

IN THE UNITED STATES DISTRICT COURT
FOR SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

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ROMELL BROOM
Inmate No. 187-343
Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699

CASE No. _____

JUDGE FROST

MAGISTRATE JUDGE ABEL

Plaintiff,

vs.

**Plaintiff's Original Complaint for
Injunctive and Declaratory Relief
Attorney Fees, and Costs of Suit
Under 42 U.S.C. § 1983**

TED STRICKLAND, Governor
State of Ohio
77 South High Street, 30th Floor
Columbus, Ohio 43215,

TERRY COLLINS, Director
Ohio Dept. of Rehabilitation & Correction
1050 Freeway Drive North
Columbus, Ohio 43229,

PHIL KERNS, Warden
Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #1, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #2, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #3, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #4, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #5, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #6, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #7, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #8, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #9, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #10, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

JOHN/JANE DOE #11, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

and

JOHN/JANE DOE #12, Execution Team Member
c/o Southern Ohio Correctional Facility
1724 State Route 728
Lucasville, Ohio 45699,

Defendants.

COMPLAINT

SUMMARY OF ACTION

1. The defendants on September 15, 2009, attempted to execute Plaintiff Romell Broom, but they failed. He has survived the execution and brings this action to prevent the defendants: (a) from trying ever again, (b) from trying again using the same flawed and unconstitutional procedures and protocols they used on September 15, 2009, and (c) from trying again in one week under any circumstances.

2. Prior to the execution Broom was denied the right to consult with his counsel privately. During the course of the execution, after it became apparent that the procedure was not proceeding according to Ohio's execution protocol, counsel was denied access to Broom and Broom was denied access to his counsel. Counsel was denied use of the telephone in the death house and was not allowed to have a cell phone in the death house. Counsel was required to leave the building in order to make telephone calls to co-counsel and others in order to take legal steps to try to stop the execution-gone-wrong.

3. The pain, suffering and distress to which Broom was subjected on September 15, 2009, went well beyond that which is tolerated by the United States Constitution. It was a form of torture that exposed Broom to the prospect of a slow, lingering death, not the quick and painless one he was promised and to which he is constitutionally entitled if he is going to be executed by defendants. In the circumstances of this case, the pain, suffering and distress were deliberately and intentionally inflicted upon Broom, and the fact that he would suffer such pain, suffering and distress was completely foreseeable to defendants, as opposed to being the result of

an “accident,” or an “innocent misadventure,” or an “isolated mishap.” It was unnecessary pain, suffering and distress.

4. Any further attempts by defendants to execute Broom, by lethal injection or any other means, would violate the prohibition against cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution. Any further attempts would also violate Broom’s right to substantive due process as guaranteed by the Fourteenth Amendment because Ohio has a statutory guarantee of a quick and painless execution, something the defendants have now demonstrated they are unable to provide to Broom. Broom is entitled to temporary, preliminary and permanent injunctive relief against any further efforts by the defendants to seek to execute him.

5. In the alternative, and even if this Court finds that another attempt on Broom’s life may lawfully be made by these defendants, the defendants cannot make that attempt using the same flawed and broken procedures they used on September 15, 2009. The defendants have demonstrated by their actions at Broom’s attempted execution on September 15, 2009, that the procedures, practices, protocols, personnel and means they adopted and employed for use during his execution, and which they actually used at his execution, are not sufficient to allow them to cause his death in a manner that comports with the requirements of the Eighth and Fourteenth Amendments. Broom is thus entitled to temporary, preliminary and permanent injunctive relief against any further efforts by the defendants to seek to execute Broom using the constitutionally deficient procedures, practices, protocols, personnel and means they currently use and which they used on September 15, 2009.

6. At the very least, and even if this Court finds that another attempt on Broom’s life may lawfully be made by these defendants, the defendants cannot make that attempt on

September 22, 2009, because one week is not sufficient time for the injuries defendants inflicted upon Broom to heal and for him to be ready to again face execution. Another attempt to execute Broom may not be made until a reasonable amount of time has passed to allow for Broom's injuries to heal, which Broom contends is at least 6 months.

7. Broom has now actually suffered severe harm as a result of Ohio's lethal injection protocol in violation of the Eighth and Fourteenth Amendments to the United States Constitution. See Baze v. Rees, 128 S. Ct. 1520, 1532 (2008). His attempted execution was neither quick nor painless as required by O.R.C. § 2949.22(A), which applies to this action through the Due Process Clause, and defendants are not capable of making his execution quick and painless if they continue to use the same defective procedures and deficient personnel.

8. Alternate means of execution are readily available that would have avoided the substantial and severe pain that Broom was forced to endure by these defendants, and will be forced to endure again if they are permitted to execute him again using the same defective procedures and deficient personnel. Defendants have no legitimate penological justification for their refusal to adopt alternative methods of execution in the face of defendants' track record of botched executions under their previous and current execution protocols, including the most recent botched execution of Romell Broom.

9. Furthermore, defendants violated Broom's constitutional rights during his attempted execution on September 15, 2009, by denying him the unfettered right to have his counsel present to witness his execution and to consult with him in private before the execution process started and after the execution process was begun. Indeed, after it became clear that defendants were unable to obtain access to Broom's veins after prolonged and repeated attempts, Broom's counsel sought to meet with Broom only to be told that once the execution process

started, it is protocol that attorneys cannot have contact with their client. Defendants created further impediments to ending the execution gone wrong earlier than it was, by denying counsel use of the death house telephone and prohibiting counsel from having a cell phone at the death house.

JURISDICTION AND VENUE

10. This action is brought under 42 U.S.C. § 1983 for both actual and threatened violations of Broom's right to be free from cruel and unusual punishment under the Eighth and Fourteenth Amendments to the United States Constitution; Broom's rights to be free from violations of his substantive and procedural due process rights under the Fourteenth Amendment to the United States Constitution; Broom's rights to counsel under the Sixth and Fourteenth Amendments to the United States Constitution; and Broom's right to Equal Protection under the Fourteenth Amendment to the United States Constitution.

11. Broom seeks equitable, injunctive, and declaratory relief.

12. This Court has jurisdiction over this matter under 28 U.S.C. § 1331, in that it arises under the Constitution of the United States; under 28 U.S.C. § 1343(a)(3), in that it is brought to redress actual and threatened deprivations, under color of state authority, of rights, privileges, and immunities secured by the United States Constitution; under 28 U.S.C. § 1343(a)(4), in that it seeks to secure equitable relief under an Act of Congress, specifically 42 U.S.C. § 1983, which provides a cause of action for the protection of civil rights; under 28 U.S.C. § 2201(a), in that one purpose of this action is to secure declaratory relief; and under 28 U.S.C. § 2202, in that one purpose of this action is to secure preliminary and permanent injunctive relief. This Court has supplemental jurisdiction over any state statutory claim asserted

by Plaintiff under 28 U.S.C. § 1367, in that the state and federal claims are derived from a common nucleus of operative facts.

13. This Court has venue under 28 U.S.C. § 1391(b)(1), in that all of the defendants are situated within the State of Ohio and each of them resides within the Southern District of Ohio, and under 28 U.S.C. § 1391(b)(2), in that all of the events described herein have occurred and will transpire within this judicial district. Defendant Strickland exercises his final authority over the other defendants in the seat of Ohio's government, located in Franklin County, Ohio; the lethal injection execution procedures were promulgated by Defendant Collins in Franklin County, Ohio; and Warden Kerns and the execution team members attempted to execute Broom on September 15, 2009, in Scioto County, Ohio, using those same lethal injection procedures; and, unless enjoined, they intend to try to execute him again using those same procedures on September 22, 2009, or perhaps some other date.

14. Broom has exhausted his administrative remedies and/or has done everything required for exhaustion to be deemed complete and/or futile. On September 16, 2009, he timely commenced his administrative remedies under the Ohio Administrative Code ("OAC") § 5120-9-31, as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997(e)(a), by filing a written grievance challenging among other things the defendants' actions on September 15, 2009, in attempting to cause his execution by the use of means that were cruel and which involved the knowing, wanton and foreseeable infliction of severe and excruciating pain.

15. As of this filing, Broom has received no response to his grievance.

16. Because defendant Strickland has set another execution date for Broom on September 22, 2009, a mere 7 days after the botched execution on September 15, 2009, it is impossible for Broom to make any further efforts at exhaustion at this time. In these

extraordinary circumstances, where defendants have themselves made it impossible for Broom to exhaust in a timely manner, the efforts Broom has made must be deemed sufficient and any further exhaustion requirements are excused as impracticable and/or impossible and/or futile.

17. Broom has thus timely and completely exhausted the administrative remedies available to him and/or has done everything required for exhaustion to be deemed complete. Accordingly, Broom has complied with any and all mandatory pre-conditions to the filing of this action in federal court.

THE PARTIES

18. Plaintiff Romell Broom is a United States citizen and a resident of the State of Ohio. He is currently a death-sentenced inmate in the custody of defendants, and under the control and supervision of the State of Ohio Department of Rehabilitation and Correction, who have him incarcerated now at the Southern Ohio Correctional Facility ("SOCF") in Lucasville, Ohio, under Inmate No. A-187-343. Broom was the subject of an attempted execution by defendants on September 15, 2009, during which he was subjected to extreme and unnecessary cruelty and wanton pain. If his death sentence is not enjoined or otherwise delayed, defendants presently intend to attempt to execute Broom again using the same cruel and wantonly painful procedures they used on Broom on September 15, 2009.

19. Defendant Ted Strickland is, and at all times relevant was, the Governor of the State of Ohio. He is the final executive authority in the state, statutorily and constitutionally responsible for the execution of all sentences of death in Ohio and the manner in which those sentences are performed. He is sued here in his individual and official capacity for the purpose of obtaining declaratory and injunctive relief. He has selected September 22, 2009, as the date for defendants to try again to execute Romell Broom, and he has done so without taking any

reasonable steps or making any reasonable investigation to ensure that the procedures, protocols, practices, and personnel that will be used in the next attempted execution of Romell Broom are sufficient to avoid subjecting Broom again to extreme cruelty and wanton pain.

20. Defendant Terry Collins is, and at all times relevant was, the Director of the State of Ohio Department of Rehabilitation and Correction (DRC), a department of the State of Ohio created and maintained under O.R.C. § 5120. Revised Code § 5120.01 charges and authorizes Defendant Collins to prescribe and direct the promulgation of rules and regulations for the DRC, including the rules and regulations for the conduct of prison operations and execution procedures. He is sued here in his individual and official capacity for the purpose of obtaining declaratory and injunctive relief.

21. Defendant Phil Kerns is, and at all times relevant was, Warden of the Southern Ohio Correctional Facility at Lucasville (SOCF), a correctional institution of the DRC that was created and is maintained under O.R.C. § 5120.05, and which is the prison where sentences of death are executed in the State of Ohio. Under O.R.C. § 5120.38, Defendant Kerns, as the Warden of SOCF, is charged with management of SOCF and the oversight and conduct of operations there. This includes the oversight of training of personnel and implementation of executions carried out there. He is sued here in his individual and official capacity for the purpose of obtaining declaratory and injunctive relief.

22. Defendants John/Jane Doe Numbers One through Twelve are, and were at all times relevant to this action, employees and/or agents of the Ohio Department of Rehabilitation and Corrections, who served and/or currently serve as members of the execution team charged with implementing defendants' lethal-injection execution protocol in a manner designed to cause the death of others in the past, who were charged with the duty to cause Broom's death on

September 15, 2009, and who will be charged with the duty to cause Broom's death on September 22, 2009, or such other date on which any second execution attempt may occur. The identities of these defendants are presently unknown to Broom. Their identities are uniquely within the knowledge of one or more of the named defendants (Gov. Strickland, Director Collins, and/or Warden Kerns) and/or their agents. As their identities become known to Broom, the proper names of the "John/Jane Doe" defendants will be added to this action.

23. Defendants, at all times relevant hereto, were acting in their respective official capacities with respect to all acts described herein, and were in each instance acting under the color and authority of state law. Unless preliminarily and permanently enjoined, the defendants intend to act in their respective official capacities and under the authority of state law by again attempting to execute Broom by utilizing lethal injection methods that have already once violated his constitutional rights and will do so again if permitted to be used again.

FACTS IN SUPPORT OF ALL CLAIMS

24. Broom incorporates by reference all facts and allegations described throughout this complaint as if fully re-written here.

25. Defendants have adopted procedures, practices and protocols for conducting executions by lethal injection. These procedures, practices and protocols are written and unwritten, and they include the most recent written protocol, Number 01-COM-11, effective as of May 14, 2009, a copy of which is attached hereto as Exhibit 1. The procedures, practices and protocols, both written and unwritten, and including the most recent written protocol adopted by defendants effective May 14, 2009, are hereinafter called collectively "the Subject Execution Protocols."

26. The Subject Execution Protocols were in place on September 15, 2009.

27. The Subject Execution Protocols are administered and carried out by an “execution team” that includes approximately 15-16 members, all of whom are employees of Ohio’s prisons, with the vast majority being employed at SOCF. The execution team members are selected and approved by the defendant Warden and/or the “team leader.” The execution team includes, broadly speaking, two categories of team members: (1) security, and (2) medical.

28. The “security” members are by far the vast majority of the team, and their principal functions are security and transport. The “medical” members are responsible for, among other things, obtaining and maintaining IV access in the inmate’s body, delivering the lethal drugs through the IV’s, and (along with the defendant Warden and the “team leader”) monitoring the inmate once the drugs are started to determine if the drugs are being properly delivered and are having their desired effect throughout the process until death. There are only 3-4 medical team members, and none of the medical team members are physicians. They are, instead, para-medical professionals such as phlebotomists and emergency medical technicians.

29. The execution team that was in place on September 15, 2009, and which attempted to carry out Broom’s execution on that date, is hereinafter called “the Subject Execution Team.”

30. Defendants Strickland, Collins and/or Kerns are ultimately responsible for what is contained in the Subject Execution Protocols. They have the authority to make changes to the Subject Execution Protocols at any time and with no need for any legislative or other approval.

31. The composition of the Subject Execution Team is determined by defendants Strickland, Collins and/or Kerns. They have the absolute authority to change the composition of the execution team, and could, if they wanted to, require a higher level of qualification, training, and competence for medical team members.

32. Broom is under a sentence of death, and he has been since 1985.

33. For many years, defendants have known that they would one day be called upon to execute Broom by utilizing a method of lethal injection.

34. They have also known for years that the method of lethal injection they have chosen to use – i.e., the Subject Execution Protocols -- was going to require them to obtain access to Broom's veins with intravenous ("IV") needles, install the accompanying IV sheathes into the accessed veins, attach receptacles to the IV's to keep the veins "open" so that the fatal drugs can be delivered to the body, and monitor and maintain that IV access throughout the process until death. The process of obtaining and maintaining proper "IV access" is a core and crucial part of any execution the defendants conduct. Indeed, the execution process begins when the designated defendant execution team members enter the inmate's holding cell, some 15 feet from the death chamber, in order to access the veins and insert the IV's. If execution team members are not able to obtain and maintain proper IV access throughout the execution, the condemned inmate will be subjected to a substantial risk of serious harm, because the anesthetic drug (the first of the three) likely will not be delivered into the circulatory system in an adequate dose to ensure adequate anesthesia throughout the process.

35. On April 22, 2009, the Ohio Supreme Court scheduled Broom's execution for September 15, 2009, at 10:00 a.m. Defendants thus knew for some 5 months before Broom's execution date that he was scheduled to be executed on September 15, 2009.

36. Broom arrived at SOCF for his execution on Monday morning, September 14, 2009. He was transported to SOCF by defendant John Does, members of the execution team.

37. Upon his arrival at SOCF, Broom was immediately taken to the holding cell in the death house, where he was to spend the rest of his time until the execution on September 15,

2009. At all times, he was watched by defendant members of the execution team, who are stationed immediately outside his small holding cell around the clock.

38. Broom's execution was scheduled to begin at 10:00 a.m. At some point prior to the execution, an examination of Broom's veins was undertaken by prison staff and it was determined that the right arm was amenable to IV access, and that the left arm would likely be more difficult or impossible.

39. Because of pending appeals, the start of the execution was delayed from 10:00 a.m. until approximately 1:00 p.m.

40. At approximately 1:00-1:30 p.m., the exact time is not clear, the defendant Warden came to the front of Broom's cell and read the death warrant to Broom. Thereafter, two medical members of the execution team, along with 4 or more security members, entered Broom's cell to begin the execution. It was discovered that the drugs to be used in the execution were old and the syringes holding the drugs had to be discarded and new drugs prepared.

41. The medical members were unable to get access to Broom's veins. They tried numerous times and then took a break. They then tried numerous times again. They still could not gain access to a vein that would allow for IV insertion. During this process, Broom was subjected to extreme cruelty and to wanton and unnecessary pain. He was visibly in pain at various times, was observed to be wincing, and, eventually, was crying because of the pain and trauma that was inflicted upon him. The execution team members, as required by the Subject Execution Protocols and as directed by defendants Strickland, Collins and Kerns, made repeated and persistent attempts to get access to Broom's veins by poking him with IV needles again and again, at least some 14-18 times and maybe more, and they continued to do so when it was or

should have been obvious that their repeated efforts to obtain access were futile and were causing Broom severe and excruciating pain and severe emotional distress.

42. The process was taking so long that his counsel at the prison (Adele Shank) contacted counsel in Cleveland, Ohio (Tim Sweeney). They ultimately decided to prepare a request for relief, which was prepared and then emailed at approximately 4:00 p.m., to Ohio Supreme Court Chief Justice Thomas Moyer and Governor Ted Strickland asking them to stop the execution on the grounds that Broom was being subjected to cruel and unusual punishment.

43. The defendants' execution attempts on Broom continued for approximately two and one-half hours, perhaps longer, and the process was only stopped when defendant Strickland issued what he called a "reprieve" at approximately 4:24 p.m. EST.

44. The reprieve was granted to "allow the Department to recommend appropriate next steps" to the governor. Neither Broom nor his counsel has been notified of what if any "next steps" are to be taken.

45. During the time the defendants were attempting to execute Broom, he was denied access to his attorney who was present at SOCF. When it became clear the defendants could not obtain venous access despite repeated attempts, and that Broom was in severe pain and emotional distress, Broom demanded that his attorney, Adele Shank, be allowed to watch the further attempts defendants were making to access his veins. This request was denied. In denying the request, a prison lawyer told Ms. Shank that the Subject Execution Protocols prohibit the inmate to have contact with his lawyers after the execution process has started, as this process obviously had. Counsel repeatedly asked to be allowed to speak with Broom and was repeatedly denied the opportunity to do so.

46. In halting the failed execution attempt and issuing a reprieve, defendant Strickland ordered that the defendants would attempt to execute Broom again in one week, on September 22, 2009, at the same place.

47. After the execution failed on September 15, 2009, the defendants cruelly ordered that Broom remain at SOCF, where he is now being housed among his executioners while he waits for them to attempt to execute him again on September 22, 2009.

48. Defendants were not prepared on September 15, 2009, to carry out Broom's execution in a manner that complied with constitutional standards or that complied with Ohio's statutory requirement of a quick and painless death.

49. Although the defendants knew or should have known that Broom's veins would present challenges for the IV access part of their execution process, the defendants failed to properly prepare and sufficiently train the execution team to access Broom's veins in a way that was not inhumane and cruel. The execution team was not sufficiently prepared, was not sufficiently trained, and lacked the necessary competence to properly access Broom's veins and to do so in a way that was not inhumane and cruel.

50. Broom has previously placed defendants on notice, as early as March 2007, that he believed the defendants' adoption and use of the Subject Execution Protocols presented a substantial risk that he would be subjected to severe and wanton pain during his execution, and that this substantial risk could be avoided with reasonable and readily available alternatives. Defendants ignored Broom's complaints and did nothing to address them.

51. Defendants also knew long before September 15, 2009, from their prior experiences conducting lethal injection executions in Ohio with the Subject Execution Protocols and the Subject Execution Team, that their use of the Subject Execution Protocols has already

caused inmates to experience severe and wanton pain during executions. These prior executions include, but are not limited to, the execution of Joseph Clark in May 2006, and the execution of Christopher Newton in May 2007, during which both inmates suffered severe, wanton, and unnecessary pain in violation of the inmate's constitutional and statutory rights. Clark's and Newton's executions differed from Broom's in that defendants eventually were able to set IVs in Clark's and Newton's arms, so, unlike Broom, they were not able to survive the harrowing experience at the hands of the defendants and their Subject Execution Protocols. The defendants have demonstrated a pattern of inexcusable neglect and reckless indifference to the constitutional rights of the condemned inmates. Defendants' pattern of trouble gaining IV access is significant because IVs that are set after numerous failed attempts are less likely to be properly set in the vein, thus creating a substantial risk that the drugs will not be successfully delivered into the circulatory system and that the inmate will suffer serious harm.

52. And, despite their actual knowledge of these recent examples of executions that actually caused inmates to suffer severe and wanton pain, and despite Broom's prior specific complaints that the defendants' Subject Execution Protocols needlessly expose him to a substantial risk of severe pain, the defendants did nothing on September 15, 2009, to protect Broom from the known and foreseeable risks of severe pain that he had warned them about. They were deliberately indifferent to the risks. The injuries he suffered on that date, and is continuing to suffer, were foreseeable and avoidable.

FIRST CLAIM FOR RELIEF

FIFTH, EIGHTH AND FOURTEENTH AMENDMENT CLAIMS THAT ANY FURTHER ATTEMPTS TO EXECUTE ROMELL BROOM WOULD VIOLATE THE CONSTITUTION

53. Broom incorporates by reference all facts and allegations described throughout this complaint as if fully re-written herein.

54. The defendants have tried to execute Broom once and have failed.

55. Broom is blameless for their failure. He was cooperative in the process and did nothing to obstruct or delay the process or to cause it to fail.

56. Defendants bear all blame for their failure. The defendants were unable to successfully complete Broom's execution after it was started because, among other failures to be developed in discovery:

- They failed to have properly trained and qualified personnel to perform the IV insertions on Broom's body.
- They failed to recognize that each inmate presents unique issues of IV access and thus failed to prepare and train for the unique issues Romell Broom presented.
- They failed to have sufficient and proper procedures in place to address the manner in which IV access would be obtained on Broom in the event the peripheral IV sites could not be established in a reasonable amount of time, and they failed in this respect even though their own expert in the "Cooley" litigation had warned them as recently as March 2009 that their failure to address this issue in the Subject Executions Protocols is a serious deficiency in their protocol.
- They failed to have any contingency plans in place to address a known and recurring problem, *i.e.*, difficult peripheral IV access, even though they have had at least two other executions in the past three years (Clark and Newton) during which access problems occurred and caused the subject inmates to experience severe and wanton pain during their executions.
- The defendants' flawed protocols called for the team members to take as much time as they needed, even as long as 14 hours, and by thus having no known time limit for

attempting peripheral IV access, let alone no reasonable time limit, the defendants placed their team members in such an oppressively stressful situation that, when the inevitable problems occurred, a policy of responding to those problems by resorting solely to repeated and persistent attempts at IV access for as much time as needed was doomed to fail and was guaranteed to cause Broom severe pain in the process.

57. During the defendants' failed execution attempt on Broom, they subjected him to prolonged and excruciating physical pain and suffering and to severe emotional distress.

58. The pain, suffering and distress to which Broom was subjected on September 15, 2009, went well beyond that which is tolerated by the Constitution. It was a form of torture that exposed Broom to the prospect of a slow, lingering death, not the quick and painless one he was promised and to which he is constitutionally entitled if he is going to be executed by defendants. In the circumstances of this case, the pain, suffering and distress were deliberately and intentionally inflicted upon Broom, and the fact that he would suffer such pain, suffering and distress was completely foreseeable to defendants, as opposed to being the result of an "accident," or an "innocent misadventure," or an "isolated mishap." It was unnecessary pain, suffering and distress.

59. What happened to Broom on September 15, 2009, at defendants' hands and under their direction, was inhuman and barbarous. It exhibited cruel indifference to Broom's rights. It should not be permitted to happen again.

60. The trauma inflicted upon Broom has continued after the attempted execution. He has been forced by defendants to remain at SOCF, and is thus forced to live around the very executioners who tried to take his life once and will try again a second time unless enjoined. Defendants have unreasonably permitted Broom only one week, until September 22, 2009, to

recover from the injuries and trauma he has sustained, and to be prepared to again face the same flawed and unconstitutional procedures and protocols as administered by the same unqualified personnel. Moreover, defendants plan to go forward again in only one week, when they know or should know that, because of the trauma they inflicted upon Broom on September 15, 2009, he will not be in any condition, physically or mentally, for the execution to proceed on September 22 without there being a repeat of the same, or worse, problems in establishing and maintaining IV access. They have thus knowingly decided to make a second attempt at Broom's execution in circumstances that have made it highly probable that this second attempt will be worse than the first.

61. Because the defendants have already subjected Broom to the pain, suffering and distress he endured during the attempted execution on September 15, 2009, and they are continuing to subject him to additional pain, suffering and distress by ordering him to go through the same process again in one week, it would violate the Eighth and Fourteenth Amendments for the defendants to make any further attempts to execute Broom by any means. Any further attempts at Broom's execution may not constitutionally take place after the experience through which he has passed.

62. Any attempt to execute Broom a second time by any means would also violate the Fifth Amendment's guarantee against Double Jeopardy as applied to the States through the Fourteenth Amendment. In pertinent part, the Fifth Amendment states "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." A second attempt to execute Broom would violate the Fifth Amendment.

63. Broom is entitled to temporary, preliminary and permanent injunctive relief against any further attempts by defendants to attempt to execute him again by any means.

64. He is also entitled to such other relief as may be appropriate in his favor.

SECOND CLAIM FOR RELIEF

EIGHTH AND FOURTEENTH AMENDMENT CLAIMS THAT ANY FURTHER EXECUTION ATTEMPTS UPON BROOM MAY NOT OCCUR UNLESS AND UNTIL DEFENDANTS FIX THEIR FLAWED AND BROKEN PROCEDURES AND PROTOCOLS

65. Broom incorporates by reference all facts and allegations described throughout this complaint as if fully re-written herein.

66. Broom brings his second claim in the alternative to his first claim.

67. Even if it is constitutionally permissible for defendants to seek to execute Broom again (which Broom does not concede), they certainly may not attempt to do so using the same flawed and constitutionally deficient Subject Execution Protocols that were used on September 15, 2009.

68. Doing so would violate Broom's rights under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment.

69. It would also violate Broom's rights to substantive due process through the Fourteenth Amendment because it would not be the "quick and painless" death that the Ohio statute requires Broom to receive.

70. Broom believes and therefore alleges that defendants intend, on September 22, 2009, or some later date, to attempt to again execute Broom using the same Subject Execution Protocols and Subject Execution Team which they unsuccessfully used on September 15, 2009.

71. Any changes defendants have made or may be intending to make to the Subject Execution Protocols or Subject Execution Team, in advance of their next attempt to execute Broom, have not been provided to Broom nor have they been made public. Broom and the public

are entitled to know what if any new procedures, practices or protocols defendants may be intending to use during any second execution attempt they make on Broom.

72. Based upon the defendants' poor track record of repeated recent flawed executions, during which the same problems have been experienced again and again without any adequate remedies being adopted to address those problems, Broom has absolutely no confidence that these defendants are capable of making changes to their procedures, practices, protocols and/or personnel that will prevent Broom from again being subjected to severe and wanton pain. The defendants are certainly incapable of doing so in the paltry one week's time that they have allowed themselves until they attempt to execute Broom again, and they are also incapable of providing, in such a short amount of time, the necessary and sufficient training to the execution team with respect to any such new or different procedures, practices, protocols and/or personnel.

73. Any changes defendants have made or may be intending to make to the Subject Execution Protocols or Subject Execution Team, in advance of their next attempt to execute Broom, are insufficient to prevent the same failed results and are insufficient to protect Broom from again being subjected to severe and wanton pain during his execution.

74. The defendants' Subject Execution Protocols are constitutionally deficient in material respects, including but not limited to those respects set forth earlier in this Complaint. Their use again upon Broom would expose him to substantial and foreseeable risks of severe and wanton pain during the execution process, severe pain that would equal or exceed that to which he was already subjected once on September 15, 2009.

75. Despite due notice of the constitutional deficiencies with the defendants' Subject Execution Protocols and with the Subject Execution Team, defendants have failed and refused,

and are persisting in their failure and refusal, to adopt lethal injection procedures, practices, customs, and methods for the second attempted execution of Romell Broom that comply with the Constitution.

76. These substantial risks of severe pain can be avoided. Less painful and even humane means for carrying out an execution by lethal injection do exist. Defendants have refused to adopt a means of execution that will not subject Broom to cruel and unusual punishment and defendants will persist in that refusal unless enjoined by this court.

77. Broom is entitled to temporary, preliminary and permanent injunctive relief against any further attempts by defendants to try to execute him again using their flawed Subject Execution Protocols and Subject Execution Team, and also against doing so using any revised protocols and procedures for lethal injection, all until further order of this Court.

78. He is also entitled to such other relief as may be appropriate in his favor.

THIRD CLAIM FOR RELIEF

EIGHTH AND FOURTEENTH AMENDMENT CLAIMS THAT A FURTHER EXECUTION ATTEMPT UPON BROOM A MERE ONE WEEK AFTER THE FAILED ATTEMPT WOULD BE UNCONSTITUTIONALLY CRUEL

79. Broom incorporates by reference all facts and allegations described throughout this complaint as if fully re-written herein.

80. Broom brings his third claim in the alternative to his first claim.

81. Even if it is constitutionally permissible for defendants to seek to execute Broom again (which Broom does not concede), they certainly may not attempt to do so again a mere one week after their first failed attempt.

82. Doing so would violate Broom's rights under the Eighth and Fourteenth Amendments to be free from cruel and unusual punishment.

83. It would also violate his rights to substantive due process through the Fourteenth Amendment because it would not be the “quick and painless” death that the Ohio statute requires him to receive.

84. The defendants’ actions on September 15, 2009, caused Broom to sustain severe physical and mental trauma. This includes trauma to his veins and surrounding tissue.

85. He needs time to heal. One week is nowhere near enough time for Broom’s veins to recover from the injuries he has sustained. Given that his peripheral venous system was extremely tenuous, it is highly likely that, even if his veins were theoretically accessible on September 15, they will be completely inaccessible to any practitioner, regardless of their expertise, on September 22. Further, unless he undertakes a vigorous exercise program to condition and enlarge his veins, Broom’s peripheral venous system will never improve on its current meager status. In all likelihood, further attempts by the same IV team on September 22 would only represent a futile infliction of pain and emotional distress on Broom and psychological stress on the prison’s professional staff. Even if a peripheral IV catheter were placed, the likelihood of it failing during the execution, as occurred with Joe Clark in 2006, is unacceptably high.

86. Broom should not be subjected to execution again so soon after the first failed attempt. Should defendants attempt to execute Broom again without first allowing time for Broom’s physical and emotional injuries to heal, they will knowingly be creating a substantial and unnecessary risk that the second attempt will be equally and perhaps more wantonly painful than the first attempt. This substantial risk of severe pain is easily avoided by delaying any future attempt at Broom’s execution for a reasonable amount of time, which Broom contends is at least 6 months.

87. Broom is entitled to temporary, preliminary and permanent injunctive relief against any further attempts by defendants to try to execute him again on September 22, 2009, or any other date that is not at least 6 months beyond the date of the first failed attempt.

88. He is also entitled to such other relief as may be appropriate in his favor.

FOURTH CLAIM FOR RELIEF

SIXTH AND FOURTEENTH AMENDMENT CLAIMS THAT A FURTHER EXECUTION ATTEMPT UPON BROOM WHILE THE DEFENDANTS' EXECUTION PROCEDURES DENY REASONABLE ACCESS TO COUNSEL THROUGHOUT THE DAY OF EXECUTION AND ALL ACCESS TO COUNSEL WHEN EXECUTION PROCEDURES GO WRONG IS UNCONSTITUTIONAL

89. Broom incorporates by reference all facts and allegations described throughout this complaint as if fully re-written herein.

90. Broom was unable to meet with his counsel in a setting that protected the attorney-client privilege at any time on the day of execution even though he had legal proceedings pending and had other confidential matters to discuss with counsel. The fact that defendants are planning to carry out an imminent execution does not allow them to ignore the right to confidential attorney client communication.

88. When it became clear that the execution process was going wrong, the defendants' refusal to allow Broom access to counsel caused the cruel process to continue longer than it otherwise would have.

89. Defendants' failure to allow counsel to bring a cell phone to the death house and refusal to allow counsel to use a prison phone at the death house further delayed efforts to stop the execution gone wrong.

90. The denial of access to counsel exacerbated Broom's injury and torture by delaying counsel's efforts to stop the process. It further denied Broom the opportunity to consult with counsel and to know that efforts were being made on his behalf.

91. Broom is entitled to temporary, preliminary, and permanent injunctive relief against any further attempts by defendants to try to execute him again on September 22, 2009, or any other date, unless or until provisions have been made to insure that he has access to confidential consultation with his lawyers, that he has access to counsel if the execution process begins to go wrong, and he through his counsel has access to assistance including from the courts by providing for the use of telephones from the death house.

92. He is also entitled to such other relief as may be appropriate in his favor.

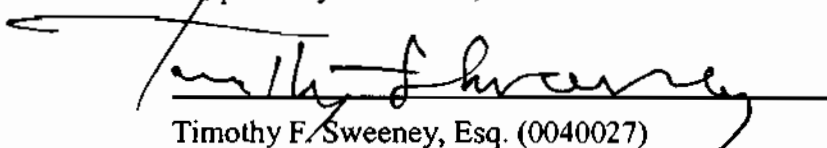
PRAYER FOR RELIEF

- A. Romell Broom requests that this Court grant him injunctive relief by granting temporary, preliminary, and permanent injunctions barring defendants from executing Broom by any means, all for the reasons set forth in the first count of this Complaint and to be more fully developed in discovery.
- B. In the alternative, Broom requests that this Court grant him injunctive relief by granting temporary, preliminary and permanent injunctions against any further attempts by defendants to execute Broom using the same flawed Subject Execution Protocols and Subject Execution Team that were used on September 15, 2009, and also against doing so using any revised protocols and procedures for lethal injection, all until further order of this Court, and for the reasons more fully set forth in the second count of this Complaint and to be developed more fully in discovery.
- C. At the very least, Broom requests that this Court grant him injunctive relief by granting temporary, preliminary and permanent injunctions against any attempt by defendants to execute Broom on September 22, 2009, or on any other date that is not at least 6 months beyond the date of the first failed attempt, all until further order of this Court, and for the

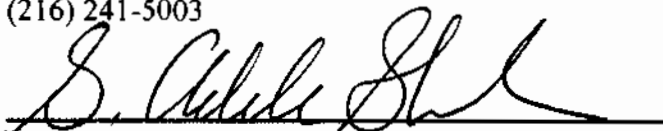
reasons more fully set forth in the third count of this Complaint and to be developed more fully in discovery.

- D. Broom requests that this Court grant him injunctive relief by granting temporary, preliminary and permanent injunctions against any further attempts by defendants to execute Broom until arrangements have been made to insure access to confidential attorney-client meetings, access to counsel when the execution process appears to be going wrong, and that he has access through counsel to courts and other assistance by allowing cell phones or use of the prison telephones in the death house.
- E. Broom requests that this Court enter such declaratory and other relief in favor of Broom as may be appropriate.
- F. Broom requests that this Court grant him reasonable attorney fees under 42 U.S.C. § 1988 and the laws of the United States.
- G. Broom requests that this Court grant such other and further relief in favor of Broom as it deems just and proper.

Respectfully Submitted,



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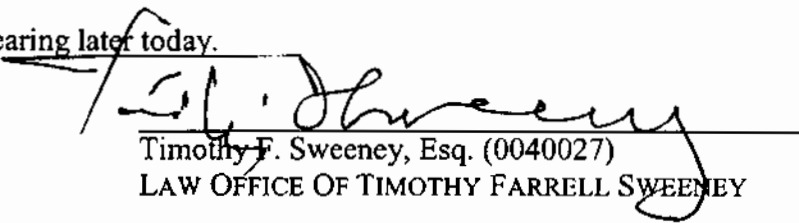
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed served by email to Charles Wille, counsel for Defendants, at charles.wille@ohioattorneygeneral.gov this 18th day of September, 2009, and will also be hand-delivered at a hearing later today.



Timothy F. Sweeney, Esq. (0040027)
LAW OFFICE OF TIMOTHY FARRELL SWEENEY

STATE OF OHIO

DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT:	PAGE <u>1</u> OF <u>10</u>
Execution	NUMBER: 01-COM-11
RULE/CODE REFERENCE: ORC 2949.22	SUPERSEDES: 01-COM-11 dated 10/11/06
RELATED ACA STANDARDS:	EFFECTIVE DATE: May 14, 2009
	APPROVED: <i>Terry J. Allison</i>

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Ohio Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish guidelines for carrying out a court-ordered sentence of death.

III. APPLICABILITY

This policy applies to all individuals involved in carrying out a court-ordered death sentence in accordance with all applicable policies, administrative regulations and statutes.

IV. DEFINITIONS

Critical Incident Debriefing Team: A group selected by the SOCF Warden, and including the Religious Services Administrator available to assist any persons involved in the execution process. A psychological debriefing process is available via DRC clinical staff and others to recognize stressors associated with executions and to work through them with affected staff as follows:

- Worker's own experiences of the execution including reactions and perceptions.
- Review any negative aspects and feelings.
- Review any positive aspects and feelings.
- Relationships with workers and/or family.
- Empathy (sharing) with others.
- Disengagement from execution experience.
- Integration of this experience into the professional work role for a positive future contribution to the overall team effort.
- Exploring Religious Convictions and feelings.

Execution Team: A team consisting of no less than twelve (12) members, designated by the Warden of the Southern Ohio Correctional Facility (SOCF) and the Religious Services Administrator. Their duties



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also include preparation and testing of equipment carrying out pre- and post-execution activities; and counseling with the inmate.

Lethal Injection: The form of execution whereby a continuous intravenous injection of a series of drugs in sufficient dosages is administered to cause death.

Reprieve: The postponement of an execution.

Stay: A court-ordered suspension or postponement of a legal execution.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to carry out the death penalty as directed by Ohio Courts of Law. All execution processes shall be performed in a professional, humane, sensitive and dignified manner. It is the responsibility of the Director to designate a penal institution where death sentences shall be executed. The Warden of that facility, or Deputy Warden in the absence of the Warden, is responsible for carrying out the death sentence on the date established by the Ohio Supreme Court.

VI. PROCEDURES

A. General Guidelines

1. All offenders sentenced to death by a court of law will be transported to a reception center within the Ohio Department of Rehabilitation and Correction for initial processing. Upon completion of the reception process the offender will immediately be transferred to the designated institution: Mansfield Correctional Institution (MANCI) or Ohio State Penitentiary (OSP) for male offenders or Ohio Reformatory for Women (ORW) for female offenders.
2. All court-ordered executions shall be carried out at the Southern Ohio Correctional Facility (SOCF) at 10:00 a.m. on the scheduled execution date.
3. Unless otherwise designated by the Director or designee, the condemned inmate will remain on death row until transferred to the Death House at SOCF for scheduled execution.
4. The Ohio Supreme Court shall designate the date of execution. Upon receipt of a scheduled execution date, the Warden of the institution housing the inmate shall notify the Director, the Religious Services Administrator and the SOCF Warden.
5. Attendance at the execution is governed by the Ohio Revised Code, section 2949.25 and includes:
 - a. The Warden or Acting Warden of the institution where the execution is to be conducted, and such number of correction officers or other persons as the Warden or Acting Warden thinks necessary to carry out the death sentence.
 - b. The Sheriff of the county in which the prisoner was tried and convicted.

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- c. The Director of the Department of Rehabilitation and Correction, or his designee and any other person selected by the Director or his designee to ensure that the death sentence is carried out.
 - d. Such number of physicians of the institution where the execution is to be conducted and medical personnel as the Warden or Acting Warden thinks necessary.
 - e. The prisoner may select one of the following persons: the Religious Services Administrator, minister-of-record, clergy, rabbi, priest, imam, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination or sect, subject to the approval of the Warden.
 - f. Three persons designated by the prisoner who are not confined in any state institution subject to the approval of the Warden or Acting Warden based on security considerations.
 - g. Three persons designated by the immediate family of the victim, subject to the approval of the Warden or Acting Warden based on security considerations, as detailed in Department Policy 03-OVS-06, Victim Involvement in the Execution Process.
 - h. Representatives of the news media as the Director/designee authorizes which shall include at least one representative of the following: a newspaper; a television station; and a radio station.
6. The SOCF Warden shall establish procedures for conducting executions consistent with all applicable laws, administrative codes and DRC policies. This will include the establishment of a communication system between the Governor's Office and the SOCF Command Center.
- a. Primary communications will be via a telephone line opened directly to the SOCF Command Center from the execution chamber. This line will be tested one (1) hour prior to the scheduled execution. Other than testing, this line will remain open.
 - b. Secondary communications will be via cellular telephone.
 - c. In the event that both the primary and secondary communications are inoperable, the execution will be delayed until communications are established.

B. Execution Procedures

- 1. Approximately thirty (30) days prior to the scheduled execution date:
 - a. The MANCI, OSP or ORW Warden will notify the Director by memo, with copies going to the Regional Director, DRC Chief Counsel, Assistant Director, APA, Ohio State Highway Patrol (Portsmouth and Jackson), and the Office of Victim Services.
 - b. The SOCF Execution Team will begin conducting training sessions no less than once per week until the scheduled date of execution. Training in the following topics will be provided for every member of the execution team prior to service and at least once per year thereafter:
 - i. the general nature and effects of the drugs that are used during the execution process,
 - ii. the insertion of the IV needles,
 - iii. signs of IV incontinence, and

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- iv. any legal developments of significance.
 - c. The Religious Services Administrator (RSA) shall make contact with the inmate to establish counseling and family contact information.
 - d. Prior to commencement of the initial training session, the warden or the team leader will verify and document that the execution team includes persons who are currently qualified under Ohio Law to administer and prepare drugs for intravenous injections, and that the persons have at least one year experience as a certified medical assistant, phlebotomist, EMT, paramedic or military corpsman. Medical team members shall provide evidence of certification status at least once per year and upon any change in status.
 - e. All persons assigned to the execution team will be provided with a copy of this policy directive, to include subsequent revisions, and shall sign for its receipt.
2. Approximately seven (7) days prior to the execution:
 - a. The MANCI, OSP or ORW Warden will have the Execution Information Release (DRC1808) completed by the condemned prisoner. This information will verify information on the condemned prisoner, visitors, witnesses, spiritual advisor, attorney, requested witness, property, and funeral arrangements.
 - b. The names of official witnesses/media witnesses will be supplied to the SOCF Warden, as outlined in this Policy.
 - c. The names and relationships of the victim's witnesses will be supplied to the SOCF Warden.
 - d. The RSA will provide family information from inmate to warden at SOCF
 3. Approximately twenty-four (24) hours prior to the scheduled execution:
 - a. The condemned prisoner will be transferred from Death Row and housed in the Death House at SOCF. The condemned inmate will be constantly monitored by at least three (3) members of the execution team. A log will be maintained including, but not limited to, visitors, movement, mood changes, meals served, showers, telephone calls, etc.
 - b. An authorized independently licensed mental health professional will interview the prisoner periodically and submit progress reports to the Warden. All inmate files shall be maintained in the Warden's office at SOCF.
 - c. The Warden will establish a line of communication with DRC legal staff and the Attorney General's Office for notice of case status and/or other significant legal changes.
 - d. The RSA will provide counseling and spiritual support unless the inmate requests not to have contact.

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- e. Beginning with his arrival at SOCF, the inmate will not be forced to meet with non-staff visitors that he does not wish to see.
4. The following events will take place upon the inmate's arrival at the Death House:
 - a. Once the condemned inmate is at SOCF, the Death House will be restricted to the following:
 - Director/designee(s)
 - Warden
 - Chief Public Information Officer(s)
 - Institution Deputy Warden
 - Administrative Assistant to the Warden
 - Chaplain
 - Physician
 - Independently licensed Mental Health Professional
 - Chief of Security
 - Maintenance Superintendent
 - Any other person as deemed necessary by the Warden.
 - b. Every possible effort shall be made to anticipate and plan for foreseeable difficulties in establishing and maintaining the intravenous (IV) lines. The condemned prisoner shall be evaluated by appropriately trained medical staff on the day of arrival at the institution, to evaluate the prisoner's veins and plan for the insertion of the IV lines. This evaluation shall include a "hands-on" examination as well as a review of the medical chart, to establish any unique factors which may impact the manner in which the execution team carries out the execution. At a minimum, the inmate shall be evaluated upon arrival, later that evening at a time to be determined by the warden, and on the following morning prior to nine a.m. Potential problems shall be noted and discussed, and potential solutions considered, in advance of the execution.
 - c. SOCF chaplains will make periodic visits to the condemned prisoner, if requested by the inmate.
 - d. The Deputy Warden of Operations will assign security personnel to staff entrances, checkpoints and to assist the Ohio State Highway Patrol (OSHP).
 - e. The Execution Team Leader will ensure that the prisoner's property is inventoried in front of the prisoner. The condemned prisoner will have previously, per paragraph 2, specified who is to receive his or her personal effects.
 - f. The condemned prisoner will, per paragraph 2, specify in writing his/her request for funeral arrangements.
 - g. The Execution Team Leader will ask the condemned inmate to identify his or her last special meal request. The last meal will be served at approximately 4:00 p.m. the day prior to the scheduled execution.

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- h. The condemned prisoner will be allowed contact visits with family, friends and/or private clergy, as approved by the Warden, between the hours of 4:30 p.m. and 7:30 p.m. on the day prior to the scheduled execution. Cell front visits will be permitted between the hours of 6:30 a.m. and 8:00 a.m. on the day of the scheduled execution. The attorney and spiritual advisor may continue to visit with the condemned until 8:45 a.m. The Warden may increase the visiting opportunities at their discretion, considering the needs of the team and the interests of the prisoner.
 - i. All communication equipment will be tested, including primary and secondary communication with the Governor's Office.
 - j. Key personnel will be briefed by the Warden, including medical and mental health, in order to allow intake information to be obtained.
 - k. The Warden will receive updates from security personnel and the OSHP on crowd control, demonstrations, pickets, etc.
 - l. The Chief of Security will brief the Warden on the level of tension within the remainder of the prison population.
 - m. The Warden will relay any out of the ordinary activity to the South Regional Director.
 - n. The Execution Team will continue to drill/rehearse.
 - o. The Warden shall consider the needs of the condemned inmate, visitors and family members, the execution team, prison staff and others, and may make alterations and adjustments to this or other policies as necessary to ensure that the completion of the execution is carried out in a humane, dignified and professional manner.
5. Approximately one (1) hour prior to the scheduled execution:
 - a. The prisoner will be permitted to take a shower and dress in the designated clothing for the execution.
 - b. Official witnesses to the execution will report to the institution. The victim's witnesses will report to the Portsmouth Highway Patrol Post for escort to the institution by designated SOCF personnel.
 - c. The RSA will be present to counsel and provide spiritual support to the inmate and staff.
6. Approximately fifteen (15) minutes prior to the scheduled execution:
 - a. The warden shall read the death warrant to the condemned prisoner.
 - b. All authorized witness groups will be escorted to the death house separately by designated staff.
7. These procedures shall be followed concerning the medications used in the execution.

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- a. Upon notification to the Warden of a firm execution date, a person qualified under Ohio law to administer medications shall order a quantity of the following drugs in a timely manner from the institution's licensed pharmacist: thiopental sodium, pancuronium bromide and potassium chloride. A sufficient quantity shall be ordered as a contingency against the contamination or other inadvertent loss of any of the drugs.
- b. On the day of the execution, the person qualified under Ohio law to administer medications shall take possession of the drugs thiopental sodium, pancuronium bromide and potassium chloride from the institution pharmacy, and shall document possession of the drugs by signing a receipt or log. The person qualified under Ohio law to administer medications shall deliver the drugs to the death house.
- c. The person qualified under Ohio law to administer medications shall, in the presence of a second medically qualified person, give possession of the drugs to a person qualified to prepare intravenous injections. This transfer shall be documented by a receipt signed by these three parties. The person qualified under Ohio law to administer medications shall notify the command center upon the delivery of drugs and the command center shall log the time of delivery, the quantity, name and type of drugs delivered.
- d. The drugs shall be prepared for injection by a person qualified under Ohio law to administer and prepare drugs for intravenous injections. The preparation of the drugs shall be monitored by a similarly qualified witness who shall independently verify the preparation and dosage of the drugs. Both medical professionals shall document and sign a written verification of the preparation and dosage of the drugs, which may be noted on the medication receipt referred to above. When the drugs are prepared, the command center shall be notified and the time of the preparation recorded. The command center shall also record what drugs were prepared, the quantity, name and dosage of the prepared drugs.
- e. The execution team shall enter the holding cell to prepare the IV sites. The member(s) of the execution team who inserts the needle and starts the intravenous connection shall be a person trained and licensed under Ohio law to administer intravenous medications. This team member and any others performing duties related to the administration of the drugs shall have at least one year of experience as a certified medical assistant, phlebotomist, EMT, paramedic or military corpsman. The appropriate team member(s) shall make every effort to establish IV sites in two locations, and shall take the amount of time necessary when pursuing this objective. This step shall be accomplished in the holding cell, and the staff shall utilize heparin locks to create the sites and keep them open. The team shall test the viability of the IV site with a small amount of saline, to be flushed through the heparin lock.
- f. The team members who establish the IV sites shall be allowed as much time as is necessary to establish two sites. If the passage of time and the difficulty of the undertaking cause the team members to question the feasibility of establishing two or even one site, the team will consult with the warden. The warden, upon consultation with the Director and others as necessary, will make the decision whether or how long to continue efforts to establish an IV site. The Director shall also consult with legal

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counsel, the office of the Governor or any others as necessary to discuss the issue and alternatives.

- g. Following the establishment of two IV sites, the inmate will be escorted to the chamber and secured to the table. The team shall roll up the inmate's sleeves or take other steps to insure that the IV sites are plainly visible to persons in the chamber and to those in the equipment room.
- h. Once the inmate has been escorted to the chamber, a low-pressure saline drip shall be connected to the IV sites.
- i. The drugs shall be prepared as follows:
 - i. Four grams of Thiopental Sodium prepared with 25 mg/cc concentration for a total of 160cc which are placed in four syringes labeled "1," "2," "A" and "B." Syringes 1 and 2 will be used as the primary dose; syringes A and B will be considered backup doses for contingent use if the initial IV site fails.
 - ii. 100 mg of Pancuronium Bromide is prepared with 2mg/ml concentration for a total of 50cc which is placed into two 25cc syringes labeled "three" and "four."
 - iii. 100 milliequivalents of Potassium Chloride are prepared with 2 meq/cc concentration for a total of 50cc. The preparation is placed in a syringe labeled "five."
 - iv. Depending upon the form and concentration of drugs delivered, it may be necessary to modify the preparation of syringes. In the event of any modification for any reason, a qualified witness shall review any modifications and the command center shall be notified and any changes recorded.
 - v. The arm veins near the joint between the upper and lower arm will be utilized as the preferred site for the injection. The team may utilize a non-invasive device such as a light, if desired, to assist in locating a vein. In the event that the execution team is unable to prepare the inmate's veins at the preferred site to receive the intravenous dose of drugs, a qualified medical person authorized to administer intravenous drugs shall use an alternative site to deliver the drugs as they may be authorized by law.

8. Execution:

- a. The Warden and Execution Team will escort the condemned prisoner to the execution chamber, place the condemned prisoner on the lethal injection bed, secure the straps and insert the intravenous injection tubes. Upon the prisoner's entry into the chamber, a member of the medical team in the equipment room will announce each step or action taken by any member of the medical team for the purposes of having those steps recorded in the written record. The Warden, Team Leader and medical team members will all confirm the visibility of the IV sites.

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- b. The Warden will ask the condemned prisoner if he has any last words. If the prisoner has a last statement, he will be allowed to make it while the witnesses are present in the adjacent viewing chambers, and are able to see him and hear him via microphone. There will be no restriction on the content of the condemned prisoner's statement and no unreasonable restriction on the duration of the prisoner's last statement.
- c. Upon the Warden's signal, the injections shall be administered in the order described above by a person qualified under Ohio law to administer intravenous injections. One additional person who is qualified to administer intravenous injections shall be present in the control room to observe the administration. The start and finish time of each syringe shall be reported to the command center and recorded in a log. The low-pressure saline drip shall be allowed to flush saline through the lines for at least ninety seconds between syringes two and three, between syringes four and five, and again after syringe five.
- d. Following the administration of syringes one and two of the thiopental and before the administration of more thiopental or the pancuronium, the warden or other execution team member shall assess the prisoner's consciousness by calling his or her name; by gently shaking the prisoner's shoulder; and by pinching the prisoner's arm or some other noxious stimulus. If the offender fails to respond, and the warden determines he is unconscious, the Warden shall give the signal to resume the process. If the offender remains conscious, the IV site shall be checked and the medication protocol and sequence must be started again.
- e. The execution team leader, the person who administers the drugs and the warden shall observe the inmate throughout the time that the drugs are being administered to the inmate. The team leader, the drug administrator and the warden will watch during the injection process to look for signs of swelling or infiltration at the IV site, blood in the catheter, and leakage from the lines and other unusual signs or symptoms. The person who connects the medication lines shall reenter the chamber following administration of the first medication to inspect the IV site for evidence of incontinence or infiltration. If problems are detected during the administration of the drugs, the problem shall be corrected or the injection site changed. Whenever it appears necessary to any person involved that it is necessary to switch IV sites, the matter shall be communicated to the Warden and the medical team member who administers the drugs. The Warden and the drug administrator shall confer before switching sites. If they decide to switch sites, that fact shall be announced and recorded. In the event that both IV sites become compromised, the team shall take such time as may be necessary to establish a viable IV site. Whenever it is necessary to change IV sites during the execution process due to a deficiency in the initial IV site, the medication protocol and sequence must be started again.
- f. At the completion of the delivery of drugs the curtain will be closed and an appropriate medical professional will evaluate the offender to confirm the fact of his or her death. The curtain will then be re-opened and the warden will announce the time of death.
- g. The RSA or the inmate's Spiritual Advisor will anoint the body of the inmate if requested by the inmate.

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- h. The RSA will coordinate the burial of the inmate's body with local chaplains if the inmate's family does not want the body.

9. Post-Execution:

- a. The Warden, or his designee, will notify the Director that the execution has been carried out.
- b. The Execution Team will remove the deceased from the execution bed, and place him or her on a gurney.
- c. Disposition of the body will be in accordance with arrangements made prior to the execution at the prisoner's request.
- d. The Warden will sign and return the death warrant to the court, indicating the execution has been carried out.
- e. One member of the medical team shall properly dispose of any unused medications while another medical team member witnesses. Both medical team members shall record the disposal or return of unused medications in an incident report, which shall be submitted to the Team Leader.

10. Debriefing:

- a. The Warden will ensure that critical incident debriefings are available for the Execution Team and staff participants immediately following the execution.
- b. The critical incident debriefing team will conduct interview in accordance with CIM guidelines.
- c. The RSA will be available for debriefing for the staff and the family of the inmate

Related Department Forms:

Execution Information Release DRC1808