

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE

ABU-ALI ABDUR'RAHMAN,
LEE HALL, a/k/a LEROY HALL,
BILLY RAY IRICK,
DONNIE JOHNSON,
DAVID EARL MILLER,
NICHOLAS TODD SUTTON,
STEPHEN MICHAEL WEST,
CHARLES WALTON WRIGHT,
EDMUND ZAGORSKI,
JOHN MICHAEL BANE,
BRYON BLACK,
ANDRE BLAND,
KEVIN BURNS,
TONY CARRUTHERS,
TYRONE CHALMERS,
JAMES DELLINGER,
DAVID DUNCAN,
KENNATH HENDERSON,
ANTHONY DARRELL HINES
HENRY HODGES,
STEPHEN HUGUELEY,
DAVID IVY,
AKIL JAHI,
DAVID JORDAN,
DAVID KEEN,
LARRY MCKAY,
DONALD MIDDLEBROOKS,
FARRIS MORRIS,
PERVIS PAYNE,
GERALD POWERS,
WILLIAM GLENN ROGERS,
MICHAEL SAMPLE,
OSCAR SMITH,

Plaintiffs,

V.

TONY PARKER, in his official capacity
As Tennessee's Commissioner of
Correction,

No. 18-183-II

Death Penalty Case

FILED
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DAVIDSON COUNTY CHANCERY CT
BCRM

TONY MAYS, in his official capacity
As Warden of Riverbend Maximum
Security Institution,

JOHN/JANE DOE
EXECUTIONERS 1-100,

JOHN/JANE DOE MEDICAL
EXAMINER(S) 1-100,

JOHN/JANE DOE PHARMACISTS 1-100,

JOHN/JANE DOE PHYSICIANS 1-100,

JOHN/JANE DOES 1-100,

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

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INTRODUCTION

On January 8, 2018, Defendants adopted a new lethal injection protocol that provides unfettered discretion to Defendants to execute Plaintiffs using one of two options: (A) a single-drug protocol utilizing compounded pentobarbital (retained from the lethal injection protocol effective June 25, 2015 through January 7, 2018) or (B) an entirely new cocktail of lethal drugs -- never before used in Tennessee -- consisting of midazolam, vecuronium bromide, and potassium chloride. (Attachment A, January 8, 2018 Lethal Injection Execution Manual). The new protocol is silent as to when, why, or what standards Defendants will use in determining which protocol to select for Plaintiffs' executions and how much notice of that decision, if any, Plaintiffs will receive. Defendants were warned by their own consultant that the new Protocol B will leave Plaintiffs aware and sensate during execution. Despite this warning, Defendants are poised to use this option to execute Plaintiffs.

Public Records reveal that the Defendants spent nearly \$60,000 dollars to stockpile the drugs required for new Protocol B before it was adopted. They have filed documents in the Tennessee Supreme Court twice in the past thirty days to obtain execution dates for Plaintiffs. That court scheduled Plaintiff Irick's execution for August 9, 2018. Plaintiffs bring this challenge to the new protocol

seeking a declaration that the new, January 8, 2018 Lethal Injection Protocol, Protocol B, violates their constitutional and statutory rights as set forth below.¹

This case is not about the constitutionality of the death penalty or the justness of the individual Plaintiffs convictions and death sentences. This case is solely about the unconstitutionality and illegality of the January 8, 2018 lethal injection protocol.

Pursuant to Article I §10, Article VI §2, and the First, Eighth, Ninth, and Fourteenth Amendments to the United States Constitution; 21 U.S.C. § 321, 331, 332, 333, 352, 353, 355, 802, 822, 829, 841, 842, 843, 844, 846 (conspiracy); 21 C.F.R. §§1301.11, 1306.04, 1306.05, 1306.06; Tenn. Const. Art. I §3, 8, 10, 11, 16, 17, 32, Art. II, §§1, 2, Art. XI §1; Tenn. Code Ann. §§ 4-1-407, 40-23-114, 40-23-114, 40-23-116, 44-17-303, 53-11-302 *et seq.*, 53-11-308, 53-11-401, -402, 63-6-201, *et seq.*, 63-6-214, 63-10-204, 68-14-301 *et seq.*; and Tenn.S.Ct.R. 8, Plaintiffs seek any and all relief available to each and all of them, including declaratory relief.

JURISDICTION AND VENUE

1. Venue is proper in this Court because Plaintiffs are incarcerated at Riverbend Maximum Security Institution, in this county; the Defendants intend to procure and inject Plaintiffs with pentobarbital or midazolam, vecuronium bromide and potassium chloride and thereby execute them in this county. Accordingly, the events giving rise to this Complaint have occurred and will occur in this county.

¹ This complaint is filed under exigent circumstances and with limited ability to consult with experts and witnesses.

2. This action arises under Tennessee Constitution Article 1, §§ 2, 8, 16, 17, and Article VI, § 2 of the United States Constitution, and, the First, Eighth, and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, and state and federal law as set forth in Counts 1-16 below.

3. The Eighth Amendment prohibits cruel and unusual punishment, including executions which “involve the unnecessary and wanton infliction of pain,” *Gregg v. Georgia*, 428 U.S. 153, 173 (1976), or which “involve torture or a lingering death.” *In re Kemmler*, 136 U.S. 436, 447 (1890) (citing *Wilkerson v. Utah*, 99 U.S. 130, 135 (1878)); *Gregg*, 428 U.S. at 170. Unnecessary and wanton infliction of pain is defined as the gratuitous infliction of suffering. It is not limited to physical pain, but includes psychological torture as well. *In re Ohio Execution Protocol Litig.*, No. 17-4221, 2018 WL 651386, at *2 (6th Cir. Feb. 1, 2018) (“The relevant question now, as it was then, concerns the *likelihood* that the inmate is conscious enough to experience that serious pain, whether physical or psychological.”); *Calhoun v. DeTella*, 319 F.3d 936, 939 (7th Cir. 2003).

4. Subjecting individuals to a future risk of harm can qualify as cruel and unusual punishment. *Baze v. Rees*, 553 U.S. 35, 49 (2008). To prevail on an Eighth Amendment claim there must be a “substantial risk of serious harm,” or an “objectively intolerable risk of harm.” *Baze*, 553 U.S. at 50.

5. This Court has jurisdiction pursuant to Tenn. Code Ann. §§ 29-14-103, 29-14-113.

6. Plaintiffs do not concede a need to exhaust administrative remedies particularly because any administrative process is futile. Nevertheless, shortly after Tennessee adopted the newest Lethal Injection Protocol (Attachment A), Plaintiffs filed grievances objecting to the use of the new protocol for their executions. The grievances have not been acted upon. Defendants' inaction regarding Plaintiffs' grievance while at the same time seeking their execution demonstrates the futility of such a process.

STATEMENT OF INCORPORATION

7. All allegations in this Complaint are incorporated in all sections as if fully set forth therein.

PARTIES

8. Plaintiff Abu-Ali Abdur'Rahman is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death. On September 27, 2013, the Tennessee Department of Correction promulgated a new lethal injection protocol which he challenged unsuccessfully in the Tennessee courts and the United States Supreme Court. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied*, *Abdur'Rahman v. Parker*, 583 U.S. ____ (2018)(U.S.No. 17-6068)(petition for rehearing pending). On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari and indicated an execution date should be set for Mr. Abdur'Rahman. The State failed to inform the Tennessee Supreme Court that a new lethal injection protocol had been enacted by Defendants three days earlier. On

January 18, 2018, Mr. Abdur'Rahman filed a response to the State's notice suggesting that no execution date should be set because, *inter alia*, the Tennessee Department of Correction had promulgated a new execution protocol on January 8, 2018, and he would be challenging that new protocol (as he does here). On February 15, 2018, the State moved the Tennessee Supreme to schedule Mr. Abdur'Rahman's execution. The Court has not set an execution date.

9. Plaintiff Lee Hall is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death. On September 27, 2013, the Tennessee Department of Correction promulgated a new lethal injection protocol which he challenged unsuccessfully in the Tennessee courts and the United States Supreme Court. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied*, *Abdur'Rahman v. Parker*, 583 U.S. ____ (2018)(U.S.No. 17-6068)(petition for rehearing pending). On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari and indicated an execution date should be set for Mr. Hall. The State failed to inform the Tennessee Supreme Court that a new lethal injection protocol had been enacted by Defendants three days earlier. On January 18, 2018, Mr. Hall filed a response to the State's notice suggesting that no execution date should be set because, *inter alia*, the Tennessee Department of Correction had promulgated a new execution protocol on January 8, 2018, and he would be challenging that new protocol (as he does here). On February 15, 2018, the State moved the Tennessee Supreme to schedule Mr. Hall's execution. The Court has not set an execution date.

10. Plaintiff Billy Ray Irick is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee under a sentence of death. On September 27, 2013, the Tennessee Department of Correction promulgated a new lethal injection protocol which he challenged unsuccessfully in the Tennessee courts and the United States Supreme Court. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied*, *Abdur'Rahman v. Parker*, 583 U.S. ____ (2018)(U.S.No. 17-6068)(petition for rehearing pending). On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari and indicated an execution date should be set for Mr. Irick. The State failed to inform the Tennessee Supreme Court that a new lethal injection protocol had been enacted by Defendants three days earlier. On January 18, 2018, Mr. Irick filed a response to the State's notice suggesting that no execution date should be set because, *inter alia*, the Tennessee Department of Correction had promulgated a new execution protocol on January 8, 2018, and he would be challenging that new protocol (as he does here). On that same day, the Tennessee Supreme Court set an execution date of August 9, 2018 for Mr. Irick.

11. Plaintiff Donnie Johnson is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death. On September 27, 2013, the Tennessee Department of Correction promulgated a new lethal injection protocol which he challenged unsuccessfully in the Tennessee courts and the United States Supreme Court. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied*, *Abdur'Rahman v. Parker*, 583 U.S. ____ (2018)(U.S.No. 17-

6068)(petition for rehearing pending). On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari and indicated an execution date should be set for Mr. Johnson. The State failed to inform the Tennessee Supreme Court that a new lethal injection protocol had been enacted by Defendants three days earlier. On January 18, 2018, Mr. Johnson filed a response to the State's notice suggesting that no execution date should be set because, *inter alia*, the Tennessee Department of Correction had promulgated a new execution protocol on January 8, 2018, and he would be challenging that new protocol (as he does here). On February 15, 2018, the State moved the Tennessee Supreme to schedule Mr. Johnson's execution. The Court has not set an execution date.

12. Plaintiff David Earl Miller is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death. On September 27, 2013, the Tennessee Department of Correction promulgated a new lethal injection protocol which he challenged unsuccessfully in the Tennessee courts and the United States Supreme Court. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied*, *Abdur'Rahman v. Parker*, 583 U.S. ____ (2018)(U.S.No. 17-6068)(petition for rehearing pending). On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari and indicated an execution date should be set for Mr. Miller. The State failed to inform the Tennessee Supreme Court that a new lethal injection protocol had been enacted by Defendants three days earlier. On January 18, 2018, Mr.

Miller filed a response to the State's notice suggesting that no execution date should be set because, *inter alia*, the Tennessee Department of Correction had promulgated a new execution protocol on January 8, 2018, and he would be challenging that new protocol (as he does here). On February 15, 2018, the State moved the Tennessee Supreme to schedule Mr. Miller's execution. The Court has not set an execution date.

13. Plaintiff Nicholas Todd Sutton is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death. On September 27, 2013, the Tennessee Department of Correction promulgated a new lethal injection protocol which he challenged unsuccessfully in the Tennessee courts and the United States Supreme Court. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied*, *Abdur'Rahman v. Parker*, 583 U.S. ____ (2018)(U.S.No. 17-6068)(petition for rehearing pending). On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari and indicated an execution date should be set for Mr. Sutton. The State failed to inform the Tennessee Supreme Court that a new lethal injection protocol had been enacted by Defendants three days earlier. On January 18, 2018, Mr. Sutton filed a response to the State's notice suggesting that no execution date should be set because, *inter alia*, the Tennessee Department of Correction had promulgated a new execution protocol on January 8, 2018, and he would be challenging that new protocol (as he does here). On February 15, 2018, the State

moved the Tennessee Supreme to schedule Mr. Sutton's execution. The Court has not set an execution date.

14. Plaintiff Stephen Michael West is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death. On September 27, 2013, the Tennessee Department of Correction promulgated a new lethal injection protocol which he challenged unsuccessfully in the Tennessee courts and the United States Supreme Court. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied*, *Abdur'Rahman v. Parker*, 583 U.S. ____ (2018)(U.S.No. 17-6068)(petition for rehearing pending). On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari and indicated an execution date should be set for Mr. West. The State failed to inform the Tennessee Supreme Court that a new lethal injection protocol had been enacted by Defendants three days earlier. On January 18, 2018, Mr. West filed a response to the State's notice suggesting that no execution date should be set because, *inter alia*, the Tennessee Department of Correction had promulgated a new execution protocol on January 8, 2018, and he would be challenging that new protocol (as he does here). On February 15, 2018, the State moved the Tennessee Supreme to schedule Mr. West's execution. The Court has not set an execution date.

15. Plaintiff Charles Walton Wright is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death. On September 27, 2013, the Tennessee Department of Correction promulgated a new lethal injection protocol which he challenged unsuccessfully in the Tennessee

courts and the United States Supreme Court. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied*, *Abdur'Rahman v. Parker*, 583 U.S. ____ (2018)(U.S.No. 17-6068)(petition for rehearing pending). On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari and indicated an execution date should be set for Mr. Wright. The State failed to inform the Tennessee Supreme Court that a new lethal injection protocol had been enacted by Defendants three days earlier. On January 18, 2018, Mr. Wright filed a response to the State's notice suggesting that no execution date should be set because, *inter alia*, the Tennessee Department of Correction had promulgated a new execution protocol on January 8, 2018, and he would be challenging that new protocol (as he does here). On February 15, 2018, the State moved the Tennessee Supreme to schedule Mr. Wright's execution. The Court has not set an execution date.

16. Plaintiff Edmund Zagorski is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death. On September 27, 2013, the Tennessee Department of Correction promulgated a new lethal injection protocol which he challenged unsuccessfully in the Tennessee courts and the United States Supreme Court. *See West v. Schofield*, 519 S.W.3d 550 (Tenn. 2017), *cert. denied*, *Abdur'Rahman v. Parker*, 583 U.S. ____ (2018)(U.S.No. 17-6068)(petition for rehearing pending). On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari and indicated an execution date should be set for Mr. Zagorski. The State

failed to inform the Tennessee Supreme Court that a new lethal injection protocol had been enacted by Defendants three days earlier. On January 18, 2018, Mr. Zagorski filed a response to the State's notice suggesting that no execution date should be set because, *inter alia*, the Tennessee Department of Correction had promulgated a new execution protocol on January 8, 2018, and he would be challenging that new protocol (as he does here). On February 15, 2018, the State moved the Tennessee Supreme to schedule Mr. Zagorski's execution. The Court has not set an execution date.

17. Plaintiff John Michael Bane is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

18. Plaintiff Byron Black is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

19. Plaintiff Andre Bland is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

20. Plaintiff Kevin Burns is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

21. Plaintiff Tony Carruthers is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

22. Plaintiff Tyrone Chalmers is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

23. Plaintiff James Dellinger is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

24. Plaintiff David Duncan is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

25. Plaintiff Kennath Henderson is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

26. Plaintiff Anthony Darrell Hines is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

27. Plaintiff Henry Hodges is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

28. Plaintiff Stephen Hugueley is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

29. Plaintiff David Ivy is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

30. Plaintiff Akil Jahi is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

31. Plaintiff David Jordan is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

32. Plaintiff David Keen is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

33. Plaintiff Larry McKay is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

34. Plaintiff Donald Middlebrooks is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

35. Plaintiff Farris Morris is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

36. Plaintiff Pervis Payne is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

37. Plaintiff Gerald Powers is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

38. Plaintiff William Glenn Rogers is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

39. Plaintiff Michael Sample is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

40. Plaintiff Oscar Smith is incarcerated at Riverbend Maximum Security Institution in Nashville, Tennessee, under a sentence of death.

41. Defendant Tony Parker is the Commissioner of the Tennessee Department of Correction, the state agency located in Nashville, Tennessee, that adopted and will implement the January 8, 2018 Lethal Injection Protocol challenged in this Complaint. Plaintiffs sue Commissioner Parker in his official capacity. Defendant Parker will oversee the administration of Plaintiffs' executions at Riverbend Maximum Security Institute (hereinafter, "RMSI") (Attachment A p.6). Defendant Parker is a state actor acting under color of state law, and his actions in seeking to execute and/or executing Plaintiffs under the Lethal Injection Protocol as described herein violate Plaintiffs' constitutional and statutory rights, described herein.

42. Defendant Tony Mays is the Warden of Riverbend Maximum Security Institution in Nashville, Tennessee, at which all the Plaintiffs are held in custody under sentence of death and where Plaintiffs' executions will occur. Plaintiffs sue Warden Mays in his official capacity. Defendant Mays is directly in charge of executing Plaintiffs at RMSI. His role in Plaintiffs' execution is described in the January 8, 2018 Lethal Injection Protocol (*see e.g.* Attachment A pp.13, 32, 35-38, 52-53, 69-70). Defendant Mays is a state actor acting under color of state law, and his actions in seeking to execute and/or executing Plaintiffs under the Lethal Injection Protocol as described herein violate Plaintiffs' constitutional and statutory rights, as described herein.

43. Defendants John/Jane Doe Executioners 1-100 are any and all other persons involved, in any manner or at any time, with the execution of the sentence of death upon any or all of the Plaintiffs, including but not limited to person(s) who undertake any action whatsoever to implement the death sentence upon any or all plaintiffs, and all person(s) who handle, prepare, possess, use, and/or administer any pharmaceutical or drug or other substance to be introduced into the body of any or all the Plaintiffs in order to cause death. These Defendants include, but are not limited to, any Emergency Medical Technician (hereinafter "EMT") and/or member of the Execution Team (Attachment A p.8). The roles of such Defendants are described in the Lethal Injection Protocol (*see e.g.*, Attachment A pp.20, 31-32, 35-46, 52-53, 64-73). Such Defendants are state actors acting under color of state law, and their actions in seeking to execute or executing Plaintiffs under the January 8,

2018 Lethal Injection Protocol as described herein violate Plaintiffs' constitutional and statutory rights, as described herein. They are sued in their official capacity as state actors.

44. Defendants John/Jane Doe Medical Examiner(s) 1-100 are any and all medical personnel or agents, staff or confederates of medical examiners involved in any manner with the execution of the sentence of death upon any or all of the Plaintiffs. Defendant(s) John/Jane Doe Medical Examiner's role in Plaintiffs' execution is described in the January 8, 2018 Lethal Injection Protocol (Attachment A pp. 67, 71-72). Such Defendants are state actors acting under color of state law, and their actions in relation to Plaintiffs' execution under the Lethal Injection Protocol as described herein violate Plaintiffs' constitutional rights, as described herein. They are sued in their official capacity as state actors.

45. Defendants John/Jane Doe Pharmacists 1-100 are any and all persons or agents or confederates of pharmacists involved in any manner with the prescription, order, procurement, provision, dispensing, possession, and/or compounding of pharmaceuticals or other drugs that any person(s) would possess, handle, prepare, use, and/or administer in any manner to execute a sentence of death upon any or all the Plaintiffs. Procurement and dispensing of drugs intended for use in Plaintiffs' execution is described in the January 8, 2018 Lethal Injection Protocol (Attachment A, pp.35, 37). Such Defendants are state actors acting under color of state law, and their actions in relation to an execution of Plaintiffs under the Lethal Injection Protocol as described herein violate federal law and/or

Plaintiffs' constitutional and statutory rights, as described herein. They are sued in their official capacity as state actors.

46. Defendants John/Jane Doe Physicians 1-100 are any and all medical doctors or agents or confederates of physicians involved in any manner with the prescription, order, procurement, possession, supply and/or administration of pharmaceuticals or other drugs that any person(s) would possess, handle, use, and/or administer in any manner to execute a sentence of death upon any or all the Plaintiffs. In such capacity, they are state actors acting under color of state law, and their actions in relation to an execution of Plaintiffs under the January 8, 2018 Lethal Injection Protocol as described herein violate federal law and/or Plaintiffs' constitutional rights, as described herein. They are sued in their official capacity as state actors. Procurement and dispensing of drugs intended for Plaintiffs' execution is described in the January 8, 2018 Lethal Injection Protocol (Attachment A p.35). Upon information and belief, the drugs intended for use in Plaintiffs' execution must be prescribed by Defendants John Doe Physicians 1-100 and must be prescribed by a practitioner for a legitimate medical purpose acting in the usual course of his profession and possessing a registration under the Controlled Substances Act.

47. Defendants John/Jane Does 1-100 are any and all person(s) who in any manner have taken, or will take, any action that in any manner relates to the execution of the sentence of death of any or all of the plaintiffs.

FACTS

Tennessee Code Annotated§ 40-23-114 provides:

§ 40-23-114. Capital punishment; electrocution; lethal injection

(a) For any person who commits an offense for which the person is sentenced to the punishment of death, the method for carrying out this sentence shall be by lethal injection.

(b) Any person who commits an offense prior to January 1, 1999, for which the person is sentenced to the punishment of death may elect to be executed by electrocution by signing a written waiver waiving the right to be executed by lethal injection.

(c) The department of correction is authorized to promulgate necessary rules and regulations to facilitate the implementation of this section.

(d) If lethal injection or electrocution is held to be unconstitutional by the Tennessee supreme court under the Constitution of Tennessee, or held to be unconstitutional by the United States supreme court under the United States Constitution, or if the United States supreme court declines to review any judgment holding lethal injection or electrocution to be unconstitutional under the United States Constitution made by the Tennessee supreme court or the United States court of appeals that has jurisdiction over Tennessee, or if the Tennessee supreme court declines to review any judgment by the Tennessee court of criminal appeals holding lethal injection or electrocution to be unconstitutional under the United States or Tennessee constitutions, all persons sentenced to death for a capital crime shall be executed by any constitutional method of execution. No sentence of death shall be reduced as a result of a determination that a method of execution is declared unconstitutional under the Constitution of Tennessee or the Constitution of the United States. In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution.

48. Plaintiffs have not elected a method of execution. Accordingly, under Tennessee Code Annotated§ 40-23-114(a) and (b), the death sentences will be carried out by lethal injection.

49. On January 8, 2018, the Tennessee Department of Correction issued a new Lethal Injection Execution Manual, Execution Procedures for Lethal Injection (hereinafter "Lethal Injection Protocol" or "protocol"). The new protocol retained from Tennessee's protocol effective March 13, 2017 through January 7, 2018, a single drug protocol utilizing 5 grams of pentobarbital (designated as Protocol A). A new execution procedure, Protocol B, utilizes 500 mg of midazolam, 100 mg of vecuronium bromide and 240 mEq of potassium chloride. (Attachment A p.34).

50. The January 8, 2018 Lethal Injection Protocol constitutes a substantial change from the previous protocol.

51. On January 11, 2018, the Attorney General of the State of Tennessee informed the Tennessee Supreme Court of the denial of certiorari in the prior litigation challenging the constitutionality of Tennessee's one-drug lethal injection protocol and indicated an execution date should be set for Plaintiffs Abdur'Rahman, Hall, Irick, Johnson, Miller, Sutton, West, Wright and Zagorski.

52. On January 18, 2018, the Tennessee Supreme Court scheduled Plaintiff Irick's execution for August 9, 2018.

53. On February 15, 2018, the Tennessee Attorney General filed a motion in the Tennessee Supreme Court seeking execution dates for Plaintiffs Abdur'Rahman, Hall, Johnson, Miller, Sutton, West, Wright and Zagorski.

54. The January 8, 2018 Lethal Injection Protocol provides two alternative lethal injection protocols, Protocol A and Protocol B.

55. Protocol A was retained from the protocol immediately preceding the January 8 protocol, and it provides the injection of 50 cc of pentobarbital from two syringes for a total of 5 grams of pentobarbital (*see e.g.* Attachment A pp.34-36, 39, 42-44, 45, 64, 65-67, 72-73).²

56. The Tennessee Supreme Court has found Protocol A does not violate the Eighth Amendment or Article I, section 16 of the Tennessee Constitution. *West v. Schofield*, 519 S.W.3d 550, 568 (Tenn. 2017).

57. New Protocol B provides for the serial injection of three drugs as follows: "Midazolam – 100 ml of a 5mg/ml solution (a total of 500 mg); Vecuronium Bromide – 100 ml of a 1 mg/ml solution (a total of 100 mg); Potassium Chloride – 120 ml of a 2 mEq/ml solution (a total of 240 mEq)." (Attachment A p.34).

Execution procedures under Protocol B

58. Under the new Lethal Injection Protocol, Protocol B, Defendant Warden will contact Defendant(s) John Doe(s) Physician(s) to obtain a physician's order written by Defendant(s) John Doe(s) Physician(s) and asking Defendant(s) John Doe(s) Pharmacist(s) for midazolam, vecuronium bromide and potassium chloride which all Defendants would intend to administer to Plaintiffs to cause their deaths (Plaintiffs' Attachment A p.35).

59. New Protocol B does not state the intended purpose of each drug.

² Some changes to Protocol A were made in the January 8, 2018 Lethal Injection Protocol but are not at issue in this Complaint. Protocol A utilizes 5 grams of compounded Pentobarbital.

60. The drugs used in Protocol B are stored in "unmovable heavy gauge steel containers with security grade locks." (Attachment A p.37). No provisions are made for monitoring and recording temperature within those containers.

61. The Lethal Injection Protocol indicates that on the day of execution, Defendants John/Jane Doe Executioners will deliver the three drugs to the Lethal Injection Room (Attachment A pp.40, 64). No specific time is designated for this event.

62. The new protocol provides that on the day of execution two sets of syringes containing the drugs utilized in Protocol B are to be prepared by Defendants John/Jane Doe Executioners (Attachment A p.40). No specific time is designated for this event.

63. The new protocol provides that syringes are to be prepared (in two sets) as follows: (a) 50 cc of midazolam (5 mg/mL solution) drawn in two syringes for a total of 500 mg of midazolam; (b) 50 cc of vecuronium (1 mg/mL solution) drawn in two syringes for a total of 100 mg of vecuronium; (c) 60 cc of potassium chloride (50 mL of 2 mEq/mL solution) drawn in two syringes for a total of 240 mEq/mL. Two syringes with 50 cc of saline are also prepared. (Attachment A pp.40-41).

64. No provisions are made for the procurement, storage, accountability, and transfer of saline.

65. The new protocol instructs that the Vecuronium is in powder form and must be reconstituted with bacteriostatic water. Vecuronium comes in 10 mg 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 vecuronium. (Attachment A p.40).

66. No provisions are made for the procurement, storage, accountability, and transfer of bacteriostatic water.

67. After two sets of syringes containing the drugs utilized in Protocol B are prepared, they remain on the workstation in the Lethal Injection Room (Attachment A p.41). No provisions are made for monitoring and recording temperature within the Lethal Injection Room.

68. The Lethal Injection Protocol begins to schedule enumerated events by time, beginning at 5:00 p.m. (Attachment A p.68).

69. Protocol B instructs that at 7:00 p.m., upon command of Defendant Warden, Defendants John/Jane Does (the Extraction Team) remove the condemned inmate from the holding cell, place him on the gurney, secure him in restraints and move him to the Execution Chamber. Defendants John/Jane Does Executioners (the IV Team) then establish IV lines in both arms (Attachment p.69).

70. The Lethal Injection Protocol designates locations for insertion of the catheters by Defendants John/Jane Doe Executioners in the following order: (a) antecubital fossa area (b) forearm (c) wrist (d) back of the hand (e) top of the foot (f) ankle, lower leg, or other appropriate locations as determined by Defendants John/Jane Doe Executioners (the EMT(s)). If usable veins are not located, Defendant John/Jane Doe Physician is to perform a cut-down procedure in the

Execution Chamber, unless he/she chooses a different method to find an IV site.

(Attachment A pp.43, 73).

71. Defendant Warden is the only person in the Execution Chamber with the condemned inmate.

72. Protocol B instructs that at 7:10 p.m., after allowing for the inmate to make a last statement, Defendant Warden gives the signal to proceed and Defendants John/Jane Doe Executioners begin to administer midazolam to the inmate (Attachment A p.70).

73. Protocol B does not include provisions for monitoring, inspection and/or recording the appearance of the solution within the syringes, at any time.

74. Protocol B does not include provisions for wait-time between administrations of the three drugs.

75. Protocol B instructs that after 500 mgs of midazolam and a saline flush have been dispensed, John/Jane Doe Executioner(s) shall signal Defendant Warden who then brushes the back of his hand over the inmate's eyelashes, calls his name and gently shakes him (Attachment A p.70).

76. Protocol B instructs that if the inmate does not respond, Defendant Warden will direct Defendants John/Jane Doe Executioners to administer the second and third drugs (Attachment A p.70).

77. Protocol B instructs that if the inmate does respond, Defendant Warden will direct Defendants John/Jane Doe Executioners to switch to the secondary IV line (Attachment A pp.70, 73).

78. Protocol B does not include procedures for determining whether Plaintiff will feel serious pain following the administration of midazolam from the second set of syringes.

79. Protocol B instructs that following the completion of the lethal injection process and a five-minute waiting period, Defendant John/Jane Doe Physician will "conduct an examination" and report his findings to Defendant Warden (Attachment A p.70).

80. If Defendant John/Jane Doe Physician reports that the inmate is not dead, the process is repeated (Attachment A pp.70, 73).

CAUSES OF ACTION

COUNT I

**Eighth and Fourteenth Amendments and
Article 1 §16 of the Tennessee Constitution
(CRUEL AND UNUSUAL PUNISHMENT)**

81. The use of new Protocol B violates the Eighth and Fourteenth Amendments to the United States Constitution and Article 1, § 16 of the Tennessee Constitution because it is sure or very likely that a person executed in accordance with this protocol will needlessly experience terror, pain, and suffocation during execution.

82. To be clear, Plaintiffs do not allege that the Constitution prohibits a risk of *any* amount of pain during execution. Plaintiffs allege that after administration of 500 mg of midazolam, as required by new Protocol B, there is a substantial and objectively intolerable risk that Plaintiffs will experience severe

and unnecessary pain and suffering. This risk is not a mere possibility, rather it is sure and very likely to occur.

83. Even if Protocol B is perfectly followed it will pose a substantial risk of unnecessary, serious pain, and suffering.

84. An Eighth Amendment challenge to a lethal injection protocol based on the infliction of pain requires the Plaintiffs to satisfy two prerequisites:

First, the inmates must establish that the protocol “presents a risk that is ‘*sure or very likely* to cause serious illness and needless suffering and give rise to sufficiently *imminent* dangers.’ ” *Glossip*, 135 S.Ct. at 2737 (quoting *Baze*, 553 U.S. at 50, 128 S.Ct. 1520) (internal quotation marks omitted). “To prevail on such a claim, ‘there must be a substantial risk of serious harm, an objectively intolerable risk of harm that prevents prison officials from pleading that they were subjectively blameless for purposes of the Eighth Amendment.’ ” *Id.* (quoting *Baze*, 553 U.S. at 50, 128 S.Ct. 1520) (internal quotation marks omitted). Second, the inmates “must identify an alternative [method of execution] that is ‘feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain.’ ” *Id.* (quoting *Baze*, 553 U.S. at 52, 128 S.Ct. 1520); *see also Baze*, 553 U.S. at 61, 128 S.Ct. 1520 (stating that an inmate asserting an Eighth Amendment challenge to a state’s lethal injection protocol must establish “that the State’s lethal injection protocol creates a demonstrated risk of severe pain” and “that the risk is substantial when compared to the known and available alternatives”).

West v. Schofield, 519 S.W.3d 550, 563–64 (Tenn. 2017).

A. Deprivation of notice

85. The January 8, 2018 Protocol does not contain standards governing how the Defendant(s) can, will, or must choose between Protocol A and/or Protocol B.

86. The January 8, 2018 Protocol does not provide any guidance as to when Protocol A is to be used as opposed to Protocol B, and this gives the Defendant

Commissioner and/or Defendant Warden and/or any or all Defendants unfettered and arbitrary discretion to choose one protocol over the other.

87. The January 8, 2018 Protocol does not provide for the manner or timing of notice to any Plaintiff about the method, manner, or reason(s) for the choice of a particular protocol.

88. The January 8, 2018 Protocol does not state or provide a manner in which any of the Defendants can, will, or must choose between Protocol A and/or Protocol B.

89. The January 8, 2018 Protocol does not provide for the manner or timing of notice to any Plaintiff about the method, manner, or reason(s) for the choice of a particular protocol.

90. Under the January 8, 2018 Protocol, Plaintiffs are not informed of how the State intends to, and will attempt to, execute him.

91. Under the January 8, 2018 Protocol, Plaintiffs are not informed why the State chose the punishment it intends to, and will attempt to, inflict.

92. As a result of such lack of notice, Plaintiffs will needlessly experience serious psychological pain and suffering.

B. Substantial Risk of Unnecessary, Serious Harm

93. It is undisputed that if an inmate is not adequately rendered unable to feel serious pain during and after the administration of a paralytic (*i.e.* vecuronium bromide) and potassium chloride then there is a constitutionally unacceptable risk of suffocation from the paralytic and pain from potassium chloride. *Baze v. Rees*,

553 U.S. 35, 53 (2008); *Fears*, 860 F.3d at 886; *see also West*, 380 S.W.3d at 111; *Abdur'Rahman v. Bredezen*, 181 S.W.3d 292, 307-08 (Tenn. 2005).

94. Under new Protocol B, the risk that Plaintiffs will needlessly experience severe and unnecessary pain caused by the second and third drugs is substantial.

95. In other words, under new Protocol B, it is sure or very likely that Plaintiffs will needlessly experience severe and unnecessary pain caused by the second and third drugs.

96. Vecuronium bromide is not necessary to execute Plaintiffs.

97. The pain and suffering caused by vecuronium bromide is not necessary to execute Plaintiffs.

98. Potassium chloride is not necessary to execute Plaintiffs.

99. The pain caused by potassium chloride is not necessary to execute Plaintiffs.

100. In 2010, this Court determined that there was a substantial risk of severe pain associated with Tennessee's then-existing three-drug lethal injection protocol because an inmate could be conscious after the administration of the first drug (sodium thiopental) and when the second and third drugs were administered.³

³ The state appellate courts did not review nor opine on that judgment. *West*, 380 S.W.3d at 111-12. After Defendants added a check for consciousness to the then-existing three-drug protocol, this Court, affirmed by the Tennessee Supreme Court, held that revision to the protocol "seem[s] to take care of the problem" (the substantial risk that an inmate will feel unnecessary pain). *Id.* at 112. The Court remarked that there was "little in the record addressing the effectiveness of the basic manual consciousness checks [contained] in the revised protocol." *Id.* *See also id.* at 113 ("we agree that the likelihood that an inmate would be conscious when the second drug was administered was the basis upon which the trial court found the prior protocol to be unconstitutional.")

101. Sodium thiopental is a barbiturate and can produce an inability to feel pain.

102. Midazolam is not a barbiturate.

The use of midazolam in Protocol B increases the risk of unnecessary serious pain and suffering.

103. Under new Protocol B, the first drug injected into Plaintiffs will be midazolam.

104. Midazolam should be stored below 25 degrees Celsius.

105. Midazolam should be used immediately after opening.

106. Midazolam does not have a shelf life after opening.

107. New Protocol B does not include procedures to ensure that midazolam is stored below 25 degrees Celsius.

108. Under new Protocol B, midazolam is not used immediately after opening.

109. Midazolam is a benzodiazepine.

110. Midazolam produces drowsiness and sleepiness.

111. Sedation is a state of calm or sleep.

112. The FDA label for midazolam states "Sedation in adult and pediatric patients is achieved within 3 to 5 minutes after intravenous (IV) injection."

113. Scientific studies show that, after injection, the peak pharmacological effect of midazolam occurs at an averaged time of 7.3 to 15 minutes.

114. The time of onset and time of peak effect for midazolam is not dose-dependent.

115. Upon information and belief, under new Protocol B, vecuronium bromide will be administered before the peak effect of midazolam occurs.

116. Upon information and belief, under new Protocol B, potassium chloride will be administered before the peak effect of midazolam occurs.

117. Upon information and belief, enough time will not have elapsed before vecuronium bromide is administered for Plaintiffs to receive the full effect of 500 mgs of midazolam (assuming no ceiling effect).

118. Upon information and belief, enough time will not have elapsed before potassium chloride is administered for Plaintiffs to receive the full effect of 500 mgs of midazolam (assuming no ceiling effect).

119. Midazolam is used for induction of anesthesia.

120. Induction is a stage that precedes maintaining anesthesia.

121. During that stage, an induction agent induces a state of sedation in which the patient is calm and easily aroused, with the eyes generally closed.

122. At the stage of induction, a person remains sensate to pain.

123. Unlike sodium thiopental, midazolam is not an anesthetic.

124. Unlike sodium thiopental, midazolam has no analgesic effects, that is, it does not stop an individual from feeling pain.

125. Midazolam—by its nature—cannot induce and maintain a state where a person is fully unaware or insensate to pain.

126. There is no dose of midazolam that can sufficiently inhibit the pain and suffering caused by vecuronium bromide and potassium chloride.. There is a

sure or very likely risk that Plaintiffs will experience excruciating pain and suffocation regardless of the quantity of midazolam injected.

127. The depth of midazolam's inhibitory effect on the central nervous system is limited.

128. Midazolam, as a benzodiazepine, affects the central nervous system by facilitating the activity of GABA receptors, the primary effect of which is to reduce anxiety.

129. Gamma amino-butyric acid (GABA) is a primary neurotransmitter that inhibits central nervous system activity.

130. The amount of GABA is limited.

131. GABA is the major inhibitory neurotransmitter in the human body.

132. When inhibitory neurons of the brain release GABA onto other brain neurons, GABA binds to GABA-specific receptors. This binding causes chloride ion channels to open on the recipient neurons.

133. The influx of chloride ions through the channels causes those neurons to become more quiescent, to decrease in electrical activity, and to decrease the likelihood of neuronal firing, resulting in neuronal inhibition and central nervous system depression.

134. Midazolam, as a benzodiazepine, promotes the binding of GABA to GABA[A] receptors, which are ion channels with multiple binding sites that can be opened by GABA.

135. Midazolam by itself, if bound to GABA[A] receptors, does not allow for chloride ion influx into the neuron.

136. Rather, midazolam requires the additional binding of GABA to the GABA[A] receptor to exert an inhibitory effect.

137. Midazolam is considered an agonist, or a drug that activates its receptor.

138. Midazolam, as a benzodiazepine, requires co-activation with GABA to produce a pharmacological effect upon the central nervous system.

139. Because the amount of GABA is limited, midazolam can only produce a partial effect upon the central nervous system.

140. When all GABA receptors are bound by midazolam there remains an amount of serious pain that a person will suffer.

141. Once all GABA receptors are bound by midazolam, any additional midazolam cannot be co-activated with GABA and the additional midazolam does not have a pharmacological effect upon the central nervous system.

142. Once midazolam has reached its maximal effect upon the brain and GABA receptors, additional or larger doses of midazolam do not create any greater effect upon the central nervous system.

143. There is a "ceiling effect" with midazolam.

144. Barbiturates (like sodium thiopental) do not require GABA to have an inhibitory effect on the central nervous system.

145. Barbiturates can create greater pharmacological effects with greater doses when midazolam cannot.

146. Because of the ceiling effect, 500 mgs of midazolam is not 500 times more effective than 1 mg of midazolam.

147. A condemned inmate has responded during a lethal injection using 10 mg of midazolam as the first drug.

148. Condemned inmates have responded during lethal injections using 50 mg of midazolam as the first drug.

149. Condemned inmates have responded during lethal injections using 500 mg of midazolam as the first drug.

150. Condemned inmates have responded during lethal injections using 500 mg of midazolam.

151. A condemned inmate has responded during a lethal injection utilizing 750 mg of midazolam.

152. Condemned inmates have responded during lethal injections utilizing 1000 mg of midazolam.

153. There exists a substantial risk that the use of midazolam in new Protocol B will not prevent Plaintiffs from experiencing pain, suffering, and the terror of suffocation caused by vecuronium bromide.

154. There exists a substantial risk that the use of midazolam in new Protocol B will not prevent Plaintiffs from experiencing serious and severe pain and suffering caused by potassium chloride.

155. New Protocol B's proposed administration of midazolam, followed by vecuronium bromide and potassium chloride is sure or very likely to cause serious pain and needless suffering and gives rise to sufficiently imminent dangers.

156. New Protocol B presents a substantial risk of serious harm or severe pain to Plaintiffs.

157. The assessment for "consciousness" in new Protocol B will not determine whether Plaintiffs will experience the severe pain and suffering caused by vecuronium bromide and potassium chloride.

158. New Protocol B states falsely, as a matter of fact, science, and medicine, that a Plaintiff's unresponsiveness to a brush of the eyelashes, calling of Plaintiff's name and gentle shaking will "demonstrate that the inmate is unconscious." (*See Attachment A p.70*).

159. "Unresponsiveness" under Protocol B does not equate with an inmate's inability to feel pain and suffering or to experience the terror of suffocation. "Unresponsiveness" to eyelash brushing, gentle shaking, and name-calling fails to demonstrate that an inmate will not be aware when significantly more noxious stimuli is introduced into the body. Both vecuronium bromide and potassium chloride are noxious stimuli.

The use of vecuronium bromide in Protocol B increases the risk of unnecessary and serious pain and suffering.

160. Vecuronium bromide is the second drug used in Protocol B.

161. Vecuronium bromide is a neuromuscular blocking agent that produces paralysis, including paralysis of respiratory muscles.

162. A neuromuscular blocking agent blocks the receptor sites in muscle tissue that receive nerve impulses.

163. When these sites are blocked, the nerve impulses have no effect on the muscle tissue, which means that the muscle tissue will no longer contract causing paralysis.

164. A neuromuscular blocking agent has no effect on the central nervous system, and consequently it has no effect on consciousness or the sensation of pain and suffering.

165. When the diaphragm and other muscles that control breathing are paralyzed, Plaintiffs will experience the sensation of suffocation without being able to respond.

166. Plaintiffs will not be able to respond by breathing, or by moving, or by facial or vocal expressions.

167. This will cause a frantic, desperate sensation which, in turns, results in inhumane and constitutionally intolerable suffering.

168. Because of the way neuromuscular blocking agents function, Tennessee law prohibits their use, in any form (with or without anesthetics), in euthanizing non-livestock animals, and veterinary ethical standards prohibit their use in euthanizing any kind of animal. See the Nonlivestock Animal Humane Death Act, Tenn. Code Ann. § 44-17-303(c).

169. The use of vecuronium bromide under Protocol B will render Plaintiffs unable to move.

170. The use of vecuronium bromide under Protocol B will render Plaintiffs unable to breathe.

171. The pain and terror caused by suffocation, if felt by Plaintiffs, is unconstitutional.

172. The use of vecuronium bromide will likely prevent any pain responses from being observed.

173. Midazolam, as used in Protocol B, will not prevent Plaintiffs from experiencing the serious constitutionally intolerable pain and suffering of suffocation.

174. When a human being experiences suffocation the biological response is an immediate and extreme spike in adrenaline and other stress hormones.

175. Vecuronium bromide is a noxious stimuli.

176. A human beings' biological response to the administration of vecuronium bromide is sure or very likely to overcome the sedative effect of midazolam.

177. The use of vecuronium bromide is unnecessary.

178. Vecuronium is not to be stored above 25 degrees Celsius.

179. Protocol B does not include provisions for the monitoring and recording of storage temperature.

180. Vecuronium should be used immediately after opening.

181. If not used immediately after opening, vecuronium should be stored at a temperature of 2 – 8 degrees Celsius.

182. Under Protocol B, syringes containing vecuronium bromide are not used immediately.

183. Under Protocol B, syringes containing vecuronium bromide are not stored at a temperature of 2 – 8 degrees Celsius.

184. Reconstituted vecuronium that is not used immediately can form particulate matter.

185. When reconstituted vecuronium solution contains particles or is not clear, it should not be used.

186. There are no provisions in Protocol B for monitoring and recording the appearance of vecuronium bromide within the syringes.

187. Solution with particulate matter increases the risk of serious and unnecessary pain upon injection.

188. Solution with particulate matter increases the risk of a dislodged catheter.

189. Infiltration from a dislodged catheter is painful.

190. Solution with particulate matter increases the risk of ruptured veins.

191. The pain associated with particulate matter in IV solution is preventable.

192. The pain associated with particulate matter in IV solution is unnecessary.

193. Vecuronium bromide cannot be, and is not, used to euthanize animals in the State of Tennessee – with or without midazolam. Tenn. Code Ann. §44-17-303(c).

The use of potassium chloride in Protocol B increases the risk of unnecessary and serious pain.

194. Potassium chloride, the third drug in Protocol B, is a metal halide salt composed of potassium and chloride.

195. An intravenous injection of potassium chloride, if felt by Plaintiffs, will cause a searing, burning, sensation in the veins.

196. Intravenous injection of potassium chloride feels like being burned alive from the inside.

197. Midazolam, as used in Protocol B, will not prevent Plaintiffs from suffering the serious pain from intravenous injection of potassium chloride.

198. Midazolam, as used in Protocol B, will not prevent Plaintiffs from suffering the serious pain of a heart attack induced by potassium chloride.

199. The pain and terror caused by potassium chloride, if felt by Plaintiffs, is unconstitutional.

200. An intravenous injection of potassium chloride, as utilized in new Protocol B, does not necessarily stop the heart.

201. The use of potassium chloride as part of a lethal injection protocol is unnecessary.

202. Potassium chloride should be discarded no later than four hours after opening.

203. There are no provisions in Protocol B to ensure the use of potassium chloride within four hours after opening.

A lack of safeguards in new Protocol B increases the risk of serious and severe pain.

204. The January 8, 2018 Lethal Injection Protocol does not provide procedures or instructions to confirm the viability of the IV sites.

205. The absence of such a provision increases the risk of unnecessary pain caused by repeated and prolonged attempts to gain venous access during the pressure-filled and stressful event of an execution.

206. The January 8, 2018 Lethal Injection Protocol does not provide an option to postpone the execution if viable IV sites cannot be established within a certain amount of time.

207. The absence of such a provision increases the risk of unnecessary pain caused by repeated and prolonged attempts to gain venous access; it also increases the risk of unnecessary pain caused by unsuccessful or partial catheterization.

208. New Protocol B does not provide for monitoring and recording of temperature and appearance of the solution in syringes containing midazolam before use in an execution.

209. The absence of such procedures increases the risk of unnecessary pain caused by the use of midazolam that has decreased potency and/or effectiveness.

210. New Protocol B does not require a wait time between the administration of the first and second drugs.

211. The absence of such a provision increases the risk of unnecessary pain caused by introduction of the second and third drugs before the first drug takes effect and/or reaches peak effectiveness.

212. New Protocol B provides only one assessment of "consciousness."

213. The absence of an assessment of whether, after administration of midazolam from the second syringe set, Plaintiffs will feel pain from the second and third drugs increases the risk of unnecessary pain.

214. The lack of an assessment of consciousness and awareness of pain during the utilization of the second syringe set increases the risk of unnecessary pain caused by the introduction of the second and third drugs.

215. New Protocol B includes procedures that will assess only whether Plaintiffs are non-responsive to the level of stimulus created by brushing the inmate's eyelids, calling the inmate's name and gently shaking the inmate.

216. Responsiveness to the assessment of "consciousness" contained in new Protocol B indicates consciousness, awareness and/or the ability to sense stimuli.

217. Non-responsiveness to the assessment of "consciousness" contained in Protocol B does not equate to unconsciousness, unawareness and/or the inability to feel painful stimuli.

218. Scientific studies show that persons injected with midazolam lose response to verbal commands and eyelash/eyelid reflexes before they lose response to pressure or to painful or noxious stimuli.

219. The failure of new Protocol B to include procedures using algogenic stimuli before the introduction of the second and third drugs increases the risk of unnecessary and severe pain caused by those drugs.

220. The level of stimulus caused by vecuronium bromide is greater than the level of stimulus created by brushing the inmate's eyelids, calling the inmate's name, and gently shaking the inmate.

221. The level of stimulus caused by potassium chloride is greater than the level of stimulus created by brushing the inmate's eyelids, calling the inmate's name, and gently shaking the inmate.

222. Including in new Protocol B the use of drugs that cause a higher level of pain than that created by brushing the inmate's eyelids, calling the inmate's name, and gently shaking the inmate increases the risk of unnecessary, serious, and severe pain and suffering.

223. New Protocol B does not include a procedure or instructions to determine whether Plaintiffs will remain unaware of and/or insensate to the serious and severe pain and suffering caused by the second and third drugs.

224. The absence of such a provision increases the risk that Plaintiffs will become aware and/or sensate to the pain and suffering terror caused by the second and third drugs.

225. The procedures in new Protocol B to assess "consciousness" are inadequate to determine whether severe and unnecessary pain and suffering will be inflicted on Plaintiffs by the use of the second and third drugs.

226. The assessment for “consciousness” in new Protocol B provides a false sense that Plaintiffs will not suffer pain and suffering caused by the second and third drugs.

227. The assessment for “consciousness” in new Protocol B increases the risk that Plaintiffs will suffer pain caused by the second and third drugs.

228. New Protocol B does not provide procedures or instructions for monitoring Plaintiffs’ awareness of pain.

229. The absence of such provisions needlessly increases the risk that Plaintiffs will suffer unnecessary pain and suffering caused by the second and third drugs.

130. The inclusion of vecuronium bromide in new Protocol B needlessly increases the risk that an execution will continue even as Plaintiffs are sensate to the severe pain, and suffering caused by suffocation but will show no outward indications of such pain.

131. The inclusion of vecuronium bromide in new Protocol B needlessly increases the risk that an execution will continue even as Plaintiffs are sensate to the severe pain, and suffering caused by potassium chloride, but will show no outward indications of such pain.

Defendants are deliberately indifferent to the substantial risk of serious and severe pain and suffering caused by new Protocol B.

132. Pain and suffering during execution caused by a paralytic drug and potassium chloride is constitutionally unacceptable.

133. Within the past year, Defendants were informed of harm to Plaintiffs that can be caused by Protocol B.

134. Midazolam was once used for lethal injection in 7 states, but only 4 states use it now.

135. There is an evolving standard of decency and practice of abandoning the use of midazolam to carry out an execution.

136. Midazolam is not, and cannot be used, to euthanize an animal in the state of Tennessee. Tenn. Code Ann. §44-17-303.

137. Executions in other States using protocols similar to new Protocol B demonstrate the substantial risk of serious harm caused by Protocol B.

138. Observers to three-drug-protocol executions using midazolam as the initial drug have reported inmates' physical responses during the execution and after the administration of midazolam.

139. Observers to three-drug-protocol executions using midazolam as the initial drug have reported abnormal breathing by the condemned inmate during the execution and after administration of midazolam.

140. Observers to three-drug-protocol executions using midazolam as the initial drug have reported body movements by the condemned inmate during the execution and after administration of midazolam.

141. Observers to three-drug-protocol executions using midazolam as the initial drug have reported grimacing by the condemned inmate during the execution and after administration of midazolam.

142. Observers to three-drug-protocol executions using midazolam as the initial drug have reported production of active tears by a condemned inmate during the execution and after administration of midazolam.

143. The observations set forth above indicate inmates have responded to pain during lethal injection executions utilizing midazolam as the first drug.

144. On October 19, 2017 the state of Alabama executed Torrey McNabb under a three-drug protocol utilizing 500 mg of midazolam as the first drug.

145. During execution and after administration of 500 mg of midazolam, Mr. McNabb responded when his arm was pinched.

146. After a second dose of 500 mg of midazolam, Mr. McNabb responded when his name was called, and moved his arm when he was pinched.

147. Minutes after the second check for consciousness, Mr. McNabb raised his arm and moved his arms and legs.

148. During the execution, Mr. McNabb curled his lips, furrowed his brow, and grimaced.

149. It is very likely that Mr. McNabb suffered pain caused by the paralytic drug and potassium chloride.

150. On September 13, 2017, Ohio executed Gary Otte using 500 mg of midazolam as the first drug of a three drug protocol.

151. During execution and after administration of 500 mg of midazolam, Mr. Otte turned his head and blinked in an exaggerated manner.

152. During execution and after administration of 500 mg of midazolam, Mr. Otte's breathing became abnormal and his stomach moved violently.

153. During execution and after administration of 500 mg of midazolam, Mr. Otte produced active tears.

154. One who is unaware of and insensate to pain does not produce active tears.

155. It is very likely that Mr. Otte suffered pain caused by the paralytic drug and potassium chloride.

156. On April 28, 2017, Arkansas executed Kenneth Williams using 500 mg of midazolam as the first drug of a three drug protocol.

157. During the execution and after administration of 500 mg of midazolam, Mr. Williams coughed, convulsed, lurched and jerked 15 times.

158. Mr. Williams emitted a sound and heard without a microphone by witnesses.

159. It is very likely that Mr. Williams suffered pain from vecuronium bromide and potassium chloride.

160. On December 8, 2016, Alabama executed Ronald Smith, Jr. with a three drug protocol using midazolam as the first drug.

161. Mr. Smith moved his lips before and after 500 mg of midazolam were administered.

162. Mr. Smith raised his head and clenched his fist after midazolam was administered.

163. Mr. Smith responded to all three stimuli in the first check for consciousness—calling his name, moving his eyelid, and pinching his arm.

164. Mr. Smith heaved and gasped after the first test for consciousness.

165. A second dose of 500 mg of midazolam was administered to Mr. Smith.

166. When a corrections officer tried to close Mr. Smith's eyelid he opened it again.

167. After administration of 1000 mg of midazolam and more than 20 minutes into the execution, Mr. Smith moved his right arm and hand when pinched during a second test for consciousness.

168. Mr. Smith struggled for air, heaved and coughed for 13 minutes.

169. It took almost 40 minutes for Mr. Smith to die.

170. It is very likely that Mr. Smith suffered pain from the paralytic drug and potassium chloride.

171. On July 23, 2014, it took almost two hours for Joseph Wood to die under Arizona's two drug protocol with midazolam as the first drug, followed by hydromorphone.

172. Eleven minutes after the administration of 50 mg of midazolam, Mr. Wood began gasping for air.

173. Mr. Wood received a total dose of 750 mg of midazolam.

174. Mr. Wood gasped for air and snorted more than 600 times before he died.

175. It is very likely that Mr. Wood suffered pain during his execution.

176. On January 16, 2014, Ohio executed Dennis McGuire using a two drug protocol with 10 mg midazolam as the first drug, followed by hydromorphone.

177. Mr. McGuire audibly gasped and struggled for air for more than 10 minutes.

178. Mr. McGuire clenched his fists, arched his back and writhed.

179. His execution lasted more than 20 minutes.

180. It is very likely that Mr. McGuire suffered pain during his execution.

181. On October 15, 2013, Florida executed William Happ using a three drug protocol, with 10 mg of midazolam as the first drug.

182. After the administration of midazolam, Mr. Happ's eyes opened and he blinked several times before closing them.

183. Two minutes later, Mr. Happ opened his eyes.

184. Seven minutes into the execution, Mr. Happ moved his head back and forth.

185. His execution took 14 minutes.

186. It is very likely that Mr. Happ suffered pain from the paralytic drug and potassium chloride.

187. Defendant Commissioner (and one or more other Defendants) are deliberately indifferent to the substantial risk that Plaintiffs will experience unnecessary and severe pain and suffering under new Protocol B.

C. Available Alternative

188. To the extent that the courts have placed a burden on Plaintiffs to demonstrate a “known and available alternative method of execution that entails a lesser risk of pain[,]” *West v. Schofield*, 519 S.W.3d at 565, quoting *Glossip*, 135 S. Ct. at 2731, Plaintiffs allege as follows:

189. If Protocol B is found to be unconstitutional, State law allows for execution “by any constitutional method.” Tenn. Code Ann. § 40-23-114(d).

190. If Protocol B is declared unconstitutional, Protocol A is a known and available alternative method of execution that has been upheld by the Tennessee Supreme Court, and the United States Supreme Court declined to review its decision.

191. Defendants retained Protocol A in the new January 8, 2018 Lethal Injection Protocol.

192. Defendants have affirmatively represented to the courts that they are able to implement Protocol A.

193. Defendants have defended the constitutionality of Protocol A as recently as November 30, 2017. *Abdur'Rahman, et al. v. Parker, et al.*, United States Supreme Court Docket No. 17-6068.

194. Defendants have not represented to any court that litigation regarding Protocol A is moot.

195. Defendants and/or Defendants' agents have affirmatively represented to the media that they are able to implement Protocol A.

196. Inmates within the United States have been executed by protocols similar to Protocol A, using pentobarbital, as recently as February 1, 2018.

D. Conclusion

197. Defendant Commissioner (and/or one or more other Defendants) knew or should have known each fact alleged in this Count, but has acted with deliberate indifference to the same.

198. There is a substantial, objectively constitutionally intolerable risk that Plaintiffs will unnecessarily suffer serious pain and suffering under new Protocol B.

199. New Protocol B violates the Eighth and Fourteenth Amendments to the United States Constitution and Tennessee Constitution Article 1, § 16.

200 By adhering to the new January 8, 2018 Lethal Injection Protocol, Protocol B, Defendants will violate the Eighth and Fourteenth Amendments to the United States Constitution and Tennessee Constitution Article 1, § 16, and 42 U.S.C. § 1983.

E. Prayer for Relief

201. Plaintiffs respectfully request that this Court enter judgment on the following declarations:

202. Declare the January 8, 2018 Lethal Injection Protocol, Protocol B, is unconstitutional under Article I §16 of the Tennessee Constitution and the Eighth and Fourteenth Amendments to the United States Constitution;

203. Declare that any attempt by Defendants to carry out Plaintiffs' executions, and/or the carrying out of such executions, using the January 8, 2018

Lethal Injection Protocol Lethal Injection Protocol, Protocol B, will violate 42 U.S.C.

§

1983; and,

204. Order such other relief as this Court deems just.

COUNT II.

Eighth Amendment of the United States Constitution and Article 1, §16 Of the Tennessee Constitution (EVOLVING STANDARDS OF DECENCY)

205. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

206. The Eighth Amendment to the United States Constitution imposes a duty on upon the “government to respect the dignity of all persons.” *Hall v. Florida*, 572 U.S., at ___, 134 S.Ct. at 1992 (2014). The United States Supreme Court has held that the “Eighth Amendment is not fastened to the obsolete.” *Id.*, at 1992. To enforce the constitutional obligation to protect the dignity of man, courts are required to “look to evolving standards of decency that mark the progress of a maturing society.” *Id. See also, Trop v. Dulles*, 356 U.S. 86, 101 (1958).

207. Because the Eighth Amendment is not static, courts are required to consider contemporary standards.

208. Courts consider trends in legislation and practice in determining whether a particular punishment violates evolving standards of decency.

209. Of the thirty states that retain the death penalty as a possible punishment, only seven states have ever used midazolam as a part of a lethal

injection protocol. Those states are Alabama, Arizona, Arkansas, Florida, Ohio, Oklahoma, and Virginia.

210. The use of midazolam has resulted in numerous problematic and botched executions as described *infra*.

211. Oklahoma has only used midazolam in two executions: Clayton Lockett and Charles Warner.

212. After reported problems with each execution, all executions are on hold in Oklahoma based on a court order pending the outcome of litigation. Oklahoma does not have a current lethal injection protocol in place.

213. Following the horrifically botched execution of Joseph Wood, the State of Arizona agreed to never again use midazolam in an execution.

214. Florida abandoned its use of midazolam in January of 2017.

215. Defendants have specific knowledge that midazolam is inappropriate for use as the first drug in a three-drug protocol because its pharmacokinetic properties do not and cannot prevent constitutionally intolerable pain and suffering nor render Plaintiffs unaware of constitutionally intolerable pain, suffering and terror.

216. Midazolam is a benzodiazepine.

217. Midazolam does not and cannot prevent or relieve pain.

218. Midazolam does not and cannot prevent a human being's awareness to the serious and severe pain, suffering, and terror caused by the second and third drugs used in Protocol B.

219. Midazolam does not and cannot reliably cause death.

220. Vecuronium bromide is a neuromuscular blocking agent that causes paralysis and stops respiration.

221. Administration of vecuronium bromide creates a feeling of suffocation and terror in persons who are aware and sensate.

222. Vecuronium bromide serves no purpose in the protocol other than to act as a chemical veil that prevents witnesses from observing signs that an inmate is aware and able to feel the searing pain caused by the administration of potassium chloride.

223. Potassium Chloride is administered to stop the heart to result in death.

224. The administration of potassium chloride is sure or very likely to result in the sensation of searing pain similar to being burned alive from the inside in persons who are aware and sensate.

225. Defendants have previously stipulated in court that the administration of drugs similar to those used in Protocol B would, by themselves, cause extreme pain and suffering.

226. Defendants have specific knowledge that Midazolam is ineffective for use in this protocol.

227. Defendants were specifically warned, "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." Attachment B, September 7, 2017 Email to TDOC from Supplier.

228. The administration of Protocol B therefore violates evolving standards of decency where the trend is against using Midazolam as a part of a lethal injection protocol and/or where the Protocol as written is sure and likely to result in terror, pain, and agony in violation of Plaintiffs' right to human dignity.

PRAYER FOR RELIEF

229. Plaintiffs respectfully request that this Court:

230. Enter judgment on the following declaration: "Protocol B violates the Eighth and Fourteenth Amendments and Article I §16 of the Tennessee Constitution as such a protocol violates evolving standards of decency, is rarely applied in other jurisdictions, and other jurisdictions have removed midazolam from their execution protocols."

231. Order such other relief as this Court deems just.

COUNT III.

Eighth Amendment of the United States Constitution and Article 1, §16 of the
Tennessee Constitution
(DIGNITY OF MAN)

232. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

233. Tenn. Code. Ann. § 44-17-303 (c) prohibits the use of potassium in non-livestock animal euthanasia.

234. Tenn. Code. Ann. § 44-17-303 (c) prohibits the use of neuromuscular blocking agents in non-livestock animal euthanasia. Vecuronium bromide is a neuromuscular blocking agent.

235. The use of neuromuscular blocking agents is considered unacceptable and unethical by humane organizations and veterinary groups.

236. Any violation of Tenn. Code. Ann. § 44-17-303 is a Class A misdemeanor.

PRAYER FOR RELIEF

237. Plaintiffs respectfully request that this Court:

238. Enter judgment on the following declaration: "Protocol B violates the Eighth and Fourteenth Amendments and Article I §16 of the Tennessee Constitution because the use of the drugs in the protocol violate the dignity of humankind, especially where such drugs cannot be used to euthanize animals."

239. Order such other relief as this Court deems just.

COUNT IV. Fourteenth Amendment and Tenn. Const. Art. 1 §8 (PROCEDURAL DUE PROCESS)

240. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

241. The Fourteenth Amendment to the United States Constitution and Article 1, § 8 of the Tennessee Constitution guarantee the right of procedural due process to all citizens.

242. At a minimum, procedural due process requires reasonable notice of state action, a reasonable time to defend against the action, and a fair opportunity to be heard.

243. The Tennessee General Assembly has not provided in Tenn. Code Ann. §40-23-114 sufficient guidance or established or substantive standards governing the Department of Correction for the creation of a lethal injection protocol to limit the manner in which the Department may establish a process for lethal injection that does not inflict cruel and unusual punishment in violation of the United States Constitution, the Tennessee Constitution, and all other applicable law.

244. The January 8, 2018 lethal injection protocol was conceived, drafted, and promulgated in secret.

245. The January 8, 2018 lethal injection protocol is silent as to who will choose whether to use Protocol A or Protocol B to execute Plaintiffs.

246. The January 8, 2018 lethal injection protocol provides no standards as to how the choice is made as to whether to use Protocol A or Protocol B to execute Plaintiffs.

247. The January 8, 2018 lethal injection protocol provides no standards as what criteria must be met to trigger the use of Protocol A or Protocol B to execute Plaintiffs.

248. The January 8, 2018 lethal injection protocol provides no timeline for deciding which protocol to use in the execution of Plaintiffs to execute Plaintiffs.

249. The January 8, 2018 lethal injection protocol has no requirement that Plaintiffs receive any notice, let alone reasonable notice, as to which protocol will be used in their execution to execute Plaintiffs.

250. The January 8, 2018 lethal injection protocol does not allow Plaintiffs a reasonable time to file a written response to the decision to use Protocol A or Protocol B to execute Plaintiffs.

251. The January 8, 2018 lethal injection protocol would allow the decision of which protocol to be used to be made with the flip of a coin on the eve of execution.

252. The January 8, 2018 lethal injection protocol risks arbitrary and capricious action by Defendants and their agents.

PRAYER FOR RELIEF

253. Plaintiffs respectfully request that this Court:

254. Enter judgment on the following declaration: "Tennessee's January 8, 2018 Protocol violates due process of law under the Fourteenth Amendment and Tenn. Const. Art. 1, §8 as it does not provide any standards for the selection of one protocol versus another, does not provide for any notice of the selection of any protocol and denies plaintiffs a meaningful opportunity to be heard."

255. Order such other relief as this Court deems just.

COUNT V.

First, Eighth, and Fourteenth Amendments to the United States Constitution and Article 1, §§ 8, 16, 17 of the Tennessee Constitution (RIGHT TO COUNSEL AND ACCESS TO THE COURTS)

256. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

257. The January 8, 2018 protocol directs that the "Defense Counsel witness" will "be secured in the official witness room" after the insertion of the IV lines but prior to the administration of the lethal chemicals. Attachment A, p. 66.

258. The official witness room does not provide Plaintiff's lawyer with the ability to view the injection site for signs of extravasation or infiltration.

259. The official witness room does not permit attorney observation of the syringes which is critical to ascertain the sequence and timing of the injection of the different syringes.

260. The official witness room does not provide Plaintiff's lawyer with sufficient ability to observe signs of unnecessary pain and distress.

261. The official witness room does not provide Plaintiffs with telephone access to the courts or co-counsel.

262. As a result of these constitutionally intolerable conditions, Plaintiffs are denied the right to access the courts through their counsel in the sure and likely event that the execution process results in unnecessary and constitutionally intolerable pain denying Plaintiffs access to the courts.

263. Defendants have the ability to provide Plaintiffs' counsel visual monitoring of the IV injection site throughout the execution process.

264. Defendants have the ability to provide Plaintiffs' counsel visual observation of the operation of the syringes.

265. Defendants have the ability to provide Plaintiffs with appropriate visual monitoring of their client during the execution process.

266. Defendants have the ability to provide Plaintiffs' counsel with suitable telephone access to the courts and co-counsel during the execution process.

267. Defendants' failure to provide appropriate visual monitoring and access to a telephone constitutes an unconstitutional denial of access to the courts.

PRAYER FOR RELIEF

268. Plaintiffs respectfully request that this Court:

269. Enter judgment on the following declaration: "The January 8, 2018 Protocol violates the First, Eighth and Fourteenth Amendments to the United States Constitution, and Article I §§ 8, 16, 17 of the Tennessee Constitution, as the protocol fails to provide Plaintiffs' counsel adequate visual access to the execution, so that counsel can properly monitor the proceedings, and as the protocol fails to provide telephone access between Plaintiffs' counsel, co-counsel, and the courts, denying Plaintiffs' right of access to the courts."

270. Order such other relief as this Court deems just.

COUNT VI

U.S. Const. Art. VI, § 2 (SUPREMACY CLAUSE AND PREEMPTION)

271. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

272. The United States Constitution and laws of the United States are the supreme law of the land. U.S. Const. Art. VI, § 2.

273. The State of Tennessee is bound by the United States Constitution and the laws of the United States.

274. Where a statute, regulation, or act by or on behalf of the State of Tennessee is in conflict with the United States Constitution or the laws of the United States, federal law preempts such statute, regulation, or act.

275. Title 21, Chapter 9 of the United States Code is known as the Federal Food, Drug and Cosmetic Act ("FDCA").

276. The FDCA is binding on the State of Tennessee.

277. Any statute, regulation or act in conflict with the FDCA is preempted by the FDCA.

278. Title 21, Chapter 23 of the United States Code is titled Drug Abuse Prevention and Control. This code includes the Controlled Substances Act ("CSA").

279. Title 21, Chapter 23 of the United States Code is binding on the State of Tennessee.

280. Any statute, regulation or act in conflict with Title 21, Chapter 23 of the United States Code is preempted by Title 21, Chapter 23 of the United States Code.

MIDAZOLAM IS A CONTROLLED SUBSTANCE

281. Midazolam (as set forth in Protocol B) is a schedule IV controlled substance under federal law.

282. Under Tennessee law, midazolam is a Schedule IV controlled substance. Tenn. Code Ann. §39-17-402.

283. Under Protocol B, midazolam is to be dispensed without a prescription from a practitioner, which is illegal under Tenn. Code Ann. §53-11-308(c).

284. Even with a prescription, the use of midazolam under Protocol B would still be illegal under state and federal law where the drug is being used for a non-approved purpose, and its use is a felony under Tenn. Code Ann. §39-17-417, and all persons involved in procuring, using, and administering it are committing criminal acts.

REQUIREMENT TO REGISTER

285. 21 U.S.C. §§ 822(a)(1) & (2) requires registration of every person who manufactures or distributes any controlled substance, or who proposes to engage in the manufacture or distribution of any controlled substance, and every person who dispenses, or who proposes to dispense, any controlled substance.

286. 21 C.F.R. § 1301.11(a) requires every person who manufactures, distributes, dispenses, imports, or exports any controlled substance or who proposes

to engage in the manufacture, distribution, dispensing, importation or exportation of any controlled substance shall obtain a registration.

287. Tenn. Code Ann. § 53-11-302(a) provides that every person who manufactures, distributes, or dispenses any controlled substance within this state must obtain annually a registration.

288. Tenn. Code Ann. § 53-11-302(b) provides that persons registered to manufacture, distribute or dispense controlled substances may do so only to the extent authorized by their registration.

289. It is unknown whether Defendants possess the registration and licenses required to manufacture, distribute, dispense and administer midazolam under Protocol B.

PRESCRIPTION/PHYSICIAN'S ORDER REQUIREMENT

290. 21 U.S.C. § 353(b)(1)(A) provides: "A drug intended for use by man which because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug[,] shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist."

291. 21 U.S.C. § 802(10) provides that before a controlled substance can be dispensed, there must be a lawful order, such as a prescription, from a practitioner.

292. 21 U.S.C. § 829(b) provides that unless a practitioner directly dispenses a Schedule III or IV controlled substance to an ultimate user, no Schedule III or IV controlled substance may be dispensed without a written or oral prescription from a practitioner. Section 829(a) requires a written prescription for any Schedule II controlled substance.

293. Tenn. Code Ann. § 53-11-303(c) provides that if practitioners are authorized to dispense under state law, they must be registered to dispense Schedule II through Schedule IV controlled substances.

294. Tenn. Code Ann. § 53-11-308(a) and (c) provide that no Schedule II, III, or IV controlled substance may be dispensed without the written prescription of a practitioner.

295. 21 U.S.C. § 829(a) and (b) provide that unless a practitioner directly dispenses a controlled substance to an ultimate user, no Schedule II, III, or IV controlled substance may be dispensed without a written or oral prescription from a practitioner.

296. 21 C.F.R. § 1306.04(a) establishes that a prescription for a controlled substance is legal only when a practitioner, acting in the usual course of his or her professional practice, issues it for a legitimate medical purpose.

297. Tenn. Code Ann. § 53-11-401(a)(1) makes it unlawful for any person to distribute or dispense a controlled substance for any purposes other than those authorized by and consistent with the person's professional or occupational licensure or registration law, or to distribute or dispense any controlled substance

in a manner prohibited by the person's professional or occupational licensure or registration law.

298. 21 C.F.R. § 1306.06 provides that a prescription for a controlled substance may only be filled by a pharmacist or practitioner acting in the usual course of his or her professional practice.

299. Under 21 U.S.C. § 844, it is unlawful for any person to knowingly and intentionally possess a controlled substance unless pursuant to a valid prescription or order from a practitioner acting in the course of his or her professional practice.

300. Tenn. Code Ann. §53-401(a)(2) makes it unlawful for any person who is a registrant to manufacture a controlled substance not authorized by the registrant's registration, or to distribute or dispense a controlled substance not authorized by the registrant's registration to another registrant or other authorized person.

301. Tenn. Code Ann. § 53-11-402(a)(3) makes it unlawful for any person to knowingly or intentionally acquire or obtain, or attempt to acquire or attempt to obtain, possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge.

302. Plaintiffs have no physician-patient or pharmacy-patient relationship with any of the Defendants, including Defendant Physician(s) and Defendant Pharmacist(s), and renounce any such relationship which any Defendants in any way would intend to establish without Plaintiffs' consent.

303. Plaintiffs do not consent and do not give informed consent to any Defendants to seek, write, issue and/or fill any prescription or order for any drug or substance used in the new lethal injection protocol which Defendants would use or administer to Plaintiffs.

304. Plaintiffs do not consent to and do not give informed consent to any Defendants to administer any drug or to them at any time, and they do not consent or provide informed consent to any Defendants to kill plaintiff(s) using any substance at any time.

305. Killing a human being is not a legitimate medical purpose for the use of any drug or pharmaceutical or substance.

306. Killing Plaintiffs who have no legitimate physician-patient relationship with Defendants also fails to establish a legitimate medical purpose for a prescription.

307. Defendant Physician(s) who issues an order or prescription for any substance used in the new lethal injection protocol for use in carrying out Plaintiffs' executions does not act in the usual course of the practitioner's professional practice and does not act lawfully.

308. Defendant Pharmacist(s) who fills a prescription for any substance used in the new lethal injection protocol does not act in the usual course of the practitioner's professional practice and does not act lawfully.

309. Defendant Physician(s)' and Defendant Pharmacist(s)' distribution or dispensation of any drug or substance for use in Plaintiffs' executions is not

authorized by and consistent with the Defendants' professional or occupational licensure or registration law.

310. Defendant Physician(s)' and Defendant Pharmacist(s)' distribution or dispensation of any drug used in the new lethal injection protocol for use in Plaintiffs' executions is prohibited by Defendants' professional or occupational licensure or registration law.

311. Defendant Physician(s) and Defendant Pharmacist(s) who either issues and orders a prescription or fills a prescription for any drug for administration to Plaintiffs to kill Plaintiffs acts in violation of Tennessee law, ethics governing Tennessee physicians and pharmacists and/or their professional oaths, including, if applicable, the Hippocratic Oath.

312. Defendant Physician(s) and Defendant Pharmacist(s) who, under the Lethal Injection Protocol, train execution personnel and/or any physician or emergency medical technician involved in any part of the execution process to be used upon Plaintiffs also act in violation of Tennessee law, ethics governing Tennessee physicians and pharmacists and/or their professional oaths, including, if applicable, the Hippocratic Oath.

313. A prescription or physician's order for any drug or pharmaceutical for use in Plaintiffs' execution is not issued by Defendant Physician(s) acting in the course of his or her professional practice.

314. A prescription or physician's order for any drug or pharmaceutical for use in Plaintiffs' execution is not a valid prescription issued by Defendant Physician(s) acting in the course of his or her professional practice.

UNLAWFUL MANUFACTURE, DISTRIBUTION, DISPENSATION AND ADMINISTRATION

315. Under 21 U.S.C. § 841(a), unless authorized by the federal Controlled Substance Act, it is unlawful for any person to knowingly or intentionally manufacture, distribute, or dispense or possess with intent to manufacture, distribute or dispense, a controlled substance.

316. Under 21 U.S.C. § 802(15), "manufacturing" includes the production, preparation, propagation, compounding or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or re-labeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. *See also* Tenn. Code Ann. §§ 39-17-402(15), 63-10-204(21).

317. Under 21 U.S.C. § 802(11), "distribute" means to deliver, other than by administering or dispensing, a controlled substance or listed chemical. *See also* Tenn. Code Ann. §§ 39-17-402(9), 63-10-204(13).

318. Under 21 U.S.C. § 802(10), "dispense" means to deliver a controlled substance to an ultimate user or research subject by, or pursuant to the lawful order of a practitioner including the prescribing and administering of a controlled substance and the packaging, labeling or compounding necessary to prepare the substance for delivery. *See also* Tenn. Code Ann. §§ 39-17-402(7); 63-10-204(12).

319. Under 21 U.S.C. § 802(2), "administer" refers to the direct application of a controlled substance to the body of a patient or research subject by a practitioner (or, in his presence, by his authorized agent), or the patient or research subject at the direction and in the presence of the practitioner, whether such application be by injection, inhalation, ingestion, or any other means. *See also* Tenn. Code Ann. §§ 39-17-402(1); 63-10-204(1).

320. Under 21 U.S.C. § 802(8), "deliver" or "delivery" means the actual, constructive, or attempted transfer of a controlled substance or a listed chemical, whether or not there exists an agency relationship. *See also* Tenn. Code Ann. §§ 39-17-402(6), 63-10-204(8).

321. Under 21 U.S.C. § 842, it is unlawful to distribute or dispense a controlled substance in violation of 21 U.S.C. § 829.

322. Under 21 U.S.C. § 846, it is also unlawful for any person to attempt or conspire to commit any offense contained in the federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.*

323. Defendant(s)' manufacturing, possession, delivery, distribution, dispensation, and administration of midazolam and/or pentobarbital for Plaintiffs' executions violates federal and state laws.

324. Under 21 U.S.C. § 321(p), a new drug includes any drug whose composition is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof.

325. As to new drugs, 21 U.S.C. § 355 mandates a new drug application approved by the Secretary of Health and Human Services.

326. The midazolam which Defendants intend to prescribe, to manufacture, to fill a prescription of, and/or administer to Plaintiffs are new drugs for which there has been no new drug application made or approved by the Secretary of Health and Human Services.

327. The midazolam that Defendants intend to prescribe, to manufacture, to fill a prescription of, and/or administer to Plaintiffs are misbranded under 21 U.S.C. §§ 331 and 352.

**PROTOCOL B REQUIRES DEFENDANTS TO ENGAGE IN ILLEGAL ACTS AND
CONSPIRACY TO COMMIT ILLEGAL ACTS**

328. Defendants' actions under the new lethal injection protocol with respect to ordering, obtaining, securing, possessing, administering, and using pentobarbital for Plaintiffs' executions, violate federal and state criminal laws governing controlled substances.

329. Under the protocol, a physician conspires with the warden to create and issue a physician's order for the lethal injection chemical (and or the use of controlled substances without a prescription) the use of which is illegal and unlawful under Tennessee law and violates federal law (which is the Supreme law of the land under Article VI § 2 of the United States Constitution), including 21 U.S.C. § 331, 332, 333, 353(b), 841 *et seq.* including but not limited to 843, 844, 846, and 21 CFR 1306.04, where drugs and controlled substances are being prescribed illegally outside the normal course of professional practice and not for legitimate medical purposes or are being used without a prescription, that would be illegal in any event.

330. The licensed pharmacy and pharmacist's filling of such prescriptions is also unlawful under Tennessee law and federal law, as herein described.

331. The procurement officers and physician and/or pharmacist who are storing, obtaining, and distributing drugs that are subject to control under state and federal laws (p. 37) used in the protocols are also acting illegally under Tennessee and federal law as described.

332. The physicians' and pharmacists' and any and all actors' use of these drugs in violation of law and/or contract or distribution agreements absolutely preclude such drugs' usage, especially where all such laws and contracts and distribution agreements were created to prevent the very harm intended by actors under the protocol, the injury or death of persons subject to the illegal and improper use of such drugs in violation of law, contract, and/or distribution agreement.

333. The pharmacist agreement (pp. 107-112) is also unlawful under Tennessee and federal law as noted *supra*, as it attempts to (but cannot) permit the filling of prescriptions that violate state and federal law and contracts for the distribution of such drugs, and the agreement is void and unenforceable where it purports to require compliance with all applicable laws, and the prescription and filling of the prescription for such drugs violates all the various laws noted *supra*.

334. The actions of persons involved in the chemical preparation and setup of midazolam, vecuronium bromide, and/or potassium chloride (pp. 39, 40, 41) is also illegal under Tennessee law and federal law, including 21 U.S.C. § 331, 332, 333, 353(b), 841 *et seq.* including 843, 844, 846, and 21 CFR 1306.04

335. The involvement and actions of the emergency medical personnel in the implementation of the protocol (e.g., p. 31, 43, 44, 45, 52) is unethical and illegal under the Tennessee Emergency Medical Services Act of 1983, Tenn. Code Ann. §68-140 301 *et seq.*, especially where emergency personnel can only ethically and legally "respond[] to the perceived need for immediate medical care in order to prevent the loss of life or aggravation of illness or injury" (§ 68-140-302(13)) and provides grounds for the revocation of the licenses of all such personnel involved, especially where such persons are involved in violations and attempted violations of the Act, abandoning or neglecting persons needing emergency care, and the Act permits an injunction prohibiting the actions of all such persons to be involved in the taking of life, and requiring an injunction to require any and all such persons to instead assist any condemned inmate at any given point in which the inmate, as the

result of the actions of any other person, is in immediate need of medical care in order to prevent the loss of his or her life.

336. Under the new lethal injection protocol, it is impossible for the Defendants and the Tennessee Department of Correction to prescribe, issue a valid prescription for, procure, receive, manufacture, deliver, distribute, fill a valid prescription for, possess, dispense, and/or administer midazolam and/or vecuronium bromide to Plaintiffs without violating, attempting to violate, or conspiring to violate all of the federal statutes and regulations cited herein, including but not limited to 21 U.S.C. §§ 321, 331, 352, 353, 355, 802(10), 802(11), 802(15), 822, 829, 841, 844, 846, and 21 C.F.R. §§ 1301.11, 1306.04, 1306.06.

337. The use of midazolam under the protocol violates the Federal Controlled Substance Act (21 U.S.C. §802(10), 829(b), 841 et seq., 21 CFR 1306.04 et seq.), and the protocol violates federal law and is pre-empted by federal law where the protocol allows a controlled substance to be prescribed, shipped, handled, possessed, administered outside the normal course medical practice and/or without a prescription, and the actors in the protocol who undertake any or all such actions are committing federal crimes (e.g., 21 U.S.C. § 829), and persons using the drug are doing so without any legitimate medical purpose, and the use of midazolam is illegal under federal law and the protocol is unconstitutional, including under the Eighth and Fourteenth Amendments.

338. In Protocol B, midazolam is also being used for a purpose not recognized by medicine, and not authorized by federal law, and when being used to

allegedly render someone unconscious, a purpose for which it has not been approved, it is misbranded and being used as a new drug without a new drug license, in violation of 21 U.S.C. § 331 and 355.

PRAYER FOR RELIEF

339. Plaintiffs respectfully request that this Court:

340. Enter judgment on the following declaration: "Protocol B violates Article VI §2 of the United States Constitution because the drugs used in the protocol are obtained, possessed, used, and/or administered illegally and in violation of federal law which preempts state law, and state law as well, including 21 U.S.C. § 321, 331, 332, 333, 352, 353, 355, 802, 822, 829, 841, 842, 843, 844, 846, 21 C.F.R. §§1301.11, 1306.04, 1306.05, 1306.06, Tenn. Code Ann. §§ 4-1-407, 40-23-114, 40-23-114, 40-23-116, 44-17-303, 53-11-302 *et seq.*, 53-11-308, 53-11-401, -402, 63-6-201, *et seq.*, 63-6-214, 63-10-204, and 68-14-301 *et seq.*

341. Order such other relief as this Court deems just.

COUNT VII.

Fourteenth Amendment of the United States Constitution and Article 1, §8 of the
Tennessee Constitution
(SHOCKS THE CONSCIENCE FOR STATE TO BREAK THE LAW
IN THE ENFORCMENT OF THE LAW)

342. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

343. The United States Constitution and the Tennessee Constitution guarantee substantive due process to all citizens.

344. Substantive due process is violated when state actors engage in activity which "shocks the conscience." *Rochin v. California*, 342 U.S. 165 (1952).

345. When a state actor breaks the law in the course of the exercise of his/her duties it shocks the conscience.

346. Here each Defendant and his/her agents are required to violate multiple state and federal laws to carry out their obligations under the January 8, 2018 Protocol.

347. The multiple, blatant, pre-meditated violations of the law by Defendants is sufficiently outrageous to "shock the conscience."

PRAYER FOR RELIEF

348. Plaintiffs respectfully request that this Court:

349. Enter judgment on the following declaration: "the January 8, 2018 lethal injection protocol violates the Fourteenth Amendment of the United States Constitution and Article 1, § 8 of the Tennessee Constitution because it shocks the conscience or violates substantive due process for Defendants to violate state and federal law where the drugs used in the protocol are obtained, possessed, used, and/or administered illegally and in violation of federal and state laws."

350. Order such other relief as this Court deems just.

COUNT VIII.

Fourteenth Amendment to the United States Constitution and Article 1, §8 of the
Tennessee Constitution
(USE OF MIDAZOLAM SHOCKS THE CONSCIENCE)

351. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

352. The United States Constitution and the Tennessee Constitution guarantee substantive due process to all citizens.

353. Substantive due process imposes a limit on the government's power to act.

354. Government action which is arbitrary, irrational, or tainted by improper motive violates substantive due process.

355. Defendants know, or should know, that midazolam is scientifically incapable of preventing Plaintiffs from needlessly experiencing constitutionally intolerable pain, suffering, and terror when used as part of the January 8, 2018 Protocol.

356. Defendants chose to specify the use of midazolam as the first drug in Protocol B despite knowing this scientific fact.

357. The use of midazolam in the January 8, 2018 Protocol exceeds the limits of governmental authority.

PRAYER FOR RELIEF

358. Plaintiffs respectfully request that this Court:

359. Enter judgment on the following declaration: "Protocol B violates the Eighth and Fourteenth Amendments and Article I §8 of the Tennessee Constitution as it violates substantive due process and shocks the conscience."

360. Order such other relief as this Court deems just.

COUNT IX.

Tennessee Constitution, Article 1 §32 (HUMANE TREATMENT OF PRISONERS)

361. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

362. Article 1, § 32 of the Tennessee Constitution provides for the safe and humane treatment of prisoners.

PRAYER FOR RELIEF

363. Plaintiffs respectfully request that this Court:

364. Enter judgment on the following declaration: "Protocol B violates Article 1 §32 of the Tennessee Constitution because it is inhumane."

365. Order such other relief as this Court deems just.

COUNT X.

Fourteenth Amendment of the United States Constitution, Art. 1, § 8 of the Tennessee Constitution and Art. 11, § 8 of the Tennessee Constitution (TREATMENT OF HUMAN BEINGS WHICH IS PROHIBITED ON ANIMALS)

366. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

PRAYER FOR RELIEF

367. Plaintiffs respectfully request that this Court:

368. Enter judgment on the following declaration: "Protocol B violates the equal protection guarantees of the Fourteenth Amendment of the United States Constitution and Tenn. Const. Art. 1, §8, Art. 11, §8 because it would allow for

treatment of human beings in a manner that is prohibited toward animals in the State of Tennessee.”

369. Order such other relief as this Court deems just.

COUNT XI.

Article 2, §§ 1 and 2 of the Tennessee Constitution (SEPARATION OF POWERS)

370. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*.

371. Article 2, § 1 of the Tennessee Constitution states, “The powers of the Government shall be divided into three distinct departments: the Legislative, Executive, and Judicial.”

372. Article 2, § 2 of the Tennessee Constitution states, “No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in the cases herein directed or permitted.”

373. The Tennessee General Assembly has not provided in Tenn. Code Ann. §40-23-114 sufficient guidance or established or substantive standards governing the Department of Correction for the creation of a lethal injection protocol to limit the manner in which the Department may establish a process for lethal injection that does not inflict cruel and unusual punishment in violation of the United States Constitution, the Tennessee Constitution, and all other applicable law.

374. Defendants are members of the Executive Branch.

375. Defendants promulgated the January 8, 2018 lethal injection protocol in secret.

376. Defendants overstepped their authority as members of the executive branch and engaged in conduct that properly belongs to the legislative branch in promulgating the January 8, 2018 lethal injection protocol.

PRAYER FOR RELIEF

377. Plaintiffs respectfully request that this Court:

378. Enter judgment on the following declaration: "Defendants' January 8, 2018 lethal injection protocol violates the Separation of Powers under Article II §§1 and 2 of the Tennessee Constitution."

379. Order such other relief as this Court deems just.

COUNT XII.

Tenn. Code § 63-6-204 (UNAUTHORIZED PRACTICE OF MEDICINE)

380. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*.

381. Tenn. Code Ann. § 63-6-204 states, "Any person shall be regarded as practicing medicine within the meaning of this chapter who treats, or professes to diagnose, treat, operates on or prescribes for any physical ailment or any physical injury to or deformity of another."

382. Unlike sodium thiopental, no amount of midazolam will reliably cause death.

383. Protocol B calls for the administration of Midazolam to the inmate while he is still alive.

384. Upon information and belief, the sole, intended use of midazolam as part of Protocol B is to relieve or alleviate the pain and/or suffering caused by the administration of the vecuronium bromide and potassium chloride while the inmate is still alive.

385. Because midazolam is neither intended nor designed to cause or contribute to causing death, its use in Protocol B is medical.

386. Individuals who practice medicine owe a duty of care to their patients.

387. As a matter of science and medicine, midazolam is incapable of treating or alleviating pain.

388. The administration of midazolam as a part of this protocol by individuals who are not licensed physicians constitutes the unauthorized practice of medicine.

389. Defendants who administer midazolam as part of Protocol B violate the duty of care owed to a patient under Tennessee law.

390. Defendants violate their duty of care to plaintiffs in the administration of midazolam as part of Protocol B.

PRAYER FOR RELIEF

391. Plaintiffs respectfully request that this Court:

392. Enter judgment on the following declaration: "Defendants actions under the Protocol B constitute the unauthorized practice of medicine and are sanctionable."

393. Order such other relief as this Court deems just.

COUNT XIII.

Impossibility Of Securing Drugs Legally Under Contract With Pharmacist As Voiding Contract And Lethal Injection Protocol

394. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*.

PRAYER FOR RELIEF

395. Plaintiffs respectfully request that this Court:

396. Enter judgment on the following declaration: "The pharmacist contract contained in the lethal injection protocol is null and void and against public policy and unenforceable, and lethal injection cannot be performed as a result, where it provides that the pharmacist will comply with all operative laws, but Defendants and the pharmacist, to perform under the contract, have to break numerous state and federal drug and controlled substance laws"

397. Order such other relief as this Court deems just.

COUNT XIV.

U.S. Const. Art. I §10, Fourteenth Amendment, and Tenn. Const. Art. 1 §§ 8, 11, 20 (PROTOCOL UNCONSTITUTIONALLY RETROSPECTIVE)

398. Plaintiffs incorporate in full and by reference each and every paragraph contained in this complaint *supra* and *infra*, as if restated in full herein.

399. Lethal injection under Protocol B is an inhumane form of execution. The retrospective adoption of this inhumane method of execution violates the ex post facto clause of the United States and Tennessee constitutions.

PRAYER FOR RELIEF

400. Plaintiffs respectfully request that this Court:

401. Enter judgment on the following declaration: "Protocol B violates the Article I §10 of the United States Constitution and Article 1, §§ 8, 11, and 20 because the application of Protocol B is unconstitutionally retrospective and constitutes a retrospective application of law that violates guarantees protecting due process and against *ex post facto* law."

402. Order such other relief as this Court deems just.

COUNT XV

Article I, § 10 of the United States Constitution and Tenn. Const. Art. 1, §§ 3, 8, 11,
13, 20, 32

(APPLICATION OF AMENDMENTS TO STATUTE VIOLATE CONSTITUTIONAL PROTECTIONS AGAINST *EX POST FACTO* LAW)

403. Plaintiffs Abdur'Rahman, Bane, Black, Bland, Burns, Carruthers, Chalmers, Duncan, Hall, Henderson, Hines, Hodges, Hugueley, Jahi, Irick, Johnson, Keen, McKay, Middlebrooks, Miller, Morris, Payne, Powers, Rogers, Sample, Smith, Sutton, West, Wright, and Zagorski were sentenced to "death by electrocution."

404. In 1998, the Tennessee legislature changed the method of execution to lethal injection for all crimes committed after January 1, 1999. (H.B. 2085).

405. The 1998 amendment provided, "Any person who commits an offense prior to January 1, 1999 for which such person is sentenced to the punishment of death may elect to be executed by lethal injection by signing a written waiver waiving the right to be executed by the method of execution in effect at the time the offense was committed." 1998 Tennessee Laws Pub. Ch. 982.

406. In 2000, the Tennessee legislature changed the statute to placed an additional burden on Plaintiffs sentenced prior to January 1, 1999.

407. The 2000 Amendment, in pertinent part, is as follows:

SECTION 1. Tennessee Code Annotated, Section 40-23-114(a), is amended by deleting the language "the court shall direct that the person be put to death by electrocution, and that the body be subjected to shock by a sufficient current of electricity until dead." and substituting instead the language "the method for carrying out this sentence shall be by lethal injection."

SECTION 2. Tennessee Code Annotated, Section 40-23-114(b), is amended by deleting the language "the court shall direct that the person be put to death" and substituting instead the language "the method for carrying out this sentence shall be".

SECTION 3. Tennessee Code Annotated, Section 40-23-114(d), is amended by deleting the language "of subsections (b) and (c)," and by substituting instead the language "of this section."

SECTION 4. Tennessee Code Annotated, Section 40-23-114(c), is amended by deleting the language "lethal injection" and substituting instead the language "electrocution", and by deleting the language "the method of execution in effect at the time the offense was committed." and substituting instead the language "lethal injection."

SECTION 5. Tennessee Code Annotated, Section 40-23-114(e), is amended by deleting the language of the subsection and substituting

instead the language: "If lethal injection or electrocution is held to be unconstitutional by the Tennessee Supreme Court under the state constitution, or held to be unconstitutional by the United States Supreme Court under the United States Constitution, or if the United States Supreme Court declines to review any judgment holding lethal injection or electrocution to be unconstitutional under the United States Constitution made by the Tennessee Supreme Court or the United States Court of Appeals that has jurisdiction over Tennessee, or if the Tennessee Supreme Court declines to review any judgment by the Tennessee Court of Criminal Appeals holding lethal injection or electrocution to be unconstitutional under the United States or Tennessee Constitutions, all persons sentenced to death for a capital crime shall be executed by any constitutional method of execution. No sentence of death shall be reduced as a result of a determination that a method of execution is declared unconstitutional under the state constitution or the Constitution of the United States. In any case in which an execution method is declared unconstitutional, the death sentence shall remain in force until the sentence can be lawfully executed by any valid method of execution."

2000 Tennessee Laws Pub. Ch. 614 (H.B. 2978)

408. In 2014, the statute was amended in pertinent part as follows:

SECTION 1. Tennessee Code Annotated, Section 40-23-114, is amended by adding the following new subsection (e):

(e) For any person who commits an offense or has committed an offense for which the person is sentenced to the punishment of death, the method of carrying out the sentence shall be by lethal injection unless subdivision (e)(1) or (e)(2) is applicable. If subdivision (e)(1) or (e)(2) is applicable, the method of carrying out the sentence shall be by electrocution. The alternative method of execution shall be used if:

(1) Lethal injection is held to be unconstitutional by a court of competent jurisdiction in the manner described in subsection (d); or

(2) The commissioner of correction certifies to the governor that one (1) or more of the ingredients essential to carrying out a sentence of death by lethal injection is unavailable through no fault of the department.

2014 Tennessee Laws Pub. Ch. 1014 (S.B. 2580)

409. Application of the 1998, 2000, and 2014 Amendments to Plaintiffs Abdur'Rahman, Bane, Black, Bland, Burns, Carruthers, Chalmers, Duncan, Hall, Henderson, Hines, Hodges, Hugueley, Jahi, Irick, Johnson, Keen, McKay, Middlebrooks, Miller, Morris, Payne, Powers, Rogers, Sample, Smith, Sutton, West, Wright, and Zagorski violates their rights under the Ex Post Facto Clause of the United States Constitution.

410. Application of the 1998, 2000, and 2014 Amendments to Plaintiffs Abdur'Rahman, Bane, Black, Bland, Burns, Carruthers, Chalmers, Duncan, Hall, Henderson, Hines, Hodges, Hugueley, Jahi, Irick, Johnson, Keen, McKay, Middlebrooks, Miller, Morris, Payne, Powers, Rogers, Sample, Smith, Sutton, West, Wright, and Zagorski violates the Ex Post Facto Clause of the Tennessee Constitution.

411. Application of the 1998, 2000, and 2014 Amendments to Plaintiffs Plaintiffs Abdur'Rahman, Bane, Black, Bland, Burns, Carruthers, Chalmers, Duncan, Hall, Henderson, Hines, Hodges, Hugueley, Jahi, Irick, Johnson, Keen, McKay, Middlebrooks, Miller, Morris, Payne, Powers, Rogers, Sample, Smith, Sutton, West, Wright, and Zagorski places an unconstitutional burden on them to participate in their own execution.

412. Plaintiffs Abdur'Rahman, Bane, Black, Bland, Burns, Carruthers, Chalmers, Duncan, Hall, Henderson, Hines, Hodges, Hugueley, Jahi, Irick, Johnson, Keen, McKay, Middlebrooks, Miller, Morris, Payne, Powers, Rogers, Sample, Smith, Sutton, West, Wright, and Zagorski have sincerely held religious

beliefs that participation in their death would constitute suicide which is prohibited by their faith.

413. Application of the 1998, 2000, and 2014 Amendments to Plaintiffs Abdur'Rahman, Bane, Black, Bland, Burns, Carruthers, Chalmers, Duncan, Hall, Henderson, Hines, Hodges, Hugueley, Jahi, Irick, Johnson, Keen, McKay, Middlebrooks, Miller, Morris, Payne, Powers, Rogers, Sample, Smith, Sutton, West, Wright, and Zagorski violates their right to religious freedom as protected by the United States and Tennessee Constitutions.

PRAYER FOR RELIEF

414. Plaintiffs Abdur'Rahman, Bane, Black, Bland, Burns, Carruthers, Chalmers, Duncan, Hall, Henderson, Hines, Hodges, Hugueley, Jahi, Irick, Johnson, Keen, McKay, Middlebrooks, Miller, Morris, Payne, Powers, Rogers, Sample, Smith, Sutton, West, Wright, and Zagorski respectfully request that this Court:

415. Enter judgment on the following declaration: "The 1998, 2000, and 2014 amendments to Tenn. Code Ann. §40-23-114 are unconstitutionally retrospective and constitutes a retrospective application of law that violates guarantees protecting due process, religious liberty, and against *ex post facto* law as to Plaintiffs Abdur'Rahman, Bane, Black, Bland, Burns, Carruthers, Chalmers, Duncan, Hall, Henderson, Hines, Hodges, Hugueley, Jahi, Irick, Johnson, Keen, McKay, Middlebrooks, Miller, Morris, Payne, Powers, Rogers, Sample, Smith,

Sutton, West, Wright, and Zagorski who were convicted and sentenced to death prior to January 1, 1999.”

416. Order such other relief as this Court deems just.

COUNT XVI

Requirement that Plaintiffs Plead and Prove An Alternative Method of Execution Violates the First, Eighth, and Fourteenth Amendment and Tenn. Const. Art. 1, §§ 3, 8, 11, 13, 16, 32⁴

417. Defendants newly promulgated lethal injection protocol retains Protocol A which utilizes a single-drug barbiturate, compounded pentobarbital.

418. Protocol A was unsuccessfully challenged by Plaintiffs.

419. Though Plaintiffs continue to believe that Protocol A violates the United States Constitution, the Tennessee Constitution, Federal Drug Laws (including the FDCA and CSA), and Tennessee drug laws – they acknowledge that their facial challenge to Protocol A was denied and the protocol upheld.

420. Compounded pentobarbital has a beyond use date of thirty days.

421. From 2013 through 2017, Defendants affirmatively represented to the Courts and the public that they had a contractual relationship with a compounding pharmacist who agreed to provide compounded pentobarbital when needed.

⁴ The requirement “inmates must identify an alternative [method of execution] that is feasible, readily implemented, and in fact significantly reduce[s] a substantial risk of severe pain[.]” *West v. Schofield*, 519 SW.3d 550, 564 (Tenn. 2017)(internal quotations omitted), only applies to “an Eighth Amendment challenge to a lethal injection protocol based on the infliction of pain.” *Id.*, at 563. This requirement exists no where else in the law and is inapplicable to counts 2-16 of this complaint.

422. In litigation challenging the use of compounded pentobarbital, Defendants produced a redacted signed contract with an individual who they represented to be a licensed compounding pharmacist. The contract did not have an expiration date.

423. Despite repeated requests for documents under the Tennessee Public Records Act, Defendants Mays and Parker have never produced a document indicating that the pharmacist has renounced his/her contractual duties.

424. On March 2, 2017, Defendants counsel Debra Inglis told reporters that the Tennessee Department of Correction “was ready to administer a lethal injection.”

425. On March 2, 2017, Ms. Inglis explained to reporters that Defendants “could obtain the drug closer to the execution.”

426. Throughout 2017, acting as agents of Defendants, the Tennessee State Attorney General defended two separate petitions for writ of certiorari challenging Protocol A in the United States Supreme Court.

427. The Tennessee Attorney General, like all licensed attorneys, has a duty of candor to the Court.

428. At no time did the Tennessee Attorney General advise the United States Supreme Court that Plaintiffs’ legal challenges were moot because they were unable to obtain compounded pentobarbital.

429. On January 11, 2018, the Tennessee Attorney General informed the Tennessee Supreme Court that certiorari proceedings challenging the use of compounded pentobarbital had concluded.

430. The Tennessee Attorney General has a duty of candor to the Tennessee Supreme Court.

431. The Tennessee Attorney General made no mention of the unavailability of drugs in his January 11, 2018 notice to the court.

432. On February 16, 2018, the Tennessee Attorney General informed the Tennessee Supreme Court that they did not currently have a supply of pentobarbital. The statement by the Attorney General is not supported by citation to any fact or record proof.

433. The current proof in the record is that Defendants have a source for compounded pentobarbital. To the extent that Defendants dispute this allegation, the proper forum to adjudicate this factual disagreement is through trial and discovery.

434. Compounded pentobarbital has been used to carry out lethal injections in the United States as recently as February 1, 2018.

435. At this point, Plaintiffs have met their pleading requirement under *Glossip* and *West*..

436. Alternatively, to the extent that *Glossip* or *West* is read to require more such holding violates the First, Eighth, and Fourteenth Amendments to the United States Constitution and Art. 1, §§ 3, 8, 11, 13, 16, 32 of the Tennessee Constitution.

437. Plaintiffs lack medical training.

438. Plaintiffs' lawyers lack medical training.

439. Individuals with sufficient education and training to advise Plaintiffs and their lawyers regarding alternative methods to kill Plaintiffs are prohibited from doing so by law, licensing requirements, and ethical standards.

440. Forcing Plaintiffs to participate in their own deaths to avoid being tortured to death by Defendants choice of execution shocks the conscience and violates substantive due process.

441. Forcing Plaintiffs to participate in their own deaths to avoid being tortured to death by Defendants violates Plaintiffs sincerely held religious beliefs in violation of the federal and state constitutional right to the exercise of religion.

442. It is simply unconstitutional and morally repugnant to place a burden to identify how they should be killed on indigent incarcerated inmates and their appointed lawyers where the vast governmental bureaucracy has proven completely unable to do so.

PRAYER FOR RELIEF

443. Plaintiffs respectfully request that this Court:

444. Enter judgment on the following declaration: "Any requirement that Plaintiffs plead and prove an alternative method of lethal injection would violate Plaintiffs rights under the First, Eighth, and Fourteenth Amendments to the United States Constitution and Art. 1, §§ 3, 8, 11, 13, 16, 32 of the Tennessee Constitution."

445. Order such other relief as this Court deems just.

PRAYERS FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment as requested in
Counts I-XVI of this complaint.

Respectfully Submitted,

**FEDERAL PUBLIC DEFENDER FOR THE
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Powers, Rogers, Sample, Smith, Wright,
Zagorski

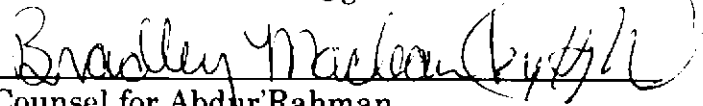
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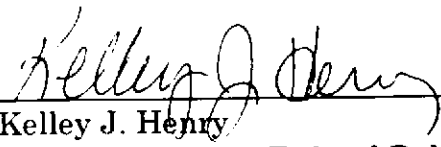
BY:


Counsel for Hall

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 and email on this the 20th day of February, 2018, to:

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




Kelley J. Henry
Supervisory Asst. Federal Public Defender

ATTACHMENT A

FILED

2018 FEB 20 AM 9:12

CLERK OF DISTRICT COURT
JANUARY CI


DC&M

LETHAL INJECTION EXECUTION MANUAL

EXECUTION PROCEDURES

FOR

LETHAL INJECTION

FILED
2018 FEB 20 AM 9:12
JAMES R. B. JANKERY CI
DC2M

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.

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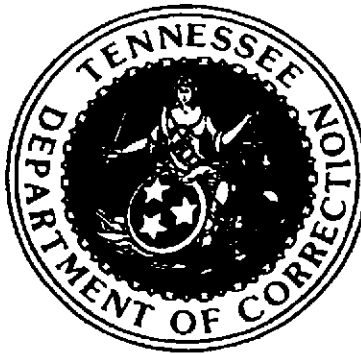
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I. INTRODUCTION

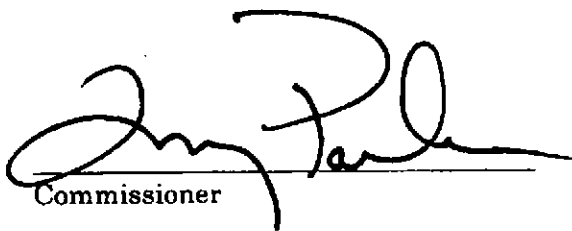


RIVERBEND MAXIMUM SECURITY INSTITUTION



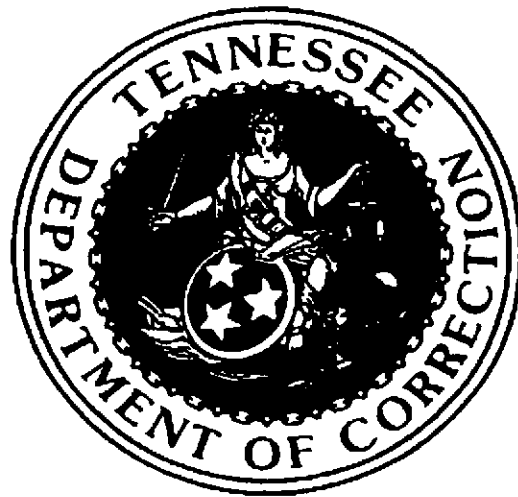
The Tennessee Department of Correction is responsible for the incarceration of convicted felons serving sentences ranging from one year to death. Individuals sentenced to death are executed at Riverbend Maximum Security Institution. Upon the exhaustion of an inmate's appeals, the execution process shall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

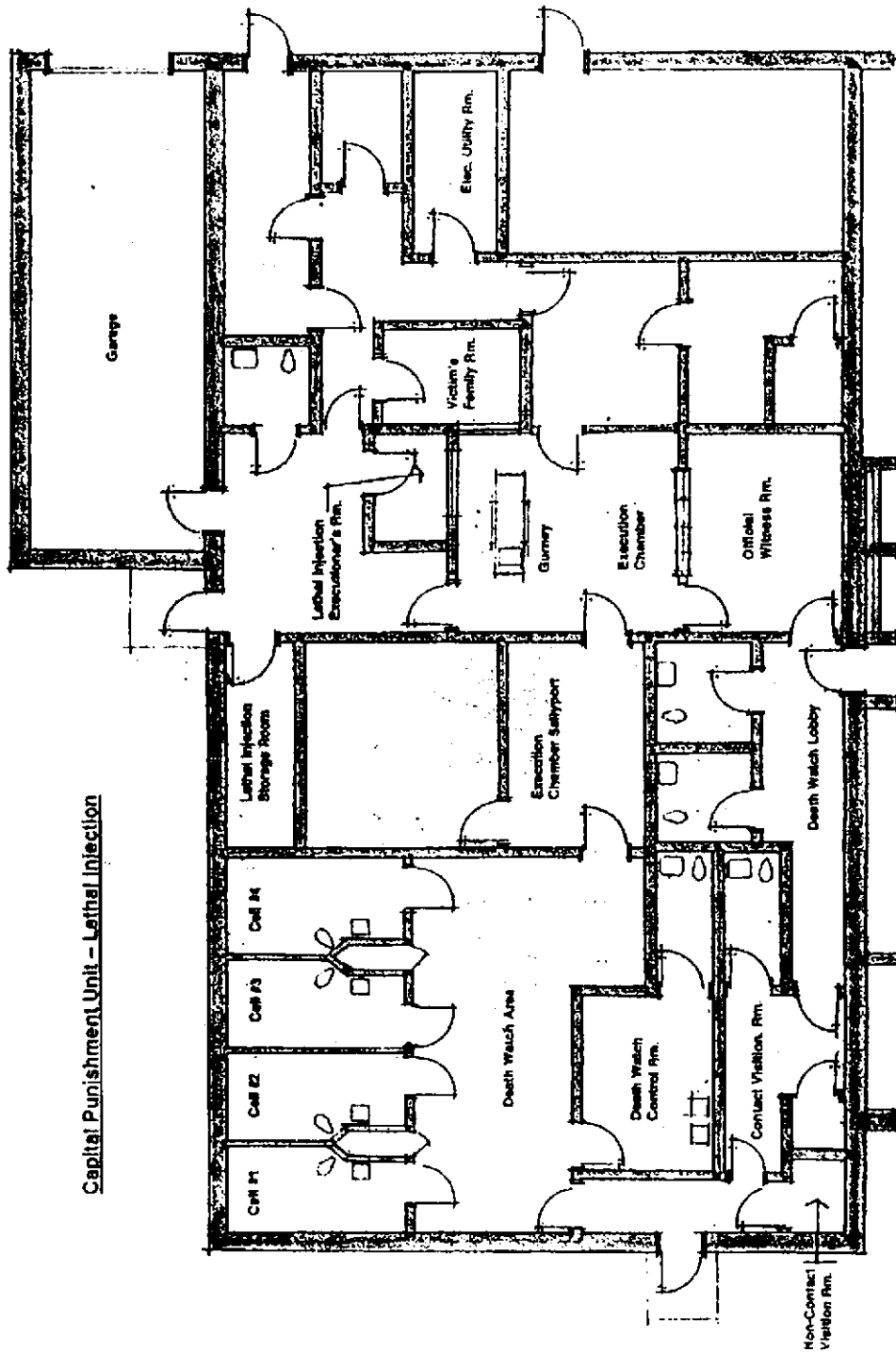
Bin Card	A card used to inventory and account for a lethal injection chemical.
Catheter	A thin flexible tube that is inserted into a part of the body to inject fluid.
Death Watch	A period of time immediately prior to an execution during which special procedures are implemented in order to ensure that 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.

Capital Punishment Unit - Lethal Injection



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:

#	DRUG SEQUENCE	IDENTIFIER LABEL	VOLUME
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:

#	DRUG SEQUENCE	IDENTIFIER LABEL	VOLUME
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
7476 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 _____

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

Inmate Name _____ Inmate # _____

Date _____

Inmate's Comments if any:

Lethal Injection Recorder

Date

Warden

Date

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 News 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.

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)(i), 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. § 40-23-110. 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.

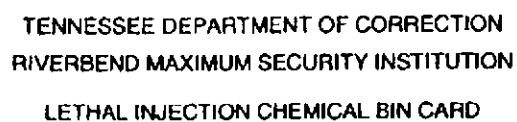
_____ I witnessed the inmate sign this affidavit.

Signature of Warden/Designee

Date

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

My Commission expires _____
Notary Public



UNIT OF ISSUE: _____ LOCATION: _____

[illegible]**RDA**

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: _____

By: _____
Name: _____
Title: TDOC Commissioner
Date: _____

Address: _____

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

ATTACHMENT B

FILED

2018 FEB 20 AM 9:12

CLERK OF SUPERIOR COURT
JANETRY LI
DC&M

[illegible]

FILED
2018 FEB 20 AM 9:12
U.S. DISTRICT COURT
SOUTHERD DISTRICT OF CALIFORNIA
SAN JOSE
JL
DCLM

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

Hello [REDACTED]

Regards,



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.