STEPHEN MICHAEL WEST

Circuit Court for Union County
No. 415A

No. M1987-00130-SC-DPE-DD



ORDER

On September 27, 2013, the Tennessee Department of Correction adopted a new single-drug lethal injection protocol. On October 3, 2013, the State filed a motion to reset the execution date for Steven Michael West. On November 20, 2013, Mr. West and nine other plaintiffs filed in the Chancery Court for Davidson County a declaratory judgment action challenging the constitutionality of the new lethal injection protocol. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-16274. Based on representations that the declaratory judgment action would be tried in July 2014, this Court issued an order on December 17, 2013, setting Mr. West's execution date for February 10, 2015. Because of a discovery dispute, the Chancery Court stayed the declaratory judgment proceedings pending a Tenn. R. App. P. 9 interlocutory appeal. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. M2014-00320-00A-R9-CV, 2014 WL 4815957 (Tenn. Ct. App. at Nashville, filed Sep. 29, 2014), *perm. app. granted* (Tenn. Oct. 21, 2014). Oral argument is set in this Court for December 18, 2014.

On November 20, 2014, Mr. West filed in this Court a Motion to Vacate Execution Date. Mr. West asks this Court to vacate his execution date to allow sufficient time for this Court to resolve the issues raised in the interlocutory appeal and for the Chancery Court to resolve, on remand, the constitutional issues raised in the declaratory judgment action. On November 24, 2014, the State filed a response; the State does not oppose Mr. West's motion.

Upon due consideration, Mr. West's Motion is GRANTED, and this Court's order of December 17, 2013, is vacated. Upon final disposition of the interlocutory appeal in *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. M2014-00320-SC-R1 1-CV, this Court shall exercise its authority to set a new date of execution, see Tenn. Sup. Ct. R.

12(4)(E) (authorizing this Court to sua sponte set execution dates in certain circumstances and providing that any new date of execution set "shall be no less than seven (7) days from the date of the order setting the new execution date"), and establish an expedited schedule for resolution of the declaratory judgment action in the Chancery Court, *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-16274.

It is so ORDERED.

PER CURIAM

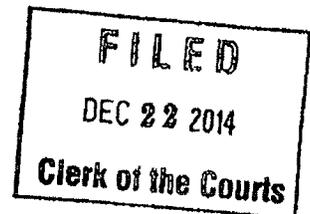
Exhibit 10

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

State vs. Donnie Edward Johnson

**Criminal Court for Shelby County
No. 8501202**

No. M1987-00072-SC-DPE-DD



ORDER

On September 27, 2013, the Tennessee Department of Correction adopted a new single-drug lethal injection protocol. On October 3, 2013, the State filed a motion to reset the execution date for Donnie Johnson. On November 20, 2013, Mr. Johnson and nine other plaintiffs filed in the Chancery Court for Davidson County a declaratory judgment action challenging the constitutionality of the new lethal injection protocol. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-16274. Based on representations that the declaratory judgment action would be tried in July 2014, this Court issued an order on December 17, 2013, setting Mr. Johnson's execution date for March 24, 2015. Due to a discovery dispute, the Chancery Court stayed the declaratory judgment proceedings pending a Tenn. R. App. P. 9 interlocutory appeal. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. M2014-00320-00A-R9-CV, 2014 WL 4815957 (Tenn. Ct. App. at Nashville, filed Sep. 29, 2014), perm. app. granted (Tenn. Oct. 21, 2014). Oral argument was heard in this Court on December 18, 2014.

On December 11, 2014, Mr. Johnson filed in this Court a Motion to Vacate Execution Date. Mr. Johnson asks this Court to vacate his execution date to allow sufficient time for this Court to resolve the issues raised in the interlocutory appeal and for the Chancery Court to resolve, on remand, the constitutional issues raised in the declaratory judgment action. The State has not filed a response opposing the motion.

Upon due consideration, Mr. Johnson's Motion is GRANTED, and this Court's order of December 17, 2013, is vacated. Upon final disposition of the interlocutory appeal in *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. M2014-00320-SC-R1 1-CV, this Court shall exercise its authority to set a new date of execution, see Tenn. Sup. Ct. R. 12(4)(E) (authorizing this Court to sua sponte set execution dates in certain circumstances

and providing that any new date of execution set "shall be no less than seven (7) days from the date of the order setting the new execution date"), and establish an expedited schedule for resolution of the declaratory judgment action in the Chancery Court, *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-16274.

It is so ORDERED.

PER CURIAM

Exhibit 11

IN THE SUPREME COURT OF TENNESSEE
AT KNOXVILLE

STATE OF TENNESSEE v. DAVID EARL MILLER

Criminal Court for Knox County
No. 12080

No. E1982-00075-SC-DDT-DD

FILED

MAR 31 2015

Clerk of the Courts
Rec'd By _____

ORDER

On September 27, 2013, the Tennessee Department of Correction adopted a new single-drug lethal injection protocol. On October 3, 2013, the State filed a motion to set the execution date for David Earl Miller. On November 20, 2013, Mr. Miller and nine other plaintiffs filed in the Chancery Court for Davidson County a declaratory judgment action challenging the constitutionality of the new lethal injection protocol. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-16274. Based on representations that the declaratory judgment action would be tried in July 2014, this Court issued an order on December 17, 2013, setting Mr. Miller's execution date for August 18, 2015. Due to a discovery dispute, the Chancery Court stayed the declaratory judgment proceedings pending an interlocutory appeal. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. M2014-00320-00A-R9-CV, 2014 WL 4815957 (Tenn. Ct. App. at Nashville, filed Sep. 29, 2014), *perm. app. granted* (Tenn. Oct. 21, 2014). On March 10, 2015, this Court resolved the issues raised in the interlocutory appeal and remanded the case to the trial court for further proceedings. *West v. Schofield*, --- S.W.3d ---, 2015 WL 1044099 (Tenn. Mar 10, 2015). In the judgment order filed contemporaneously with that opinion, this Court established strict time lines within which the Chancery Court is to resolve the lethal injection claims raised in the declaratory judgment action.

On March 20, 2015, Mr. Miller filed in this Court a Motion to Vacate Execution Date to allow sufficient time for the Chancery Court to resolve, on remand, the constitutional issues raised in the declaratory judgment action. The State has not filed a response opposing the motion.

Upon due consideration, Mr. Miller's Motion is GRANTED, and this Court's order

of December 17, 2013, is vacated. Upon final disposition of the declaratory judgment action in *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-16274 (Davidson Chancery), this Court shall exercise its authority to set a new date of execution. See Tenn. Sup. Ct. R. 12(4)(E) (authorizing this Court to sua sponte set execution dates in certain circumstances and providing that any new date of execution set “shall be no less than seven (7) days from the date of the order setting the new execution date”).

It is so ORDERED.

PER CURIAM

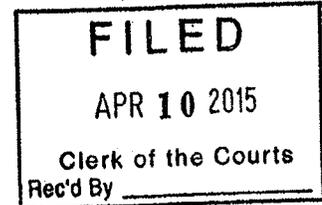
Exhibit 12

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

**ABU-ALI ABDUR' RAHMAN (FORMERLY KNOWN AS JAMES LEE
JONES) v. STATE OF TENNESSEE**

**Criminal Court for Davidson County
No. 87W417**

No. M1988-00026-SC-DPE-PD



STATE OF TENNESSEE v. LEE HALL, a/k/a LEROY HALL, JR.

**Criminal Court for Hamilton County
Nos. 188000 & 188001**

No. E1997-00344-SC-DDT-DD

DONALD WAYNE STROUTH v. STATE OF TENNESSEE

**Circuit Court for Sullivan County
No. S35, 090, 12548K, 12572BL**

No. E1997-00348-SC-DDT-DD

STATE OF TENNESSEE v. NICHOLAS TODD SUTTON

**Circuit Court for Morgan County
No. 7555**

No. E2000-00712-SC-DDT-DD

ORDER

Abu-Ali Abdur'Rahman, Lee Hall, Nicholas Sutton and Donald Strouth each have pending execution dates. Each also has pending in the Chancery Court for Davidson County a declaratory judgment action challenging the constitutionality of the Tennessee Department of Correction's lethal injection protocol. *See Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-16274 (Davidson Chancery). Following interlocutory appeal in that

case, this Court remanded the case to the Chancery Court for resolution of the underlying issues, establishing strict procedural deadlines with which that court is to comply. See *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, ---S.W.3d 8---, No. M2014-00320-SC-R11-CV, 2015 WL 1044099 (Tenn. Mar. 10, 2015). With the exception of the above-named plaintiffs, this Court has, for all other plaintiffs involved in the declaratory judgment action, vacated execution dates pending the conclusion of that action, through appeal of the trial court's final judgment. Accordingly, the Court vacates the execution dates for these plaintiffs as well.

Upon final disposition of the declaratory judgment action in *Stephen Michael West, et al. v. Derrick D. Schofield, et al.*, No. 13-16274 (Davidson Chancery), this Court shall exercise its authority to set new dates of execution. See Tenn. Sup. Ct. R. 12(4)(E) (authorizing this Court to sua sponte set execution dates in certain circumstances and providing that any new date of execution set "shall be no less than seven (7) days from the date of the order setting the new execution date").

It is so ORDERED.

PER CURIAM

Exhibit 13

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STEPHEN MICHAEL WEST, et al. v. DERRICK D. SCHOFIELD, et al.

Appeal by Permission from the Court of Appeals, Middle Section
Chancery Court for Davidson County
No. 13-1627-I Claudia C. Bonnyman, Chancellor

No. M2014-00320-SC-R11-CV - Filed March 10, 2015

JUDGMENT

This interlocutory appeal was heard upon the record from the Court of Appeals, application for permission to appeal having heretofore been granted, and upon the briefs and argument of counsel. Upon consideration thereof, this Court holds that the judgments of the Court of Appeals and the trial court should be reversed.

In accordance with the Opinion filed herein, it is, therefore, ordered and adjudged that the judgment of the Court of Appeals is hereby reversed, and this matter is remanded to the Chancery Court for Davidson County for additional proceedings consistent with this Opinion.

The Chancery Court further is directed to commence the trial in this matter on the claims at issue in this appeal within 120 days from the date of this Judgment. The trial shall conclude within 150 days from the date of this Judgment. Within 30 days of the date upon which the trial concludes, the trial court shall enter its decision in this matter as a final, appealable order as to the claims at issue in this appeal.

It appearing that the plaintiffs in this matter are indigent, the costs of this appeal shall be paid by the State of Tennessee, for which execution may issue if necessary.

PER CURIAM

Exhibit 14

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

2010 NOV 29 PM 4:04

APPELLATE COURT CLERK
NASHVILLE

STATE OF TENNESSEE V. STEPHEN MICHAEL WEST

Circuit Court for Union County
No. 415A

No. M1987-000130-SC-DPE-DD¹

ORDER

On November 6, 2010, this Court reset the execution date for Stephen Michael West to November 30, 2010, pending an evidentiary hearing and ruling in a declaratory judgment action filed by Mr. West challenging the constitutionality of Tennessee's three-drug protocol for lethal injection. On November 22, 2010, the trial court entered an order granting a declaratory judgment to Mr. West. To date, no appeal has been lodged.

Also on November 22, 2010, Mr. West filed in this Court a "Motion to Vacate or Further Modify Court's Order Scheduling Mr. West's Execution." A transcript of the trial court's ruling was included with the filing, but not a transcript of the evidence. On November 24, 2010, the State filed a response in opposition to Mr. West's Motion and attached to the response a copy of a revised protocol. Later that same day, this Court denied Mr. West's motion to vacate or further modify his execution date because the revised protocol appeared to address the basis of the trial court's conclusion that the previous protocol was unconstitutional. However, we specified that the denial of Mr. West's motion was without prejudice to his ability to seek further relief in this or any other court.

On November 26, 2010, Mr. West filed in this Court a motion to reconsider or in the alternative a renewed motion to vacate or further modify the order scheduling his execution for November 30, 2010. Mr. West forcefully asserts that reconsideration is warranted because he was not afforded an opportunity to reply to the State's response and to address

¹Mr. West styled his motion *Stephen Michael West et al. v. Gayle Ray et al.*, and referred to the number of the declaratory judgment action pending in the Chancery Court for Davidson County. As previously stated, to date no appeal has been lodged in the declaratory judgment action. Because Mr. West's motion asks this Court to modify a scheduled execution, it is more properly filed under the style of the order initially setting Mr. West's execution, listed above.

the trial court on the issues of whether the revised protocol eliminates the constitutional deficiencies in the prior protocol and whether the revised protocol is constitutional. In support of his motion, Mr. West has submitted the transcript of the testimony presented at the two-day hearing in the trial court. This Court has now received and fully reviewed the motion and the transcript.

The evidence presented in this case differs from the evidence presented in *Abdur'Rahman v. State*, 181 S.W.3d 292 (Tenn, 2005). The inmate's primary challenge to the three-drug protocol in *Abdur'Rahman* was that the inclusion of pancuronium bromide in the three-drug protocol rendered the protocol unconstitutional. We determined that the use of the pancuronium bromide did not undermine the constitutionality of the protocol because it was preceded by the administration of a dose of sodium thiopental sufficient to render the inmate unconscious. *Abdur'Rahman v. State*, 181 S.W.3d at 307-08. The inmate in *Abdur'Rahman* did not produce evidence that the required dose of sodium thiopental would fail to render the inmate unconscious.

Proper administration of an adequate amount of sodium thiopental is essential to the constitutionality of Tennessee's three-drug protocol. Chief Justice Roberts has noted that "[i]t is uncontested that, failing a proper dose of sodium thiopental that would render the prisoner unconscious, there is a substantial, constitutionally unacceptable risk of suffocation from the administration of pancuronium bromide and pain from the injection of potassium chloride." *Baze v. Rees*, 553 U.S. 35, 53 (2008). Echoing Chief Justice Roberts, the trial court in this case found that Tennessee's lethal injection protocol was unconstitutional because it "allows . . . death by suffocation while the prisoner is conscious." Following this finding, the trial court also determined feasible and readily available alternative procedures existed to insure unconsciousness and to negate any objectively intolerable risk of severe suffering or pain.²

After the trial court's findings and conclusions, on November 24, 2010, the State revised its three-drug execution protocol to include a process to assess the consciousness of the inmate following the administration of the sodium thiopental and to provide for the administration of additional sodium thiopental should the inmate be conscious following the administration of the first dose of the drug.

²The trial court stated:

It appears to this Court that there are feasible and readily available alternative procedures which could be supplied at execution to insure unconsciousness and negate any objectively intolerable risk of severe suffering or pain. This Court should not say or find which of those it would recommend, but I think the Court's finding of fact regarding the ways – the various ways that unconsciousness can be checked should be left to the State.

The principles of constitutional adjudication and procedural fairness require that decisions regarding constitutional challenges to acts of the Executive and Legislative Branches be considered in light of a fully developed record addressing the specific merits of the challenge. The requirement of a fully developed record envisions a trial on the merits during which both sides have an opportunity to develop the facts that have a bearing on the constitutionality of the challenged provision. Mr. West is correct that the trial court has not been given the opportunity to consider in the first instance whether the revised protocol eliminates the constitutional deficiencies the trial court identified in the prior protocol and whether the revised protocol is constitutional.

Upon due consideration, Mr. West's Motion is GRANTED, and his November 30, 2010 execution is stayed. Additionally, the State is directed to file a motion in the trial court presenting for determination in the first instance the issues of whether the revised protocol eliminates the constitutional deficiencies the trial court identified in the prior protocol and whether the revised protocol is constitutional. See Tenn. R. Civ. P. 52.02; 59.04. The trial court shall afford the parties an opportunity to submit argument or evidence on the revised protocol. The trial court shall render its final, appealable judgment expeditiously, but in no event later than ninety (90) days from the date of the entry of this Order.

In any proceedings on remand, the standards enunciated in the plurality opinion in *Baze v. Rees*, 553 U.S. 35, 51 (2008) apply. The burden is on Mr. West to prove that the revised protocol creates an "objectively intolerable risk of harm that qualifies as cruel and unusual." *Baze v. Rees*, 553 U.S. at 52. In order to carry this heavy burden, he must demonstrate that the revised protocol imposes a substantial risk of serious harm, and he must either propose an alternative method of execution that is feasible, readily implemented, and which significantly reduces the substantial risk of severe pain, *Baze v. Rees*, 553 U.S. at 52-53, or demonstrate that no lethal injection protocol can significantly reduce the substantial risk of severe pain.

The stay granted herein shall remain in effect throughout the pendency of any appeal of the trial court's final judgment in the declaratory judgment action and until the State files a motion to reset the execution date pursuant to Tennessee Supreme Court Rule 12.4.

The final resolution of the issues in this case impacts the scheduled executions of Billy Ray Irick, Edmund Zagorski, and Edward Jerome Harbison. Accordingly, entered contemporaneously herewith are orders staying the executions of Mr. Irick, Mr. Zagorski, and Mr. Harbison.

It is so ORDERED.

PER CURIAM

Exhibit 15

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

STEPHEN MICHAEL WEST, et al. v. DERRICK D. SCHOFIELD, et al.

**Appeal by Permission from the Court of Appeals, Middle Section
Chancery Court for Davidson County
No. 13-1627-I Claudia C. Bonnyman, Chancellor**

No. M2014-00320-SC-R11-CV - Filed March 10, 2015

JUDGMENT

This interlocutory appeal was heard upon the record from the Court of Appeals, application for permission to appeal having heretofore been granted, and upon the briefs and argument of counsel. Upon consideration thereof, this Court holds that the judgments of the Court of Appeals and the trial court should be reversed.

In accordance with the Opinion filed herein, it is, therefore, ordered and adjudged that the judgment of the Court of Appeals is hereby reversed, and this matter is remanded to the Chancery Court for Davidson County for additional proceedings consistent with this Opinion.

The Chancery Court further is directed to commence the trial in this matter on the claims at issue in this appeal within 120 days from the date of this Judgment. The trial shall conclude within 150 days from the date of this Judgment. Within 30 days of the date upon which the trial concludes, the trial court shall enter its decision in this matter as a final, appealable order as to the claims at issue in this appeal.

It appearing that the plaintiffs in this matter are indigent, the costs of this appeal shall be paid by the State of Tennessee, for which execution may issue if necessary.

PER CURIAM