

**IN THE SUPREME COURT OF OHIO**

|                       |  |                             |
|-----------------------|--|-----------------------------|
| JAMES D. O'NEAL, and  |  | Case No. 2020-0676          |
| CLEVELAND JACKSON,    |  |                             |
| Appellants,           |  | On Appeal from the Franklin |
| -vs-                  |  | County Court of Appeals     |
| STATE OF OHIO, et al. |  | Tenth Appellate District    |
| Appellees.            |  | Court of Appeals Case Nos.  |
|                       |  | 19-AP-260 and 19-AP-289     |

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**SUPPLEMENT TO  
MERIT BRIEF OF APPELLANT CLEVELAND JACKSON**

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IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

JAMES DERRICK O'NEAL, et al.,

Plaintiffs,

v.

THE STATE OF OHIO, et al.,

Defendants.

Case No. 18-CV-000758

Judge Mark A. Serrott

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DEFENDANTS' RESPONSES TO PLAINTIFFS' INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS

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Pursuant to Rules 26, 33, and 34 of the Ohio Rules of Civil Procedure, Defendants the State of Ohio and the Ohio Department of Rehabilitation and Correction (hereinafter "Defendants"), by and through counsel, submit the following objections and responses to Plaintiffs O'Neal and Tibbetts' discovery request of March 26, 2018<sup>1</sup>.

GENERAL RESPONSES AND OBJECTIONS

1. Defendants object to each request to the extent that it or any portion thereof seeks to impose obligations or requirements beyond those required by the Ohio Rules of Civil Procedure and the Local Rules of this Court. Defendants will respond, on Defendants' own behalf only, in accordance with the applicable local rules and Ohio Rules of Civil Procedure.
2. Defendants specifically object to each Request to the extent that it, or any portion thereof, seeks information that is protected or prohibited from disclosure

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<sup>1</sup> Defendants' provision of responses to Plaintiffs' interrogatories and requests for production of documents is not a waiver of any of the grounds for dismissal set forth in Defendants' motion to dismiss.

pursuant to any protective orders or rulings on Defendants' claims of privilege issued in Case Numbers 2:11-cv-1016 or 2:04-cv-1156 in the United States District Court for the Southern District of Ohio (including but not limited to ECF Nos. 629, 838, 1240, 2:11-cv-1016; ECF No. 413, 2:04-cv-1156).

3. Defendants object to each Request to the extent that it seeks information that is not relevant to any claim or defense asserted in this litigation; that is not readily identifiable as being sought by the Request; that will impose an undue burden or expense; or that will result in annoyance, embarrassment, or oppression. Defendants also object to each Request to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.
4. Defendants object to all of the "Definitions" and "Instructions" and all of the Requests to the extent that any of them seek information from any other person or party to this action besides Defendants personally, or require Defendants to obtain information or documents that are not within Defendants' personal knowledge, nor in Defendants' possession, custody, or control. Defendants will respond only as to Requests which apply to Defendants and not on behalf of other Defendants or non-parties. The responses are not responses of any other party or defendant to this action.
5. Defendants object to the "Definitions" and "Instructions" and all of the Requests to the extent that they seek information from any other party or defendant in this action, any nonparties to the litigation or other persons, or from Defendants' attorneys (whether in-house counsel or attorneys for the Ohio Attorney General's Office).
6. Defendants object to any interrogatory, including instructions and definitions therein, to the extent it seeks information which is irrelevant and which is not reasonably calculated to lead to the discovery of admissible evidence.
7. Defendants object to any interrogatory, including instructions and definitions therein, to the extent it is burdensome, overbroad, vague, ambiguous, uncertain, or susceptible to more than one interpretation. Any response that Defendants

- provide will be based on a reasonable interpretation of the discovery request, and Defendants do not waive this objection.
8. Defendants object to each Request to the extent that it or any portion thereof seeks information that is not in Defendants' possession, custody or control.
  9. Defendants object to each Request to the extent that it or any portion thereof seeks information that was already provided to any or all Plaintiffs, or that is already in Plaintiffs' or their agents' possession, custody, or control; or has previously been objected to in any privilege log previously provided to the Plaintiffs in the federal court cases filed in the Southern District of Ohio, case number 2:11-cv-1016 or 2:04-cv-1156.
  10. Defendants object to each Request to the extent that it or any portion thereof seeks information or documents protected by the attorney-client privilege, work-product doctrine or privilege, common-interest or defense privilege, or any other applicable privilege. Information or documents that fall within the scope of any such privilege or immunity will not be produced. Inadvertent disclosure of any information or documents within the scope of this objection shall not constitute a waiver of any privilege or any other ground for objecting to discovery, and shall not waive Defendants' right to object to the use of any such information or documents during any proceedings in this matter.
  11. Defendants object to each Request to the extent that it or any portion thereof is vague, ambiguous, overreaching, misleading, improper, unclear or incomprehensible, overly broad, unreasonably cumulative or duplicative, is not relevant to the claim or defense of any party, makes erroneous assumptions or states facts incorrectly, or seeks information that is more properly addressed through expert testimony.
  12. Defendants object to each Request to the extent that it or any portion thereof seeks information that is obtainable from some other source that is more convenient, less burdensome, or less expensive, or to the extent that responding will be oppressive, unduly burdensome, or expensive.

13. Defendants object to each Request to the extent that it or any portion thereof seeks information that is publicly available or is a matter of public record, including information that has already been submitted into the court record in this case or the federal court cases filed in the Southern District of Ohio, case number 2:11-cv-1016 or 2:04-cv-1156.
14. Defendants object to each Request to the extent that it or any portion thereof calls for a legal conclusion.
15. Defendants object to Plaintiffs' Interrogatories, including instructions and definitions therein, to the extent they seek information about actions of the State other than the actions as they relate to this case and these Defendants. Actions of the State, other than those that are the subject of the present case, are not relevant to this case.
16. Neither the submission of these responses and objections, nor the production of any document, is or should be construed as an admission of any other material not stated, or as a waiver of any objection, including, without limitation, objections to the relevance, materiality, admissibility, or authentication of any document, or the subject matter thereof, and any other objection under the Ohio Rules of Civil Procedure and the Ohio Rules of Evidence. All such objections are expressly reserved.
17. Defendants object to each interrogatory to the extent that it or any portion thereof seeks a narrative response.
18. Defendants object to each Request insofar as it seeks information that has not yet been obtained by Defendants.
19. Defendants state that these objections and answers provide and rely upon information and identify information that is currently available or known to Defendants. Defendants reserve the right to supplement, amend, or revise these objections and answers as additional information becomes available or comes to Defendants' attention. Defendants also reserve the right to object to the relevancy

and to the admissibility of any information provided in these objections and responses.

20. Nothing in these objections and answers is intended to, or should be construed, to waive or relinquish any rights that Defendants have under applicable law and rules. Defendants do not waive other objections to these Requests by expressing or asserting certain objections in their objections or responses. Defendants further reserve the right to assert additional objections and to revise or amend Defendants' objections as appropriate or necessary.
21. Defendants' responses to the Requests are subject to, and consistent with, the Protective Orders entered in the Southern District of Ohio Case Nos. 2:11-cv-1016 or 2:04-cv-1156 that expressly prohibit the discovery of, and place off-limits certain communications, documents, materials and information from, or created during, the time periods provided in the Orders. [See ECF Nos. 629, 838; ECF No. 413, 04-cv-1156]
22. Defendants object to each Request to the extent that it or any portion thereof seeks information that is protected or prohibited from disclosure pursuant to any applicable provision of the Ohio Revised Code, including but not limited to R.C. §149.43, R.C. §2949.221, and R.C. §2949.222, effective March 23, 2015.
23. Defendants object to each Request to the extent that it or any portion thereof seeks information that is protected or prohibited from disclosure pursuant to the Southern District of Ohio Court's October 2015 Protective Order [2:11-cv-1016, ECF No. 629], pursuant to the Southern District of Ohio Court's Rulings on Defendants' Claims of Privilege [*Id.*, ECF No. 838, PageID 24911-916], R.C. §2949.221, and the Governmental Privilege, and pursuant to all of the arguments DRC Defendants raised in the federal court cases in support of their privilege claims, which arguments are specifically incorporated fully into each of the following responses by reference.
24. Without waiving these or any other applicable objections, and subject to them, Defendants respond as follows to the specific Requests.

## INTERROGATORIES

INTERROGATORY NO. 1: Identify the person who is the custodian of all records, as that term is defined in the Instruction section of these Interrogatories, relating to ODRC 01-COM-11 that was first effective on January 9, 2015 to and including ODRC 01-COM-11 effective October 7, 2016?

**RESPONSE:**

**Objections:**

The terms "custodian" or "custodian of records" are not defined in the Instructions, so Defendants are unable to answer this interrogatory.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that there is no one person who is the custodian of all records relating to the versions of ODRC 01-COM-11 cited in this interrogatory.

INTERROGATORY NO. 2: Did the Ohio Department of Rehabilitation and Correction comply with Ohio's statutory administrative rule making requirements in adopting ODRC 01-COM-11 that was first effective on January 9, 2015 to and including ODRC 01-COM-11 effective October 7, 2016?

**RESPONSE:****Objections:**

The question is overbroad and unduly burdensome because it does not define "statutory administrative rulemaking requirements" with sufficient specificity. The question essentially requests that Defendants state an opinion as to whether "Ohio's statutory administrative rule making requirements" apply to the adoption of written policy directive 01-COM-11. Accordingly, it constitutes a request to state an opinion on a pure question of law which is subject to objection. See *United States v. Quebe*, 2017 U.S. Dist. LEXIS 9005 (USDC S. D. Ohio Western Division at Dayton Jan. 23, 2017), slip opinion at \*48.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that to whatever extent Plaintiffs contend that "Ohio's statutory administrative rule making requirements" apply, ODRC 01-COM-11 is not subject to such requirements or adopted in violation of such requirements.

INTERROGATORY NO. 3: If your answer to Interrogatory #2 is in the affirmative, identify the Ohio Revised Code provisions with which ODRC complied.

**RESPONSE: N/A**



**INTERROGATORY NO. 4:** If James Derrick O'Neal and Raymond Tibbets were to be executed on the date these interrogatories are answered, would ODRC execute them utilizing ODRC 01-COM-11 effective October 7, 2016?

**RESPONSE:**

**Objection:**

The question calls for speculation.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that ODRC 01-COM-11, effective October 7, 2016, sets forth the current policies and procedures for the conduct of court-ordered executions.

**INTERROGATORY NO. 5:** Paragraph I of ODRC 01-COM-11 states that it was "issued in compliance with Ohio Revised Code 5120.01." Does ODRC claim that any law, statute, legal decision, or constitutional provision, other than Ohio Revised Code 5120.01, gave it authority to issue ODRC 01-COM-11 effective January 9, 2015, June 29, 2015 and again on October 7, 2016?

**RESPONSE:**

**Objections:**

The question is vague, overbroad, unduly burdensome, insofar as it requests that Defendants identify "any law, statute, legal decision, or constitutional provision, other than Ohio Revised Code 5120.01."

Insofar as the question essentially asks Defendants to state an opinion as to the applicability of "any law, statute, legal decision, or constitutional provision, other than Ohio Revised Code 5120.01," it constitutes a request to state an opinion on a pure question of law which is subject to objection. See *United States v. Quebe*, 2017 U.S. Dist. LEXIS 9005 (USDC S. D. Ohio Western Division at Dayton Jan. 23, 2017), slip opinion at \*48.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants refer Plaintiffs to O.R.C. § 2949.22 - Execution of death sentence and O.R.C § 2949.24 - Execution and return of warrant for sentence of death.

INTERROGATORY NO. 6: If your answer to Interrogatory #5 above is in the affirmative, list all sections of the Ohio Revised Code and/or any other source of law that ODRC claims gave it authority to issue ODRC 01-COM-11 effective January 9, 2015, June 29, 2015 and again on October 7, 2016?

**RESPONSE:**

See response to INTERROGATORY NO. 5.

INTERROGATORY NO. 7: Are there any limitations contained in ODRC 01-COM-11 on the number of piercings/cuttings/woundings of a condemned prisoner that may be used in preparation for execution? The question also contains the undefined and vague terms, "piercings/cuttings/woundings."

**RESPONSE:**

**Objections:**

The question seeks information that is not relevant to Plaintiffs' claims or likely to lead to the discovery of relevant information.

The question requests information that is publicly available or is a matter of public record.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants refer Plaintiffs to ODRC 01-COM-11(VI)(G)(7).

INTERROGATORY NO. 8: Did ODRC receive any guidance, in any form including communications, from the Ohio General Assembly in adopting ODRC 01-COM-11 effective January 9, 2015, June 29, 2015 and again on October 7, 2016?

**RESPONSE:**

**Objections:**

Insofar as it refers to "guidance, in any form," from "the Ohio General Assembly," the question is overbroad, vague and ambiguous.

Insofar as the question implies that Defendants may be subject to "guidance" by individual members of the Ohio General Assembly, the question seeks information not relevant to Plaintiffs' claims or likely to lead to the discovery of relevant information. See *State ex rel. Willke v. Taft*, 107 Ohio St. 3d 1, 8 (2005), quoting *Nichols v. Villarreal* (1996), 113 Ohio App. 3d 343, 349, 680 N.E.2d 1259 ("we must determine the intent of the Ohio General Assembly not from the expressions of a single legislator, but from the expression of the legislative body as a whole"),

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants refer Defendants refer Plaintiffs to O.R.C. § 2949.22 – Execution of death sentence and O.R.C. § 2949.24 – Execution and return of warrant for sentence of death.

INTERROGATORY NO. 9: If your answer to Interrogatory 7 above is in the affirmative, state the dates the guidance was given, and who in the Ohio General Assembly gave the guidance in enacting ODRC 01-COM-11?

**RESPONSE:**

See Responses to INTERROGATORY NOS. 7 and 8.

**INTERROGATORY NO. 10:** What authority does ODRC claim authorizes it to choose the drugs to be used in carrying out executions?

**RESPONSE:**

**Objections:**

Insofar as it does not specify the "authority" to which it refers, the question is vague, ambiguous, and burdensome.

The question essentially constitutes a request to state an opinion on a pure question of law which is subject to objection. See *United States v. Quebe*, 2017 U.S. Dist. LEXIS 9005 (USDC S. D. Ohio Western Division at Dayton Jan. 23, 2017), slip opinion at \*48.

**Answer:**

Subject to and without waiving the specific and objections stated above, Defendants refer Plaintiffs to ORC § 2949.22 - Execution of death sentence.

**INTERROGATORY NO. 11:** Has the Ohio General Assembly provided ODRC any guidance or policy for choosing the drugs to be used in carrying out an execution by lethal injection?

**RESPONSE:**

See Responses to INTERROGATORY NOS. 7 and 8.

INTERROGATORY NO. 12: Does the Ohio Revised Code define "lethal injection" as that term is found in Ohio Revised Code 2949.22?

**RESPONSE:**

**Objection:**

The question seeks information that is publicly available or is a matter of public record.

**Answer:**

Subject to and without waiving the specific and objections stated above, Defendants state that to the best of their knowledge and belief the Ohio Revised Code does not include a specific provision which defines the term "lethal injection" for the purpose of section 2949.22 or other sections or provisions of the Ohio Revised Code.

INTERROGATORY NO. 13: What is the source of the term "IV injection" as used in ODRC 01-COM-11 effective January 9, 2015, June 29, 2015 and again on October 7, 2016?

**RESPONSE:**

**Objection:**

Insofar as the question does not define "source," and seeks information or explanation beyond the normal or plain meaning of the terms "IV" and "injection," it is vague, ambiguous and unduly burdensome.

Insofar as the questions asks Defendants to provide the normal or plain meaning of the terms "IV" and "injection," it requests information that is publicly available or is a matter of public record.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that term "IV" is used to refer to "intravenous," see ODRC 01-COM-11 (VI)(B.)(3.)(a.), and the terms "IV" and "injection" are used in ODRC 01-COM-11 consistent with their normal and plain meaning.

INTERROGATORY NO. 14: Do Defendants claim that the Ohio General Assembly delegates lawmaking authority to ODRC?

**RESPONSE:**

**Objections:**

Insofar as it does not define "lawmaking authority," the question is vague, ambiguous and burdensome.

Insofar as it essentially asks Defendants to state an opinion as to the definition of "lawmaking," it constitutes a request to state an opinion on a pure question of law which is subject to objection. See *United States v. Quebe*, 2017 U.S. Dist. LEXIS 9005 (USDC S. D. Ohio Western Division at Dayton Jan. 23, 2017), slip opinion at \*48.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants refer Plaintiffs to *AMOCO v. Petroleum Underground Storage Tank Release Compensation Bd.*, 89 Ohio St. 3d 477, 480 (2000) ("It is well settled that the General

Assembly cannot delegate legislative authority, but it can delegate rule-making authority to agencies.”).

INTERROGATORY NO. 15: Is ODRC an "agency" as defined in Ohio Revised Code 111.15(A)(2)?

**RESPONSE:**

**Objections:**

The question seeks information that is publicly available or is a matter of public record. Insofar as it essentially asks Defendants to state an opinion as to the definition of the term "agency" as set forth in ORC § 111.15(A)(2), it constitutes a request to state an opinion on a pure question of law which is subject to objection. *See United States v. Quebe*, 2017 U.S. Dist. LEXIS 9005 (USDC S. D. Ohio Western Division at Dayton Jan. 23, 2017), slip opinion at \*48.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants refer Plaintiffs to O.R.C. § 5120.05 and *State ex rel. Oriana House, Inc. v. Montgomery*, 110 Ohio St. 3d 456, 463 (2006) (describing ODRC as "the state agency authorized to 'maintain, operate, manage, and govern all state institutions for the custody, control, training, and rehabilitation of persons convicted of crime and sentenced to correctional institutions.'").



INTERROGATORY NO. 16: If your answer to Interrogatory #15 is in the affirmative, does an administrative agency of the State of Ohio have any regulatory or rulemaking power that is not delegated to it by the Ohio General Assembly?

**RESPONSE:**

**Objection:**

Insofar as it essentially asks Defendants to state an opinion as to the "regulatory or rulemaking power" of "an administrative agency of the State of Ohio," it constitutes a request to state an opinion on a pure question of law which is subject to objection. See *United States v. Quebe*, 2017 U.S. Dist. LEXIS 9005 (USDC S. D. Ohio Western Division at Dayton Jan. 23, 2017), slip opinion at \*48.

**Answer:**

See response to INTERROGATORY NO. 14.

INTERROGATORY NO. 17: Was ODRC 01-COM-11 effective January 9, 2015, June 29, 2015 and again on October 7, 2016 ever an "emergency rule" as that term is defined in Ohio Revised Code 111.15?

**RESPONSE:**

**Objection:**

The term "emergency rule" is not defined in Ohio Revised Code 111.15. Also the question essentially asks Defendants to state an opinion as to the definition of the term "emergency rule" as set forth in ORC § 111.15, it constitutes a request to state an

opinion on a pure question of law which is subject to objection. See *United States v. Quebe*, 2017 U.S. Dist. LEXIS 9005 (USDC S. D. Ohio Western Division at Dayton Jan. 23, 2017), slip opinion at \*48.

**Answer:**

See the answer to INTERROGATORY NO. 2.

INTERROGATORY NO. 18: Was ODRC 01-COM-11 effective October 7, 2016 filed in electronic form or otherwise, with the Ohio Secretary of State, the director of the legislative service commission, or the joint committee on agency rule review?

**RESPONSE:**

No.

INTERROGATORY NO. 19: If your answer to Interrogatory #18 is in the affirmative, what was the date that ODRC 01-COM-11 effective October 7, 2016 was filed, regardless of form, with the Ohio Secretary of State?

**RESPONSE:**

N/A

INTERROGATORY NO. 20: If your answer to Interrogatory #18 is in the affirmative, what was the date that ODRC 01-COM-11 effective October 7, 2016 was filed, regardless of form, with the director of the legislative service commission?

**RESPONSE:**

N/A

INTERROGATORY NO. 21: If your answer to Interrogatory #18 is in the affirmative, what was the date that ODRC 01-COM-11 effective October 7, 2016 was filed, regardless of form, with the joint committee on agency rule review?

**RESPONSE:**

N/A

INTERROGATORY NO. 22: Does ODRC 01-COM-11 apply to all Ohio prisoners who are to be executed by the State of Ohio?

**RESPONSE:**

**Objection:**

The question does not specify whether the phrase "all Ohio prisoners who are to be executed" refers to prisoners currently under a sentence of death but whose sentences remain under judicial review; to prisoners whose sentences are no longer under judicial review but whose executions are not presently impending; or prisoners whose

sentences are no longer under judicial review and whose executions are imminent. Accordingly, the question is vague, ambiguous, and unduly burdensome.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that 01-COM-11, effective October 7, 2016, sets forth current policies and procedures for the conduct of Ohio's court-ordered executions.

INTERROGATORY NO. 23: Is there any language in Ohio Revised Code 5120.01 or any other provision of the Ohio Revised Code that exempts the Director of ODRC or ODRC itself, from Ohio's statutory rulemaking procedures?

**RESPONSE:**

**Objections:**

The question does not define with specificity the "statutory rulemaking procedures" which the question assumes are applicable to Defendants absent statutory exemption. Accordingly, the question is vague, ambiguous, and unduly burdensome.

The question implicitly asks the Defendants to state a legal opinion as to what extent, if any, "statutory rulemaking procedures" are applicable to Director of the ODRC or ODRC. As such, it constitutes a request to state an opinion on a pure question of law which is subject to objection. *See United States v. Quebe*, 2017 U.S. Dist. LEXIS 9005 (USDC S. D. Ohio Western Division at Dayton Jan. 23, 2017), slip opinion at \*48.

**Answer:**

See the answer to INTERROGATORY NO. 2.

INTERROGATORY NO. 24: If your answer to Interrogatory #23 is in the affirmative, what language of Ohio Revised Code 5120.01 or other Ohio Revised Code provisions contains the claimed exemption?

**RESPONSE:**

See the answers to INTERROGATORY NOS. 2 and 23.

INTERROGATORY NO. 25: Does Ohio Revised Code 111.15 et seq set out the procedures for the adoption of administrative rules by state agencies that are not governed by other statutory administrative rule making procedures?

**RESPONSE:**

**Objections:**

Insofar as the question does not specify the referenced terms "state agencies" or "other statutory administrative rule making procedures," the question is vague, ambiguous, and unduly burdensome.

Insofar as the question requests a recitation of the provisions of ORC § 111.15 et seq, it seeks information that is publicly available or is a matter of public record.

Insofar as the question implicitly asks Defendants to state a legal opinion as to the general meaning and effect of ORC § 111.15 et seq, it constitutes a request to state an

opinion on a pure question of law which is subject to objection. *See United States v. Quebe*, 2017 U.S. Dist. LEXIS 9005 (USDC S. D. Ohio Western Division at Dayton Jan. 23, 2017), slip opinion at \*48.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants refer Plaintiffs to ORC § 111.15 et seq.

INTERROGATORY NO. 26: What are the reasons for subjecting defense counsel to special search requirements the day before an execution under 01-COM-11, VI.E.7 (October 7, 2016)?

**RESPONSE:**

**Objections:**

The question seeks information that is neither relevant to the Plaintiffs' claims nor likely to lead to the discovery of relevant information.

Insofar as the question does not specify "defense counsel" or the referenced "special search requirements," which could be subject to interpretation, it is vague, ambiguous and overly burdensome.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that the requirements of 01-COM-11, VI.E.7 (October 7, 2016) were promulgated for the purpose of insuring institutional safety and security. Defendants

also refer Plaintiffs to *Briscoe v. Ohio Dept. of Rehab. & Corr.*, Franklin App. No. 02AP-1109, 2003 Ohio 3533, P 16 ("With respect to penal institutions, prison administrators must be accorded deference in adopting \* \* \* policies and practices to preserve internal order and to maintain institutional security").

INTERROGATORY NO. 27: What is the factual basis justifying this special search requirement?

**RESPONSE:**

See the answer to INTERROGATORY NO. 26.

INTERROGATORY NO. 28: What are the reasons for prohibiting confidential attorney-client consultation on the day of execution by permitting only "monitored," (01-COM-11, VI.D.1) "cell-front" (01-COM-11, VI.E.7; VI.F.6) attorney visits on that day?

**RESPONSE:**

See the answer to INTERROGATORY NO. 26.

INTERROGATORY NO. 29: What is the factual basis justifying the denial of confidential attorney-client consultation on the day of execution?

**RESPONSE:**

See the answer to INTERROGATORY NO. 26.

INTERROGATORY NO. 30: What are the reasons for restricting witnessing defense counsels' access during the execution process to a telephone that will make calls only within the prison and cannot reach an outside line? 01-COM-11, VI.G.2.a. and b.

**RESPONSE:**

See the answer to INTERROGATORY NO. 26.

INTERROGATORY NO. 31: What is the factual basis justifying the restriction on defense counsels' access to telephones during the execution process?

**RESPONSE:**

See the answer to INTERROGATORY NO. 26.

INTERROGATORY NO. 32: Is it the role of the ODRC to carry out the punishments defined by the legislature and imposed by the courts?

**RESPONSE:**

**Objections:**

Insofar as the question does not specify "the punishments defined by the legislature" to which it refers, it is vague, ambiguous and overly burdensome.

Insofar as it requests Defendants to describe the punishment prescribed by law for criminal offenses, and Defendants' duties and responsibilities in carrying out such



punishment, it requests information that is publicly available or is a matter of public record.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants refer Plaintiffs to O.R.C. § 2949.22 - Execution of death sentence, O.R.C. § 2949.24 - Execution and return of warrant for sentence of death, and to O.R.C. Chapter 5120 - Department of Rehabilitation and Correction.

INTERROGATORY NO. 33: Is it the role of the executive branch of the government of the State of Ohio to carry out the punishments defined by the legislature and imposed by the courts?

**RESPONSE:**

See the answer to INTERROGATORY NO. 32.

**REQUEST FOR PRODUCTION OF DOCUMENTS**

1. Any and all documents from the Ohio Legislature to the Ohio Department of Rehabilitation and Correction concerning ODRC 01-COM-11.

**RESPONSE:****Objections:**

The term "Ohio Legislature" is not defined in this request. Also, insofar as the request refers to "[a]ny and all documents... concerning ODRC 01-COM-11," it is vague, ambiguous, and unduly burdensome.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants have no "documents from the Ohio Legislature" which are responsive to the request.

2. Any and all medical studies in the possession of the Ohio Department of Rehabilitation and Correction concerning ODRC-01-COM-11 concerning the efficacy of the drug Midazolam Hydrochloride for use in capital punishment by lethal injection.

**RESPONSE:****Objections:**

The request seeks documents which are not relevant to Plaintiffs' claims and not likely to lead to the discovery of relevant information.

Insofar as the request does not specify the type of "medical studies" which are requested, or whether the request excludes "medical studies" pertaining to the effects of Midazolam Hydrochloride with respect to its general medical use, the request is vague, ambiguous, and overly burdensome.

Insofar as the request seeks "medical studies" pertaining to the effects of Midazolam Hydrochloride with respect to its general medical use, it seeks documents which are publicly available or are a part of the public record.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants have no documents stating or describing the results of studies of the use of Midazolam Hydrochloride for the specific purpose of and the dosage levels utilized in executing condemned prisoners. Insofar as the request seeks "medical studies" pertaining to the effects of Midazolam Hydrochloride with respect to its general medical use, Defendants refer Plaintiffs to the above referenced publicly available information, including but not limited to records, documentary evidence and testimony in *In re Ohio Lethal Injection Protocol Litigation*, U.S. Dist. Court S. Dist. Ohio, Case No. 2:11-cv-1016.

3. Any and all medical studies in the possession of the Ohio Department of Rehabilitation and Correction concerning ODRC-01-COM-11 concerning the efficacy of the drug Vecuronium bromide for use in capital punishment by lethal injection.

**RESPONSE:**

**Objections:**

The request seeks documents which are not relevant to Plaintiffs' claims and not likely to lead to the discovery of relevant information.

Insofar as the request does not specify the type of "medical studies" which are requested, or whether the request excludes "medical studies" pertaining to the effects of Vecuronium bromide with respect to its general medical use, the request is vague, ambiguous, and overly burdensome.

Insofar as the request seeks "medical studies" pertaining to the effects of Vecuronium bromide with respect to its general medical use, it seeks documents which are publicly available or are a part of the public record.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants have no documents stating or describing the results of studies of the use of Vecuronium bromide for the specific purpose of and the dosage levels utilized in executing condemned prisoners. Insofar as the request seeks "medical studies" pertaining to the effects of Vecuronium bromide with respect to its general medical use, Defendants refer Plaintiffs to the above referenced publicly available information,

including but not limited to records, documentary evidence and testimony in *In re Ohio Lethal Injection Protocol Litigation*, U.S. Dist. Court S. Dist. Ohio, Case No. 2:11-cv-1016.

4. Any and all medical studies in the possession of the Ohio Department of Rehabilitation and Correction concerning ODRC-01-COM-11 concerning the efficacy of the drug Pancuronium bromide for use in capital punishment by lethal injection

**RESPONSE:**

**Objections:**

The request seeks documents which are not relevant to Plaintiffs' claims and not likely to lead to the discovery of relevant information.

Insofar as the request does not specify the type of "medical studies" which are requested, or whether the request excludes "medical studies" pertaining to the effects of Pancuronium bromide with respect to its general medical use, the request is vague, ambiguous, and overly burdensome.

Insofar as the request seeks "medical studies" pertaining to the effects of Pancuronium bromide with respect to its general medical use, it seeks documents which are publicly available or are a part of the public record.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state they have no documents stating or describing the results of studies of the use of Pancuronium bromide for the specific purpose of and the dosage levels

utilized in executing condemned prisoners. Insofar as the request seeks "medical studies" pertaining to the effects of Pancuronium bromide with respect to its general medical use, Defendants refer Plaintiffs to the above referenced publicly available information, including but not limited to records, documentary evidence and testimony in *In re Ohio Lethal Injection Protocol Litigation*, U.S. Dist. Court S. Dist. Ohio, Case No. 2:11-cv-1016.

5. Any and all medical, pharmacological, pharmaceutical or expert studies, reports, opinions, in the possession of the Ohio Department of Rehabilitation and Correction concerning ODRC-01-COM-11 concerning the efficacy of the drug Rocuronium bromide for use in capital punishment by lethal injection.

**RESPONSE:**

**Objections:**

The request seeks documents which are not relevant to Plaintiffs' claims and not likely to lead to the discovery of relevant information.

Insofar as the request does not specify the type of "medical studies" which are requested, or whether the request excludes "medical studies" pertaining to the effects of Rocuronium bromide with respect to its general medical use, the request is vague, ambiguous, and overly burdensome.

Insofar as the request seeks "medical studies" pertaining to the effects of Rocuronium bromide with respect to its general medical use, it seeks documents which are publicly available or are a part of the public record.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that they have no documents stating or describing the results of studies of the use of Rocuronium bromide for the specific purpose of and the dosage levels utilized in executing condemned prisoners. Insofar as the request seeks "medical studies" pertaining to the effects of Rocuronium bromide with respect to its general medical use, Defendants refer Plaintiffs to the above referenced publicly available information, including but not limited to records, documentary evidence and testimony in *In re Ohio Lethal Injection Protocol Litigation*, U.S. Dist. Court S. Dist. Ohio, Case No. 2:11-cv-1016.

5. Any and all transcripts of expert testimony, that was offered by Defendants in any legal proceeding and copies of which remain in the possession of Defendants, concerning the use and effects of the drugs identified in ODRC 01-COM-11 including Midazolam Hydrochloride, Vecuronium bromide, Pancuronium bromide, Rocuronium bromide, Potassium Chloride, Pentobarbital, and Thiopental sodium, in capital punishment by lethal injection.

**RESPONSE:**

**Objections:**

The request seeks documents which are not relevant to Plaintiffs' claims and not likely to lead to the discovery of relevant information.

The request seeks information which is readily available to Plaintiffs via the record of *In re Ohio Lethal Injection Protocol Litigation*, U.S. Dist. Court S. Dist. Ohio, Case No. 2:11-cv-1016, and which thereby may already have been acquired by Plaintiffs. Requiring Defendants to duplicate such information is unnecessary and would be unduly burdensome.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants refer Plaintiffs to the above referenced publicly available information, including but not limited to records, documentary evidence and testimony in *In re Ohio Lethal Injection Protocol Litigation*, U.S. Dist. Court S. Dist. Ohio, Case No. 2:11-cv-1016.

6. Any and all exhibits Defendants intend to introduce at trial.

**RESPONSE:**

**Objections:**

The request is premature. This information shall be exchanged in accordance with the time schedule likely to be established at the Initial Status Conference. Discovery is currently still ongoing, and Defendants have not yet identified what exhibits may be



used at trial. Defendants reserve the right to supplement its response to this Interrogatory and will do so sometime prior to trial.

7. Any and all correspondence and/or other written documents (email and the like) between the State of Ohio and/or the Ohio Department of Rehabilitation and Correction and any other State concerning the drugs Midazolam Hydrochloride, Vecuronium bromide, Pancuronium bromide and Rocuronium bromide.

**RESPONSE:**

**Objections:**

The request seeks records which are not relevant to Plaintiffs' claims or likely to lead to the discovery of relevant information.

Insofar as it seeks "[a]ny and all correspondence and/or other written documents (email and the like)," and particularly in light of the obvious lack of relevance to any of the Plaintiffs' claims, the request is vexatious and unduly burdensome.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that they have no documents responsive to the request.

8. Any and all documents received by the Ohio Department of Rehabilitation and Correction from the Ohio Legislature concerning the drugs Midazolam Hydrochloride, Vecuronium bromide, Pancuronium bromide and Rocuronium bromide.

**RESPONSE:**

**Objections:**

The request seeks records which are not relevant to Plaintiffs' claims or likely to lead to the discovery of relevant information.

Insofar as it seeks "[a]ny and all documents...from the Ohio Legislature," and particularly in light of the obvious lack of relevance to any of the Plaintiffs' claims, the request is vexatious and unduly burdensome.

The request seeks documents which may contain information that is subject to R.C. §2949.221, and R.C. §2949.222, effective March 23, 2015. and/or subject to protective orders in *In Re Ohio Lethal Injection Protocol Litigation*.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state they have no documents received from the Ohio Legislature which are responsive to the request.

9. Any and all documents provided to the Ohio Legislature by the Ohio Department of Rehabilitation and Correction concerning the drugs Midazolam Hydrochloride, Vecuronium bromide, Pancuronium bromide and Rocuronium bromide.

**RESPONSE:**

**Objections:**

The request seeks records which are not relevant to Plaintiffs' claims or likely to lead to the discovery of relevant information.

Insofar as it seeks "[a]ny and all documents provided to the Ohio Legislature," and particularly in light of the obvious lack of relevance to any of the Plaintiffs' claims, the request is vague, ambiguous, unduly burdensome and vexatious. See also <https://www.legislature.ohio.gov/legislators/legislator-directory>, last accessed on April 25, 2018 (indicating that Ohio Legislature includes 99 Representatives and 33 Senators).

The request seeks documents which may contain information that is subject to R.C. §2949.221, and R.C. §2949.222, effective March 23, 2015, and/or subject to protective orders in *In Re Ohio Lethal Injection Protocol Litigation*.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state they have no documents provided to the Ohio Legislature which are responsive to the request.

10. The current inventory in the care, custody and control of the Ohio Department of Rehabilitation and Correction for the drugs Midazolam Hydrochloride, Vecuronium bromide, Pancuronium bromide and Rocuronium bromide.

**RESPONSE:**

**Objections:**

The request seeks records which are not relevant to Plaintiffs' claims or likely to lead to the discovery of relevant information.

Insofar as the request does not specify what documents or information is requested with respect to the "inventory" of the named drugs, it is vague, ambiguous and unduly burdensome.

The request seeks documents which may contain information that is subject to R.C. §2949.221, and R.C. §2949.222, effective March 23, 2015. and/or subject to protective orders in *In Re Ohio Lethal Injection Protocol Litigation*.

**Answer:** To the extent such information is not subject to R.C. §2949.221, and R.C. §2949.222, effective March 23, 2015. and/or subject to protective orders in *In Re Ohio Lethal Injection Protocol Litigation*, the request seeks information which is readily available to Plaintiffs via the record of *In re Ohio Lethal Injection Protocol Litigation*, U.S. Dist. Court S. Dist. Ohio, Case No. 2:11-cv-1016, and which thereby may already have been acquired by Plaintiffs. Requiring Defendants to duplicate such information is unnecessary and would be unduly burdensome.

11. Any and all documents from the Ohio Department of Rehabilitation and Correction to the Ohio Legislature reporting on the necessity for changing ODRC-01-COM-11 including the reasons given for such changes for at least the ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016.

**RESPONSE:**

**Objections:**

Insofar as it seeks "[a]ny and all documents ... to the Ohio Legislature," and particularly in light of the obvious lack of relevance to any of the Plaintiffs' claims, the request is vague, ambiguous, unduly burdensome and vexatious. See also <https://www.legislature.ohio.gov/legislators/legislator-directory>, last accessed on April 25, 2018 (indicating that Ohio Legislature includes 99 Representatives and 33 Senators).

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state they have no documents "reporting" to the Ohio Legislature which are responsive to the request.

12. A copy of any authority by which Ohio Department of Rehabilitation and Correction claims to enact ODRC-01-COM-11.

**RESPONSE:**

**Objections:**

Insofar as the request does not specify the "authority" to which the request references, the request is vague, ambiguous and unduly burdensome.

Insofar as the ODRC's duties and responsibilities with respect to execution of sentences of death are set forth in the Ohio Revised Code, the documents requested are matters of public record.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that, apart from the above-referenced publicly available documents, they have no documents responsive to the request.

13. Any document that demonstrates ODRC-01-COM-11 was filed in electronic form with the Ohio Secretary of State for at least the ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016.

**RESPONSE:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.

14. All documents in the care, custody or control of the Ohio Department of Rehabilitation and Correction that exempt the ODRC from Ohio's rulemaking procedures.

**RESPONSE:**

**Objections:**

Insofar as the request does not specify the "rule making procedures" to which the request references, the request is vague, ambiguous and unduly burdensome.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that they have no documents responsive to the request.

15. All documents in the care, custody and control of the Ohio Department of Rehabilitation and Correction that demonstrate it is governed by statutory administrative rule making procedures other than those in Ohio Rev. Code § 111.15.

**RESPONSE:**

**Objections:**

Insofar as the request does not specify the "statutory administrative rule making procedures" to which the request references, the request is vague, ambiguous and unduly burdensome.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that they have no documents responsive to the request.

16. Any document that demonstrates ODRC-01-COM-11 was filed in electronic form with the director of the legislative service commission for at least the ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016.

**RESPONSE:****Answer:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.

17. Any document that demonstrates ODRC-01-COM-11 was filed in electronic form with the joint committee on agency rule review for at least the ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016.

**RESPONSE:****Answer:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.



18. Any document from the Ohio Secretary of State to the Ohio Department of Rehabilitation and Correction that indicates, in any form, that ODRC did not have to file the ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016 in electronic form.

**RESPONSE:**

**Answer:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.

19. Any document from the director of legislative service commission to the Ohio Department of Rehabilitation and Correction that indicates, in any form, that ODRC did not have to file the ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016 in electronic form.

**RESPONSE:**

**Answer:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.

20. Any document from the joint committee on agency rule review to the Ohio Department of Rehabilitation and Correction that indicates, in any form, that ODRC did not have to file the ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016 in electronic form.

**RESPONSE:**

**Answer:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.

21. Any document that contains a formal or informal opinion that Ohio Department of Rehabilitation and Correction did not have to file ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016 in electronic form with the Ohio Secretary of State.

**RESPONSE:**

**Answer:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.

22. Any document that contains a formal or informal opinion that Ohio Department of Rehabilitation and Correction did not have to file ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016 in electronic form with the director of legislative service commission.

**RESPONSE:**

**Answer:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.

23. Any document that contains a formal or informal opinion that Ohio Department of Rehabilitation and Correction did not have to file ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016 in electronic form with the joint committee on agency rule review.

**RESPONSE:**

**Answer:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.

24. Any document in the care, custody and control of the Ohio Department of Rehabilitation and Correction that defines what a "rule of an emergency nature" is for purposes of that agency.

**RESPONSE:**

**Objections:**

Insofar as the request does not define or specify the term "rule of an emergency nature," nor does it define or specify "the purposes" to which it references, the request is vague, ambiguous, and unduly burdensome.

**Answer:**

Subject to and without waiving the specific and general objections stated above, Defendants state that they have no documents responsive to the request.

25. Any document in the care, custody and control of the Ohio Department of Rehabilitation and Correction that defines what an "internal management rule" is for purposes of that agency.

**RESPONSE:**

**Objections:**

Insofar as the request does not define or specify the term "internal management rule," nor does it define or specify "the purposes" to which it references, the request is vague, ambiguous, and unduly burdensome.

**Answer:**

Subject to and without waiving the specific and general objections stated above,

Defendants state that they have no documents responsive to the request.

26. The curriculum vitae of any expert the State of Ohio and/or Ohio Department of Rehabilitation and Correction intend to call as a witness at trial.

**RESPONSE:****Objections:**

This Request is premature. This information shall be exchanged in accordance with the time schedule established by the Clerk's Original Case Schedule or as otherwise determined at the Initial Status Conference. Discovery is currently still ongoing, and Defendants have not yet identified what experts may be used at trial. Defendants reserve the right to supplement its response to this Request and will do so sometime prior to trial.

27. Any document that demonstrates the joint committee on agency rule review reviewed the substantive portion of ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016

**RESPONSE:**

**Answer:**

Subject to and without waiving the general objections stated above, Defendants state that they have no documents responsive to the request.

28. Any document from the Ohio Legislature that purports to grant Ohio Department of Rehabilitation and Correction the authority to promulgate ODRC-01-COM-11 effective January 9, 2015, June 29, 2015 and October 7, 2016

**RESPONSE:**

**Objections:**

The term "Ohio Legislature" is not defined in this request.

**Answer:**

Subject to and without waiving the specific and general objections stated above, see the response to Request No. 12.

**As to objections:**

s/ Jocelyn K. Lowe

JOCELYN K. LOWE (0083646)

Respectfully submitted,

MICHAEL DEWINE  
Ohio Attorney General

*s/ Jocelyn K. Lowe*

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*Department of Rehabilitation and Correction*

Stephen C. Gray

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO

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Case No. 18CV-758

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James D. O'Neal, et al.,

Plaintiffs,

vs.

The State of Ohio, et al.,

Defendants.

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Deposition of: STEPHEN C. GRAY

Date and Time: Tuesday, October 16, 2018  
10:30 a.m.

Place: Franklin County  
Common Pleas Court  
345 South High Street  
Courtroom 6E Jury Room  
Columbus, Ohio

Reporter: Julieanna Hennebert, RPR, RMR  
Notary Public - State of Ohio

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1                   STEPHEN C. GRAY,  
2     being by me first duly sworn, as hereinafter  
3     certified, deposes and says as follows:

4                   CROSS-EXAMINATION

5     BY MR. GREGER:

6           Q.       Calling as if on cross-examination.

7                   If you would please state your name and  
8     spell your first and last name for the record.

9           A.       Stephen, S-t-e-p-h-e-n, Gray, G-r-a-y.

10          Q.       Mr. Gray, besides seeing each other at the  
11     Moon and former-Director Mohr's depositions we've not  
12     had the pleasure of meeting each other; is that  
13     correct?

14          A.       I believe that is correct.

15          Q.       You understand that this is a discovery  
16     deposition being taken by the agreement of the  
17     parties in the litigation now pending in Franklin  
18     County Common Pleas Court in the case captioned  
19     O'Neal, et al. versus the State of Ohio, do you not?

20          A.       If it is Case No. 18CV-758, that's  
21     correct.

22          Q.       You have been deposed in the past, have  
23     you not?

24          A.       That's correct.

25          Q.       You understand the deposition process?

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1 A. I do.

2 Q. You are an attorney licensed to practice  
3 in the state of Ohio; is that correct?

4 A. Yes.

5 Q. When were you first licensed?

6 A. I was licensed in Ohio in 1996.

7 Q. Were you licensed in any other states?

8 A. I am licensed in the state of Wisconsin.  
9 I obtained that license in 1991. I'm currently  
10 inactive in the state of Wisconsin but I still hold a  
11 license.

12 Q. Mr. Gray, are those the only two states  
13 you hold a law license in?

14 A. Correct. Yes.

15 Q. Have you ever had any discipline taken  
16 against either license?

17 A. No.

18 Q. Trace for me if you would please your  
19 employment after graduation from law school.

20 A. Graduated from Ohio State University  
21 College of Law in May of 1991. I began my career in  
22 August of that year, 2011 [verbatim] as a law clerk  
23 to the Honorable J.P. Stadtmueller,  
24 S-t-a-d-t-m-u-e-l-l-e-r. That's Eastern District of  
25 Wisconsin. I clerked for Judge Stadtmueller for two

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1 years from August 2011 to August of 2013. August of  
2 2013 -- excuse me.

3 I misspoke, it would be August of 1991 to  
4 August of 1993, that was my two-year clerkship with  
5 Judge Stadtmueller.

6 Following that I worked for a law firm  
7 called Davis & Kuelthau, K-u-e-l-t-h-a-u, located in  
8 Milwaukee, Wisconsin. Worked for Davis for a year.  
9 Excuse me, I believe that was two years, until August  
10 of 2015 [verbatim]. And then September of 2015 to  
11 about September of -- excuse me, I'm getting my years  
12 messed up.

13 We're in 1993 to 1995, I was at Davis &  
14 Kuelthau. 1995 to 1996 I clerked for the Honorable  
15 Terence, T-e-r-e-n-c-e, Evans, E-v-a-n-s. He is a  
16 circuit judge at the Sixth Circuit Court of Appeals.  
17 I clerked for Judge Evans for one year from 1995 to  
18 1996.

19 Fall of 1996 I came back to Ohio, obtained  
20 my license to practice in Ohio. In 1996 I began as  
21 an associate attorney at Bricker & Eckler,  
22 E-c-k-l-e-r, in Columbus, Ohio. I worked at Bricker  
23 & Eckler from 1996 until 2012.

24 In January of 2012 I took a position with  
25 the Office of the Ohio Attorney General and worked

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1 there from January of 2012 until April of 2013.

2 And I began this position as chief counsel  
3 for the Ohio Department of Rehabilitation and  
4 Correction in April of 2013 and still hold that  
5 position presently.

6 Q. Thank you, Mr. Gray. Other than Assistant  
7 Ohio Attorney General and your current position, have  
8 you held any other employment for the State of Ohio?

9 A. No.

10 Q. Is there an official job description for  
11 your position as managing director of risk management  
12 for the Ohio Department of Rehabilitation and  
13 Correction?

14 A. I do not know. I am not aware that there  
15 is a specific job description for the managing  
16 director of risk management position.

17 Q. Is there a job description for your  
18 general counsel position with the Ohio Department of  
19 Rehabilitation and Correction?

20 A. Excuse me, you said general counsel. My  
21 title is chief counsel.

22 I am not aware personally that there is  
23 but I believe there probably may be a position  
24 description, and I say that because many of our  
25 positions, for example, the attorneys that work under

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1 me, each of them has a position description. It's a  
2 document and I'm aware of that as their supervisor.

3 Q. Mr. Gray, did they advertise the position  
4 for managing director of risk management before you  
5 filled that position?

6 A. I'm not sure what you mean by "they"?

7 Q. The Ohio Department of Rehabilitation and  
8 Correction.

9 A. I do not know.

10 Q. Did you respond to an ad for that  
11 position?

12 A. No.

13 Q. Were you asked to be that person, managing  
14 director?

15 A. Yes.

16 Q. Did they create the position for you? Had  
17 it existed before you filled it?

18 A. Not that -- I didn't understand the  
19 question. I think it was two questions there.

20 Q. Sure. Did the position of managing  
21 director of risk management for the Ohio Department  
22 of Rehabilitation and Correction exist before you  
23 filled that position?

24 A. Let me answer it this way, Larry, when I  
25 was hired in 2013 I was hired as chief counsel. And

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1 that position was in existence at the time I was  
2 hired in April of 2013, "that position" being chief  
3 counsel. The title managing director of risk  
4 management came at a later time.

5 Q. Do you know why it came at a later time?

6 A. I do not.

7 Q. Did the position of managing director of  
8 risk management for the Ohio Department of  
9 Rehabilitation and Correction exist as a position at  
10 the time you filled the chief counsel position?

11 A. No, I don't believe so.

12 Q. Who recommended, if you know, that a  
13 managing director of risk management for the Ohio  
14 Department of Rehabilitation and Correction be  
15 created?

16 A. I believe it was former-Director Gary Mohr  
17 who decided to create the title of managing director  
18 of risk management. And asked me to serve in that  
19 capacity under that title as well as continue as  
20 chief counsel.

21 Q. Where in the hierarchy of the Ohio  
22 Department of Rehabilitation and Correction does the  
23 position of managing director of risk management  
24 fall? By that I mean to whom do you report?

25 A. I report currently to the Interim Director



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1 of the Department, and his name is Stuart  
2 S-t-u-a-r-t, Hudson, H-u-d-s-o-n.

3 Q. And has that always been true that you  
4 directly report to the Director whether it be interim  
5 or permanent?

6 A. That is correct.

7 Q. And as chief counsel is that on an equal  
8 level of the hierarchy of the Ohio Department of  
9 Rehabilitation and Correction? By that I mean does  
10 the chief counsel likewise report to the Director?

11 A. If I understand your question, yes, I  
12 believe so.

13 Q. Has that always been true since you filled  
14 that position?

15 A. Yes.

16 Q. How many people report to you in your  
17 position as chief counsel?

18 A. Approximately 11 or 12.

19 Q. How many people report to you in your  
20 position as managing director of risk management?

21 A. I don't know that I have any separate  
22 reports for that title that I hold. That being  
23 managing director of risk management.

24 Q. What then are the title of the people that  
25 report to you? Do they have an assistant

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1 counsel/risk management appellation or what are the  
2 titles of the positions of the people who report to  
3 you?

4 A. We'll start with my reports first would be  
5 assistant chief counsel and that would be Mr. Trevor  
6 Clark. And then I have various attorneys that hold I  
7 believe their title is staff attorney or staff  
8 counsel, which Ms. Lowe is one and I believe there  
9 are seven total.

10 And then I have two administrative staff  
11 who are assigned to Legal Services that report to me,  
12 on up to me through Mr. Clark. He has direct  
13 supervisory authority over all of the staff counsel  
14 and two of the administrative supports or one of the  
15 administrative support staff. And then there's one  
16 other employee, a policy staff employee that works  
17 under my supervision in the Office of Legal Services.

18 Q. Besides the chief counsel position and the  
19 managing director of risk management for the Ohio  
20 Department of Rehabilitation and Correction do you  
21 hold any other positions with the Department?

22 A. With DRC, no, I do not.

23 Q. You qualified that. Do you hold a  
24 position with State of Ohio in any other regard?

25 A. No.

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1 Q. Are there other directors who you are the  
2 managing director of?

3 A. I'm confused by your question. I think  
4 you said -are there other directors which I'm the  
5 managing director of.

6 Q. Right. Your title is Managing Director of  
7 Risk Management; is that true?

8 A. Yes.

9 Q. And so as a managing director are there  
10 other directors that you manage?

11 A. No.

12 Q. What then does a managing director mean as  
13 that term defines your position with the Department?

14 A. A couple years after I began as chief  
15 counsel, Director Mohr changed the organizational  
16 structure of his direct reports. When I came on  
17 there was an assistant director for the Department.  
18 That individual retired and Director Mohr did not  
19 backfill or fill that position of assistant director.

20 Instead he created titles of managing  
21 directors of various subject areas of which I am one,  
22 and that is risk management. And there are four  
23 other managing directors. Would you like me to tell  
24 you their titles?

25 Q. No. They would be on the same level as

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1 you in the hierarchy?

2 A. Correct. There's five managing directors  
3 that report directly up to the Director of the  
4 Department.

5 Q. Is there a flowchart that's a matter of  
6 public record that lists where you fall in hierarchy  
7 of the Department?

8 A. I believe there is. We do publish an  
9 annual report as a state agency. It may be there, I  
10 don't know for certain if it is.

11 Q. Would you as a courtesy produce that  
12 pursuant to just my informal request today?

13 A. Sure, we can do that. Are you just  
14 looking for the hierarchy for Director and those  
15 managing director reports?

16 Q. Well, if it lists the entire structure of  
17 the Department, I'd like that entire structure, not  
18 just limited to the managing directors.

19 A. We'll see what we can provide to you.

20 Q. Great. And I'll follow that up with a  
21 letter. Thank you.

22 What risk do you manage?

23 A. I would say I would manage any risk of the  
24 Department that I become aware of or that I may have  
25 some knowledge of.

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1 Q. Define for me the term "risk" as is  
2 encompassed in your position title.

3 A. I don't know that I have a formal  
4 definition of risk.

5 Q. In what way do you manage risk?

6 A. I think in my daily activities I am  
7 constantly being asked to provide advice and counsel  
8 on operations of the Department, on, and those  
9 operations can be on the prison side, they can be on  
10 the parole side, the courts and community side.

11 So I'm asked to evaluate and assess  
12 operations generally and specifically on a regular  
13 basis and I assess and provide advice and counsel on  
14 the risk associated with both past conduct and  
15 potential future conduct of DRC employees.

16 Q. Is it a true statement that others bring  
17 identified risk to you?

18 A. As a general statement I would agree that  
19 sometimes I become aware of information that is  
20 brought to me by others of a matter either they  
21 identify as a risk or I may identify independently as  
22 risk.

23 Q. That was the second part of my question.  
24 So risk comes to you perhaps in two ways; one, others  
25 have identified a risk and seek your advice on how to

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1 manage it, or you yourself identify risk and then  
2 seek to manage it. Is that a fair statement?

3 A. I would agree those are two manners in  
4 which risk can brought to my attention.

5 Q. Besides your employment with Bricker &  
6 Eckler and the Davis firms have you held employment  
7 in the private sector other than those two firms?

8 A. No, I have not.

9 Q. Were you a partner for Bricker & Eckler?

10 A. Yes, I was.

11 Q. How long were you a partner there?

12 A. I want to say approximately ten or 11  
13 years. I think I was an associate from '96 till  
14 about 2001 and then a partner 2001 through 2011.

15 Q. What area of the law did you practice at  
16 the Bricker firm?

17 A. General litigation.

18 Q. If would you please for the record  
19 describe what your function is as the managing  
20 director of or managing director of risk management  
21 for the Ohio Department of Rehabilitation and  
22 Correction.

23 A. I don't personally distinguish between the  
24 chief counsel title and managing director of risk  
25 management. Certainly the chief counsel brings with

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1 it all the responsibilities to provide legal advice  
2 and counsel to employees of the Department especially  
3 the Director, managing directors, executive staff.

4 As a managing director of risk management  
5 that is just another title for what I'd call  
6 additional responsibilities that I have to evaluate,  
7 assess, manage risk, advise the Director, managing  
8 directors, managing officers, which is a term we use  
9 for wardens and other managing officers on the Adult  
10 Parole Authority side.

11 Q. How far down the hierarchy of the  
12 Department do you offer advice? Can I as a  
13 corrections officer come to you and seek your legal  
14 advice?

15 A. Yes, you may.

16 Q. So your legal advice is not limited to  
17 advising the Director or other managing directors as  
18 chief counsel but you're equally available to anyone  
19 who's employed by the Department.

20 A. That is correct. When I spoke earlier of  
21 my primary responsibility and majority of my time is  
22 giving advice to the Director, managing director,  
23 executive staff, but I do provide counsel to  
24 individual employees. Just not as frequently.

25 Q. Is there any limitation on the areas of

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1 the law that you give advice to anyone who's employed  
2 by the Department?

3 A. I don't have any limitations. But that's  
4 not to say that I couldn't.

5 Q. Did you play any role in the development  
6 of 01-COM-11 that became effective on October the 7th  
7 of 2016.

8 A. When you say 01-COM-11 you're stipulating  
9 that's DRC policy 01-COM-11?

10 Q. I am.

11 A. Yes, I was involved in the development of  
12 that policy.

13 Q. And what role did you play, Mr. Gray?

14 A. I was one of the drafters of that revised  
15 policy.

16 Q. How was the change from the previous  
17 01-COM-11 to the current 01-COM-11 effective  
18 October 7 of '16, how did the change, what was the  
19 impetus to the change as best you understood it?

20 A. I'm going to refer to a copy of the  
21 01-COM-11 just to note that it states it supersedes  
22 the version of 01-COM-11 that was effective June 29,  
23 2015. So this was a change that was made in the  
24 summer to fall of 2016 to the policy.

25 And previous to that change in June I



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1 believe there was a change maybe in January of 2015  
2 and there had been changes before. So this was a  
3 change to the policy that came after some other  
4 changes, and the principal, sorry, Larry, the  
5 question you asked me?

6 Q. What was the impetus for the change?

7 A. The impetus there was to, the primary  
8 change to the policy as I recall without looking at  
9 it specifically was to add an additional option for  
10 drugs and it was an additional three-drug option to  
11 provide that to the Department to enable the  
12 Department to carry out lethal injection in  
13 accordance with Ohio Revised Code.

14 Q. Did you, were you a motivator for the  
15 change or did the change come to you via some other  
16 source?

17 A. I would say I was not, I don't know  
18 what -- I was not the motivator.

19 Q. Let me withdraw that question and I'll try  
20 to rephrase it.

21 Did you seek to change the policy or did  
22 someone come to you seeking to change the policy?

23 A. Neither. It was not a unilateral decision  
24 to change the policy. At least from my perspective.

25 Q. Who then, who or what motivated the

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1 change?

2 A. I think generally the purpose behind the  
3 change was to provide an additional option for drugs  
4 to be used in lethal injection. Prior to this  
5 version of 01-COM-11 I believe, without looking at  
6 the, if I misstate something without looking at the  
7 policy, I believe the prior version there was a  
8 one-drug option of pentobarbital, there was a  
9 one-drug option of thiopental sodium, this is where  
10 I'm not clear.

11 There may have been an option for a  
12 two-drug combination of hydromorphone and midazolam.  
13 I'm not sure, I know at some point that was dropped  
14 from the policy. And then the three-drug option was  
15 added.

16 Q. How did that three-drug option come to  
17 your attention?

18 A. Personally as the chief counsel and my  
19 involvement in this process and the Department  
20 carrying out court-ordered executions, I would stay  
21 abreast of what is happening in other states and what  
22 is happening in those states with respect to what  
23 procedures they implement, what drugs they are using,  
24 and litigation involving the use of those drugs.

25 And with respect to the three-drug option,

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1 I believe it was the summer of 2015 when the United  
2 States Supreme Court issued its decision in Glossip  
3 v. Gross, which affirmed the, I believe it was  
4 Oklahoma's use of a three-drug protocol using the  
5 same three drugs that were added to the policy.

6 Q. Is it a fair statement, Mr. Gray, that  
7 you're in a network of similarly situated chief  
8 counsels who then discuss among yourselves that there  
9 is manners and means by which lethal injection can be  
10 carried out among the various states that still have  
11 that as an option for execution?

12 A. I wouldn't say it was, there was a  
13 network. I would say there are chief counsels who  
14 are in similar positions with other departments of  
15 corrections who are carrying out court-ordered  
16 executions, and I have spoken to them on occasion.

17 Q. You indicated your role was as a drafter.  
18 If we could then break down the others who were  
19 individually involved in policy that became effective  
20 October 7, 2016, list for me another person who  
21 played a role in the development of that current  
22 protocol.

23 A. Well, let's start with then-Director Gary  
24 Mohr was involved.

25 Q. It doesn't matter to me, Mr. Gray, if you

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1 want to elaborate at the time you identify the  
2 role-player and then what role, if you want to just  
3 list the role-players and I'll go back and ask you to  
4 fill in the roles that they actually played. It  
5 doesn't matter to me how you want to answer that.

6 A. Maybe it will be helpful for me to share  
7 with you then the involvement or who was involved and  
8 you'll probably ask me when in the process they were  
9 involved.

10 So, and let me just preface my remarks by  
11 saying that the drafting process was not, it occurred  
12 over time. It occurred over probably a month, maybe  
13 a month preceding or the months leading up to  
14 October 2016.

15 Q. So is it fair then sometime in the late  
16 summer/early fall of 2016 the version of 01-COM-11  
17 that was in effect started to then be looked at for  
18 purposes of change?

19 A. Yes, that would be accurate to say.

20 Q. Okay, go ahead.

21 A. So in looking at the then, when I say this  
22 then, let's talk about the June of 2015 version.  
23 Looking at that version we examined what changes  
24 would need to be made if the State were to add a, the  
25 current three-drug option.

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1           And I had discussions with, as I said,  
2 Director Mohr, our director, the managing director of  
3 operations whose name is Ed Voorhies,  
4 V-o-o-r-h-i-e-s. Had discussions with the warden at  
5 the Southern Ohio Correctional Facility, at the time  
6 in the summer of '16 that would have been Ron Erdos,  
7 E-r-d-o-s.

8           Also included would be, I forget his  
9 title, Donald Morgan, M-o-r-g-a-n, he's our special  
10 operations commander and former warden at SOCF who  
11 has familiarity with prior versions of 01-COM-11 and  
12 this version.

13           Talked to members of the Execution Team.  
14 By number that would be Team No. 10, who you may know  
15 as the team leader, Execution Team leader. The  
16 assistant team leader might have been, I don't  
17 recall, might have been involved, and I think that  
18 would be No. 5, Team Member No. 5.

19           The members of the Execution Team who are  
20 medical team members were also involved, and I  
21 believe No. 17, No. 21, and maybe No. 9.

22           Q.       17, 21, and maybe No. 9?

23           A.       Correct.

24           Q.       Were members of the medical team?

25           A.       They're members of the medical team, that

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1 is correct. And the medical team is a subset of the  
2 Execution Team.

3 Q. Understood, thank you.

4 A. Give me a moment to see if I have left out  
5 anyone.

6 Might have had somebody, and I at the time  
7 I believe it was Jim Goodman and he is an employee of  
8 DRC. And I believe he may hold a title within our  
9 Incident Command system organization which oversees  
10 or which we use to organize an execution event. So  
11 Mr. Goodman might have been involved as well. And I  
12 think that exhausts my memory.

13 Q. Would it exhaust your memory of those who  
14 participated or it exhausts your memory as you sit  
15 here today?

16 A. Excuse me?

17 Q. It exhausts your memory of everybody that  
18 was involved?

19 A. I don't understand if that's a question or  
20 just a comment. To the best of my recollection those  
21 are the individuals who were involved in the  
22 evaluation of 01-COM-11 and who provided input on the  
23 changes that were made.

24 And let me just add that I had discussions  
25 with members of the Office of the Ohio Attorney

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1 General. Given that we were and still are in pending  
2 Federal Court litigation.

3 Q. Was the overriding change between the 2015  
4 protocol and the 2016 protocol the addition of the  
5 three-drug option?

6 A. That was a major change, Larry. Without  
7 going and checking the, but that was my recollection,  
8 yes.

9 Q. And so there would be others who had to  
10 determine whether the implementation of the  
11 three-drug option then necessitated other collateral  
12 changes once that overriding option was decided.

13 A. I think I didn't understand the question.  
14 If you can reask it, please.

15 Q. For lack of a better term the major change  
16 from the '15 protocol to the '16 protocol was the  
17 addition of the three-drug option.

18 A. Correct. I agree that was the major  
19 change.

20 Q. And so there might be collateral changes  
21 that each of the people you identified, medical team  
22 members, Execution Team leaders, wardens, may also  
23 have to comment on as you decided or someone decided  
24 to put in the three-drug option. Is that a fair  
25 statement?

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1           A.       The individuals that I identified were  
2 provided an opportunity to comment about the adding  
3 of the three-drug option, correct.

4           Q.       And so: Warden, if we implement a  
5 three-drug option are there any changes to the  
6 protocol that you see that need to be changed so we  
7 can incorporate those into the new policy; is that a  
8 fair approach?

9           A.       Yeah, I think how it came up or is that a  
10 decision was made by the Director to explore the  
11 possibility of adding this three-drug option to the  
12 policy. They asked me to gain input from all the  
13 individuals who I discussed and I asked the  
14 individuals to provide input on the three-drug  
15 option.

16          Q.       Okay. Did the option for the three -- did  
17 the three-drug option come from the Director to you  
18 or from you to the Director if you recall?

19          A.       I don't recall.

20          Q.       Do you know whether or not having read  
21 Glossip v. Gross you then took the three-drug option  
22 to the Director for consideration?

23          A.       I don't know that it was necessarily the  
24 fact that the Glossip v. Gross decision came out  
25 that, I don't know that that was the impetus for the



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1 Director to give me direction to explore the  
2 three-drug option.

3 I think it's important to provide some  
4 context to the addition of the three-drug combination  
5 because it wasn't in a vacuum that the Director gave  
6 me this guidance.

7 When I came on to the, excuse me, came to  
8 DRC in the spring of 2013, I believe the policy,  
9 without looking back at the policy in place, but I  
10 believe it provided for pentobarbital as a  
11 single-drug option and I believe at the time there  
12 was just a, there was a backup method of  
13 intramuscular injection of hydromorphone and  
14 midazolam.

15 And at some point the Department could no  
16 longer obtain pentobarbital, so the Department looked  
17 for another option and it had supplies of  
18 hydromorphone and midazolam. And added the option  
19 for the intravenous administration of hydromorphone  
20 and midazolam an additional option. And the State  
21 proceeded with the execution of Mr. McGuire I believe  
22 in early 2014.

23 Following that execution the State  
24 continued to look and continues to look for  
25 pentobarbital and thiopental, or at the time of

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1 pentobarbital, added the option of thiopental sodium  
2 because we became aware that other states were  
3 looking and it's no secret that states looking for  
4 pentobarbital and had difficulty finding it.

5 Thiopental sodium, we looked to try to  
6 achieve that. We were told by the FDA you cannot  
7 obtain that drug, even though we had gone through the  
8 proper channels to obtain a registration to be an  
9 importer to import that drug. I had corresponded  
10 with the FDA about that.

11 So we're looking over 2014-2015 at other,  
12 at getting, obtaining single drugs, seeing what other  
13 states are doing. I don't know if it was just  
14 Oklahoma. I think maybe Florida had used a  
15 three-drug protocol, another state.

16 And at some point I think the Director, I  
17 would have fairly regular discussions with the  
18 Director about what's going on in other states and  
19 what do we have and what drugs can we obtain and I  
20 was asked to pursue the three-drug combination, see  
21 if we could add that and evaluate adding that as an  
22 option to the policy.

23 Q. Who asked you?

24 A. To draft it? I mean formally Director  
25 Mohr asked me to draft this revision, to be the

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1 primary drafter of the revision to 01-COM-11 that is  
2 presently in the October version of the policy.

3 Q. And is it also a fair statement that he  
4 asked you to explore the three-drug option? In  
5 addition to being a primary drafter of the policy did  
6 he also ask you to explore the three-drug option?

7 A. I'm not sure what you mean by "explore the  
8 three-drug option."

9 Q. He asked you to be the primary drafter of  
10 the current protocol, that's a fair statement,  
11 correct?

12 A. Yes.

13 Q. Who, did he ask you prior to asking you to  
14 be the primary drafter ask you to explore addition,  
15 adding the three-drug option?

16 A. I'm not sure I understand the question.

17 Q. One doesn't start drafting in a vacuum,  
18 that's a fair statement, isn't it? So that someone  
19 came to you asking you whether or not the three-drug  
20 could be an option and if somebody said yellow light  
21 proceed with caution, or green light, yes, it is,  
22 then one would start drafting a protocol to implement  
23 that option. Is that a fair statement?

24 A. Yes. In this instance Director Mohr had a  
25 conversation with me and asked me to look at the

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1 three-drug option and draft such an option into the  
2 policy.

3 Q. Were you in a supervisory role in the  
4 development of the current protocol?

5 A. I wouldn't characterize my role as  
6 supervisory.

7 Q. How would you characterize your role?

8 A. As I said, I was primary drafter. I  
9 obtained input from the individuals who I've  
10 identified before. Had discussions with the Attorney  
11 General's Office.

12 Q. I apologize. I have to get used to your  
13 cadence. I should think and pause. I apologize for  
14 stepping over you, Mr. Gray.

15 Did you assign any drafting tasks to other  
16 individuals besides yourself?

17 A. I don't believe so, no.

18 Q. I'm going to hand you what's been marked  
19 for identification for this deposition as Exhibit  
20 No 1. I'd ask if you can identify that for the  
21 record, please.

22 (GRAY EXHIBIT 1 MARKED.)

23 A. Sorry, was there a question pending?

24 Q. Yes. Can you identify that Exhibit No. 1  
25 for the record?

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1       A.       This appears to be DRC policy 01-COM-11  
2       with an effective date of October 7, 2016, consisting  
3       of 21 pages.

4       Q.       Is Exhibit No. 1, Mr. Gray, a true and  
5       accurate copy to the best of your knowledge of the  
6       current protocol that is used in the execution of the  
7       death penalty in the state of Ohio?

8       A.       Without comparing every word, it appears  
9       to be a true and accurate copy based on my brief  
10      review.

11      Q.       Mr. Gray, can we agree, you and I, that  
12      the Ohio Department of Rehabilitation and Correction  
13      intends to carry out the executions of James Derek  
14      O'Neal and Cleveland Jackson using the procedures set  
15      forth in Exhibit 1 unless modified or changed between  
16      today and the dates of their respective executions?

17      A.       I can't answer the question of what the  
18      Department's intent is with respect to those  
19      individuals at this time.

20      Q.       How else are they going carry out the  
21      executions of Mr. O'Neal and Mr. Jackson if not  
22      pursuant to Exhibit 1?

23      A.       I don't know. It would be my assumption  
24      that the Department would carry out those executions  
25      using the then-in place version of the 01-COM-11.

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1 But again it's my presumption. As we sit here today  
2 I don't know what ultimately the Department will do  
3 at the times of those executions.

4 Q. Well, if they're executed they have to be  
5 strictly in compliance with the protocol that's  
6 current at the time of the execution, that's a fair  
7 statement, isn't it?

8 A. Respectfully disagree. I cannot say if --  
9 I cannot answer that.

10 Q. How else could James Derek O'Neal be  
11 executed in the state of Ohio if not pursuant to the  
12 then-current protocol?

13 A. Oh, I would agree with you that as we sit  
14 here today I would expect and presume that the  
15 Department will carry out, if his execution goes  
16 forward with the then-current version of 01-COM-11.

17 Q. And as we sit here today, and you're under  
18 oath, Exhibit No. 1, that is now the current  
19 protocol, correct?

20 A. Yes, that is correct.

21 Q. Can we agree, you and I, that the Ohio  
22 Department of Rehabilitation and Correction intends  
23 to carry out all executions in the state of Ohio  
24 using the procedures set out in Exhibit No. 1 unless  
25 modified or changed between today and the dates of

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1 any given execution?

2 A. I cannot speak for the Department with  
3 respect to its intentions to carry out future  
4 executions.

5 Q. You are, however, the chief counsel for  
6 the Department as you sit here today, correct?

7 A. Correct, sir.

8 Q. You are also the managing director of the  
9 risk that's identified by the Department as you sit  
10 here today under oath; is that correct?

11 A. That is correct.

12 Q. And yet you cannot speak on behalf of the  
13 Department, is that your testimony?

14 A. No, sir, that is not my testimony.

15 Q. Mr. Gray, were you present for Ms. Moon's  
16 deposition?

17 A. I was present for parts of it. I believe  
18 I had to step out during some portions.

19 Q. Did you hear her use the term "owner of a  
20 policy"?

21 A. I think I do.

22 Q. Who is the owner as Ms. Moon used that  
23 term and you understood it of Exhibit No. 1?

24 A. The policy owner of 01-COM-11 is Legal  
25 Services and Legal Services is the Department over

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1 which I supervise and I'm the chief counsel.

2 Q. Does anyone below chief counsel own  
3 Exhibit No. 1?

4 A. No, I believe chief counsel and Legal  
5 Services are the policy owner as that term is used  
6 with respect to 01-COM-11.

7 Q. Tell me what your understanding of the  
8 term "owner of a policy" is.

9 A. I would defer to the Department's  
10 definition of policy owner in 01-COM-01. I don't  
11 have a copy in front of me but I believe it's a  
12 version by the Department of a division or a section  
13 of the Department that takes ownership over the  
14 policy.

15 Q. As the owner of a policy can any other  
16 Department change that policy?

17 A. Not directly, no.

18 Q. They can suggest changes but they can't  
19 change it themselves; is that true?

20 A. I would say that's correct, they cannot  
21 unilaterally change the policy but they can provide,  
22 as you said, suggestions.

23 Q. And as the owner of the policy you as the  
24 chief of the Department who claims ownership would  
25 have the final say; is that a true statement?



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1           A.       I would not say I have the final say. I  
2       have primary responsibility for the policy as a  
3       policy owner and I have primary input, but ultimately  
4       the Director's signature and approval goes on the  
5       policy. And the Director has final say on every  
6       policy including 01-COM-11.

7           Q.       Mr. Gray, can you for the record give me  
8       an overview of how Exhibit No. 1 came to be?

9           A.       When -- let me understand your question.  
10       How the October 7, 2016, version of this policy came  
11       to be?

12          Q.       Yes, sir.

13          A.       I think as I stated there were discussions  
14       in the weeks and maybe months prior to the October 7,  
15       2016, effective date to make changes to the policy  
16       which changes manifested themselves in this current  
17       version.

18          Q.       Who gathered the participants in the  
19       discussions that occurred that resulted in the change  
20       in the policy from the '15 to the '16?

21          A.       You asked who gathered them? I  
22       individually was the person to solicit input from  
23       those individuals.

24          Q.       You identified the participants and then  
25       gathered their input; is that true?

1 A. Yeah, I would agree with that.

2 Q. Was Exhibit No. 1 drafted from a template  
3 obtained from any other state?

4 A. No.

5 Q. Have you seen templates from other states  
6 that concerned their policies and procedures for  
7 lethal injection executions?

8 A. I'm confused by your use of the word  
9 "template." If you could clarify what you mean, what  
10 you're asking.

11 Q. Did you obtain any other state's policy in  
12 the revisions that occurred between the 2015 and the  
13 2016 protocol?

14 A. I don't believe that I obtained any other  
15 state's policy.

16 Q. Is the Ohio Department of Rehabilitation  
17 and Correction an Executive branch agency?

18 A. I don't know what that term means just  
19 from the context of your question.

20 Q. You and I can agree in Ohio there are  
21 three coequal branches of government, can't we?

22 A. That's my understanding, yes.

23 Q. Can you identify those three coequal  
24 branches?

25 A. The Executive branch, Governor's Office,

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1 the Judiciary, and the Legislature.

2 Q. And where does the Ohio Department of  
3 Correction and Rehabilitation fall in one of those  
4 three buckets?

5 A. I believe without looking at the Ohio  
6 Revised Code and the Constitution, which we lawyers  
7 should be familiar with, I believe it falls within  
8 the Executive branch.

9 Q. And am I correct that it's the position of  
10 the Ohio Department of Rehabilitation and Correction  
11 that that agency was delegated the authority to adopt  
12 Exhibit 1 by virtue of Ohio Revised Code Section  
13 5120.01?

14 A. I'm not sure I understand your question.  
15 Can you repeat that, please?

16 Q. Sure. Am I correct that it's the position  
17 of the Ohio Department of Rehabilitation and  
18 Correction that that agency was delegated the  
19 authority to adopt Exhibit 1 by virtue of Ohio  
20 Revised Code Section 5120.01?

21 A. I don't know that I necessarily would  
22 agree with that statement that that's a position of  
23 the Department.

24 Q. Tell me then what authority, statutory  
25 authority the Department claims as its power to enact

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1 Exhibit 1.

2 A. I would say Ohio Revised Code 5120.01, and  
3 then I believe Ohio Revised Code 2949.22 directs the  
4 Department to carry out court-ordered executions.  
5 And I believe maybe 2949.24 also speaks to executing  
6 on a warrant from the Supreme Court. And then I  
7 think 2949.25 speaks to witnessing, witnesses'  
8 attendance at executions.

9 Q. As you've listed those four statutes is  
10 that the total statutory authority the Department  
11 claims enables them to promulgate Exhibit 1?

12 A. That's what I am saying as chief counsel  
13 of the Department.

14 Q. Am I correct that it's the position of the  
15 Ohio Department of Rehabilitation and Correction that  
16 there was a legislative delegation of authority to  
17 that agency that being the four statutes that you've  
18 just listed?

19 A. Can you repeat that question, please?

20 Q. Sure. Am I also correct that it is the  
21 position of the Ohio Department of Rehabilitation and  
22 Correction that there was a legislative delegation of  
23 authority to that agency, that being the four  
24 statutes that you've just listed, that then allows  
25 them to promulgate Exhibit No. 1?

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1 A. I would say yes.

2 Q. Mr. Gray, do you agree with the United  
3 States Supreme Court's pronouncement that "death is  
4 different," that "death is a unique punishment," that  
5 "death is in a class by itself," "penalty of death  
6 differs from all other forms of criminal punishment"?

7 A. I can't, I can neither agree or disagree  
8 with that statement, Larry, without seeing the  
9 reference. I'm not familiar with that reference to a  
10 Supreme, I don't know if you're quoting from a  
11 Supreme Court opinion.

12 Q. Was former-Director Gary Mohr in charge of  
13 the adoption of Exhibit No. 1?

14 A. As I said before, he had the final say on  
15 approving this revised copy of 01-COM-11.

16 Q. Can you and I agree that Exhibit 1 states  
17 that it's a policy issued in compliance with Ohio  
18 Revised Code Section 5120.01 which delegates to the  
19 Director of a Department of Rehabilitation and  
20 Correction the authority to manage and direct the  
21 total operations of the Department and to establish  
22 such rules and regulations as the Director  
23 prescribes?

24 A. Yes, I'd agree that you have read  
25 Section 1 authority of the policy.

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1 Q. Can we break that statement down. How  
2 does Exhibit 1 comply with Ohio Revised Code section  
3 5120.01?

4 A. Did you ask how much the policy complies  
5 with that?

6 Q. How does Exhibit 1 comply with Ohio  
7 Revised Section 5120.01?

8 A. As I read the statement the policy's  
9 issued in compliance, so the issuance of the policy,  
10 the revisions to the policy are made in compliance  
11 with that statutory cite.

12 Q. My question is how does it comply with the  
13 statute?

14 A. I don't know that I can answer the  
15 question.

16 Q. The term "delegates," am I correct that it  
17 is the position of the Ohio Department of  
18 Rehabilitation and Correction that the Legislative  
19 branch delegated to the Executive branch agency, that  
20 being ODRC, the authority to manage and direct the  
21 total operations of that agency?

22 A. I don't think I can answer that, Larry,  
23 without looking at Revised Code 5120.01.

24 Q. Am I correct that it is ODRC's position  
25 that Exhibit 1 is a rule or regulation prescribed by

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1 the Director as part of his authority to manage and  
2 direct the total operations of his department/agency?

3 A. Yes, that's my understanding of the  
4 Department's position.

5 Q. Absent Exhibit 1, what authority does the  
6 Director of ODRC have to manage the execution of an  
7 inmate?

8 A. Can you state that again?

9 Q. Sure. Absent Exhibit 1, what authority  
10 does the Director of ODRC have to manage the  
11 execution of an inmate?

12 A. I don't know that I can answer that  
13 question.

14 Q. Absent Exhibit 1 what authority does the  
15 Director of ODRC have to direct the execution of an  
16 inmate?

17 A. I don't know that I can answer that  
18 question either.

19 Q. Although referred to as "protocol" or  
20 "policy," Exhibit 1 must, strictly speaking, be  
21 either a rule or a regulation of ODRC because that is  
22 what is ostensibly the only two things that the  
23 Director is authorized by the legislature to  
24 establish pursuant to Revised Code 5120.01, correct?

25 A. I would not agree with that.

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1 Q. Why not?

2 A. It sounds to me that your question limits  
3 the Director's authority to only establish, quote,  
4 such rules and regulations as the Director  
5 prescribes. I don't agree with your characterization  
6 that that is a limiting statement as you have framed  
7 it in your question.

8 Q. Even though that's exactly what it says as  
9 the authority in Exhibit 1?

10 A. My answer stands.

11 Q. Well, what is Exhibit 1? Is it a rule, a  
12 regulation, a policy, protocol, a guideline?

13 A. I refer to it as policy 01-COM-11, the  
14 purpose of which is to establish guidelines for  
15 carrying out a court-ordered sentence of death.

16 Q. So it is not a rule and regulation as  
17 prescribed by the Director for the total operation of  
18 the Department.

19 A. No, I would not agree with that statement.

20 Q. Was there any legislative representative  
21 that played a role in the development of Exhibit 1?

22 A. Not that I am aware of.

23 Q. Did you consult with any legislative  
24 representative in your role as the drafter of  
25 Exhibit 1?



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1 A. I did not.

2 Q. As you sit here under oath today can you  
3 identify any contribution the Legislative branch of  
4 the Ohio State Government made to Exhibit 1 other  
5 than ostensibly delegating legislative authority to  
6 the Executive branch?

7 A. I don't know that I can answer your  
8 question as framed.

9 Q. Why not?

10 A. I think the last part of it, if you could  
11 read it back, please, Julieanna. I think it sounded  
12 like a compound question to me or had a qualifier on  
13 the end.

14 Q. Let me phrase it this way then, Mr. Gray,  
15 to try to make it clear, I apologize.

16 Other than delegating legislative  
17 authority to the agency, has the legislature given  
18 you any other guidance in the enactment of Exhibit 1?

19 A. I am not aware that the legislature gave  
20 myself or anyone in the Department any input with  
21 respect to the revisions that ended up in the  
22 October 2016 version of 01-COM-11.

23 Q. To the best of your knowledge is that  
24 likewise true of the protocol that was superseded by  
25 Exhibit 1?

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1 A. The June 29, 2015, version?

2 Q. Yes.

3 A. That is the best of my knowledge, excuse  
4 me, to the best of my knowledge that would be a true  
5 statement for the prior version of 01-COM-11.

6 Q. How many iterations of Exhibit 1 have you  
7 personally participated in development of since you  
8 came on the staff of ODRC?

9 A. I have had involvement in the development  
10 of each of the iterations of 01-COM-11 since  
11 April 2013 to the present.

12 Q. Mr. Gray, is there a difference in your  
13 mind between the words "policy" and "protocol"?

14 A. It would depend on how you use the terms.

15 Q. Is there a difference in your mind,  
16 Mr. Gray, between the words "policy" and "guideline"?

17 A. Again I think it would depend on the usage  
18 of those terms.

19 Q. Is there a difference in your mind,  
20 Mr. Gray, between the words "guideline" and "rule"?

21 A. Again it would depend on the context in  
22 which those terms are used.

23 Q. Is there a difference in your mind,  
24 Mr. Gray, between the words "rule" and "regulation"?

25 A. Again it would depend on how those terms

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1 are used.

2 Q. Of the terms that I've just gone over,  
3 policy, protocol, guideline, rule, and regulation, do  
4 any of those need to be adopted pursuant to the Ohio  
5 Administrative Procedures Act?

6 MS. SAADEY: Objection. I would object at  
7 this point this is calling for privileged information  
8 as potentially subject to work product protection.  
9 And to the extent that Mr. Gray's answer would  
10 include those legal analyses that he had gone through  
11 as a result of this litigation, I would instruct him  
12 not to answer.

13 MR. GREGER: I'm not asking him  
14 specifically to Exhibit 1. I'm asking whether or not  
15 any of those terms that I just used need to be  
16 applied to the Ohio Administrative Procedures Act.

17 A. I can't answer that question without  
18 revealing my own attorney work product or  
19 communications with the Ohio Attorney General's  
20 Office.

21 Q. Does the ODRC have rules?

22 A. Yes.

23 Q. Give me an example of an ODRC rule.

24 A. I would use an example of rules for inmate  
25 conduct.

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1 Q. Detail me the process that's used for the  
2 enactment of an ODRC rule.

3 A. I can only, let me just speak to the last  
4 answer where I said I'm familiar with ODRC rules of  
5 inmate conduct. As I sit here right now I cannot  
6 tell you for certain the process by which those rules  
7 are established.

8 Q. Does ODRC have policies?

9 A. Yes.

10 Q. Give me an example of a policy of the  
11 ODRC.

12 A. We have hundreds of policies of which  
13 obviously 01-COM-11 is one. We have a whole series  
14 of nonpublic policies which are security policies.  
15 We have policies that are specific to institutional  
16 operations. We have specific policies as respects to  
17 human resources, employees of DRC. We have policies  
18 specific to medical, mental, behavioral health.

19 Q. Does ODRC rules also qualify as ODRC  
20 policy?

21 A. I distinguish between the policies that I  
22 just described and the single reference I made to  
23 ODRC rules being institutional conduct. Inmate rules  
24 of conduct. They're different.

25 Q. So a rule doesn't necessarily mean that

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1 it's ODRC policy?

2 A. That isn't what I said. I just  
3 distinguished between we have DRC policies that I've  
4 described and I'm familiar with what I'll call DRC  
5 rules.

6 Q. Right. And so does an ODRC rule also  
7 qualify as ODRC policy?

8 A. I don't think I can answer that in the  
9 context that you're asking.

10 Q. Do you need a break?

11 A. Can we just take a break to get some  
12 water?

13 Q. Sure.

14 (Recess taken.)

15 Q. You indicated in your prior testimony that  
16 the managing director of risk management came later.  
17 How, were you hired in as chief counsel and then the  
18 managing director position was created or how did  
19 that work, Mr. Gray?

20 A. Yes, I was hired in as chief counsel of  
21 the Department and then as I think I explained  
22 previously, when the Assistant Director, I believe it  
23 was Steve Huffman, H-u-f-f-m-a-n, I believe he  
24 retired late '14, maybe early 2015, and Director Mohr  
25 created this level of five managing directors that

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1 would report directly to him and eliminated, didn't  
2 eliminate, just didn't fill the assistant director  
3 position.

4 Q. Likewise you testified about kind of the  
5 hierarchy in your staff, your assistant chief counsel  
6 and staff attorneys, two administrators. You said  
7 there was a policy staff member. Who's the policy  
8 staff member?

9 A. That's Richard Theodore.

10 Q. It's unclear in my mind and I'm going to  
11 try to clear it up as best I can, were you the sole  
12 drafter of Exhibit 1? Or just the primary drafter of  
13 Exhibit 1?

14 A. I would say I was the primary drafter.

15 Q. Who else assisted in the drafting of  
16 Exhibit 1 to your knowledge?

17 A. Attorneys at the Attorney General's  
18 Office.

19 Q. Can you identify them for the record,  
20 please?

21 A. In the fall of 2016 I believe Thomas  
22 Madden, Charles Wille, David Picken, I'm not sure if  
23 Ms. Lowe had, and perhaps Jocelyn Lowe.

24 Q. Tell me the interplay between you as chief  
25 legal counsel for the Department and the Ohio

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1 Attorney General's Office with the four or five or  
2 six names that you just listed. Did you give them a  
3 draft and then they edited it, reviewed it, and then  
4 gave it back to you, or how did that interchange go?

5 A. I believe I reviewed or had meetings with  
6 the Attorney General's Office with those individuals  
7 and I believe I shared, showed them a draft, received  
8 some input, made changes to the draft. I made the  
9 changes to the draft of the policy.

10 Q. And when the final draft was done, is that  
11 when it was presented to the Director Mohr?

12 A. I know that I shared the final version of  
13 01-COM-11 with Director Mohr before he gave his  
14 approval to it and put his signature on it. I can  
15 say that for certain.

16 I believe I may have shared with him the  
17 contents generally of the draft before it was in the  
18 final form that he approved.

19 Q. Did Director Mohr make any suggested  
20 changes to the drafts that were being exchanged  
21 between his agency and the Ohio Attorney General's  
22 Office?

23 A. Let me be clear, I did not exchange drafts  
24 with the Attorney General's Office, I shared a draft  
25 with them, I showed them a draft.

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1 Q. Did they make changes? Or suggest changes  
2 to the draft that you --

3 A. I believe that the Attorney General's  
4 Office did suggest some changes. As I sit here right  
5 now I could not tell you specifically what they are.

6 Similarly I believe Director Mohr, I know  
7 he had a lot of questions about what things meant and  
8 why they were being changed and what's the  
9 significance of this change and why do we say this  
10 here, not say it there.

11 Generally those, my recollection is that  
12 was always his response to the various drafts of  
13 01-COM-11 that were presented to him for his final  
14 approval. Not just this version but the prior  
15 iterations, as I testified before.

16 Q. And so Director Mohr would ask questions,  
17 you would answer those questions. Did he propose  
18 changes to the draft other than asking questions?

19 A. He might have. I don't recall  
20 specifically that he did.

21 Q. Had the iteration drafts been saved by  
22 anybody?

23 A. No. By "iteration drafts" do, what do you  
24 mean "iteration," prior versions?

25 Q. No, iteration 1 of Exhibit 1 was given and



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1 shared with the Ohio Attorney General's Office. One  
2 or more of the six people that you listed made  
3 comments and/or suggested changes. Did anybody keep  
4 copies of the drafts that were going between the Ohio  
5 Attorney General's Office and the Agency and the  
6 Agency with its Director?

7 A. Not that I'm aware of. I didn't retain  
8 any drafts.

9 Q. Help me understand then, I don't know that  
10 it completely clarifies it, did you have the final  
11 say in the language that was contained in Exhibit 1?

12 A. No, I did not have the final say. My  
13 testimony is Director Mohr has the final say of the  
14 revised version of 01-COM-11, the October 2016  
15 version.

16 Q. And when you presented the final -- strike  
17 that.

18 Did you present a final draft to the  
19 Director or did you present to him a final iteration  
20 for his approval?

21 A. I don't know that, I don't understand the  
22 difference. I presented him with what I would call  
23 the final work product of drafts of the revisions to  
24 the policy. I had discussed them with him in  
25 advance, sat down and went through every page of the

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1 policy and went over all the changes and he approved  
2 this final version.

3 Q. And was it then on or about October 7,  
4 2016, that that final meeting between the two of you  
5 occurred?

6 A. I believe so. That was a busy week as I  
7 recall in October.

8 Q. And he then signed off on the final work  
9 product as you presented it to him.

10 A. He approved it, yes. And affixed his  
11 signature to this version of 01-COM-11.

12 Q. Exhibit 1.

13 A. Yes.

14 Q. Thereby making it effective.

15 A. Excuse me?

16 Q. Thereby making it effective.

17 A. Yes.

18 Q. Who was the Attorney General, you spoke  
19 about Voorhies, the various wardens of SOCF,  
20 Mr. Morgan, Execution Team members. Who was the Ohio  
21 Attorney General that was in the list of people?

22 A. The Assistant Attorney Generals that I  
23 consulted with and prior to October 2016 would have  
24 been Mr. Madden, Mr. Wille, and Mr. Picken maybe, and  
25 I can't recall if Ms. Lowe had just joined the

1 Attorney General's Office and was on the case at that  
2 time.

3 Q. Ms. Moon indicated in her deposition there  
4 were some 500 policies give or take. Did you hear  
5 her testify to that?

6 A. I believe so.

7 Q. Are there 500 give or take rules of the  
8 Department?

9 A. I don't know what you mean by the term  
10 "rules."

11 Q. Let's try to put some flush on that if we  
12 could. There are rules of the Agency that conform to  
13 the Ohio Administrative Procedures Act; is that true?

14 A. I'm not understanding your premise. Are  
15 you talking about an administrative rule that applies  
16 to the Department that is contained in the Ohio  
17 Administrative Code?

18 Q. Yes.

19 A. I will stipulate that rules,  
20 administrative rules in the Ohio Administrative Code  
21 that affect or describe or provide guidance to the  
22 Ohio Department of Rehabilitation and Correction.

23 Q. And there is a process by which that kind  
24 of rule goes into effect; is that a fair statement?

25 A. I would agree that there is a process for

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1 an administrative rule to become an administrative  
2 rule under Ohio law.

3 Q. Okay. There are also rules of the Agency  
4 that do not use that process; is that true?

5 A. I would agree with you specifically as  
6 respects to a rule that I am aware of the Department  
7 as I indicated before inmate rules of conduct.

8 I believe the inmate rules of conduct are  
9 covered or provided for in the Ohio Administrative  
10 Code so in that instance those are Department rules  
11 that are promulgated and become Ohio Administrative  
12 Rules.

13 Q. Ms. Moon testified that she was the  
14 bookkeeper and custodian of the ODRC policies,  
15 correct?

16 A. Without reading her transcript if that's  
17 what she said. I don't have reason to disagree with  
18 that.

19 Q. Do you know if that's accurate?

20 A. Excuse me?

21 Q. To your knowledge is that accurate?

22 A. Yes, to the best of my knowledge that is  
23 an accurate statement.

24 Q. She oversees in her position that the  
25 policies are uniform in font and style, those kinds

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1 of things, correct?

2 A. I believe that follows within her  
3 responsibilities, yes.

4 Q. Are ODRC policies collected in one place  
5 or cataloged in one location?

6 A. Yes, I believe so. I think they're  
7 contained in one electronic database.

8 Q. And is that publicly accessible?

9 A. For the most part, yes. All of our  
10 policies are publicly available from our website  
11 except for a group of policies that are designated as  
12 our security policies.

13 Q. Are your ODRC rules collected in one place  
14 or cataloged in one location?

15 A. I don't know that I can answer your  
16 question. Are you talking about administrative rules  
17 under the Ohio Administrative Code? I don't know if  
18 all of the administrative rules that apply to ODRC,  
19 I'm not aware that they are kept in one location or  
20 one database.

21 Q. And let's talk about ODRC rules that are  
22 not Ohio administrative rules. Are those kept in one  
23 place or cataloged in one location?

24 A. I don't know that I can answer that,  
25 Larry, because I'm not aware of a group as you

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1 describe of ODRC rules that are not promulgated under  
2 the Ohio Administrative Code.

3 Q. In your experience who participates in the  
4 development of ODRC policy?

5 A. That's a general. I'm taken aback by the  
6 question just because it's not specific enough for  
7 me. Because when you say "ODRC policy," I mean that  
8 could be departmental policy that the direction comes  
9 from now-Director Hudson. It's going to be our  
10 policy to do something or not do something with  
11 regard to operations, et cetera.

12 Q. So who generally participates in that?

13 A. I don't know. I can't speak for Director  
14 Hudson on that.

15 Q. Who in your experience participates in the  
16 development of ODRC rules?

17 A. Again, I can't answer that. I've not  
18 identified specific DRC rules other than what I've  
19 testified.

20 Q. What's the difference between a managing  
21 director and former-Director Mohr's title?

22 A. I'm sorry, I had trouble hearing the end  
23 of your question, Larry, because you had your hand up  
24 next to your mouth.

25 Q. Sure. What's the difference between

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1 managing director and Director Mohr's former  
2 position?

3 A. So you're asking me the difference between  
4 managing director and director. The managing  
5 directors serve at a level below the now-Director  
6 Hudson and former-Director Mohr. And so I could say  
7 that now-Director Hudson and former-Director Mohr  
8 supervises and indirectly supervises, excuse me,  
9 directly supervises the managing directors and  
10 indirectly has involving in all of the matters of the  
11 Department as they are disseminated through those  
12 managing directors' responsibilities.

13 Q. What percentage of the Legal Services work  
14 stops at your level and never gets above your level  
15 to the Director of the Agency?

16 A. I can't answer that question.

17 Q. Most? Some? A lot?

18 A. I would say some do not go above my level.

19 Q. Most don't go above your level?

20 A. I said "some."

21 Q. But my question is can you quantify it as  
22 most?

23 A. I'm quantifying it as some.

24 Q. Does the Director of ODRC in your  
25 experience sign off on both policies and rules?

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1           A.       I am not aware that the Director has  
2 signed off on any rules as you have used that term.  
3 He has signed off on policies which bear his name as  
4 approved and bear his signature.

5           Q.       Is there any ODRC rule to your knowledge  
6 that requires the procedures contained in Revised  
7 Code 111.15?

8           A.       I do not know.

9           Q.       Can we agree, you and I, that Exhibit 1  
10 was adopted by the Ohio Department of Rehabilitation  
11 and Correction without complying with the  
12 requirements of ORC 111.15?

13          A.       I would say that 01-COM-11 was not  
14 required to be promulgated pursuant to 111.15.

15          Q.       So you and I can agree that Exhibit 1 was  
16 adopted by the Ohio Department of Rehabilitation and  
17 Correction without complying with the requirements of  
18 ORC 111.15.

19                   MS. SAADEY: Objection, asked and  
20 answered. You may answer.

21          A.       I'd say it was, 01-COM-11 was revised and  
22 made effective in October 2016 and was not required  
23 to be promulgated as an administrative rule under  
24 111.15.

25          Q.       So we can agree that it was adopted



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1 without going through the procedures of 111.15.

2 A. I'd stand by my answer it was adopted as  
3 policy 01-COM-11.

4 Q. Why is Exhibit 1 not required to comply  
5 with ORC 111.15?

6 MS. SAADEY: Objection. I would object on  
7 the basis of privilege that this is work product  
8 privilege and this legal analysis would be protected  
9 and I would instruct the witness not to answer.

10 MR. GREGER: Go ahead and certify that  
11 question.

12 (Question certified.)

13 Q. I'll hand you what's been marked for  
14 identification as Exhibit 2 for purposes of this  
15 deposition. Can you identify that for the record,  
16 please?

17 A. I've not seen this document before but it  
18 has a title, appears to be Section 111.15 of the Ohio  
19 Revised Code.

20 Q. I'll represent to you for purposes of this  
21 deposition that Exhibit 2 is a true and accurate copy  
22 of the Revised Code Section 111.15 current August 1,  
23 2018. Will you accept that representation for  
24 purposes of this deposition?

25 A. I'll accept your representation, yes.

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1 Q. Are you familiar with this statute?

2 A. I have some familiarity with it.

3 Q. How did you become familiar with this  
4 statute?

5 A. I read this statute after you filed this  
6 lawsuit against the Department.

7 Q. Is that the first time that you had  
8 acquainted yourself with the contents of 111.15?

9 A. No. I believe I've read it in the past.

10 Q. You're presumed to know the law, are you  
11 not?

12 A. I think all attorneys are, yourself  
13 included are presumed to know the law.

14 Q. And, Mr. Gray, for the record the  
15 complaint in this case was filed -- strike that.

16 Have you consulted this statute in your  
17 role as managing director of risk management for the  
18 Ohio Department of Rehabilitation and Correction?

19 A. I cannot specifically recall if I did or  
20 did not.

21 Q. Can we agree that a rule for purposes of  
22 Revised Code Section 111.15 includes in the rule,  
23 regulation, bylaw, or standard having a general and  
24 uniform operation?

25 A. I will stipulate that Section (A) (1) of

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1 the statute as you represented to me on Exhibit 2  
2 states what it states.

3 Q. That it's adopted by an agency?

4 A. Those words "adopted by an agency" appear  
5 in Section (A)(1).

6 Q. Under the authority of the laws governing  
7 the agency?

8 A. Those terms also appear on this exhibit.

9 Q. What do you understand the word "standard"  
10 to mean as used in this statute?

11 MS. SAADEY: Objection, calls for a legal  
12 conclusion. To the extent that to answer the  
13 question would call for privileged work product or  
14 opinion, legal analysis as a result of this  
15 litigation, I would instruct the witness not to  
16 answer. Otherwise you can answer the question.

17 A. I can't answer the question.

18 Q. What do you understand "regulation" to  
19 mean as it's used in this statute?

20 MS. SAADEY: Objection, I would renew the  
21 same objection that I had just made on the exact same  
22 basis with the same instruction to the witness.

23 A. I cannot answer.

24 Q. As part of your job do you interpret  
25 statutes so as to give advice to the Ohio Department

1 of Rehabilitation and Correction?

2 A. Yes.

3 Q. Had any of the directors that you've given  
4 advice to also been attorneys?

5 A. No. We're just talking about Director  
6 Mohr and Director Hudson, neither one is an attorney,  
7 no.

8 Q. As between yourself and the directors that  
9 you've served who has the greater legal knowledge if  
10 you know?

11 A. I do not know.

12 Q. Is it fair that you as an attorney  
13 advising directors and others in the ODRC have had to  
14 determine the meaning of words used in statutes?

15 A. I have done that on occasion in my role,  
16 yes.

17 Q. Returning then to my question, have you  
18 yourself discerned the meaning of "regulation" as  
19 that term is used in 111.15?

20 MS. SAADEY: I'll renew my objection on  
21 the same basis as before with the same instruction to  
22 the witness.

23 A. I cannot answer that.

24 Q. Returning to my question then have you  
25 discerned the meaning of the word "standard" as that

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1 term is used in 111.15?

2 MS. SAADEY: I would renew my objection  
3 with the same instruction to the witness.

4 A. And I cannot answer that without revealing  
5 attorney work product or attorney-client  
6 communication.

7 Q. Well, it's a yes or no question without  
8 revealing the advice. Have you discerned the meaning  
9 of the term "standard" in Revised Code 111.15?

10 A. I can say this, with respect to the  
11 Section 111.15 you're asking me questions about have  
12 I discerned the meaning, I have analyzed the meaning  
13 of all the words in this statute only as a result of  
14 this litigation that you have filed against the  
15 Department.

16 I can state on the record that I did not,  
17 I do not recall that I reviewed 111.15, that statute,  
18 in my activities involved with revising 01-COM-11 in  
19 summer and fall of 2016. So any discussions I have  
20 about what something means in this statute on  
21 Exhibit 2 were formed as my attorney work product or  
22 in communications with the attorneys at the Ohio  
23 Attorney General's Office.

24 Q. Tell me about your conversations with the  
25 Ohio Attorney General's Office.

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1 MS. SAADEY: Objection, clearly privileged  
2 attorney-client communication.

3 Q. Are you the attorney to the Ohio Attorney  
4 General? Or any staff member of the Ohio Attorney  
5 General's Office?

6 A. No, myself? I'm an employee of the Ohio  
7 Department of Rehabilitation and Correction.

8 Q. Right. So those communications aren't  
9 privileged between you and the Ohio Attorney General.

10 MS. SAADEY: The Ohio Attorney General's  
11 Office represents the Ohio Department of  
12 Rehabilitation and Correction and Mr. Gray as a  
13 representative of the ODRC is a client who which we  
14 advise and consult on legal matters. And that is  
15 privileged communication.

16 MR. GREGER: I understand that your advice  
17 to him might be privileged, I'm asking his  
18 communication with the Ohio Attorney General's  
19 Office, not what you told him.

20 MS. SAADEY: In seeking advice that is  
21 also privileged communication.

22 Q. (By Mr. Greger) Well, give me the areas  
23 that you sought advice on, Mr. Gray, from the Ohio  
24 Attorney General's Office.

25 A. When this lawsuit was filed I asked our

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1 attorneys in the Attorney General's Office to review  
2 it and tell me what, they give me advice on what it  
3 means.

4 Q. Did you yourself discern what the words  
5 "laws governing the agency" meant as are contained in  
6 111.15?

7 MS. SAADEY: Objection on the basis of  
8 work product privilege. Instruct the witness not to  
9 answer if such answer would reveal work product  
10 privileged information. Or attorney-client  
11 communication.

12 A. It would reveal that confidential  
13 information so I will not answer.

14 Q. My question is did you yourself discern  
15 the meaning of the words "laws governing the agency"  
16 as those words are used in 111.15?

17 A. To answer that question would reveal my  
18 work product and I will not answer.

19 Q. We can agree that ODRC is an agency of the  
20 State of Ohio, can we not?

21 A. In the general sense of the word, yes, I  
22 would say it is an agency.

23 Q. Revised Code 111.15 Exhibit 2 defines  
24 "agency" as any governmental entity of the state,  
25 correct?

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1 A. That is part of Section (A)(2) of that  
2 statute, correct.

3 Q. ODRC qualifies as such, does it not?

4 MS. SAADEY: Objection. Again, to the  
5 extent it calls for work product I would instruct the  
6 witness not to answer.

7 MR. GREGER: You want to stipulate then,  
8 Ms. Saadey, that the ODRC is an agency?

9 MS. SAADEY: I will not stipulate to any  
10 interpretation of the statute or legal analysis that  
11 is at issue in this case, no. And I will continue to  
12 object to questions that would call for the  
13 privileged information as we've laid forth in the  
14 objection.

15 Q. Mr. Gray, does Exhibit 1 have general and  
16 uniform operation in the carrying out of a judgment  
17 of the sentence of death in the state of Ohio?

18 MS. SAADEY: Objection on the same basis,  
19 but you may answer if you can without revealing.

20 A. I'm sorry, Mr. Greger, did you just switch  
21 exhibits on me and go back to Exhibit 1?

22 Q. I did.

23 A. Okay. Could you --

24 Q. Does Exhibit 1 have general and uniform  
25 operations in the carrying out of the judgment of



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1 sentence of death in the state of Ohio?

2 A. I'm sorry, I still didn't understand the  
3 question.

4 Q. What portion of the question didn't you  
5 understand?

6 THE WITNESS: Could you read back the  
7 question, please.

8 (Record read.)

9 A. I think the policy provides guidelines for  
10 carrying out a court-ordered sentence of death by the  
11 Ohio Department of Rehabilitation and Correction.

12 Q. In a uniform manner?

13 A. I don't know what you mean by the term "in  
14 a uniform manner" so I can't answer that question.

15 Q. The Ohio Department of Rehabilitation and  
16 Correction will uniformly apply Exhibit 1 to every  
17 inmate execution until it's changed. Is that a true  
18 statement?

19 A. I can't speak to the intent of the  
20 Department going forward so I would not agree with  
21 that.

22 Q. Are you contemplating changing Exhibit 1  
23 with a new iteration?

24 A. Personally, no, I am not.

25 Q. Is the Department?

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1 A. Not that I'm aware of as I sit here today.

2 Q. Okay, so Exhibit 1 until it's changed is  
3 going to be uniformly applied to every inmate who's  
4 executed, true?

5 A. I would presume so.

6 Q. Exhibit 1 will be strictly and uniformly  
7 applied to both Mr. O'Neal and Mr. Jackson at the  
8 time of their execution, assuming that Exhibit 1 is  
9 still the iteration in effect; is that true?

10 A. I think I've answered that question  
11 already and said that I don't know what the intent of  
12 the Department will be at the times of those  
13 executions. If there is no change to 01-COM-11 as it  
14 stands today, I presume that the Department will  
15 proceed with the then-current version, which would be  
16 this version of 01-COM-11.

17 Q. And will strictly follow it?

18 A. I would presume so, yes.

19 Q. And will uniformly apply its procedures to  
20 Mr. O'Neal and Mr. Jackson and anyone else who's  
21 executed while that is the current protocol, true?

22 A. I would presume that to be the case.

23 Q. Must ODRC strictly comply with the  
24 dictates of Exhibit 1 in carrying out an execution?

25 A. I'm taking a moment to look at 01-COM-11.

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1 Page 3 of the policy section Roman  
2 Numeral V states that "The procedures set forth in  
3 this policy are to be strictly followed."

4 Q. My question to you is must ODRC strictly  
5 comply with the dictates of Exhibit 1 in the carrying  
6 out of an execution?

7 MS. SAADEY: Objection, asked and  
8 answered. You may answer.

9 A. DRC will strictly follow procedures set  
10 forth in 01-COM-11 according to the words of the  
11 01-COM-11.

12 Q. Mr. Gray, can we agree that to be an  
13 emergency rule as that term is defined in Exhibit 2  
14 the rule "shall state the reasons for the necessity"?

15 A. I cannot agree with that. I'm not  
16 familiar with the term "emergency rule."

17 Q. Why don't you look at Exhibit 2. Is  
18 "emergency rule" defined in Exhibit 2?

19 A. I don't see a definition of "emergency  
20 rule" on Exhibit 2.

21 Q. I apologize for calling that an emergency  
22 rule. How about we call it a rule of an emergency  
23 nature.

24 A. I don't know that that term is defined  
25 anywhere in this statute. I don't see the definition.

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1 section other than what's in Section (A).

2 Q. You would stipulate to the contents of  
3 Exhibit 2, wouldn't you, that being a correct  
4 statement of 111.15?

5 MS. SAADEY: Counsel, if you are directing  
6 the witness to a particular section of the exhibit,  
7 would you mind clarifying?

8 A. I think, Mr. Greger, you asked me if I  
9 accepted your representation this is a true and  
10 accurate copy of 111.15 that you indicated is current  
11 as of August 1, 2018.

12 Q. Okay. Was Exhibit 1 adopted on an  
13 emergency basis?

14 A. I'm not sure what you mean by the terms  
15 "emergency basis." I can say that it was revised and  
16 made effective in what I would say is the ordinary  
17 course of our reviewing policies annually or on an  
18 as-needed basis.

19 Q. Exhibit 2 includes under the rule any  
20 "internal management rule," correct?

21 A. Those words appear on the exhibit, yes.

22 Q. We can agree that Exhibit 2 defines  
23 internal management rule as a "rule, bylaw, or  
24 standard governing the day-to-day staffs procedures  
25 or operations within an agency," can we not?

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1 A. I think you left out the word "regulation"  
2 in your reference to Section (A)(3).

3 Q. Sure, why don't you read it so the record  
4 then, the definition so it's clear in the record.

5 A. "'Internal management rule' means any  
6 rule, regulation, bylaw, or standard governing the  
7 day-to-day staff procedures and operations within an  
8 agency."

9 Q. Mr. Gray, in your legal training is it a  
10 rule of statutory construction that one is to give  
11 meaning to every word contained in a statute?

12 THE WITNESS: Can you read back that  
13 question, please?

14 (Record read.)

15 A. I would agree that that is what you have  
16 described as, considered as one possible statutory  
17 rule of interpretation.

18 Q. If you would please from your training and  
19 experience give me an example of an internal  
20 management rule of the ODRC.

21 A. Nothing's coming to mind specifically,  
22 Mr. Greger.

23 Q. Where can I find a list of internal  
24 management rules of the ODRC?

25 A. I'm not certain that there is such a list.

1 Q. Give me an example of a day-to-day staff  
2 procedure of the ODRC.

3 A. A day-to-day staff procedure might be, for  
4 example, post orders, what a corrections officer is  
5 supposed to do at a certain post on a certain day.

6 Q. This is a yes or no question. After  
7 discerning the meaning of internal management --  
8 strike that.

9 Have you discerned the meaning of  
10 "internal management rule" as its contained in  
11 111.15? That's a yes or no.

12 A. No.

13 Q. Are there internal management rules at  
14 ODRC as those words are used in Exhibit 2 which is  
15 the statute 111.15 to your knowledge?

16 MS. SAADEY: I would object to the extent  
17 it calls for work product --

18 Q. That's a yes or no.

19 MS. SAADEY: -- privilege. To the extent  
20 it does I would instruct the witness not to answer.  
21 If it does not, he can answer.

22 A. You are asking me to interpret the statute  
23 here and that would require me to reveal my thoughts  
24 and impressions about what this definition means  
25 vis-à-vis what goes on at ODRC. So I'm not going to

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1 answer the question.

2 Q. I'm simply asking you are there internal  
3 management rules at ODRC, that's a yes or no, as that  
4 term is defined in the statute.

5 A. And I can't answer that without revealing  
6 to you what my own work product is with respect to  
7 what this term means "internal management rule" to be  
8 able to answer your question. I will not answer the  
9 question.

10 Q. And so, Mr. Gray, is, for the first time  
11 you looked at 111.15 after Mr. O'Neal's lawsuit was  
12 filed against the State of Ohio; is that a fair  
13 statement?

14 A. That's not exactly. It's close. I did  
15 not look at 111.15 in any of these defined terms as  
16 it relates to 01-COM-11 the version that was drafted  
17 in October 2016 until after this lawsuit was filed.

18 Q. So you did not look at the statute in  
19 conjunction with October the 7th of 2016.

20 A. Yes, I think that's accurate, I did not  
21 look at this statute 111.15 in connection with the  
22 revisions made that are on Exhibit 1.

23 Q. Is there a classification in the ODRC that  
24 has as its heading "internal management rules" that  
25 are available as a matter of public record?

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1 A. I do not know.

2 Q. Are there rules of ODRC under the caption  
3 "internal management rules" that are not publicly  
4 available?

5 A. I do not know.

6 (GRAY EXHIBIT 3 MARKED.)

7 Q. I'm going to hand you what's been marked  
8 as Exhibit 3 for this deposition.

9 Mr. Gray, I've handed to you what's been  
10 marked Exhibit 3 to this deposition. I'll represent  
11 to you this is a true and accurate copy of Section  
12 3371.67. Can you take a minute and review that,  
13 please?

14 A. Sure.

15 I've skimmed the document. I didn't read  
16 it closely.

17 Q. Mr. Gray, we can agree that Exhibit 1 was  
18 not adopted pursuant to Exhibit 3 of the Revised Code  
19 Section 3301.0714, can't we?

20 MS. SAADEY: Object to lack of personal  
21 knowledge, but you may answer if you know.

22 A. Yeah, without looking at every word of  
23 this statute I'm unable to answer that question.

24 Q. Well, we can agree that it's not listed as  
25 a statutory authority on the face of Exhibit 1 and



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1 you never -- correct?

2 A. Exhibit 1 has a rule code reference that  
3 does not include Section 3301.0714 of the revised  
4 code.

5 Q. And we can agree that you didn't list  
6 Section 3301.714 as a statutory basis listed in your  
7 prior testimony authorizing the enactment of  
8 Exhibit 1, can't we?

9 A. That is correct, I did not cite this  
10 section of the Revised Code in response to that  
11 question.

12 Q. Mr. Gray, is Exhibit 1 an order respecting  
13 the duties of employees of ODRC?

14 A. I don't know.

15 Q. Is Exhibit 1 a finding of ODRC?

16 A. Again, I don't know what you mean by that  
17 term "finding."

18 Q. Is Exhibit 1 a determination of a question  
19 of law or fact that was presented to the ODRC?

20 A. I'm unable to answer that question.

21 Q. Is Exhibit 1 a rule promulgated pursuant  
22 to 119 of the Ohio Revised Code?

23 A. 01-COM-11 is a policy that was adopted by  
24 DRC.

25 Q. So your answer is no?

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1 A. My answer was not promulgated as an  
2 administrative rule under Chapter 111 or Chapter 119.

3 Q. The listed statutory authority for Exhibit  
4 1 is listed on the face of that document; is that  
5 correct?

6 A. There are two citations to the Ohio  
7 Revised Code on page 1 of Exhibit 1, yes.

8 Q. Can we agree that's the only listed  
9 statutory authority?

10 A. Those are the only two statutes that are  
11 listed on that page 1 of Exhibit 1.

12 Q. I'll hand you what's been marked for  
13 identification purposes as Exhibit 4.

14 (GRAY EXHIBIT 4 MARKED.)

15 Q. I'll represent to you that this is a true  
16 and accurate copy of Revised Code Section 5120.01.  
17 Will you accept that representation for purposes of  
18 this deposition?

19 A. Yes. This is current as of August 1,  
20 2018, Mr. Greger; is that correct?

21 Q. It is. Do you know why ODRC did not  
22 comply with Ohio's rule-making requirements in  
23 formulating Exhibit 1? That's a yes or a no.

24 MS. SAADEY: I'll object on the same basis  
25 of potential work product privilege. To the extent

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1 it would reveal legal analysis, I'll instruct the  
2 witness not to answer it, otherwise he may answer.

3 A. I will not answer.

4 Q. Do you know why? Simple yes or no.

5 A. If I know, yes or no would reveal work  
6 product and attorney-client communications and I will  
7 not answer.

8 Q. In what way? In what way answering  
9 whether you know why Exhibit 1 was not enacted  
10 pursuant to Ohio's rule-making requirements and how  
11 does that reveal work product?

12 MS. SAADEY: May I have a moment to  
13 discuss with my client on the potential privilege?

14 MR. GREGER: I'm sorry, on the record  
15 whose privilege?

16 MS. SAADEY: On the potential work product  
17 privilege Mr. Gray indicated that he could not answer  
18 on the basis it may reveal privilege and I'm taking a  
19 moment to confer with my client as to whether that  
20 privilege would refer.

21 MR. GREGER: Whose work product privilege  
22 are you discussing, yours or?

23 MS. SAADEY: Mr. Gray's work product  
24 privilege and/or attorney-client communication.

25 MR. GREGER: Thank you.

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1 MS. SAADEY: Thank you.

2 (Off the record.)

3 MR. GREGER: We're back on the record. Go  
4 ahead.

5 (Record read.)

6 A. When 01-COM-11 was modified in the fall of  
7 2016 and when the prior versions of 01-COM-11 were  
8 modified prior to that in 2015 and 2014, at each  
9 instance where the policy was modified and I had  
10 involvement, including here in the fall of 2016, the  
11 policy was already in existence.

12 I did not consider or have any discussions  
13 in the fall of 2016 on whether or not the policy  
14 would be modified and I did not take into  
15 consideration whether or not any of the  
16 administrative rule, statutes that you've cited to me  
17 would have any effect.

18 It wasn't until after you filed this  
19 lawsuit that I had discussions about what these  
20 statutes 111 and 119 and 5120 mean with respect to  
21 01-COM-11. And I'm asserting work product because  
22 what I thought of those statutes are my own legal  
23 impressions of what it means and I'm not going to  
24 answer any questions about those.

25 Q. Did you have discussions with Director

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1 Mohr after this lawsuit, yes or no, with respect to  
2 Exhibit 2 and Exhibit 3?

3 A. No, as to --

4 Q. Strike that. Exhibit 2. I'm sorry, 2 and  
5 4.

6 A. Yes, I believe I had communications with  
7 Director Mohr when he was director with respect to  
8 Exhibits 2 and 4.

9 Q. And was that --

10 A. After the lawsuit was filed.

11 Q. Before or after you spoke to the Ohio  
12 Attorney General?

13 A. I don't recall. I think it was, might  
14 have been before. Or after or both.

15 MR. GREGER: If you could for the record  
16 whose privilege have you been asserting every time  
17 you've objected and asserted privilege?

18 MS. SAADEY: I cannot answer that as one  
19 thing. When I talk about work product privilege, it  
20 is with respect to Mr. Gray's work product and his  
21 legal analysis and thoughts and processes as he has  
22 indicated as well and also with respect to  
23 attorney-client communications which also includes  
24 the work product of the Attorney General that he may  
25 now have knowledge of based on those communications.

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1 So it's a mixed bag. It cannot be separated out as  
2 you are attempting to do.

3 MR. GREGER: What privileged communication  
4 when you've used that term are you referring to?

5 MS. SAADEY: Mr. Greger, if --

6 MR. GREGER: I want the record clear on  
7 what you're asserting so that when Judge Serrott  
8 makes his ruling it's what you're asserting.

9 MS. SAADEY: You can ask the question  
10 again, and we can also go and speak to the Judge who  
11 is available here as opposed to leaving it for a  
12 later date.

13 MR. GREGER: If you can articulate for the  
14 record what privileged communication you've been  
15 referring to, that should clear it up for the record.

16 MS. SAADEY: I mean --

17 MR. GREGER: Let the record reflect that  
18 the witness is now consulting with his attorney.

19 MS. SAADEY: Any communication on the  
20 phone, mostly on the phone, in person meetings that  
21 we have regarding discussions about the ongoing  
22 litigation is attorney-client communication that I  
23 have with Mr. Gray. Or other attorneys in my office  
24 have with Mr. Gray.

25 MR. GREGER: Who is the "we" as you just

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1 used that term?

2 MS. SAADEY: It would be myself,  
3 Mr. Wille, perhaps Mr. Picken. I believe perhaps  
4 Mr. Madden but to a lesser extent.

5 MR. GREGER: What entity is representing  
6 Mr. Gray in this deposition?

7 MS. SAADEY: The Ohio Attorney General's  
8 Office is representing Mr. Gray.

9 MR. GREGER: Because?

10 MS. SAADEY: Because the Ohio Attorney  
11 General's Office represents the Ohio Department of  
12 Rehabilitation and Correction and its employees in  
13 their capacities within that Department.

14 Q. (By Mr. Greger) Mr. Gray, is lethal  
15 injection a duty conferred by the legislature on any  
16 division of the Ohio Department of Rehabilitation and  
17 Correction?

18 A. Can you repeat that question, please?

19 Q. Is lethal injection a duty conferred by  
20 the legislature on any division of ODRC?

21 A. I don't believe so specifically. My  
22 recollection is that Ohio Revised Code 2949.22  
23 confers the authority upon the Director of DRC  
24 without looking at that statute.

25 Q. Is lethal injection a duty conferred by

1 the legislature on any institution of ODRC?

2 A. I would respond the same as my last  
3 answer.

4 Q. Is the duty conferred by statute?

5 A. I'm sorry, is what duty conferred upon  
6 what statute?

7 Q. Well, the duty that you just testified to.

8 A. Do you have a copy of 2949.2.2 I can refer  
9 to, please?

10 Q. I don't know if I do or not. What section  
11 are you looking for?

12 A. 2949.22.

13 Q. Handing you what's been marked as  
14 Exhibit 4 for the Mohr deposition, is that the  
15 statute that you're looking for?

16 A. Yes, it is.

17 Q. Is lethal injection a duty conferred by  
18 the legislature on any division of ODRC?

19 A. I would answer that the same as my last  
20 answer.

21 Q. Is lethal injection a duty conferred by  
22 the legislature on any institution of ODRC?

23 A. I would answer the same as my last answer.

24 Q. Is lethal injection conferred on any  
25 division of ODRC by an order of its Director?



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1 A. I don't believe so.

2 Q. Is lethal injection conferred on any  
3 institution of ODRC by an order of its Director?  
4 First question was any division, now on any  
5 institution of ODRC. Is your answer the same, you  
6 don't believe so?

7 A. I believe the answer may be different,  
8 Mr. Greger, because another statute might be in  
9 place, 2949.24. Without having it in front of me I  
10 believe may identify the place where the lethal  
11 injection is to take place and identifies that place  
12 as the Southern Ohio Correction Facility, but I don't  
13 have that in front of me.

14 Q. But that's by statute that's not by order  
15 of the Director, correct?

16 A. I am referencing the statute, correct, not  
17 a specific order of the Director.

18 Q. I'm going to hand you what's been marked  
19 for identification purposes as Plaintiff's Exhibit 5  
20 for this deposition.

21 (GRAY EXHIBIT 5 MARKED.)

22 Q. I'll represent to you that is a true and  
23 accurate copy of Revised Code Section 5120.42. Will  
24 you accept that representation for purposes of this  
25 deposition?

1 A. I will accept your representation. Yes.

2 Q. Exhibit 5 states "The Department of  
3 Rehabilitation and Corrections shall make rules for  
4 the proper execution of its powers," does it not?

5 A. That is the first line of the section,  
6 yes.

7 Q. Where can I find the powers of the Ohio  
8 Department of Rehabilitation and Correction?

9 A. I do not know where that term is defined  
10 or explained.

11 Q. Do you know --

12 A. As you used it.

13 Q. Do you know if they're statutorily set  
14 forth?

15 A. I do not know.

16 Q. Who gives the Ohio Department of  
17 Rehabilitation and Correction its powers if you know?

18 A. I do not know specifically.

19 Q. Exhibit 5 uses the term "requirements," in  
20 context "so as to fully meet the requirements of  
21 Revised Code 5120". What are the requirements of  
22 Revised Code 5120 if you know?

23 A. I don't have any response to that  
24 question.

25 Q. Exhibit 5 uses the term "intents" in

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1 context so as to fully meet the intents of Revised  
2 Code 5120. What are intents of 5120 if you know?

3 A. I do not know.

4 Q. Exhibit 5 uses the term "purposes," in  
5 context so as to fully meet the purposes of Revised  
6 Code 5120". What are the purposes of Revised Code  
7 5120 if you know?

8 A. I don't know specifically.

9 Q. Can we agree, Mr. Gray, that 2949.22(A)  
10 charges the Warden of the Correctional Institution in  
11 which the sentence is to be executed or another  
12 person selected by the Director of Rehabilitation and  
13 Correction to ensure that the death sentence is  
14 executed?

15 A. I will stipulate that you just read the  
16 last sentence, yes, of Section (A) of 2949.22 but  
17 that you neglected to use the term "shall." I think  
18 you substituted the term to, "t-o," in your reading  
19 of that sentence.

20 Q. Mr. Gray, does Exhibit 1 state that ODRC  
21 is delegated by Revised Code 5120.01 the legislative  
22 authority to create the rules governing the entire  
23 execution process from preparation to conclusion?

24 A. That is not stated on page 1 of Exhibit 1.

25 Q. Is it, does Exhibit 1 cover the entire

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1 execution process from preparation to conclusion?

2 A. I would say that, no, it does not cover  
3 the entire process.

4 Q. What part of the execution process does  
5 Exhibit 1 not cover?

6 A. I can't think of a specific example at  
7 this time.

8 Q. Exhibit 1 starts 30 days, give or take,  
9 out from the actual date of execution, does it not?

10 A. Parts of it begin 30 days prior to  
11 execution, yes, that's correct.

12 Q. Does any part of the preparation for  
13 execution contained in Exhibit 1 go farther than 30  
14 days out?

15 THE WITNESS: Can you repeat that  
16 question, please?

17 (Record read.)

18 A. Yes.

19 Q. How far out does Exhibit 1 cover?

20 A. Parts of the policy I'm focusing on annual  
21 training requirements under the policy apply  
22 irrespective of the 30 days in advance of a scheduled  
23 execution. So annual training activities could take  
24 place before or after a scheduled execution.

25 Q. Is it your testimony as you sit here under

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1 oath today that there are portions of the lethal  
2 injection process that's not covered by Exhibit 1?

3 A. I believe there are some processes that  
4 are not specifically covered in 01-COM-11 and I can  
5 think of an example.

6 Q. Why aren't, why isn't the entire execution  
7 process covered by Exhibit 1?

8 A. I don't think I can answer that question.

9 Q. Are you asserting privilege or you don't  
10 have an answer?

11 A. I don't have an answer. I don't think  
12 every single action of every single person involved  
13 in the execution process from attorneys representing  
14 their clients to attorneys representing DRC clients  
15 to witnesses is addressed specifically in 01-COM-11.

16 The purpose of 01-COM-11 is to establish  
17 the guidelines for carrying out a court-ordered  
18 sentence of death but it doesn't include every  
19 minutia of detail that "covers the process" as you  
20 have used that term in your questions.

21 Q. How then is strict compliance judged?

22 A. I do not know.

23 Q. Mr. Gray, is there any language in Revised  
24 Code 5120.01 that exempts the Director or the  
25 Department from Ohio's administrative rule-making

1 procedures?

2 A. Again, I cannot answer that question  
3 without revealing my work product or the work product  
4 of the Attorney General's Office that has been shared  
5 with me in their defense of me and the Department in  
6 this case.

7 Q. We can agree that there is no exemption  
8 listed on the face of 5120.01, can't we?

9 A. I can state that the word "exempt" or the  
10 word "exemption" does not appear in the statute  
11 5120.01.

12 Q. Nor does it appear in correspondence to  
13 the Director or the Department of Rehabilitation and  
14 Correction, correct?

15 A. I don't understand the question. It was  
16 not in the correspondence with?

17 Q. There's no, the word "exemption" doesn't  
18 appear, neither does the word "exemption" in  
19 connection with Director or the Department, correct?  
20 There are no exemptions listed on the face of this  
21 statute, correct?

22 A. I do not see any exemptions listed on  
23 Exhibit 4, correct.

24 Q. Exhibit 2, Revised Code 111.15 sets out  
25 the procedures for the adoption of the administrative

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1 rules by state agencies that are not governed by  
2 other statutory administrative rule-making  
3 procedures, correct?

4 MS. SAADEY: Objection to the extent that  
5 the answer would require Mr. Gray to reveal any of  
6 his legal analyses or his work product or the work  
7 product of the Attorney General's Office shared with  
8 him, I would instruct him not to answer. If he may  
9 do so without so revealing, he may answer the  
10 question.

11 A. I can't answer.

12 Q. I'm sorry?

13 A. I cannot answer that.

14 Q. Are you asserting privilege or you just  
15 don't have an answer?

16 THE WITNESS: Can you read back the  
17 question, please?

18 (Record read.)

19 A. I cannot respond to your question without  
20 revealing my work product with respect to this  
21 section.

22 Q. Mr. Gray, is the Department of  
23 Rehabilitation and Correction governed by any  
24 statutory rule-making procedures based on your  
25 training and experience?

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1 A. Yes.

2 Q. Give me an example.

3 A. If the Ohio Revised Code contains express  
4 language from the legislature that DRC shall adopt a  
5 rule, then I would expect that the Department would  
6 follow the applicable rule-making procedures to adopt  
7 such an administrative rule.

8 Q. So is it the triggering language from the  
9 legislature that they shall adopt the rules that then  
10 mandates the ODRC to actually implementing an  
11 administrative rule?

12 A. That could be the case, yes.

13 Q. What's the other case? Or any other  
14 cases.

15 A. I do not know what those other cases might  
16 be.

17 Q. Mr. Gray, is there any language in  
18 Exhibit 2, which is Revised Code Section 111.15,  
19 generally or in that same exhibit 111.15(B)  
20 specifically that exempts the ODRC from compliance  
21 with the rule as is required as contained in that  
22 statute?

23 A. I cannot answer your question  
24 specifically, Mr. Greger, with respect to whether or  
25 not the section contains an exemption based on my



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1 analysis and interpretation of the statute which is  
2 work product. But I can represent to you that I do  
3 not on quick glance see the word "exempt" or  
4 "exemption" listed here for the Ohio Department of  
5 Rehabilitation and Correction.

6 Q. Mr. Gray, must the rules of ODRC be  
7 uniformly applied to those affected by the rule?

8 A. I think that depends.

9 Q. In what way?

10 A. When you use the term "rules," again I'm  
11 only focusing on rules of DRC that I stated before,  
12 rules of inmate conduct. And if you're familiar with  
13 the rules of inmate conduct, it's a disciplinary  
14 procedure and process that we have within an  
15 institution to make sure that inmates are complying  
16 with operational rules so that we can orderly operate  
17 prisons.

18 And whether those are uniformly applied, I  
19 would hope so but I don't, it depends on individual  
20 circumstances that could be factual circumstances of  
21 actions of inmates and staff on whether those are  
22 applied uniformly all of the time.

23 Q. So it's your testimony that there are ODRC  
24 rules that are not uniformly applied to those who are  
25 affected by the rule.

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1           A.       I am saying in the context of ODRC rules  
2 of inmate conduct there may be instances when a rule  
3 may not be uniformly applied by every employee  
4 against every inmate. There may be instances where  
5 there are subjective determinations made on whether a  
6 rule will be enforced against one inmate and not  
7 another.

8           Q.       Give me another example of a rule that's  
9 not uniformly applied.

10          A.       I can't think of one at this time.

11          Q.       Are there others?

12          A.       I don't know. I can't think of any as I  
13 sit here right now.

14          Q.       Is Exhibit 1 applied uniformly to all Ohio  
15 prisoners to be executed by the State of Ohio?

16                 MS. SAADEY: Objection. I believe this  
17 was already asked and answered but you may answer if  
18 you know.

19          A.       I believe I answered that presumptively  
20 the 01-COM-11, DRC policy 01-COM-11 will be uniformly  
21 applied to inmates who are sentenced to death.

22          Q.       Mr. Gray, in what way is Exhibit 1 an  
23 "internal management rule" as those words are used in  
24 111.15(D)(4) if you know?

25                 MS. SAADEY: Objection, I would object on

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1 the basis of privilege that calls for Mr. Gray's  
2 personal legal analysis of what "internal management  
3 rule" might mean with respect to 01-COM-11 and to the  
4 extent that that is work product I would instruct the  
5 witness not to answer. If you can answer otherwise,  
6 you may do so.

7 A. I cannot answer without revealing work  
8 product.

9 Q. Mr. Gray, in what way is Exhibit 1 not an  
10 internal management rule as those words are used in  
11 Revised Code 111.15(D)(4)?

12 MS. SAADEY: I would renew my objection on  
13 the basis of Mr. Gray's work product and with respect  
14 to not to answer if it reveals his personal legal  
15 analysis.

16 MR. GREGER: I assume, Ms. Saadey, you're  
17 going to stand on that even through the hearing of  
18 this matter?

19 MS. SAADEY: Mr. Greger, if you have an  
20 issue with the objection, we can go discuss it with  
21 the Judge. Otherwise I will, I put my objection on  
22 the record and I would ask you to proceed with your  
23 next question for Mr. Gray.

24 THE WITNESS: I need to respond --

25 MR. GREGER: For the record if in fact

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1 Mr. Gray is called to testify at the hearing in this  
2 matter and thereby waives the privilege that has been  
3 invoked here time and time again, I will ask for the  
4 right to redepose Mr. Gray absent that privilege.  
5 Just so the record's clear.

6 THE WITNESS: To make the record clear  
7 there is a pending question and I will respond that I  
8 cannot answer Mr. Greger's question without revealing  
9 my work product and the work product of the Attorney  
10 General's Office and attorney-client communications  
11 between myself and my attorneys.

12 Q. (By Mr. Greger) So you're now asserting  
13 the privilege of the Ohio Attorney General's Office?

14 A. That is not what I am stating, that's as  
15 Ms. Saadey has stated the record, Mr. Greger, that in  
16 the course of communications between myself and her  
17 office attorney work product that is independently  
18 generated by me has been shared with my attorneys,  
19 attorney work product of the Attorney General's  
20 Office has been shared with me, and I cannot respond  
21 to your question without the possibility of revealing  
22 both.

23 Q. Define for the record here this afternoon  
24 what the term "work product" means as you've asserted  
25 it.

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1 A. I don't have a citation to the record.

2 Q. Well, tell me what it means.

3 A. I think that's outside the scope of the  
4 deposition.

5 Q. Are you objecting now?

6 MS. SAADEY: Mr. Greger, we have lodged  
7 our objection, we understand that you disagree with  
8 it that we are objecting on the basis of work  
9 product, that these are the opinions, mental  
10 impressions, legal analyses, theories prepared as a  
11 result of this litigation in consultation with it has  
12 been shared both ways here and for the purpose of  
13 giving advice to DRC who is a client there's been  
14 work product on behalf of the Attorney General, work  
15 product of Mr. Gray including his mental impressions,  
16 opinions, theories, legal analyses, and judgments  
17 about the questions that you are asking.

18 Those are privileged materials not subject  
19 to discovery. And on that basis I would maintain my  
20 objection, respectfully.

21 MR. GREGER: I want Mr. Gray to define the  
22 term "work product" as he has asserted it.

23 A. "Work product" as I'm asserting here is  
24 any work that I have performed on behalf of the  
25 Department in preparing the defense of the Department

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1 to the complaint filed by your client asserting that  
2 01-COM-11 was not promulgated as an administrative  
3 rule and that any of my impressions, mental  
4 impressions, opinions, analyses, about the  
5 allegations in the complaint that have been raised  
6 are my work product and I am, they're not, it's not  
7 discoverable in this deposition.

8 Q. But waivable?

9 A. I did not say that.

10 Q. Mr. Gray, in your training and experience  
11 is an execution a day-to-day staff procedure for  
12 ODRC?

13 A. It can be.

14 Q. In what way?

15 A. I'm not sure what you mean by the term  
16 "day-to-day staff procedure" is not defined in your  
17 question. I understood your question and I answer it  
18 depends. Day to day there are some activities of  
19 individuals within the Department that happen on a  
20 daily basis with respect to certain parts of the  
21 execution process.

22 For example, the day-to-day housing of an  
23 inmate on Death Row before an execution. Then the  
24 housing of the inmate at Lucasville for the two days,  
25 the prior two and day of an execution.

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1 Q. Any others you want to put on the record?

2 A. That's all.

3 Q. Mr. Gray, do individuals outside of ODRC  
4 have an interest in Exhibit 1, like the courts and  
5 the individual being executed or general public as an  
6 expression of the public policy enacted by the  
7 General Assembly?

8 A. I can't speak for the general public. I  
9 don't know who has an interest in 01-COM-11 except  
10 those individuals who have expressed that interest in  
11 my presence, such as attorneys representing Death Row  
12 inmates.

13 Q. Did you consult with anybody outside of  
14 the Ohio Attorney General's Office and ODRC in  
15 enacting Exhibit 1?

16 A. Just to clarify the record, 01-COM-11  
17 wasn't enacted, was modified and approved by, became  
18 revised policy in October 2016. To answer your  
19 question, no, I did not consult with anyone outside  
20 of the Agency with regard to 01-COM-11.

21 Q. Mr. Gray, who determines in your training  
22 and experience whether the rules enacted by ODRC  
23 exceed the scope of the adopting agency's authority?

24 MS. SAADEY: Would you repeat that  
25 question, please?

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1 Q. Mr. Gray, who determines in your training  
2 and experience whether the rules enacted by ODRC  
3 exceed the scope of the adopting agency's authority?

4 A. I don't understand the premise of your  
5 question. What rules are you talking about?

6 Q. Who oversees the discretion of the  
7 Director of ODRC to determine whether or not the  
8 rules he's enacting exceed the scope of his  
9 authority?

10 A. I don't agree with your premise that the  
11 Director is enacting rules. Are you talking about  
12 administrative rules that become part of the  
13 Administrative Code? Or are you talking about  
14 policies that are approved by the Director and issued  
15 by . . .

16 Q. So far we determined that there are  
17 policies and we've determined that there are rules  
18 and that there is a classification of rules that go  
19 under the Ohio Administrative Procedure Act. You've  
20 testified to that, correct?

21 A. Yes, I think that's accurate.

22 Q. Who oversees the discretion of the  
23 Director in enacting a rule, not one that goes under  
24 the Ohio Administrative Procedures Act to determine  
25 whether or not he has exceeded his authority in



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1 enacting that rule?

2 A. I can't answer your question because I  
3 don't understand the premise of it. I can't think of  
4 the example that you're asking. So I don't know.

5 Q. I'm not asking for an example. Who  
6 oversees the discretion of the Director of ODRC as it  
7 relates to whether or not a rule he's adopted exceeds  
8 his authority?

9 MS. SAADEY: Objection, asked and  
10 answered. You may answer.

11 A. I cannot answer that. I do not know.

12 Q. Who, Mr. Gray, in your training and  
13 experience determines whether the rules enacted by  
14 ODRC conflict with other rules?

15 A. If ODRC is enacting an administrative  
16 rule, typically Legal staff will be working and may  
17 be a primary drafter of that administrative rule. So  
18 that they would be checking, I would expect that  
19 Legal staff would check for conflicts to make sure  
20 that the proposed administrative rule is not in  
21 conflict with existing administrative rules.

22 Q. You've used the subclass of rules, those  
23 that are enacted pursuant to the Ohio administrative  
24 rules or their rule-making authority. My question is  
25 the other rules that the Director enacts.

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1 A. I don't know that I've identified or  
2 stated that there are "rules that the Director  
3 enacts." So I'm unable to respond to your question.

4 Q. So the only rules that exist in the ODRC  
5 are those that go through the Ohio Administrative  
6 Procedures Act?

7 A. That is not what I stated.

8 Q. Okay, so then the classification of those  
9 that do not go through the Ohio Administrative  
10 Procedures Act, those rules, who determines whether  
11 they conflict with other rules?

12 A. I do not know.

13 Q. Mr. Gray, who determines in your training  
14 and experience whether the rules enacted by ODRC  
15 conflict with the legislative intent of the statute  
16 pursuant to which those rules were adopted?

17 A. Again if it's an administrative rule that  
18 Legal staff is preparing, I would expect Legal staff  
19 to review not only other administrative rules but  
20 legislative authority and intent in the Ohio Revised  
21 Code.

22 Q. Has the Director enacted any rules  
23 pursuant to 5120 et sec. or 5120.01?

24 A. Generally has the Director enacted any  
25 rules generally or are you talking about

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1 administrative rules?

2 Q. No, 5120.01 talks about rules and  
3 regulations, and has the Director enacted rules  
4 pursuant to 5120.01?

5 A. I do not know.

6 Q. Who determines if any rule he enacts under  
7 5120.01 conflicts with any other rules?

8 A. I would expect that if he is enacting a  
9 rule pursuant to 5120 that Legal will be consulted on  
10 such rule before it is enacted.

11 Q. Mr. Gray, in your training and experience  
12 does ODRC possess only such regulatory power as is  
13 delegated to it by the General Assembly?

14 A. I can't answer that without revealing my  
15 own work product.

16 Q. Mr. Gray, in your training and experience  
17 can ODRC itself extend the authority that was  
18 legislatively granted?

19 A. On the same basis I cannot answer that  
20 question without revealing work product and/or  
21 attorney-client communications with the Attorney  
22 General's Office.

23 Q. Mr. Gray, does Revised Code 5120 confer  
24 any duties on divisions or institutions of the ODRC  
25 regarding carrying out a death sentence?

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1 A. I'm not sure. It might.

2 Q. Take a look at it. It's in front of you.

3 A. 5120.01?

4 Q. Uh-huh. Does 5120.01 confer any duties on  
5 divisions or institutions of the ODRC regarding  
6 carrying out of a sentence of death?

7 A. The statute says "All duties conferred on  
8 the various divisions and institutions of the  
9 Department by law or by order of the Director shall  
10 be performed under the rules and regulations that the  
11 Director prescribes and shall be under the Director's  
12 control."

13 Q. So what's the answer to the pending  
14 question?

15 A. I can't answer that question without  
16 revealing my work product.

17 Q. You looked at 5120.01 before today?

18 A. Yes, sir.

19 Q. You've analyzed it?

20 A. I have looked at it and analyzed it, yes.

21 Q. So can we agree that 5120.01 does not  
22 confer any duties on any division or institution of  
23 the ODRC in carrying out a sentence of death?

24 MS. SAADEY: Objection, asked and  
25 answered. You may answer.

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1 A. I would not agree with your statement.

2 Q. Mr. Gray, to your knowledge did the  
3 legislature grant ODRC or its Director the power to  
4 promulgate rules regarding executions?

5 A. I can't answer that without revealing  
6 attorney work product and attorney-client  
7 communications.

8 Q. It's yes or no.

9 A. And I said, I cannot answer that question  
10 yes or no without revealing my attorney work product  
11 or communications with the Attorney General's Office.

12 Q. Mr. Gray, to your knowledge where can I  
13 find the procedure for authority that permits the  
14 review by the legislature of the exercise of the  
15 Director's discretion in promulgating Exhibit 1?

16 A. I do not know.

17 Q. Mr. Gray, to your knowledge who reviews  
18 the exercise of the Director's discretion used in  
19 promulgating Exhibit 1?

20 MS. SAADEY: Can you repeat that question?

21 Q. Mr. Gray, to your knowledge who reviews  
22 the exercise of the Director's discretion used in  
23 promulgating Exhibit 1?

24 A. I can't answer that without revealing work  
25 product.

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1 Q. Mr. Gray, does Revised Code Section  
2 5120.01 establish legislative policy?

3 A. Again, I cannot answer any questions about  
4 interpretations of 5120.01 without revealing work  
5 product.

6 Q. I'm just asking you whether or not the  
7 statute establishes legislative policy.

8 A. You're asking me what the statute, what it  
9 does or what it establishes and I cannot answer that  
10 question without revealing work product.

11 Q. Mr. Gray, does Revised Code Section 5120  
12 set any standards regarding execution procedures?

13 A. Is your question -- could you read back  
14 that question, please?

15 (Record read.)

16 A. Mr. Greger, does 5120.01 or are we talking  
17 about Chapter 5120?

18 Q. 5120.01.

19 A. It does not specifically.

20 Q. Doesn't specifically what?

21 THE WITNESS: Excuse me, can you read back  
22 the original question and my response, please,  
23 Julieanna as follow-up, please?

24 (Record read.)

25 A. I cannot answer further without revealing

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1 work product.

2 Q. Does 5120.01 identify intelligible  
3 principles the Director has to follow in enacting  
4 Exhibit 1?

5 A. I cannot answer that without revealing  
6 work product.

7 Q. Does 5120.01 establish any procedures for  
8 the effective review of execution procedures?

9 A. I cannot answer that without revealing  
10 work product.

11 Q. Can't even answer that yes or no?

12 A. That is correct.

13 Q. We can agree that it doesn't, can't we?

14 A. I stand on my responses.

15 Q. Mr. Gray, to your knowledge is the term  
16 "lethal injection" defined by the Ohio General  
17 Assembly?

18 A. It is not defined to my knowledge.

19 Q. How then, Mr. Gray, in your experience has  
20 ODRC determined what they are doing conforms to the  
21 undefined term "lethal injection"?

22 THE WITNESS: Could you read back that  
23 question, please?

24 (Record read.)

25 A. I can't answer that without revealing work

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1 product.

2 Q. How is it determined that the Ohio  
3 Department of Rehabilitation and Correction is in  
4 fact implementing the undefined lethal injection  
5 public policy enacted by the Ohio General Assembly?

6 A. I can't answer that without revealing work  
7 product.

8 Q. Mr. Gray, to your knowledge has ODRC  
9 received guidance from the legislature on any aspect  
10 of Exhibit 1?

11 A. Did you say any aspect of 01-COM-11?

12 Q. Mr. Gray, to your knowledge has ODRC  
13 received guidance from the legislature on any aspect  
14 of Exhibit 1?

15 A. Not specifically.

16 Q. Has Exhibit 1 ever been tendered to the  
17 Ohio General Assembly to your knowledge for any  
18 reason?

19 A. It has not been formally tendered to the  
20 legislature to the best of my knowledge.

21 Q. Mr. Gray, am I correct that the Ohio  
22 General Assembly in your training and experience  
23 defines crimes and penalties for those crimes?

24 A. Generally I'm familiar with the General  
25 Assembly defining crimes and penalties under the Ohio



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1 Revised Code.

2 Q. So is that answer yes?

3 A. Yes.

4 Q. Mr. Gray, does Exhibit 1 limit the manner  
5 in which an intravenous site may be established?

6 THE WITNESS: Can you read the question  
7 again, please?

8 (Record read.)

9 A. I'd have to look at the policy in detail  
10 to see where to familiarize myself again with where  
11 IV administration and sites are addressed,  
12 Mr. Greger.

13 Q. Go ahead.

14 A. It appears that IV site preparation  
15 established is addressed in Section (G) (7) and (8) on  
16 pages 15 and 16 of the policy.

17 Q. Does it limit the manner in which an  
18 intravenous site may be established?

19 A. I do not see any limitations on the manner  
20 of establishing the IV sites. So no.

21 Q. Mr. Gray, does Exhibit 1 limit the number  
22 of attempts to establish an intravenous site in a  
23 given condemned inmate?

24 A. No, it does not contain any restrictions  
25 on the number of attempts to establish IV sites.

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1 Q. Mr. Gray, is it a true statement that when  
2 the legislature determines the policy and the law it  
3 can, by providing appropriate guidance, authorize an  
4 Executive agency to implement that law and policy?

5 MS. SAADEY: Objection, lack of  
6 foundation. You may answer if you know.

7 A. I don't know.

8 Q. Mr. Gray, to your knowledge has the  
9 General Assembly provided any guidance to ODRC for  
10 the preparatory steps of carrying out an execution by  
11 lethal injection?

12 A. Formally not that I'm aware.

13 Q. Mr. Gray, to your knowledge has the  
14 General Assembly provided any policies to ODRC for  
15 the preparatory steps of carrying out an execution by  
16 lethal injection?

17 A. No, not that I'm aware.

18 Q. Mr. Gray, has the General Assembly  
19 delegated to ODRC, which is an Executive branch  
20 agency, unguided discretionary authority to carry out  
21 lethal injection in the state of Ohio?

22 MS. SAADEY: Objection. To the extent  
23 that would call for privileged work product of  
24 Mr. Gray, I would instruct him not to answer.

25 A. Yes, I cannot answer because of work

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1 product. And attorney-client communications.

2 Q. Mr. Gray, has the General Assembly  
3 suggested any policy with respect to the drugs used  
4 for a lethal injection in the state of Ohio?

5 A. No, not that I'm aware of.

6 Q. Mr. Gray, has the General Assembly  
7 provided any guidance with respect to the drugs used  
8 for lethal injection in the state of Ohio?

9 A. No, not that I'm aware of.

10 Q. Mr. Gray, is it a true statement that the  
11 General Assembly has simply stated that drugs of  
12 sufficient dosage to quickly and painlessly cause  
13 death be used for lethal injection in the state of  
14 Ohio?

15 A. I would say that section, the first  
16 sentence of Section A of 2949.22 addresses your  
17 question and states what the law is as stated by the  
18 General Assembly.

19 Q. So your answer, yes, that it's a true  
20 statement?

21 A. No, my answer is refer to statement, refer  
22 to the sentence in the first section of 4929.22(A).

23 Q. Is that statement that you just read or  
24 cited the extent of the guidance provided to ODRC by  
25 the General Assembly with regards to the drugs to be

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1 used in a lethal injection in the state of Ohio?

2 A. Yes, that is my understanding.

3 Q. Has the General Assembly placed any limit  
4 on the drugs that may be used in a lethal injection  
5 in the state of Ohio?

6 A. When you say "limits" what do you mean?  
7 Limits on the drugs?

8 Q. Yes, legislature told you you can use this  
9 but you can't use that?

10 A. No, the legislature has not said that.

11 Q. Has General Assembly prevented ODRC from  
12 changing the drugs used in a lethal injection in the  
13 state of Ohio?

14 A. No, not that I'm aware of.

15 Q. Did the General Assembly define what a  
16 "quick and painless death" meant as those words are  
17 used in the statute?

18 A. I do not see any definitions for the terms  
19 you described in the Statute 2949.22.

20 Q. Would you turn to Exhibit 1, please,  
21 at VI, Section (E)(7), which is on page 11 of 21.

22 A. (E)(7) the top of page 11, Mr. Greger?

23 Q. Page 11 of 21.

24 A. I am there.

25 Q. It permits the condemned inmate "contact

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1 visits with family, friends, and/or private clergy,  
2 as approved by the Warden, between approximately  
3 4:30 p.m. and 7:30 p.m. on the day prior to the  
4 scheduled execution." Correct?

5 A. Yes, that's what it says.

6 Q. Mr. Gray, to your knowledge does Exhibit 1  
7 contain any special search requirements for the  
8 family, friends, or private clergy that visit during  
9 the 4:30 to 7:30 period the day before the execution?

10 A. I do not see any search provisions with  
11 respect to that sentence.

12 Q. Mr. Gray, does an inmate possess the Sixth  
13 Amendment right to counsel to at least his or her  
14 final breath?

15 A. Generally that's my understanding.

16 Q. Mr. Gray, what's the basis for subjecting  
17 defense counsel to a special search procedure on the  
18 day before the execution?

19 A. I believe it's due to safety and  
20 securities concerns.

21 Q. Why is the usual prison search procedures  
22 that apply for all visits by counsel prior to any  
23 visit the day before the day of the execution not  
24 used with respect to counsel's visit on the day prior  
25 to the execution?

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1 A. I do not know.

2 Q. Mr. Gray, are confidential attorney-client  
3 consultations permitted between counsel and the  
4 condemned prisoner on the day of the execution?

5 A. No, I do not believe so.

6 Q. Mr. Gray, are confidential attorney-client  
7 consultations permitted at all other times prior to  
8 the day of the execution to your knowledge?

9 A. Yes, I believe so.

10 Q. Mr. Gray, I'm handing you what's been  
11 marked as Exhibit 9 for the Mohr deposition. You've  
12 seen the language of this exhibit before, have you  
13 not?

14 A. Yes, I believe so.

15 Q. You and I can agree that Exhibit 9 is part  
16 of the Ohio Administrative Code, can we not?

17 A. It appears to be Ohio Administrative Code  
18 5120-9-20, yes.

19 Q. Is the process, if you know, that some  
20 attorney visits are part of the Administrative Code  
21 Exhibit 9 and some attorney visits aren't part of the  
22 Administrative Code like in Exhibit 1?

23 A. I do not know specifically but this  
24 Administrative Code is titled "Visits by attorneys  
25 and inmate access to legal services" speaks to

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1 general provisions on how ODRC will handle attorney  
2 visits and inmate access to legal services generally,  
3 and specifically with regard to carrying out a  
4 court-ordered sentence death is addressed in  
5 01-COM-11.

6 Q. I understand that. But they both concern  
7 attorney visits, do they not?

8 A. Yes, the code addresses attorney visits  
9 and the provisions that we cited in 01-COM-11 talk  
10 about attorney visits.

11 Q. What then is the process, if you know,  
12 that some attorney visits are part of the  
13 Administrative Code and some attorney visits aren't?

14 A. I do not know why that is.

15 Q. If you know, how is ODRC, how is an ODRC  
16 subject like attorney visits determined to be part of  
17 the administrative rule-making process and while  
18 others aren't?

19 A. I do not know the answer to that.

20 Q. What causes the loss of confidentiality  
21 between counsel and a condemned client on the day of  
22 the execution?

23 A. Can you repeat that question?

24 Q. What causes the loss of confidentiality  
25 between counsel and the condemned client on the day

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1 of the execution?

2 A. I don't know. I don't know what causes  
3 the loss as you described.

4 Q. Mr. Gray, based on your training and  
5 experience did the General Assembly make the laws and  
6 the Executive branch carries them out?

7 A. I would say generally the General Assembly  
8 makes laws and the Ohio Revised Code and those are  
9 carried out by the Executive agencies.

10 Q. Director Mohr testified that he did not  
11 know why the ODRC has not complied with Ohio's  
12 Administrative rule-making requirements. Is that  
13 because you didn't tell him?

14 A. I do not know why he answered it that way.

15 Q. Director Mohr testified that he did not  
16 know how it was decided not to follow the Ohio  
17 administrative rule-making requirements. Is that  
18 because you didn't tell him?

19 A. I do not know why he said that.

20 Q. Is it the position of the Ohio Department  
21 of Rehabilitation and Correction that Section 5120 et  
22 sec. provides the legislative authority to create the  
23 rules governing the entire execution process?

24 MS. SAADEY: Objection to the extent that  
25 answer would reveal Mr. Gray's work product or



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1 confidential attorney-client communication I would  
2 instruct him not to answer. If he can answer  
3 otherwise, he may do so.

4 A. I cannot answer without revealing work  
5 product or attorney-client communications.

6 Q. Have you discerned any ambiguity in  
7 Revised Code Section 5120.01?

8 MS. SAADEY: Objection and ambiguous and  
9 potentially would reveal privileged information as  
10 stated before. Otherwise Mr. Gray may answer.

11 A. I cannot respond to that question without  
12 revealing attorney work product and attorney-client  
13 communications.

14 Q. Have you discerned any ambiguity in  
15 Revised Code Section 111.15.

16 MS. SAADEY: Renew the objection.

17 A. Again, I cannot answer without revealing  
18 attorney work product and attorney-client  
19 communication.

20 Q. Have you discerned any ambiguity in  
21 Revised Code 111.15(B)?

22 MS. SAADEY: Renew the objection and the  
23 instruction.

24 A. I cannot answer without revealing work  
25 product and attorney-client communication.

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1 Q. Can we agree, you and I, that if the  
2 language at issue qualifies as a rule pursuant to  
3 Revised Code Section 111.15(A)(1), it must have  
4 general and uniform operation and application?

5 MS. SAADEY: Same objection and  
6 instruction to this line of questioning.

7 A. Yeah, I cannot answer that question  
8 without revealing work product and attorney-client  
9 communication.

10 Q. Mr. Gray, where in Exhibit 1 can I find  
11 the words "immediate preservation of the public  
12 peace, health, or safety" as the reason for that  
13 exhibit?

14 A. Can you repeat that, the language you  
15 quoted, please?

16 Q. Mr. Gray, where in 01-COM-11, Exhibit 1,  
17 can I find the words "immediate preservation of the  
18 public peace, health, or safety" as the reason for  
19 that exhibit?

20 A. Would you like me to review the entire  
21 document or can you represent to me that it is not in  
22 the document?

23 Q. I'll represent to you that it's nowhere in  
24 that document but you may take your time to make sure  
25 that my representation is accurate.

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1           A.       Excuse me, Mr. Greger, there's an asterisk  
2 on my copy of this exhibit on page 5. Does that have  
3 any meaning for your question?

4           Q.       No.

5           A.       Based on my brief review of the policy I  
6 would agree that those terms described in your  
7 question do not appear to be contained in 01-COM-11  
8 Exhibit 1.

9           Q.       Mr. Gray, based on your experience how far  
10 apart are executions spaced or scheduled?

11          A.       It's my understanding the Supreme Court  
12 has been scheduling them approximately every 60 days.

13          Q.       Do you agree that every execution is an  
14 individual event?

15          A.       Yes.

16          Q.       By that I mean the particulars of each  
17 inmate, their mental health, their physical health is  
18 taken into consideration in each execution?

19          A.       That's part of it.

20          Q.       ODRC has executions anticipating the  
21 circumstances of each individual inmate; is that  
22 correct?

23          A.       Generally, yes.

24          Q.       ODRC has available and reviews the  
25 individual inmate's records when planning for that

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1 inmate's execution; is that correct?

2 A. When you say "records," what records are  
3 you referring to?

4 Q. All ODRC records.

5 A. I don't agree that they necessarily review  
6 all ODRC records in preparing for an execution, no.

7 Q. But they have available those records?

8 A. I would presume so, yes.

9 Q. Is it correct that although each execution  
10 is by lethal injection, each execution is unique?

11 A. It could be.

12 Q. Am I correct that ODRC has only such  
13 regulatory power as is delegated to it by the General  
14 Assembly?

15 A. I cannot answer that without revealing  
16 work product documents.

17 Q. Is the delegation of authority from the  
18 Ohio General Assembly to the ODRC to draft and  
19 implement Exhibit 1 explicit in Revised Code Section  
20 5120.01?

21 A. I cannot answer that without revealing  
22 work product or attorney-client communication.

23 Q. Is the delegation from the authority of  
24 the Ohio General Assembly to the ODRC to draft and  
25 implement Exhibit 1 implicit in Revised Code Section

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1 5120.01?

2 A. I'm unable to respond without revealing  
3 work product and attorney-client communication.

4 Q. Has the Ohio General Assembly provided the  
5 Ohio Department of Rehabilitation and Correction any  
6 standards to which the Agency must comply in carrying  
7 out an execution?

8 A. No, not to my knowledge.

9 Q. Am I correct that the Director of ODRC has  
10 the discretion to determine the process by which  
11 lethal drugs are administered?

12 A. Can you repeat that question?

13 Q. Am I correct that the Director of ODRC has  
14 the discretion to determine the process by which  
15 lethal drugs are administered?

16 A. Generally, yes.

17 Q. Am I correct that the Director of ODRC has  
18 the discretion to determine the drugs or the  
19 combination of drugs that are actually used in  
20 carrying out an execution?

21 A. Yes.

22 Q. Am I correct that the Director of ODRC has  
23 the discretion to determine the number of piercings  
24 or needle sticks that occur to an inmate in order to  
25 establish an IV line?

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1           A.       Yes, that would fall within his  
2 discretion.

3           Q.       Am I correct that the Director of ODRC has  
4 the discretion to determine the inmate's access to  
5 confidential attorney-client communications on the  
6 day before the inmate's execution?

7           A.       He could.

8           Q.       Am I correct that the Director of ODRC has  
9 the discretion to determine the inmate's access to  
10 confidential attorney-client communications on the  
11 day of the inmate's execution?

12          A.       He could have input on that question, yes.

13          Q.       Am I correct that the Director of ODRC has  
14 the discretion to permit unlimited attempts to  
15 establish an IV site in the condemned inmate?

16          A.       We would have that discretion, yes.

17          Q.       Am I correct that the Director of ODRC has  
18 the discretion to permit an unlimited amount of time  
19 in carrying out an execution?

20          A.       Yes, we would have that discretion.

21          Q.       Am I correct that the Director of ODRC has  
22 the discretion to determine how attorney-client  
23 communications will occur on the day of the  
24 execution, and by that I mean cell front visits only?

25          A.       He would have that discretion along with

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1 the Warden and the Team Leader.

2 Q. Mr. Gray, is it your experience that the  
3 inmate who's being prepared for execution including  
4 on the day of the execution is involved in some form  
5 or fashion of litigation whether it's a state or  
6 federal court?

7 A. Could you repeat that question.

8 Q. Mr. Gray, is it your experience that the  
9 inmate who's being prepared for execution including  
10 to the day of the execution is involved in some form  
11 or fashion of litigation whether in the state or  
12 federal courts?

13 A. My experience has been that some condemned  
14 inmates have been involved in litigation before and  
15 including the day of execution and some inmates have  
16 not.

17 Q. Clemency can occur at the last moment, can  
18 it not?

19 A. That is my understanding, yes.

20 Q. A federal judge has the power to enjoin or  
21 temporarily restrain the execution even at the last  
22 moment, can he or she not?

23 A. A federal court could issue an injunction  
24 prohibiting the State from carrying out an execution,  
25 yes, I would agree.

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1 Q. Or a temporary restraining order.

2 A. That could issue as well, yes.

3 Q. A State judge has the power to enjoin or  
4 temporarily restrain the execution even at the last  
5 moment, can he or she not?

6 A. I do not know for certain.

7 Q. You don't know if a State judge has the  
8 power to enjoin or temporarily restrain an execution  
9 even at the last moment?

10 A. I am not certain of that because of your  
11 term "State judge." I don't know if you're talking  
12 about an Ohio Supreme Court judge or a Trial Court  
13 judge or a Court of Appeals judge and how that  
14 relates to the warrant issued by the Ohio Supreme  
15 Court ordering my Department to carry out a  
16 court-ordered execution. So that is the basis for my  
17 uncertainty in responding to your question.

18 Q. We can agree that any justice of the Ohio  
19 Supreme Court can do it, can't they?

20 A. That is my understanding, yes.

21 Q. Is there a physician on site at the time  
22 of executions in your experience?

23 A. Could you repeat that?

24 Q. Is there a physician on site at the time  
25 of the executions in your experience?



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1           A.       There is not a physician located at the  
2 building in which execution takes place. Whether or  
3 not there may be a physician in the general medical  
4 area of the Southern Ohio Correction Facility is  
5 unknown to me.

6           Q.       Is there a physician as part of the  
7 medical team?

8           A.       As the term "medical team" is defined in  
9 01-COM-11, it does not presently include a physician.  
10 No.

11          Q.       How are the lethal drugs introduced into  
12 the inmate on the day of his execution?

13          A.       Intravenous administration.

14          Q.       Are the drugs injected into the IV line  
15 that was previously established?

16          A.       That was previously established when?

17          Q.       Prior to the lethal drugs being inserted  
18 into the IV line that's connected to the inmate.

19          A.       Yes, that's my understanding.

20          Q.       Do the lethal drugs then travel down the  
21 IV line and into the inmate's body?

22          A.       That is my understanding of what occurs,  
23 yes.

24          Q.       Can we agree that the lethal drugs are not  
25 directly injected into the condemned inmate on the

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1 day of his or her execution, and by that I mean IM,  
2 intramuscularly, but they travel down a tube and  
3 enter the inmate through the IV portal previously  
4 established?

5 A. I don't know that I necessarily understand  
6 and agree with the terms you used. It's my  
7 understanding that the intravenous catheter is set in  
8 the inmate's arm or somewhere on his arms and a  
9 tubing is attached to that, to those catheters and  
10 that the drugs are intravenously administered into  
11 the line.

12 And they are not administered as you  
13 stated by intramuscular injection, which I understand  
14 to be taking a syringe with a needle and putting it  
15 not in the blood stream but into a large muscle mass.

16 Q. You and I have previously agreed that the  
17 Director of ODRC has a great deal of discretion and I  
18 must have asked a dozen questions about whether he  
19 has this particular discretion. My question is who  
20 reviews the discretion of the Director of ODRC?

21 A. I don't know who does. I know I do.

22 Q. What's the process that exists for one to  
23 test the discretion and whether or not the discretion  
24 was abused by the Director of ODRC?

25 A. I don't know that I can identify the

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1 process.

2 Q. Would you agree that an inmate who's  
3 affected by the discretion of a Director of ODRC may  
4 believe that the discretion is illegal or exceed its  
5 grant of authority, that declaratory judgment would  
6 be a process available to that inmate to test that  
7 discretion or grant of authority?

8 MS. SAADEY: Can you read back the  
9 question please, Julieanna?

10 Q. Mr. Gray, would you agree that an inmate  
11 who is affected by the discretion of the ODRC might  
12 believe that the discretion is illegal or that it  
13 exceeds the grant of authority, that declaratory  
14 judgment process would be available to that inmate to  
15 test that discretion or grant of authority?

16 MS. SAADEY: Objection. I would object on  
17 the basis of work product and attorney-client  
18 communication to the extent that Mr. Gray would have  
19 to reveal either of those in answering that question.  
20 To the extent that it would not, you may do so.

21 A. I can't answer that without revealing  
22 attorney work product or attorney-client  
23 communication.

24 MR. GREGER: Let me take a break.

25 (Recess taken.)

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1 MR. GREGER: I'm done asking questions but  
2 that doesn't mean we're done.

3 --|--

4 CROSS-EXAMINATION

5 BY MR. PORTER:

6 Q. We've talked a great deal about Exhibit 2,  
7 Section 111.15.

8 A. Yes.

9 Q. And I'm a little unclear so just help me  
10 here. Has DRC adopted or promulgated any rules  
11 pursuant to the procedure outlined in 111.15?

12 A. Generally any administrative rule, I don't  
13 know for certain one way or the other.

14 Q. Have you been -- just a yes or no. Have  
15 you been consulted by anyone outside this lawsuit  
16 about whether the procedure contained in 111.15  
17 should be followed?

18 A. I can't think of an instance here. I  
19 mean, in my tenure at DRC where I was specifically  
20 asked about promulgating a rule under 111 but that's  
21 not to say I wasn't, I just don't recall that issue  
22 or question being brought to my attention.

23 Q. If I worked for DRC and I had a question  
24 whether it needed, the procedures contained in 111.15  
25 needed to be followed, is there someone I should

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1 consult?

2 A. I would expect that that person would  
3 consult someone in Legal. In Legal Services to be  
4 any of my eight attorneys that work for me.

5 Q. Do you know if anyone in Legal Services  
6 was, has been consulted regarding whether the  
7 procedure in 111.15 needs to be followed?

8 A. In a general question?

9 Q. In a general question.

10 A. I don't know specifically if someone has  
11 been asked that question, someone in Legal Services.

12 Q. I just got a couple more, I know I  
13 exceeded the four.

14 Have any rules been adopted while you've  
15 been at DRC that the procedure outlined in 111.15 was  
16 followed?

17 A. I don't know specifically if there were  
18 any rules promulgated under 111 or Chapter 119 with  
19 respect to DRC.

20 Q. Do you know or have any knowledge of the  
21 rules that were promulgated pursuant to 111.15 who  
22 made the decision or whether those procedures should  
23 be followed?

24 A. I don't know the answer to that.

25 Q. I think I have one more question.

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1 Exhibit 1 we're talking about.

2 A. Yes, sir.

3 Q. And it has, and I'm sorry, I should know  
4 the number of changes that have gone on, maybe it's  
5 14, 15, a large number of changes. Do you agree?  
6 Significant number of changes.

7 A. For what time period? I can tell you  
8 since I've been working at ODRC I believe there's  
9 been four or five versions of 01-COM-11 and so there  
10 were changes made for, with each of those versions.

11 Q. Do you know if this includes the versions  
12 that were made prior to you coming to DRC?

13 A. Yeah, when I came to DRC and I was asked  
14 to make the first changes to 01-COM-11, I used as a  
15 template the existing version and made changes to  
16 that existing version of 01-COM-11. I don't know if  
17 that helps you.

18 Q. And it helped me, my question wasn't very  
19 good so give me another chance.

20 A. Sure. Just one more chance.

21 Q. If you know was any version ever of  
22 Exhibit 1 adopted pursuant to 111.15?

23 A. Not that I'm aware of.

24 MR. PORTER: I don't think I have any  
25 other questions.

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1 MR. GREGER: For the record you have  
2 tendered to us a binder today pursuant to the  
3 subpoena that was issued. If you could just identify  
4 for the record what the contents of the binder is and  
5 we'll make this a Roman Numeral I joint exhibit for  
6 purposes of the depo?

7 MS. SAADEY: We'll go through it and for  
8 identification purposes, yes. So for the first page  
9 of the document that's in the binder is a copy of the  
10 subpoena for Mr. Gray that was filed in the Franklin  
11 County Common Pleas Court on September 28, 2018, a  
12 copy of which was e-mailed to myself as counsel for  
13 DRC and Mr. Gray.

14 MR. GREGER: I'll stipulate that's a true  
15 and accurate copy of that subpoena.

16 THE WITNESS: I would just note for the  
17 record the subpoena contained a request for documents  
18 to bring with me. All documents produced or obtained  
19 in any form that were used or generated by you as the  
20 policy owner in the development of 01-COM-11 version  
21 October 7, 2016.

22 And all the documents contained in this  
23 binder are all the documents that are responsive to  
24 that request in the subpoena.

25 And so, Ms. Saadey, would you identify

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1 what is in the binder.

2 MS. SAADEY: For the record what's  
3 contained in the binder is just the first page is the  
4 subpoena. It was just to give context to the  
5 remaining exhibits.

6 MR. GREGER: And since he's appeared I  
7 assume you have no objection to the subpoena.

8 MS. SAADEY: I do not believe that's an  
9 objection to the service, no.

10 Also was a copy of ODRC policy 01-COM-11  
11 with an effective date of October 7, 2016.

12 THE WITNESS: And just let me note for the  
13 record if you notice that the signature box in this  
14 version of 01-COM-11 is larger than the other. This  
15 is a copy of the original signature of Director Mohr.

16 MR. GREGER: He testified his signature  
17 was larger.

18 THE WITNESS: And the one that is posted  
19 on the Internet for public consumption contains a  
20 smaller version of his signature.

21 MR. GREGER: Then what would be the third  
22 document the subpoena being number one, 01-COM-11, 21  
23 pages is the second document.

24 MS. SAADEY: I guess what you could term  
25 third document is the DRC Policy Impact Analysis



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1 which is dated October 12, 2016, and which was I  
2 believe a previously identified exhibit for Amanda  
3 Moon's deposition.

4 MR. GREGER: It was but it does not have  
5 both sides.

6 MS. SAADEY: This is just one page of the  
7 DRC Policy Impact Analysis. It is one-sided. The  
8 side with the signature page.

9 MR. GREGER: Right, that's not complete.

10 MS. SAADEY: Okay. I don't know what to  
11 say. It is. But do you have the other side of it?

12 MR. GREGER: We do.

13 THE WITNESS: Let's go off the record.

14 (Discussion off the record.)

15 MR. GREGER: Back on the record.

16 The fourth document is?

17 MS. SAADEY: Fourth document is an e-mail  
18 from the e-mail address at Stephen.Gray@ODRC to  
19 Jondrea Parrish dated Friday, October 7, 2016. That  
20 is one page.

21 The I believe that the fifth document is a  
22 copy of ODRC policy 01-COM-11 that is a, basically a  
23 redlined or marked revision copy.

24 And I would note that these documents thus  
25 far with the exception of the subpoena are also all

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1 marked as deemed discovery provided on October 14th  
2 of 2016 and that discovery was provided in the  
3 federal litigation which is why it is so marked.  
4 This was not provided specifically in this litigation  
5 prior to.

6 So that I guess edited or redlined version  
7 of 01-COM-11 is 22 pages in length.

8 The sixth document is a one-page e-mail  
9 that is from Stephen Gray to Jondrea Parrish and  
10 JoEllen Smith and is dated Friday, October 7, 2016.

11 And the last document is a DRC Policy  
12 Variance Request that is dated, well, it is dated as  
13 discovery provided on October 26, 2016, and it is  
14 with regard to a variance to Department policy  
15 01-COM-11.

16 That is the extent of the responsive  
17 documents that were identified in response to the  
18 subpoena.

19 MR. GREGER: Is the last document, the DRC  
20 Policy Variance Request, two-sided if you know?

21 MS. SAADEY: I do not believe that it is.

22 MR. GREGER: If it is would you subpoena  
23 the record with the other page?

24 MS. SAADEY: Yes. I will check on that.

25 MR. GREGER: And I'll follow up with a

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1 letter to what we requested of Mr. Gray that he said,  
2 he would informally, flow chart.

3 THE WITNESS: Table of organization I  
4 think.

5 Were these Mohr Exhibits 5 and 9, I think  
6 that's how you identified them today.

7 MR. GREGER: Not 4 but 9, yes. The only  
8 one that had a yellow sticker on it to my knowledge  
9 was No. 9.

10 (Off the record.)

11 MS. SAADEY: We would like the opportunity  
12 to review and sign once the deposition is available  
13 and we would like a copy.

14 (Whereupon, at 2:22 p.m., the deposition  
15 was concluded and signature was not waived.)

16 --|--

17

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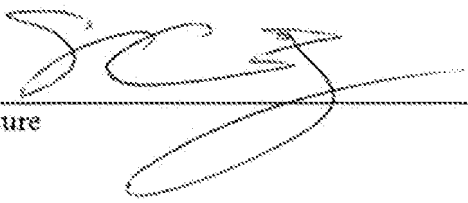
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### ERRATA SHEET

Please list any changes to your deposition below. Be sure to list the page, line, description of change and the reason for your change. Please sign and date when complete. While the changes are not physically made to the transcript, the errata sheet is forwarded to the ordering attorney and will be added as an addendum to your transcript.

| <u>PAGE</u> | <u>LINE</u> | <u>DESCRIPTION OF CHANGE</u>                    | <u>REASON FOR CHANGE</u> |
|-------------|-------------|---|--------------------------|
| 30          | 23          | change "assumption" to "presumption"            | mistaken                 |
| 75          | 1           | after "answer" add "is the policy" before "was" | correction               |
| 96          | 17          | after "enacted," add "it" before "was"          | correction               |
| 108         | 22          | change "4929" to "2949" to be "2949.22(A)"      | correction               |
| 119         | 16          | change "We" to "He"                             | mistaken                 |
| 119         | 20          | change "we" to "he"                             | mistaken                 |
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Signature

11-8-18  
Date

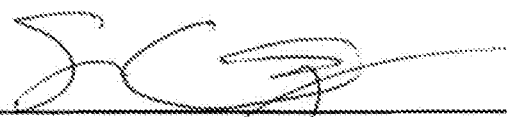
Stephen C. Gray

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AFFIDAVIT

State of Ohio )  
County of FRANKLIN ) SS:

I, STEPHEN C. GRAY, do hereby certify that I have read the foregoing transcript of my deposition given on Tuesday, October 16, 2018; that together with the correction page attached hereto noting changes in form or substance, if any, it is true and correct.

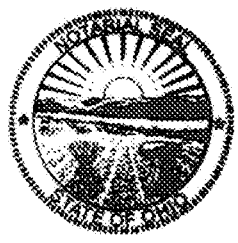
  
STEPHEN C. GRAY

I do hereby certify that the foregoing transcript of the deposition of STEPHEN C. GRAY was submitted to the witness for reading and signing; that after he had stated to the undersigned Notary Public that he had read and examined his deposition, he signed the same in my presence on the 8<sup>th</sup> day of November, 2018.

  
Notary Public

My commission expires 2/1/2022.

--|--



CHERYL A. JORDAN  
Notary Public, State of Ohio  
My Commission Expires 02-01-2022

Stephen C. Gray

Page 133

1 AFFIDAVIT  
 2 State of Ohio )  
 ) SS:  
 3 County of \_\_\_\_\_ )

4 I, STEPHEN C. GRAY, do hereby certify that I  
 5 have read the foregoing transcript of my deposition  
 given on Tuesday, October 16, 2018; that together  
 6 with the correction page attached hereto noting  
 changes in form or substance, if any, it is true and  
 correct.

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 8 \_\_\_\_\_  
 STEPHEN C. GRAY

9  
 10 I do hereby certify that the foregoing  
 transcript of the deposition of STEPHEN C. GRAY was  
 11 submitted to the witness for reading and signing;  
 that after he had stated to the undersigned Notary  
 12 Public that he had read and examined his deposition,  
 he signed the same in my presence on the \_\_\_\_\_ day  
 13 of \_\_\_\_\_, 2018.

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 Notary Public

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 17 My commission expires \_\_\_\_\_, \_\_\_\_\_.

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Stephen C. Gray

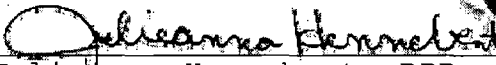
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CERTIFICATE

State of Ohio )  
 ) SS:  
County of Franklin )

I, Julieanna Hennebert, RPR and RMR, the undersigned, a duly qualified and commissioned notary public within and for the State of Ohio, do certify that, before giving his deposition, STEPHEN C. GRAY was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the foregoing is the deposition given at said time and place by STEPHEN C. GRAY; that I am neither a relative of nor employee of any of the parties or their counsel and have no interest whatever in the result of the action.

IN WITNESS WHEREOF, I hereunto set my hand and official seal of office on this 25th day of October 2018.

  
Julieanna Hennebert, RPR, RMR,  
and Notary Public in and for the  
State of Ohio.



My commission expires February 19, 2023.  
(2511-JLH)

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|  |   |
|--|---|
| SUBJECT:<br>Execution                        | PAGE <u>1</u> OF <u>21</u>              |
|  | NUMBER: 01-COM-11                       |
| RULE/CODE REFERENCE:<br>ORC 2949.22; 2949.25 | SUPERSEDES:<br>01-COM-11 dated 06/29/15 |
| RELATED ACA STANDARDS:                       | EFFECTIVE DATE:<br>October 7, 2016      |
|  | APPROVED:<br>                           |

**I. AUTHORITY**

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

**II. PURPOSE**

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

**III. APPLICABILITY**

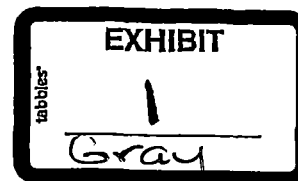
This policy applies to all individuals involved in carrying out a court-ordered death sentence in accordance with all applicable policies, administrative regulations, and statutes.

**IV. DEFINITIONS**

Auxiliary Team Member - A physician, advanced level provider or registered nurse who has been designated by the Director to provide advice and consultation as described in this policy.

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

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





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**Death House** - A physical location within the Southern Ohio Correctional Facility (SOCF) used for the execution of a death-sentenced prisoner.

**Death Row** - (1) A housing area at the Chillicothe Correctional Institution (CCI) or Ohio State Penitentiary (OSP) that has been designated by the Director of the Ohio Department of Rehabilitation and Correction to house male prisoners who are committed to the Department with a sentence of death; (2) A housing area at the Ohio Reformatory for Women (ORW) that is similarly designated to house female prisoners committed to the Department with a sentence of death; (3) A housing area at the Franklin Medical Center (FMC) that has been designated by the Director of the Ohio Department of Rehabilitation and Correction to house male or female prisoners whose medical needs are inconsistent with assignment to CCI, ORW, or OSP pursuant to DRC policy 68-MED-13, Medical Classification; or such other facility as may be deemed appropriate by the Director. Death Row is also a reference to a housing status for prisoners sentenced to death; it is not a security classification.

**Director** - As used in the policy, the term "Director" refers to the current Director of the Ohio Department of Rehabilitation and Correction (DRC) or the Director's designee.

**Drug Administrator** - Any qualified member of the Medical Team who administers any execution drug or witnesses the preparation and administration of any execution drug. A Drug Administrator shall be currently qualified under Ohio Law to administer and prepare drugs for intravenous injections. A Drug Administrator may also establish, or assist in, establishing, or assess, IV connections.

**Execution Drugs** - As used in this policy, the terms "Execution Drugs" means any of the following three options, under whatever names those drugs may be available to DRC from a pharmacy, manufacturer, supplier, wholesaler, distributor, pharmacist, or compounding pharmacy:

- 1) Pentobarbital; or
- 2) Thiopental sodium; or
- 3) A three-drug combination of:
  - a. Midazolam Hydrochloride; and
  - b. One of the following three drugs:
    - i. Vecuronium bromide; or
    - ii. Pancuronium bromide; or
    - iii. Rocuronium bromide; and
  - c. Potassium Chloride.

**Execution Team** - A group consisting of no less than twelve (12) members designated by the Warden of the Southern Ohio Correctional Facility (SOCF) to carry out court-ordered executions. The Warden shall designate one team member to be the Team Leader who shall communicate with the Warden and the Director as necessary to carry out the terms of this Policy. The Team's duties also include preparation and testing of equipment, carrying out pre- and post-execution activities, and counseling with the prisoner.

**Execution Timeline** - A record of events before and during an execution to include the specific information required to be recorded by this policy and other information at the discretion of the Execution Team.

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**Medical Team Member** - A person who is a member of the Execution Team and who is currently qualified under Ohio Law to administer and prepare drugs for intravenous injections, or who has at least one year experience as a certified medical assistant, phlebotomist, EMT, paramedic, or military corpsman, or who is currently certified or licensed within the United States as a registered nurse or nurse practitioner.

**Religious Services Administrator (RSA)** - The Religious Services Administrator is the coordinator and administrator for religious services for the Ohio Department of Rehabilitation and Correction (DRC). The RSA will provide counseling and support services for the offender and others consistent with the provisions of this policy.

**Reprieve** - The postponement of an execution.

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

**Support Staff** - Support Staff shall mean those individuals who have specified roles in this policy including, but not limited to, medical staff, mental health staff, Health Care Administrators (HCAs), appointed designees, correction officers at DRC institutions, the RSA, SOCF Chief of Security or his/her designee, SOCF Deputy Warden(s), the Special Assistant designated in this policy, and/or other general DRC staff. Support Staff are not members of the Execution Team. Overhead management staff at DRC are not Support Staff, and not members of the Execution Team. As defined above in this section IV, only those individuals designated by the Warden to carry out court-ordered executions shall be Execution Team members. The Director and the Warden(s) are not members of the Execution Team.

**Warden** - As used in the policy, the term "Warden" refers to the current Warden of the Southern Ohio Correctional Facility (SOCF), or his or her current Deputy Warden, or the Director's designee, unless the policy uses language which indicates another Warden of another institution.

## V. POLICY

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

The procedures set forth in this policy are to be strictly followed. Any situation that arises that would make following these policies difficult, impractical, or impossible shall be immediately reported to the Director or the Warden. Any variations of a substantial nature must be approved by the Director as described in this policy.

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There will be no variations from the following requirements:

1. At least three (3) Medical Team Members, two (2) of whom are authorized to administer drugs under Ohio law, shall be used in the conduct of court-ordered executions.
2. The drugs required by this policy shall be used.
3. Functions required to be performed by medically-qualified persons, as described in this policy, shall be performed by Medical Team Members.
4. All Execution Team functions shall be performed by appropriately trained and qualified members of the Execution Team.
5. Only the Director can authorize a variation from the procedures stated in this policy but not a variation from the four requirements listed immediately above in subsections V.1.2.3 and 4 of this policy.


## VI. PROCEDURES

### A. General Guidelines

1. All prisoners sentenced to death by a court of law shall be transported to a reception center within the Ohio Department of Rehabilitation and Correction (DRC) for initial processing. Upon completion of the reception process, the prisoner shall immediately be transferred to the designated institution: CCI or OSP for male prisoners or ORW for female prisoners. The Director may designate FMC or another appropriate DRC institution as necessary.
2. All court-ordered executions shall be carried out at the Southern Ohio Correctional Facility (SOCF) and will be planned to commence at approximately 10:00 a.m. on the scheduled execution date, subject to developing circumstances.
3. Unless otherwise designated by the Director/designee, the prisoner shall remain on Death Row until transferred to the Death House for scheduled execution.
4. The Ohio Supreme Court shall designate the date of execution. Upon receipt of a scheduled execution date, the Warden of the institution housing the prisoner shall notify the Director, the RSA, and the Warden at SOCF.
5. Attendance at the execution is governed by Ohio Revised Code section 2949.25 and includes:
  - a. The Warden or Acting Warden of the institution where the execution is to be conducted and such number of correction officers or other persons as the Warden or Acting Warden thinks necessary to carry out the death sentence.
  - b. The sheriff of the county in which the prisoner was tried and convicted.

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- c. The Director of the Ohio Department of Rehabilitation and Correction (DRC), or designee, and any other person selected by the Director/designee to ensure that the death sentence is carried out.
  - d. Any Auxiliary Team Member whose role will be to provide consultation or advice as may be necessary. An Auxiliary Team Member shall attend such number of execution rehearsals as the Warden may consider necessary, but no less than one rehearsal per execution. An Auxiliary Team Member shall attend training sessions on topics identified in subsection VI.B.4.b of this policy, below. An Auxiliary Team Member shall not be required to attend an execution, but may, at the discretion of the Warden, attend an execution and provide consultation or advice to the Warden, the Director and the Medical Team.
  - e. The prisoner may select one or two of the following persons: the RSA, minister-of-record, clergy, rabbi, priest, imam, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination or sect, subject to the approval of the Warden.
  - f. Three (3) persons designated by the prisoner who are not confined in any state institution subject to the approval of the Warden or Acting Warden based on security considerations. The prisoner may also request that one or two attorneys attend the execution.
  - g. Three (3) persons designated by the immediate family of the victim, subject to the approval of the Warden or Acting Warden based on security consideration, as detailed in DRC policy 03-OVS-06, Victim Involvement in the Execution Process.
  -  h. Representatives of the news media who are authorized by the Director, which may include representatives of the following: a newspaper, a television station, and a radio station.
6. Given the gravity of the sentence to be carried out, it is imperative that these procedures be strictly adhered to and all actions by Department personnel in carrying out the sentence be fully documented as required by this policy. However, due to the difficult and sometimes unpredictable nature of the tasks to be performed in carrying out the sentence it may not always be possible to follow these procedures to the letter. Thus, variations from the requirements of the policy may sometimes be necessary. Any Support Staff, overhead management staff at DRC, or member of the Execution Team who determines for any reason it is difficult, impractical, or impossible to strictly follow the procedures in this policy shall immediately report the same to the Warden or to the Director. The Director may then consult with the Warden and others as appropriate. Only the Director may authorize a variation from the procedures in this policy. Any such variation shall be documented as soon as possible.

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**B. Execution Preparation – Approximately thirty (30) days prior to the scheduled execution date**

**1. Notification**

The Warden of the institution where the prisoner is housed shall notify the Director of an upcoming scheduled execution date. Notification may also be provided to the supervising Regional Director of SOCF, DRC Chief Counsel, DRC Managing Director of Operations, the Adult Parole Authority (APA), the Ohio State Highway Patrol (Portsmouth and Jackson), and the Office of Victim Services.

**2. Execution Drugs**

- a. The Warden shall determine whether there will be sufficient quantities of the Execution Drugs available for the scheduled execution and report those findings to the Director.
- b. The Warden's assessment of what constitutes a sufficient quantity of Execution Drugs shall include ensuring a sufficient amount for a contingency against contamination or inadvertent loss.
- c. At his discretion, the Warden may, at any time, direct the SOCF HCA, the HCA's designee, or SOCF's responsible pharmacist, to order Execution Drugs from the Ohio Pharmacy Services of the Ohio Department of Mental Health and Addiction Services, or from a pharmacy, manufacturer, supplier, wholesaler or distributor, or from any other licensed pharmacist.
- d. All Execution Drugs delivered to SOCF shall be maintained in a secured location.
- e. If compounded Execution Drugs are to be used, a sample from the batch of those drugs will be analytically tested before they are used. The sample will be tested for identity and potency, pursuant to the applicable USP/NF monograph. DRC will only use the batch of compounded drugs if its sample is properly identified as the intended drug and its tested potency is within the applicable monograph standard. At the discretion of the Director, a sample of non-compounded Execution Drugs may also be tested for identity and potency pursuant to the applicable monograph standard.

**3. Assessment of Prisoner**

- a. Every possible effort shall be made to anticipate and plan for foreseeable difficulties in establishing and maintaining the intravenous (IV) lines. The prisoner shall be evaluated by appropriately trained medical staff approximately twenty-one (21) days prior to the execution to evaluate the prisoner's veins and plan for the insertion of the IV lines. This evaluation shall include a "hands-on" examination as well as a review of the medical chart to establish any unique factors which may impact the manner in which the Execution Team carries out the execution. Potential problems shall be noted and discussed, and potential solutions considered, in advance of the execution. Concerns or potential issues shall be communicated to the Warden or designee at

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SOCF as soon as possible. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.

- b. Any evaluation that is conducted by medical staff pursuant to subsection VI.B.3.a of this policy, above shall be noted in the prisoner's medical chart.
- c. The prisoner's medical condition shall be assessed in order to identify any necessary accommodations or contingencies that may arise from the prisoner's medical condition or history. Any medical condition or history that may affect the performance of the execution shall be communicated as soon as possible to the Warden of SOCF, who shall confer with others as necessary to plan such accommodations or contingencies. The fact of the assessment and any conclusions shall be documented in the prisoner's medical chart. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.
- d. Any concerns for establishing or maintaining IV lines and any concerns or plans for medical accommodations or contingencies shall be communicated to the Execution Team in order that these things may be discussed and addressed in execution trainings or rehearsals.
- e. An appropriate member of the mental health staff shall evaluate the prisoner approximately twenty-one (21) days prior to the execution to evaluate his or her stability and mental health in light of the scheduled execution. Any concerns or contingencies affecting the execution process shall be communicated to the Warden of SOCF as soon as possible. The fact of the assessment and any conclusions shall be documented in the prisoner's mental health record. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.
- f. Beginning approximately thirty (30) days prior to the scheduled execution date until the prisoner's transfer from Death Row to SOCF, the prisoner shall be evaluated by mental health staff to determine the prisoner's appropriate observation level, housing status, and access to personal property. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.

#### 4. Training

- a. The Execution Team shall begin conducting weekly training sessions at least thirty (30) days before the scheduled date of execution. The training shall address any accommodations or contingencies that might be identified or anticipated.
- b. Training in the following topics shall be provided for every member of the Execution Team, and any Auxiliary Team Member designated by the Director, prior to service and at least once per year thereafter:
  - i. The general nature and effects of the Execution Drugs that are used during the execution process;

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- ii. Drug administration procedures, including the insertion of the IV needles and administration of injections;
    - iii. Signs or symptoms of problems when administering the Execution Drugs; and
    - iv. Any legal developments of significance.
  5. Other Preparations
    - a. The RSA shall make contact with the prisoner to establish counseling and family contact information.
    - b. Prior to commencement of the initial training session, the Warden or the Team Leader shall verify and document the qualifications of the Medical Team members. Medical team members shall provide evidence of certification status at least once per year and upon any change in status.
    - c. The Team Leader shall ensure that each member of the Execution Team has received a copy of the current version of this execution policy. Each member of the Execution Team shall sign for its receipt.
- C. Execution Preparation - Approximately fourteen (14) days prior to the execution
  1. The Warden of the institution where the prisoner is housed shall have the Execution Information Release (DRC1808) completed by the prisoner. This form will verify information on the prisoner, visitors, witnesses, spiritual advisor, attorney, requested witness, property, and funeral arrangements.
  2. The names of official witnesses/media witnesses shall be supplied to the Warden, as outlined in this policy.
  3. The names and relationships of the victim's witnesses shall be supplied to the Warden.
  4. The RSA shall provide family information from the prisoner to the Warden.
  5. Approximately fourteen (14) days prior to the execution, the Warden shall determine whether a sufficient quantity of Execution Drugs is available for use at the scheduled execution.
    - a. If a sufficient quantity of the Execution Drugs is available, then the Warden shall select one of the following drug options to be intravenously administered at the scheduled execution:
      - i. Pentobarbital; or
      - ii. Thiopental sodium; or
      - iii. A three-drug combination of:
        - (a) Midazolam Hydrochloride; and
        - (b) One of the following three drugs:

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- (i) Vecuronium Bromide; or
  - (ii) Pancuronium Bromide; or
  - (iii) Rocuronium Bromide; and
  - (c) Potassium Chloride.
- b. If a sufficient quantity of the Execution Drugs is not available, or if at any time any of the selected Execution Drugs is deemed unsuitable or unusable by the Medical Team, then the Warden shall consult with the Director and they shall notify the Governor.
- c. Notice of the Warden's determination, concerning the selection of Execution Drugs or insufficient quantities of such drugs to be used for intravenous administration, shall be provided to the prisoner.
- d. If the scheduled execution date is postponed for any reason, and:
- i. Such postponement is less than ten (10) days, then no later than four (4) days prior to the re-scheduled execution date, the Warden shall make the determination set forth above in subsection VI.C.5 of this policy.
  - ii. Such postponement is between ten (10) and thirty (30) days, then no later than seven (7) days prior to the re-scheduled execution date, the Warden shall make the determination set forth above in subsection VI.C.5 of this policy.
  - iii. Such postponement is more than thirty (30) days, then approximately fourteen (14) days prior to the re-scheduled execution date, the Warden shall make the determination set forth above in subsection VI.C.5 of this policy.
- e. The Warden shall ensure that sufficient quantities of the execution drugs, which have been determined to be used for the scheduled execution, have been delivered to SOCF and stocked within an appropriate secured location and then notify the Director.
- D. Execution Preparation - Approximately twenty-four (24) hours prior to the scheduled execution**
- 1. The prisoner shall be transferred from Death Row and housed in the Death House at SOCF. The prisoner shall be constantly monitored by at least three (3) members of the Execution Team. An Execution Timeline shall be maintained.
  - 2. An Authorized Independently Licensed Mental Health Professional shall interview the prisoner periodically and submit progress reports to the Warden. All prisoner files shall be maintained in the Warden's office at SOCF, unless otherwise directed by the Warden.
  - 3. The Warden shall establish a line of communication with DRC legal staff, the Attorney General's Office, and the Governor's Office for notice of case status and/or other significant legal changes.
  - 4. The RSA shall provide counseling and spiritual support unless the prisoner requests not to have such contact.



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5. Beginning with his/her arrival at SOCF, the prisoner shall not be forced to meet with non-staff visitors that he or she does not wish to see.

**E. Execution Preparation - The following events shall take place upon the prisoner's arrival at the Death House**

1. Once the prisoner is at SOCF, the Death House shall be restricted to the following:

Director or his/her designee;  
Warden;  
Members of the Execution Team;  
Managing Directors or Regional Directors;  
Communications Chief or his/her designee;  
Institution Deputy Warden;  
Administrative Assistant to the Warden;  
Chaplain;  
Physician;  
Independently Licensed Mental Health Professional;  
Chief of Security;  
Maintenance Superintendent;  
Any other person as deemed necessary by the Warden or Director.

2. The prisoner shall be evaluated by medical staff on the day of arrival at SOCF to evaluate the prisoner's veins and plan for the insertion of the IV lines. This initial evaluation shall include a "hands-on" examination as well as a review of the medical chart. At a minimum, a "hands-on" examination shall also occur later that evening. Potential problems shall be discussed, and potential solutions considered. The performance of these two evaluations shall be noted in the Execution Timeline. Any relevant portion of the medical file may be kept in the Death House for appropriate reference as needed. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.
3. SOCF chaplains shall make periodic visits to the prisoner, if requested by the prisoner.
4. The Deputy Warden shall assign security personnel to staff entrances, checkpoints, and to assist the Ohio State Highway Patrol (OSHP).
5. The Team Leader shall ensure that the prisoner's property is inventoried in front of the prisoner. The prisoner will have previously, pursuant to subsection VI.C.1 of this policy above, specified who is to receive his or her personal effects. The Team Leader shall ensure that the Inmate Property Record Disposition and Release (DRC2055), correctly specifies this information, and the Team Leader shall sign it to confirm the review.
6. The prisoner shall, pursuant to subsection VI.C.1 of this policy above, specify in writing his/her request for funeral arrangements, which shall be recorded in the Execution Information Release, (DRC1808).

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7. The prisoner shall be allowed contact visits with family, friends and/or private clergy, as approved by the Warden, between approximately 4:30 p.m. and 7:30 p.m. on the day prior to the scheduled execution. If the prisoner requests an attorney meeting, the prisoner shall be allowed one confidential attorney-client meeting, not to exceed an hour, on the day prior to the execution, following the prisoner's intake at SOCF. This visit will take place in an area where conversation is not audible to DRC staff. The visit will be visually monitored and recorded on video only. Before such meeting, all attorneys shall be subject to a thorough, gender-specific search of their person and property. Cell front visits as approved by the Warden shall be permitted between approximately 6:30 a.m. and 8:00 a.m. on the day of the scheduled execution. The attorney and spiritual advisor may continue to visit with the prisoner until approximately 8:45 a.m. The Warden may modify the frequency and duration of the visiting opportunities at his or her discretion.
  8. The Team Leader shall ask the prisoner to identify his or her special meal request. The special meal shall be served the day prior to the scheduled execution at a time to be determined by the Warden.
  9. The Warden shall brief key personnel, to include medical and mental health staff, in order to allow intake information to be obtained.
  10. The Warden shall receive updates from security personnel and the OSHP on crowd control, demonstrations, pickets, etc.
  11. The Chief of Security or designee shall brief the Warden on the level of tension within the remainder of the prison population.
  12. The Warden shall relay any out of the ordinary activity to the Regional Director supervising SOCF.
  13. The Execution Team shall continue to prepare as needed.
- F. Execution Preparation – Morning of Execution Day. At any time, as determined by the Team Leader, on the morning of the execution:**
1. The prisoner shall be permitted to take a shower and dress in the designated clothing the morning of the execution.
  2. Vein Assessment  

A “hands-on” examination of the prisoner’s veins shall be made by a Medical Team Member before the IV is established. If any potential problems are identified they shall be discussed between the Medical Team, the Warden, the Director, and any Auxiliary Team Member, and potential solutions shall be considered. The performance of this evaluation shall be noted in the Execution Timeline.
  3. Possession of Execution Drugs

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A Drug Administrator, in the presence of a second Drug Administrator, shall take possession of the Execution Drugs from the SOCF responsible pharmacist or another appropriately licensed pharmacist at the secured pharmacy storage area, and shall document possession of the Execution Drugs by signing form Order for Execution Medications (DRC2001). The Drug Administrator taking possession of the Execution Drugs, accompanied by a second Drug Administrator shall deliver the Execution Drugs to the Death House. These persons shall complete form Order for Execution medications (DRC2001).

4. Drug Preparation

- a. The Execution Drugs shall be prepared for injection by a Drug Administrator. The preparation of the drugs shall be monitored by a second Drug Administrator who shall independently verify the preparation and dosage of the Execution Drugs. Both Drug Administrators shall complete form Order for Execution Medications (DRC2001).
- b. If the Warden determines that a sufficient quantity of pentobarbital is available and has been selected to be used, then a Drug Administrator shall prepare the drug as follows:
  - i. Syringes 1 and 2: Five (5) grams of pentobarbital shall be withdrawn and divided into two (2) syringes labeled "1" and "2".
  - ii. Syringes 3 and 4: Five (5) additional grams of pentobarbital shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless the primary dose of five (5) grams proves to be insufficient for the procedure. If prepared, these two (2) additional syringes shall be labeled "3" and "4".
- c. If the Warden determines that a sufficient quantity of thiopental sodium is available and has been selected to be used, then a Drug Administrator shall prepare the drug as follows:
  - i. Syringes 1, 2, 3, 4 and 5: Five (5) grams of thiopental sodium shall be withdrawn and divided into five (5) separate syringes, labeled "1", "2", "3", "4" and "5".
  - ii. Syringes 6, 7, 8, 9 and 10: Five (5) additional grams of thiopental sodium shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless the primary dose of five grams proves to be insufficient for the procedure. If prepared, these five (5) additional syringes shall be labeled "6", "7", "8", "9" and "10".

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- d. If the Warden determines that a sufficient quantity of the three-drug combination is available and has been selected to be used, then a Drug Administrator shall prepare those three drugs as follows:

FIRST DRUG:

- i. Syringes 1 and 2: The first drug shall be prepared as follows: Five hundred (500) milligrams of midazolam hydrochloride shall be withdrawn and divided into two separate syringes, labeled "1" and "2".
- ii. Syringes A and B: If needed for contingent use, an additional amount of the first drug shall be prepared as follows: Five hundred (500) milligrams of midazolam hydrochloride shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless directed by the Warden or the primary dose of 500 milligrams of midazolam hydrochloride proves to be insufficient for the procedure. If prepared, these two (2) additional syringes shall be labeled "A" and "B".

SECOND DRUG:

- i. Syringes 3 and 4: The second drug shall be prepared as follows:
- a) If the Warden has selected Vecuronium Bromide, then one hundred (100) milligrams of Vecuronium Bromide shall be withdrawn and divided into two separate syringes, labeled "3 and "4".
- b) If the Warden has selected Pancuronium Bromide, then one hundred (100) milligrams of Pancuronium Bromide shall be withdrawn and divided into two separate syringes, labeled "3 and "4".
- c) If the Warden has selected Rocuronium Bromide, then one thousand (1000) milligrams of Rocuronium Bromide shall be withdrawn and divided into two separate syringes, labeled "3 and "4".

THIRD DRUG:

- i. Syringes 5 and 6: The third drug shall be prepared as follows: Two hundred forty (240) milliequivalents of Potassium Chloride shall be withdrawn and divided into two separate syringes, labeled "5" and "6".
- e. The drug preparation shall be documented as follows:
- i. The Drug Administrator who prepared the Execution Drugs and the Drug Administrator who witnessed the preparation shall complete form Order for Execution Medications (DRC2001).

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- ii. A Drug Administrator shall inform the Command Center of the time when all of the Execution Drugs have been prepared, and the Command Center shall record in the Execution Timeline the time that the all of the drugs were prepared.
  5. Official witnesses to the execution will report to the institution. The victim's witnesses shall report to the Portsmouth Highway Patrol Post, or other Post or location designated by the Highway Patrol, for escort to the institution by designated SOCF personnel.
  6. The prisoner shall be allowed to have visits as described in subsection VI.E.7 of this policy, above.
  7. The RSA shall be present to counsel and provide spiritual support to the prisoner and staff.
  8. All communication equipment shall be tested, including primary and secondary communication, with both the Governor's Office and the Office of the Attorney General.
    - a. Primary communications shall be via a telephone line opened directly to the Command Center from the execution chamber. This line shall be tested one (1) hour prior to the scheduled execution. Other than testing, this line shall remain open.
    - b. Secondary communications shall be via cellular telephone.
    - c. In the event that both the primary and secondary communications are inoperable, the execution shall be delayed until communications are established.
- G. Execution Preparation - Approximately fifteen (15) minutes prior to the scheduled execution**
1. Witnesses Transported to Death House.

All authorized witness groups shall be escorted to the Death House separately by designated staff. Witnesses shall be escorted to viewing rooms before the death warrant is read.
  2. Phone for Prisoner's Counsel

If the prisoner chooses to have his or her counsel as a witness, at all times after counsel enters the witness room, counsel shall have free access to the phone near the entrance door of the Death House.

    - a. The phone in the Death House foyer will enable counsel to call into the waiting room for prisoner's counsel in the prison compound where another person, whose presence is arranged by counsel for the prisoner and whose presence satisfies the prison's security concerns, and which person is acting on behalf of the prisoner and his or her counsel, will be situated during all times after the death warrant is read.

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b. The Warden shall allow this other person to have access to his or her own laptop computer and to a phone that can connect that person to an outside line.

3. Death Warrant

The Warden shall read the death warrant to the prisoner.

4. Closed-Circuit Camera Activated

Immediately after the death warrant is read, the closed-circuit camera in the execution chamber shall be turned on so that witnesses in the witness rooms can view the subsequent activities in the execution chamber on the television screen in those rooms.

5. Prisoner Enters Execution Chamber

The Warden and Execution Team shall escort the prisoner to the execution chamber, assist the prisoner onto the bed and secure the straps. The team shall roll up the prisoner's sleeves or take other steps to ensure that the arms are plainly visible to persons in the chamber and to those in the equipment room.

6. Curtain Closed

Once the prisoner is secured to the bed, the curtain shall be closed prior to the insertion of the IV needles. The closed-circuit camera shall remain on to allow the witnesses to view the establishment of IV site(s).

7. IV Site(s) Preparation & Establishment

a. The Medical Team shall enter the Execution Chamber to prepare IV site(s).

b. The Medical Team shall establish one or two viable IV sites.

i. The arm veins near the joint between the upper and lower arm shall be utilized as the preferred site for the IV injection.

ii. In the event that the Medical Team member is unable to establish an IV at a preferred site, the Medical Team member(s) may establish an IV at alternative site(s) for use by the Drug Administrator when administering execution drugs.

iii. The Execution Team may utilize any non-invasive device such as a light, illuminator or ultrasound device, if desired, to assist in locating a vein.

c. The Medical Team member(s) shall be allowed as much time as is necessary to establish viable IV site(s).

d. If the Medical Team member(s) are unable to establish viable IV site(s), the Medical Team members shall consult with the Warden, the Director, and any Auxiliary Team

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Member for the purpose of determining whether or how long to continue efforts to establish viable IV site(s).

8. Confirming & Recording Establishment of IV Site(s)
  - a. A Medical Team member shall test the viability of the IV site with a low-pressure saline drip through IV tubing. If necessary, a heparin lock may be attached to the IV needle as an alternative to the saline drip.
  - b. The Warden, Team Leader, and a Drug Administrator shall all confirm the visibility of the IV sites.
  - c. The Medical Team member(s) shall exit the Execution Chamber and shall announce the number of attempts made to establish viable IV site(s) to the Command Center contact who shall then inform the Command Center, for capture on the Execution Timeline.
  - d. The Command Center shall record in the Execution Timeline the number of attempts.

9. Curtain Opened

The curtain shall be opened after the establishment of viable IV site(s). The curtain shall remain open during the remainder of the execution until the examination for the pronouncement of death, unless the execution is abandoned or halted.

10. Last Words

The Warden shall ask the prisoner if he or she has any last words. If the prisoner has a last statement, he or she will be allowed to make it while the witnesses are present in the adjacent viewing rooms, and are able to see him or her and hear him or her via microphone.

- a. There shall generally be no restriction on the content of the prisoner's statement and no unreasonable restriction on the duration of the prisoner's last statement.
- b. The Warden may impose reasonable restrictions on the length of the statement. The Warden may also terminate a statement that he or she believes is intentionally offensive to the witnesses.

**H. Commencement of Execution**

1. Execution by IV Injection

- a. If the Warden has decided, pursuant to subsection VI.C.5 of this policy above, to proceed with pentobarbital, then upon the Warden's signal, a Drug Administrator shall intravenously administer the previously prepared syringes 1 and 2 of pentobarbital.

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- b. Alternatively, if the Warden has decided, pursuant to subsection VI.C.5 of this policy above, to proceed with thiopental sodium, then upon the Warden's signal, a Drug Administrator shall intravenously administer the previously prepared syringes 1, 2, 3, 4 and 5 of thiopental sodium.
- c. Alternatively, if the Warden has decided, pursuant to subsection VI.C.5 of this policy above, to proceed with the three-drug combination, then upon the Warden's signal, a Drug Administrator shall proceed as follows:
- i. FIRST DRUG: intravenously administer the previously prepared syringes 1 and 2 of midazolam hydrochloride.
- ii. Following administration of syringes 1 and 2 and before the administration of the second and third drugs described in this subsection below, a Drug Administrator shall reenter the Execution Chamber to assess the prisoner's consciousness.
- (a) If the prisoner is found to be unconscious, then the process shall continue with the administration of the second and third drugs, as described below.
- (b) If the prisoner is found to be conscious, then the Drug Administrator shall consult with a Second Drug Administrator, the Warden and the Director, and any Auxiliary Team Member. After consultation, the IV sites may be checked and changed. The Warden shall decide how to proceed, including but not limited to waiting for the passage of time, requesting an additional assessment by a Drug Administrator, and/or directing the administration of contingency-use syringes A and B.
- (c) If syringes A and B are administered, a Drug Administrator shall reenter the Execution Chamber following administration and assess the prisoner's consciousness.
- (i) If the prisoner is found to be unconscious, then the process shall continue with the administration of the second and third drugs, as described below.
- (ii) If the prisoner is found to be conscious, then the Drug Administrator shall consult with a Second Drug Administrator, the Warden and the Director, and any Auxiliary Team Member. After consultation, the IV sites may be checked and changed. The Warden shall decide how to proceed, including but not limited to waiting for the passage of time, requesting an additional assessment by a Drug Administrator, and/or directing the administration of additional syringes of the first drug. If requested, additional syringes of the first drug shall be prepared by a Drug Administrator, in the same manner as contingent syringes A and B, with new consecutively lettered labels.
- iii. SECOND DRUG: Following administration of the first drug and confirmation that the prisoner is unconscious, the Drug Administrator shall intravenously administer the previously prepared syringes 3 and 4 of the selected drug.



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- iv. THIRD DRUG: Following administration of the first and second drugs, the Drug Administrator shall intravenously administer the previously prepared syringes 5 and 6 of potassium chloride.
- d. The low-pressure saline drip shall be allowed to flush saline through the line(s) during and following completion of the IV drug administration.
- e. A second Drug Administrator shall be present in the equipment room to observe the administration of the Execution Drugs. This Drug Administrator shall announce the start and finish times of each injection to the Command Center contact who shall then inform the Command Center for capture on the Execution Timeline.
- f. The Command Center shall record in the Execution Timeline the start and finish times of each injection.
- g. Following administration of all of the Execution Drugs, a Drug Administrator shall reenter the Execution Chamber to inspect the IV site for evidence of incontinence or infiltration and to listen to the prisoner for breathing and heart sounds.
- h. If a sufficient time for death to occur has passed but the prisoner has not died, a Drug Administrator shall consult with a second Drug Administrator, the Warden and the Director, and any Auxiliary Team Member. The Warden, after consultation with the Director, shall determine whether to proceed with any additional syringes of Execution Drugs, and may order a Drug Administrator to prepare such additional syringes, as necessary, and intravenously administer them, in accordance with the terms of this policy, above.
- i. At the completion of the process and after a sufficient time for death to have occurred, the curtain shall be closed and an appropriate medical professional shall evaluate the prisoner to confirm death. The curtain shall then be re-opened and the Warden shall announce the time of death. In the event that the appropriate medical professional cannot confirm that death has occurred, the curtain shall be reopened until an appropriate time has passed to reevaluate the prisoner.
2. Using Alternative IV Sites
- a. The Team Leader, a Medical Team member, and the Warden shall observe the prisoner during the injection process to look for signs of swelling or infiltration at the IV site, blood in the catheter, and leakage from the lines and other unusual signs or symptoms.
- b. The Execution Team shall communicate to the Drug Administrators any problems detected during the administration of the Execution Drugs.
- c. The Drug Administrator who is administering the Execution Drugs shall determine whether it is necessary to use another viable IV site.

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- d. In the event that the Drug Administrator who is administering the Execution Drugs detects a problem in the administration of the drugs, the Drug Administrator shall use any other viable IV site. No prior consultation with the Warden or other members of the Execution Team is required.
  - e. Whenever it is necessary to change IV sites, the Drug Administrator shall administer a full dosage of the Execution Drugs through the alternate, viable IV site using additional syringes, as necessary, prepared in accordance with the terms of this policy, above.
  - f. In the event the Drug Administrator changes to another viable IV site, the Drug Administrator shall inform the Command Center contact, who shall then inform the Command Center for capture on the Execution Timeline. The Command Center shall record in the Execution Timeline any change in IV site(s).
3. Establishing Other IV Sites(s)
- a. In the event there is no alternative viable IV site, the Medical Team shall consult with the Warden and Director.
  - b. The Warden, following consultation with the Director, shall determine whether to proceed with execution by IV injection.
  - c. In the event the Warden determines to proceed with execution by IV injection, the Execution Team shall repeat the steps in subsections VI.G.6-8 of this policy, above, and continue with the execution as provided for in subsection VI.H of this policy, above.
  - d. The Warden shall ensure the Command Center is informed of his decision. The Command Center shall record the Warden's decision in the Execution Timeline.

#### I. Post-Execution

1. The Warden, or his/her designee, shall notify the Director that the execution has been carried out.
2. The Medical Team shall remove the IV equipment and clean the IV sites.
3. The RSA or the prisoner's Spiritual Advisor shall anoint the body of the prisoner if requested by the prisoner.
4. The RSA shall coordinate the burial of the prisoner's body with local chaplains if the prisoner's family does not want the body.
5. The Execution Team shall remove the deceased from the execution bed and place him or her on a gurney.

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6. Disposition of the body shall be in accordance with arrangements made prior to the execution at the prisoner's request.
7. The Warden shall sign and return the death warrant to the Court, indicating the execution has been carried out.
8. Prepared Execution Drugs
  - a. A Drug Administrator shall properly dispose of any Execution Drugs that have been prepared for administration but not been utilized.
  - b. A Second Drug Administrator shall witness the disposal.
  - c. Both Drug Administrators shall document the disposal in form Order for Execution Medications (DRC2001).
9. Unprepared Execution Drugs
  - a. A Drug Administrator shall properly return any unprepared Execution Drugs to the secured pharmacy storage area.
  - b. A Second Drug Administrator shall witness the return of the unprepared Execution Drugs.
  - c. Both Drug Administrators shall document the return of the unprepared Execution Drugs in form Order for Execution Medications (DRC2001).
10. Recording Used Execution Drugs
  - a. A Drug Administrator shall document the name or description, and any expiration date or beyond use date, of the Execution Drugs used, in form Order for Execution medications (DRC2001).
  - b. An Execution Team member shall save the packaging of the used Execution Drugs or take photographs of such packaging. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.
11. After-Action Review

Immediately following an execution, the Execution Team and the on-site administrators directly involved in the execution process shall meet to review the process of the execution. Any unique or unusual events shall be discussed, as well as opportunities for improvement and successful procedures. Actions and documentation of the events shall be reviewed to identify any discrepancies. Discrepancies from the policy shall be clearly described and noted in a written record. The record shall be signed and dated by the Warden.

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12. Critical Incident Debriefing

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

13. Quality Assurance Review

The Director shall designate a Special Assistant for Execution Policy and Procedures. The Special Assistant shall evaluate the performance of the Execution Team, review the conduct of court-ordered executions and report to the Director of the Department. His or her duties will consist of reviewing documentation, training, and professional qualifications, to ensure compliance with the written policy. The Special Assistant may utilize assistants as necessary to compile or assess the information, and may consult with others consistent with the confidentiality of the process. Whenever appropriate, the Special Assistant shall consult with a properly trained medical person when reviewing the medical aspects of the execution procedures. The Special Assistant will also provide consultation and advice concerning modifications in the written policy. The Special Assistant will prepare a report to the Director following each execution, with any suggestions or recommendations that are appropriate.

**Related Department Forms:**

|  |         |
|--|---------|
| Execution Information Release                  | DRC1808 |
| Order for Execution Medications                | DRC2001 |
| Inmate Property Record Disposition and Release | DRC2055 |

§ 111.15. Adoption and filing of agency administrative code rules.

**Ohio Statutes**

**Title 1. STATE GOVERNMENT**

**Chapter 111. SECRETARY OF STATE**

*Current with acts signed by the Governor as of August 1, 2018*

**§ 111.15. Adoption and filing of agency administrative code rules**

(A) As used in this section:

- (1) "Rule" includes any rule, regulation, bylaw, or standard having a general and uniform operation adopted by an agency under the authority of the laws governing the agency; any appendix to a rule; and any internal management rule. "Rule" does not include any guideline adopted pursuant to section 3301.0714 of the Revised Code, any order respecting the duties of employees, any finding, any determination of a question of law or fact in a matter presented to an agency, or any rule promulgated pursuant to Chapter 119. or division (C)(1) or (2) of section 5117.02 of the Revised Code. "Rule" includes any amendment or rescission of a rule.
- (2) "Agency" means any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the controlling board, the adjutant general's department, or any court.
- (3) "Internal management rule" means any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.

(B) (1) Any rule, other than a rule of an emergency nature, adopted by any agency pursuant to this section shall be effective on the tenth day after the day on which the rule in final form and in compliance with division (B)(3) of this section is filed as follows:

- (a) The rule shall be filed in electronic form with both the secretary of state and the director of the legislative service commission;
- (b) The rule shall be filed in electronic form with the joint committee on agency rule review. Division (B)(1)(b) of this section does not apply to any rule to which division (D) of this section does not apply.

An agency that adopts or amends a rule that is subject to division (D) of this



section shall assign a review date to the rule that is not later than five years after its effective date. If a review date assigned to a rule exceeds the five-year maximum, the review date for the rule is five years after its effective date. A rule with a review date is subject to review under section 106.03 of the Revised Code. This paragraph does not apply to a rule of a state college or university, community college district, technical college district, or state community college.

If an agency in adopting a rule designates an effective date that is later than the effective date provided for by division (B)(1) of this section, the rule if filed as required by such division shall become effective on the later date designated by the agency.

Any rule that is required to be filed under division (B)(1) of this section is also subject to division (D) of this section if not exempted by that division.

If a rule incorporates a text or other material by reference, the agency shall comply with sections 121.71 to 121.76 of the Revised Code.

- (2) A rule of an emergency nature necessary for the immediate preservation of the public peace, health, or safety shall state the reasons for the necessity. The emergency rule, in final form and in compliance with division (B)(3) of this section, shall be filed in electronic form with the secretary of state, the director of the legislative service commission, and the joint committee on agency rule review. The emergency rule is effective immediately upon completion of the latest filing, except that if the agency in adopting the emergency rule designates an effective date, or date and time of day, that is later than the effective date and time provided for by division (B)(2) of this section, the emergency rule if filed as required by such division shall become effective at the later date, or later date and time of day, designated by the agency.

An emergency rule becomes invalid at the end of the one hundred twentieth day it is in effect. Prior to that date, the agency may file the emergency rule as a nonemergency rule in compliance with division (B)(1) of this section. The agency may not refile the emergency rule in compliance with division (B)(2) of this section so that, upon the emergency rule becoming invalid under such division, the emergency rule will continue in effect without interruption for another one hundred twenty-day period.

- (3) An agency shall file a rule under division (B)(1) or (2) of this section in compliance with the following standards and procedures:
- (a) The rule shall be numbered in accordance with the numbering system devised by the director for the Ohio administrative code.

- (b) The rule shall be prepared and submitted in compliance with the rules of the legislative service commission.
- (c) The rule shall clearly state the date on which it is to be effective and the date on which it will expire, if known.
- (d) Each rule that amends or rescinds another rule shall clearly refer to the rule that is amended or rescinded. Each amendment shall fully restate the rule as amended.

If the director of the legislative service commission or the director's designee gives an agency notice pursuant to section 103.05 of the Revised Code that a rule filed by the agency is not in compliance with the rules of the legislative service commission, the agency shall within thirty days after receipt of the notice conform the rule to the rules of the commission as directed in the notice.

(C) All rules filed pursuant to divisions (B)(1)(a) and (2) of this section shall be recorded by the secretary of state and the director under the title of the agency adopting the rule and shall be numbered according to the numbering system devised by the director. The secretary of state and the director shall preserve the rules in an accessible manner. Each such rule shall be a public record open to public inspection and may be transmitted to any law publishing company that wishes to reproduce it.

(D) At least sixty-five days before a board, commission, department, division, or bureau of the government of the state files a rule under division (B)(1) of this section, it shall file the full text of the proposed rule in electronic form with the joint committee on agency rule review, and the proposed rule is subject to legislative review and invalidation under section 106.021 of the Revised Code. If a state board, commission, department, division, or bureau makes a revision in a proposed rule after it is filed with the joint committee, the state board, commission, department, division, or bureau shall promptly file the full text of the proposed rule in its revised form in electronic form with the joint committee. A state board, commission, department, division, or bureau shall also file the rule summary and fiscal analysis prepared under section 127.18 of the Revised Code in electronic form along with a proposed rule, and along with a proposed rule in revised form, that is filed under this division. If a proposed rule has an adverse impact on businesses, the state board, commission, department, division, or bureau also shall file the business impact analysis, any recommendations received from the common sense initiative office, and the associated memorandum of response, if any, in electronic form along with the proposed rule, or the proposed rule in revised form, that is filed under this division.

A proposed rule that is subject to legislative review under this division may not be adopted and filed in final form under division (B)(1) of this section unless the proposed rule has been filed with the joint committee on agency rule review under this division and the time for the joint committee to review the proposed rule has expired without recommendation of

a concurrent resolution to invalidate the proposed rule.

As used in this division, "commission" includes the public utilities commission when adopting rules under a federal or state statute.

This division does not apply to any of the following:

- (1) A proposed rule of an emergency nature;
- (2) A rule proposed under section 1121.05, 1121.06, 1349.33, 1707.201, 1733.412, 4123.29, 4123.34, 4123.341, 4123.342, 4123.40, 4123.411, 4123.44, or 4123.442 of the Revised Code;
- (3) A rule proposed by an agency other than a board, commission, department, division, or bureau of the government of the state;
- (4) A proposed internal management rule of a board, commission, department, division, or bureau of the government of the state;
- (5) Any proposed rule that must be adopted verbatim by an agency pursuant to federal law or rule, to become effective within sixty days of adoption, in order to continue the operation of a federally reimbursed program in this state, so long as the proposed rule contains both of the following:
  - (a) A statement that it is proposed for the purpose of complying with a federal law or rule;
  - (b) A citation to the federal law or rule that requires verbatim compliance.
- (6) An initial rule proposed by the director of health to impose safety standards and quality-of-care standards with respect to a health service specified in section 3702.11 of the Revised Code, or an initial rule proposed by the director to impose quality standards on a facility listed in division (A)(4) of section 3702.30 of the Revised Code, if section 3702.12 of the Revised Code requires that the rule be adopted under this section;
- (7) A rule of the state lottery commission pertaining to instant game rules.  
If a rule is exempt from legislative review under division (D)(5) of this section, and if the federal law or rule pursuant to which the rule was adopted expires, is repealed or rescinded, or otherwise terminates, the rule is thereafter subject to legislative review under division (D) of this section.

Whenever a state board, commission, department, division, or bureau files a proposed rule or a proposed rule in revised form under division (D) of this section, it shall also file the full text of the same proposed rule or proposed rule in revised form in electronic form with the secretary of state and the director of the legislative



service commission. A state board, commission, department, division, or bureau shall file the rule summary and fiscal analysis prepared under section 127.18 of the Revised Code in electronic form along with a proposed rule or proposed rule in revised form that is filed with the secretary of state or the director of the legislative service commission.

**Cite as R.C. § 111.15**

**History.** Amended by 132nd General Assembly File No. TBD, HB 49, §130.21, eff. 1/1/2018.

Amended by 130th General Assembly File No. TBD, SB 3, §1, eff. 9/17/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 130th General Assembly File No. 18, SB 67, §1, eff. 9/4/2013.

Amended by 129th General Assembly File No.2, SB 2, §1, eff. 1/1/2012.

Effective Date: 09-17-2002; 04-14-2006; 11-13-2006

§ 3301.0714. Guidelines for statewide education management information system.

**Ohio Statutes**

**Title 33. EDUCATION - LIBRARIES**

**Chapter 3301. DEPARTMENT OF EDUCATION**

*Current with acts signed by the Governor as of August 1, 2018*

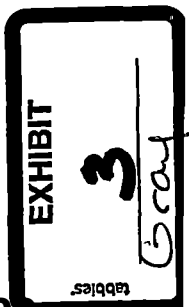
**§ 3301.0714. Guidelines for statewide education management information system**

(A) The state board of education shall adopt rules for a statewide education management information system. The rules shall require the state board to establish guidelines for the establishment and maintenance of the system in accordance with this section and the rules adopted under this section. The guidelines shall include:

- (1) Standards identifying and defining the types of data in the system in accordance with divisions (B) and (C) of this section;
- (2) Procedures for annually collecting and reporting the data to the state board in accordance with division (D) of this section;
- (3) Procedures for annually compiling the data in accordance with division (G) of this section;
- (4) Procedures for annually reporting the data to the public in accordance with division (H) of this section;
- (5) Standards to provide strict safeguards to protect the confidentiality of personally identifiable student data.

(B) The guidelines adopted under this section shall require the data maintained in the education management information system to include at least the following:

- (1) Student participation and performance data, for each grade in each school district as a whole and for each grade in each school building in each school district, that includes:
  - (a) The numbers of students receiving each category of instructional service offered by the school district, such as regular education instruction, vocational education instruction, specialized instruction programs or enrichment instruction that is part of the educational curriculum, instruction for gifted students, instruction for students with disabilities, and remedial instruction. The guidelines shall require instructional services under this division to be divided into discrete categories if an instructional service is



limited to a specific subject, a specific type of student, or both, such as regular instructional services in mathematics, remedial reading instructional services, instructional services specifically for students gifted in mathematics or some other subject area, or instructional services for students with a specific type of disability. The categories of instructional services required by the guidelines under this division shall be the same as the categories of instructional services used in determining cost units pursuant to division (C)(3) of this section.

- (b) The numbers of students receiving support or extracurricular services for each of the support services or extracurricular programs offered by the school district, such as counseling services, health services, and extracurricular sports and fine arts programs. The categories of services required by the guidelines under this division shall be the same as the categories of services used in determining cost units pursuant to division (C)(4)(a) of this section.
- (c) Average student grades in each subject in grades nine through twelve;
- (d) Academic achievement levels as assessed under sections 3301.0710, 3301.0711, and 3301.0712 of the Revised Code;
- (e) The number of students designated as having a disabling condition pursuant to division (C)(1) of section 3301.0711 of the Revised Code;
- (f) The numbers of students reported to the state board pursuant to division (C)(2) of section 3301.0711 of the Revised Code;
- (g) Attendance rates and the average daily attendance for the year. For purposes of this division, a student shall be counted as present for any field trip that is approved by the school administration.
- (h) Expulsion rates;
- (i) Suspension rates;
- (j) Dropout rates;
- (k) Rates of retention in grade;
- (l) For pupils in grades nine through twelve, the average number of Carnegie units, as calculated in accordance with state board of education rules;
- (m) Graduation rates, to be calculated in a manner specified by the department of education that reflects the rate at which students who were in the ninth grade three years prior to the current year complete school and that is

consistent with nationally accepted reporting requirements;

(n) Results of diagnostic assessments administered to kindergarten students as required under section 3301.0715 of the Revised Code to permit a comparison of the academic readiness of kindergarten students. However, no district shall be required to report to the department the results of any diagnostic assessment administered to a kindergarten student, except for the language and reading assessment described in division (A)(2) of section 3301.0715 of the Revised Code, if the parent of that student requests the district not to report those results.

(o) Beginning on the first day of July that next succeeds the effective date of this amendment, for each disciplinary action which is required to be reported under division (B)(4) of this section, districts and schools also shall include an identification of the person or persons, if any, at whom the student's violent behavior that resulted in discipline was directed. The person or persons shall be identified by the respective classification at the district or school, such as student, teacher, or nonteaching employee, but shall not be identified by name.

Division (B)(1)(o) of this section does not apply after the date that is two years following the submission of the report required by Section 733.13 of H.B. 49 of the 132nd general assembly.

(2) Personnel and classroom enrollment data for each school district, including:

(a) The total numbers of licensed employees and nonlicensed employees and the numbers of full-time equivalent licensed employees and nonlicensed employees providing each category of instructional service, instructional support service, and administrative support service used pursuant to division (C)(3) of this section. The guidelines adopted under this section shall require these categories of data to be maintained for the school district as a whole and, wherever applicable, for each grade in the school district as a whole, for each school building as a whole, and for each grade in each school building.

(b) The total number of employees and the number of full-time equivalent employees providing each category of service used pursuant to divisions (C)(4)(a) and (b) of this section, and the total numbers of licensed employees and nonlicensed employees and the numbers of full-time equivalent licensed employees and nonlicensed employees providing each category used pursuant to division (C)(4)(c) of this section. The guidelines adopted under this section shall require these categories of data to be maintained for the school district as a whole and, wherever applicable, for

each grade in the school district as a whole, for each school building as a whole, and for each grade in each school building.

- (c) The total number of regular classroom teachers teaching classes of regular education and the average number of pupils enrolled in each such class, in each of grades kindergarten through five in the district as a whole and in each school building in the school district.
  - (d) The number of lead teachers employed by each school district and each school building.
- (3)
- (a) Student demographic data for each school district, including information regarding the gender ratio of the school district's pupils, the racial make-up of the school district's pupils, the number of limited English proficient students in the district, and an appropriate measure of the number of the school district's pupils who reside in economically disadvantaged households. The demographic data shall be collected in a manner to allow correlation with data collected under division (B)(1) of this section. Categories for data collected pursuant to division (B)(3) of this section shall conform, where appropriate, to standard practices of agencies of the federal government.
  - (b) With respect to each student entering kindergarten, whether the student previously participated in a public preschool program, a private preschool program, or a head start program, and the number of years the student participated in each of these programs.
- (4) Any data required to be collected pursuant to federal law.
- (C) The education management information system shall include cost accounting data for each district as a whole and for each school building in each school district. The guidelines adopted under this section shall require the cost data for each school district to be maintained in a system of mutually exclusive cost units and shall require all of the costs of each school district to be divided among the cost units. The guidelines shall require the system of mutually exclusive cost units to include at least the following:
- (1) Administrative costs for the school district as a whole. The guidelines shall require the cost units under this division (C)(1) to be designed so that each of them may be compiled and reported in terms of average expenditure per pupil in formula ADM in the school district, as determined pursuant to section 3317.03 of the Revised Code.
  - (2) Administrative costs for each school building in the school district. The guidelines shall require the cost units under this division (C)(2) to be designed so that each of

them may be compiled and reported in terms of average expenditure per full-time equivalent pupil receiving instructional or support services in each building.

- (3) Instructional services costs for each category of instructional service provided directly to students and required by guidelines adopted pursuant to division (B)(1)(a) of this section. The guidelines shall require the cost units under division (C)(3) of this section to be designed so that each of them may be compiled and reported in terms of average expenditure per pupil receiving the service in the school district as a whole and average expenditure per pupil receiving the service in each building in the school district and in terms of a total cost for each category of service and, as a breakdown of the total cost, a cost for each of the following components:
  - (a) The cost of each instructional services category required by guidelines adopted under division (B)(1)(a) of this section that is provided directly to students by a classroom teacher;
  - (b) The cost of the instructional support services, such as services provided by a speech-language pathologist, classroom aide, multimedia aide, or librarian, provided directly to students in conjunction with each instructional services category;
  - (c) The cost of the administrative support services related to each instructional services category, such as the cost of personnel that develop the curriculum for the instructional services category and the cost of personnel supervising or coordinating the delivery of the instructional services category.
  
- (4) Support or extracurricular services costs for each category of service directly provided to students and required by guidelines adopted pursuant to division (B)(1)(b) of this section. The guidelines shall require the cost units under division (C)(4) of this section to be designed so that each of them may be compiled and reported in terms of average expenditure per pupil receiving the service in the school district as a whole and average expenditure per pupil receiving the service in each building in the school district and in terms of a total cost for each category of service and, as a breakdown of the total cost, a cost for each of the following components:
  - (a) The cost of each support or extracurricular services category required by guidelines adopted under division (B)(1)(b) of this section that is provided directly to students by a licensed employee, such as services provided by a guidance counselor or any services provided by a licensed employee under a supplemental contract;
  - (b) The cost of each such services category provided directly to students by a

nonlicensed employee, such as janitorial services, cafeteria services, or services of a sports trainer;

- (c) The cost of the administrative services related to each services category in division (C)(4)(a) or (b) of this section, such as the cost of any licensed or nonlicensed employees that develop, supervise, coordinate, or otherwise are involved in administering or aiding the delivery of each services category.

- (D) (1) The guidelines adopted under this section shall require school districts to collect information about individual students, staff members, or both in connection with any data required by division (B) or (C) of this section or other reporting requirements established in the Revised Code. The guidelines may also require school districts to report information about individual staff members in connection with any data required by division (B) or (C) of this section or other reporting requirements established in the Revised Code. The guidelines shall not authorize school districts to request social security numbers of individual students. The guidelines shall prohibit the reporting under this section of a student's name, address, and social security number to the state board of education or the department of education. The guidelines shall also prohibit the reporting under this section of any personally identifiable information about any student, except for the purpose of assigning the data verification code required by division (D)(2) of this section, to any other person unless such person is employed by the school district or the information technology center operated under section 3301.075 of the Revised Code and is authorized by the district or technology center to have access to such information or is employed by an entity with which the department contracts for the scoring or the development of state assessments. The guidelines may require school districts to provide the social security numbers of individual staff members and the county of residence for a student. Nothing in this section prohibits the state board of education or department of education from providing a student's county of residence to the department of taxation to facilitate the distribution of tax revenue.
- (2) (a) The guidelines shall provide for each school district or community school to assign a data verification code that is unique on a statewide basis over time to each student whose initial Ohio enrollment is in that district or school and to report all required individual student data for that student utilizing such code. The guidelines shall also provide for assigning data verification codes to all students enrolled in districts or community schools on the effective date of the guidelines established under this section. The assignment of data verification codes for other entities, as described in division (D)(2)(d) of

this section, the use of those codes, and the reporting and use of associated individual student data shall be coordinated by the department in accordance with state and federal law.

School districts shall report individual student data to the department through the information technology centers utilizing the code. The entities described in division (D)(2)(d) of this section shall report individual student data to the department in the manner prescribed by the department.

- (b)
  - (i) Except as provided in sections 3301.941, 3310.11, 3310.42, 3310.63, 3313.978, and 3317.20 of the Revised Code, and in division (D)(2)(b)(ii) of this section, at no time shall the state board or the department have access to information that would enable any data verification code to be matched to personally identifiable student data.
  - (ii) For the purpose of making per-pupil payments to community schools under division (C) of section 3314.08 of the Revised Code, the department shall have access to information that would enable any data verification code to be matched to personally identifiable student data.
- (c) Each school district and community school shall ensure that the data verification code is included in the student's records reported to any subsequent school district, community school, or state institution of higher education, as defined in section 3345.011 of the Revised Code, in which the student enrolls. Any such subsequent district or school shall utilize the same identifier in its reporting of data under this section.
- (d) The director of any state agency that administers a publicly funded program providing services to children who are younger than compulsory school age, as defined in section 3321.01 of the Revised Code, including the directors of health, job and family services, mental health and addiction services, and developmental disabilities, shall request and receive, pursuant to sections 3301.0723 and 5123.0423 of the Revised Code, a data verification code for a child who is receiving those services.
- (E) The guidelines adopted under this section may require school districts to collect and report data, information, or reports other than that described in divisions (A), (B), and (C) of this section for the purpose of complying with other reporting requirements established in the Revised Code. The other data, information, or reports may be maintained in the education management information system but are not required to be compiled as part of the profile formats required under division (G) of this section or the annual statewide report required under division (H) of this section.



- (F) Beginning with the school year that begins July 1, 1991, the board of education of each school district shall annually collect and report to the state board, in accordance with the guidelines established by the board, the data required pursuant to this section. A school district may collect and report these data notwithstanding section 2151.357 or 3319.321 of the Revised Code.
- (G) The state board shall, in accordance with the procedures it adopts, annually compile the data reported by each school district pursuant to division (D) of this section. The state board shall design formats for profiling each school district as a whole and each school building within each district and shall compile the data in accordance with these formats. These profile formats shall:
- (1) Include all of the data gathered under this section in a manner that facilitates comparison among school districts and among school buildings within each school district;
  - (2) Present the data on academic achievement levels as assessed by the testing of student achievement maintained pursuant to division (B)(1)(d) of this section.
- (H)
- (1) The state board shall, in accordance with the procedures it adopts, annually prepare a statewide report for all school districts and the general public that includes the profile of each of the school districts developed pursuant to division (G) of this section. Copies of the report shall be sent to each school district.
  - (2) The state board shall, in accordance with the procedures it adopts, annually prepare an individual report for each school district and the general public that includes the profiles of each of the school buildings in that school district developed pursuant to division (G) of this section. Copies of the report shall be sent to the superintendent of the district and to each member of the district board of education.
  - (3) Copies of the reports received from the state board under divisions (H)(1) and (2) of this section shall be made available to the general public at each school district's offices. Each district board of education shall make copies of each report available to any person upon request and payment of a reasonable fee for the cost of reproducing the report. The board shall annually publish in a newspaper of general circulation in the school district, at least twice during the two weeks prior to the week in which the reports will first be available, a notice containing the address where the reports are available and the date on which the reports will be available.
- (I) Any data that is collected or maintained pursuant to this section and that identifies an individual pupil is not a public record for the purposes of section 149.43 of the Revised Code.

- (J) As used in this section:
- (1) "School district" means any city, local, exempted village, or joint vocational school district and, in accordance with section 3314.17 of the Revised Code, any community school. As used in division (L) of this section, "school district" also includes any educational service center or other educational entity required to submit data using the system established under this section.
  - (2) "Cost" means any expenditure for operating expenses made by a school district excluding any expenditures for debt retirement except for payments made to any commercial lending institution for any loan approved pursuant to section 3313.483 of the Revised Code.
- (K) Any person who removes data from the information system established under this section for the purpose of releasing it to any person not entitled under law to have access to such information is subject to section 2913.42 of the Revised Code prohibiting tampering with data.
- (L)
- (1) In accordance with division (L)(2) of this section and the rules adopted under division (L)(10) of this section, the department of education may sanction any school district that reports incomplete or inaccurate data, reports data that does not conform to data requirements and descriptions published by the department, fails to report data in a timely manner, or otherwise does not make a good faith effort to report data as required by this section.
  - (2) If the department decides to sanction a school district under this division, the department shall take the following sequential actions:
    - (a) Notify the district in writing that the department has determined that data has not been reported as required under this section and require the district to review its data submission and submit corrected data by a deadline established by the department. The department also may require the district to develop a corrective action plan, which shall include provisions for the district to provide mandatory staff training on data reporting procedures.
    - (b) Withhold up to ten per cent of the total amount of state funds due to the district for the current fiscal year and, if not previously required under division (L)(2)(a) of this section, require the district to develop a corrective action plan in accordance with that division;
    - (c) Withhold an additional amount of up to twenty per cent of the total amount of state funds due to the district for the current fiscal year;
    - (d) Direct department staff or an outside entity to investigate the district's data reporting practices and make recommendations for subsequent actions.

The recommendations may include one or more of the following actions:

- (i) Arrange for an audit of the district's data reporting practices by department staff or an outside entity;
  - (ii) Conduct a site visit and evaluation of the district;
  - (iii) Withhold an additional amount of up to thirty per cent of the total amount of state funds due to the district for the current fiscal year;
  - (iv) Continue monitoring the district's data reporting;
  - (v) Assign department staff to supervise the district's data management system;
  - (vi) Conduct an investigation to determine whether to suspend or revoke the license of any district employee in accordance with division (N) of this section;
  - (vii) If the district is issued a report card under section 3302.03 of the Revised Code, indicate on the report card that the district has been sanctioned for failing to report data as required by this section;
  - (viii) If the district is issued a report card under section 3302.03 of the Revised Code and incomplete or inaccurate data submitted by the district likely caused the district to receive a higher performance rating than it deserved under that section, issue a revised report card for the district;
  - (ix) Any other action designed to correct the district's data reporting problems.
- (3) Any time the department takes an action against a school district under division (L)(2) of this section, the department shall make a report of the circumstances that prompted the action. The department shall send a copy of the report to the district superintendent or chief administrator and maintain a copy of the report in its files.
- (4) If any action taken under division (L)(2) of this section resolves a school district's data reporting problems to the department's satisfaction, the department shall not take any further actions described by that division. If the department withheld funds from the district under that division, the department may release those funds to the district, except that if the department withheld funding under division (L)(2)(c) of this section, the department shall not release the funds withheld under division (L)(2)(b) of this section and, if the department withheld funding under division (L)(2)(d) of this section, the department shall not release the funds withheld under division (L)(2)(b) or (c) of this section.

- (5) Notwithstanding anything in this section to the contrary, the department may use its own staff or an outside entity to conduct an audit of a school district's data reporting practices any time the department has reason to believe the district has not made a good faith effort to report data as required by this section. If any audit conducted by an outside entity under division (L)(2)(d)(i) or (5) of this section confirms that a district has not made a good faith effort to report data as required by this section, the district shall reimburse the department for the full cost of the audit. The department may withhold state funds due to the district for this purpose.
  - (6) Prior to issuing a revised report card for a school district under division (L)(2)(d)(viii) of this section, the department may hold a hearing to provide the district with an opportunity to demonstrate that it made a good faith effort to report data as required by this section. The hearing shall be conducted by a referee appointed by the department. Based on the information provided in the hearing, the referee shall recommend whether the department should issue a revised report card for the district. If the referee affirms the department's contention that the district did not make a good faith effort to report data as required by this section, the district shall bear the full cost of conducting the hearing and of issuing any revised report card.
  - (7) If the department determines that any inaccurate data reported under this section caused a school district to receive excess state funds in any fiscal year, the district shall reimburse the department an amount equal to the excess funds, in accordance with a payment schedule determined by the department. The department may withhold state funds due to the district for this purpose.
  - (8) Any school district that has funds withheld under division (L)(2) of this section may appeal the withholding in accordance with Chapter 119. of the Revised Code.
  - (9) In all cases of a disagreement between the department and a school district regarding the appropriateness of an action taken under division (L)(2) of this section, the burden of proof shall be on the district to demonstrate that it made a good faith effort to report data as required by this section.
  - (10) The state board of education shall adopt rules under Chapter 119. of the Revised Code to implement division (L) of this section.
- (M) No information technology center or school district shall acquire, change, or update its student administration software package to manage and report data required to be reported to the department unless it converts to a student software package that is certified by the department.
- (N) The state board of education, in accordance with sections 3319.31 and 3319.311 of the Revised Code, may suspend or revoke a license as defined under division (A) of section

3319.31 of the Revised Code that has been issued to any school district employee found to have willfully reported erroneous, inaccurate, or incomplete data to the education management information system.

- (O) No person shall release or maintain any information about any student in violation of this section. Whoever violates this division is guilty of a misdemeanor of the fourth degree.
- (P) The department shall disaggregate the data collected under division (B)(1)(n) of this section according to the race and socioeconomic status of the students assessed.
- (Q) If the department cannot compile any of the information required by division (H) of section 3302.03 of the Revised Code based upon the data collected under this section, the department shall develop a plan and a reasonable timeline for the collection of any data necessary to comply with that division.

**Cite as R.C. § 3301.0714**

**History.** Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 131st General Assembly File No. TBD, HB 483, §101.01, eff. 10/12/2016.

Amended by 130th General Assembly File No. TBD, HB 487, §1, eff. 9/17/2014.

Amended by 130th General Assembly File No. 25, HB 59, §101.01, eff. 9/29/2013.

Amended by 129th General Assembly File No. 184, HB 555, §1, eff. 3/22/2013.

Amended by 129th General Assembly File No. 128, SB 316, §101.01, eff. 9/24/2012.

Amended by 129th General Assembly File No. 126, HB 386, §1, eff. 6/11/2012.

Amended by 129th General Assembly File No. 28, HB 153, §101.01, eff. 9/29/2011.

Amended by 128th General Assembly File No. 15, HB 290, §1, eff. 12/28/2010.

Amended by 128th General Assembly File No. 9, HB 1, §101.01, eff. 10/16/2009.

Effective Date: 06-09-2004; 07-01-2006; 03-30-2006; 07-11-2006; 03-30-2007; 2007 HB119 09-29-2007; 2008 HB562 09-22-2008

§ 5120.01. Director of rehabilitation and correction - powers and duties.

**Ohio Statutes**

**Title 51. PUBLIC WELFARE**

**Chapter 5120. DEPARTMENT OF REHABILITATION AND CORRECTION**

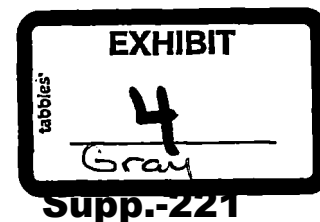
*Current with acts signed by the Governor as of August 1, 2018*

**§ 5120.01. Director of rehabilitation and correction - powers and duties**

The director of rehabilitation and correction is the executive head of the department of rehabilitation and correction. All duties conferred on the various divisions and institutions of the department by law or by order of the director shall be performed under the rules and regulations that the director prescribes and shall be under the director's control. Inmates committed to the department of rehabilitation and correction shall be under the legal custody of the director or the director's designee, and the director or the director's designee shall have power to control transfers of inmates between the several state institutions included under section 5120.05 of the Revised Code.

Cite as R.C. § 5120.01

History. Effective Date: 03-31-2003.



§ 5120.42. Rules for proper execution of powers.

**Ohio Statutes**

**Title 51. PUBLIC WELFARE**

**Chapter 5120. DEPARTMENT OF REHABILITATION AND CORRECTION**

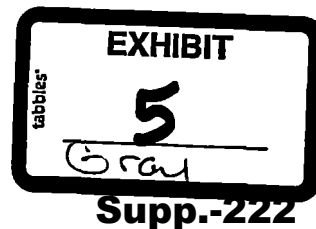
*Current with acts signed by the Governor as of August 1, 2018*

**§ 5120.42. Rules for proper execution of powers**

The department of rehabilitation and correction shall make rules for the proper execution of its powers and may require the performance of additional duties by the officers of the several institutions, so as to fully meet the requirements, intents, and purposes of Chapter 5120. of the Revised Code, and particularly those relating to making estimates and furnishing proper proof of the use made of all articles furnished or produced in such institutions. In case of an apparent conflict between the powers conferred upon any managing officer and those conferred by such sections upon the department, the presumption shall be conclusive in favor of the department.

**Cite as R.C. § 5120.42**

**History.** Effective Date: 07-12-1972.



## 2949.22 Method of execution of death sentence.

(A) Except as provided in division (C) of this section, a death sentence shall be executed by causing the application to the person, upon whom the sentence was imposed, of a lethal injection of a drug or combination of drugs of sufficient dosage to quickly and painlessly cause death. The application of the drug or combination of drugs shall be continued until the person is dead. The warden of the correctional institution in which the sentence is to be executed or another person selected by the director of rehabilitation and correction shall ensure that the death sentence is executed.

(B) A death sentence shall be executed within the walls of the state correctional institution designated by the director of rehabilitation and correction as the location for executions, within an enclosure to be prepared for that purpose, under the direction of the warden of the institution or, in the warden's absence, a deputy warden, and on the day designated by the judge passing sentence or otherwise designated by a court in the course of any appellate or postconviction proceedings. The enclosure shall exclude public view.

(C) If a person is sentenced to death, and if the execution of a death sentence by lethal injection has been determined to be unconstitutional, the death sentence shall be executed by using any different manner of execution prescribed by law subsequent to the effective date of this amendment instead of by causing the application to the person of a lethal injection of a drug or combination of drugs of sufficient dosage to quickly and painlessly cause death, provided that the subsequently prescribed different manner of execution has not been determined to be unconstitutional. The use of the subsequently prescribed different manner of execution shall be continued until the person is dead. The warden of the state correctional institution in which the sentence is to be executed or another person selected by the director of rehabilitation and correction shall ensure that the sentence of death is executed.

(D) No change in the law made by the amendment to this section that took effect on October 1, 1993, or by this amendment constitutes a declaration by or belief of the general assembly that execution of a death sentence by electrocution is a cruel and unusual punishment proscribed by the Ohio Constitution or the United States Constitution.

Effective Date: 11-21-2001.





## 5120-9-20 Visits by attorneys and inmate access to legal services.

### (A) Attorney visits

(1) Attorneys of record may visit inmates during regular visiting hours. Where there is no evidence of an attorney of record or when an attorney other than the attorney of record requests visiting privileges, the attorney must provide a copy of a written statement, redacting any confidential or privileged information, from the inmate or a member of the inmate's family requesting his legal services. An attorney wishing to visit may be required to furnish proof that he is licensed to practice law.

(2) When an attorney requests to visit with his clients on weekends or after regular visiting hours, at least one-day, advanced notice to the managing officer shall be made by such attorney. In the event an attorney is present at an institution and desires additional time

(beyond regular visiting hours) to visit with his client(s), the attorney shall request such additional time from the managing officer. Such request shall be made within a reasonable time prior to the expiration of regular visiting hours. Such requests shall be liberally granted when the attorney can show sufficient reason why such visits are necessary.

(3) Law students, legal interns or legal investigators must be under the direct supervision of an attorney who shall be responsible for the activities of such person. Before admission to the institution is granted, that person must produce a written statement containing all of the following information:

- (a) Name of the student, intern or investigator.
- (b) Name of the law school or program, if applicable.
- (c) Name and address of the supervising attorney.
- (d) Name of the inmate-client to be interviewed.



(4) Visits by attorneys, law students, legal interns, and legal investigators may be partially curtailed or totally banned during the existence of a critical incident as determined by the managing officer. However, the managing officer may, if security permits, authorize visits by attorneys during a critical incident in the following situations:

- (a) A personal interview of the inmate is absolutely necessary because of a rapidly approaching court date for which a continuance cannot be obtained.
- (b) Legal aid is necessitated by the conditions which caused the critical incident.

(5) Visits by attorneys will take place in a room designated for that purpose, subject to being visually monitored, but conversations shall not be monitored.

(6) An attorney of record may be permitted to visit up to three inmate-clients at one time, unless it is the opinion of the managing officer that such visit would be inappropriate due to an existing situation at the institution. In such event, the attorney shall be so notified and other arrangements made.

(7) Where an attorney requests to visit with a large number of inmates (e.g., cell-block or dormitory) who he does not explicitly represent, and who he does not name individually, the attorney shall be requested to submit in writing the names of those persons he wishes to meet. If the attorney is unable

to produce the names of such inmates, he shall be given a reasonable amount of time to gather such information. Subsequent to the receipt of such names, a staff member shall contact each inmate so named and inform him of the presence of the attorney and of the attorney's request to visit with him. The inmate shall be asked if he desires to meet with the attorney. If the inmate declines, the inmate shall be asked to sign a statement to that effect and it shall be witnessed by a staff member. Under no circumstances shall an inmate be harassed, intimidated or in any manner influenced with regard to such a request. Any document so executed shall be immediately forwarded to the managing officer who shall forthwith have it placed in the inmate's file. The attorney shall also be shown this document upon request.

(B) Inmate access to legal services

(1) It is the policy of the department of rehabilitation and correction to permit inmates reasonable access to legal materials and a reasonable opportunity to prepare legal documents.

(2) Inmates in local control, protective control, administrative control, and security control shall be afforded the same access to legal materials as those in general population, except that they may not go to the law library. In the event an inmate is not permitted access to the law library premises, legal materials shall be provided to the inmate on a reasonable basis. Such inmates may have such assistance from other inmates as is authorized by the managing officer.

(3) Each institution shall establish a schedule of library hours when legal materials can be used. Where possible, evening and weekend hours shall be provided.

(4) An inmate shall be permitted to purchase law books unless there is a compelling reason why he should not be able to do so.

(5) Inmates shall be permitted to assist each other in the preparation of legal documents. However, it shall be a violation of institutional rules for an inmate to charge a fee of any kind for such services.

(6) Inmates shall be permitted reasonable access to typewriters or may be assigned an inmate-clerk for the typing preparation of legal documents.

(7) Inmates shall be permitted to contact attorneys to secure legal representation. The payment of attorney fees is a matter between attorney and client. Inmates who want to make confidential attorney-client telephone calls should make such requests to the managing officer or designee.

(8) Each institution shall make available to its inmates a legal kit which shall be sold through the commissary.

R.C. 119.032 review dates: 01/10/2014 and 01/10/2019

Promulgated Under: 111.15

Statutory Authority: 5120.01

Rule Amplifies: 5120.01

Prior Effective Dates: 9/9/73, 12/21/76, 1/8/91, 6/10/92, 7/18/97, 12/31/00

Joint  
EXHIBIT  
I  
Date: 10.16.18

**O'Neal, et al. v. State of Ohio, et. al.,  
Case No. 18CV000758**

Defendants' Documents Provided in  
Response to Plaintiffs' Subpoena  
for Deposition of Stephen Gray

## DRC Policy Impact Analysis

2. Are there any overlaps or conflicts with existing agency directives? This includes, but is not limited to, Administrative Regulations, Department Policies, Operations Manuals, ORC, etc. If yes, please list the related directives and explain why the directive was not consolidated into the pre-existing directive:

None.

3. List any facilities, entities, or groups who should be exempted from the policy directive (i.e. inmates, DPCS, private prisons, contractors, CTA, OPI, etc.) Refer to the Applicability Statement in the policy to ensure consistency.

None.

4. Please answer yes or no to the following questions. Please provide a summary in the below text box for any "YES" responses.

| Does the new directive or proposed revision:  | Yes                                 | No                                  |
|---|-------------------------------------|-------------------------------------|
| <b>Require updates to any DRC forms?</b><br><i>If yes, explain the impact including whether old forms can be bought out or the form is electronic.</i>                            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| <b>Have an impact on other areas of the agency?</b><br><i>If yes, include evidence that such revisions were discussed with the impacted area.</i>                                 | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <b>Have an impact on ACA Accreditation?</b>   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <b>Have an impact on Labor Relations or Human Resources?</b>  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <b>Have a fiscal impact or impact on Information Technology?</b>  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <b>Have a training impact on any part of the agency?</b><br><i>Directives are NOT to contain a new training component without the express approval of the CTA Superintendent.</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

**Please provide a summary to any of the above questions with a "YES" response:**

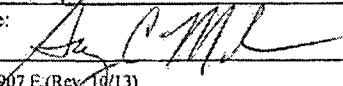
DRC Forms 2001, 4083, 4084 and 4085 will be updated to be consistent with the terms of the updated Policy. The Execution Team will be trained on the new, updated Policy, consistent with terms of the Policy.

All proposed new or revised policies must be submitted by the policy owner or designee and approved by the appropriate Managing Director, Deputy Director, or Regional Director or designee. Please indicate below that such review and approval has been granted.

**Submitted by:**

|   |                            |                  |
|---|----------------------------|------------------|
| Name:  | Title: Chief Legal Counsel | Date: 10-12-2016 |
|---|----------------------------|------------------|

**Approved by:**

|   |                 |                |
|---|-----------------|----------------|
| Name:  | Title: Director | Date: 10/12/16 |
|---|-----------------|----------------|

# DRC Policy Impact Analysis

## GENERAL INFORMATION

|                                |                              |
|--------------------------------|------------------------------|
| Directive Number:<br>01-COM-11 | Directive Name:<br>Execution |
|--------------------------------|------------------------------|

**Please check one:**

- DRC Policy       Operation Manual

**Please check one:**

- New Directive       Revised Directive

**If revision, please indicate type:**

- Annual       Non-Routine

**Please check all that apply:**

- Policy Submitted for Initial Review by Policy Review Team     In-Person       Electronic  
 Policy Updated Following PRT Review and Submitted for Director's Consideration

*Note: When submitting a policy for the Director's consideration, the original Impact Analysis must be updated with any new revisions made following the PRT review.*

**If significant policy comments were received through the DRC.PolicyReview e-mail account but were not utilized, please provide the general reason:**

- The Policy/Impact Analysis Writing Guidelines posted at the bottom of the main intranet policy page have been reviewed and all formatting guidelines adhered to. **Note:** Policies that are not properly formatted may be returned without processing.
- The Rule/Code References in the heading of the policy have been verified. **Note:** If not correct, please make the necessary updates.

## ANALYSIS

- Please provide a brief rationale for the creation of a new policy or for the revision of existing directives. A list of all changes is not necessary but you must provide a summary of the major changes including the reason for the change.**  
This policy was updated to add an additional, three-drug combination drug option. The drug selection, preparation and administration sections were updated. The Definitions section was updated.

COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
Subpoena - Civil

James Derrick O'Neal, et al,

-VS/AND

Plaintiff/Petitioner

Case No. 18CV-758

(Example: 11CV0142345)

State of Ohio, et al,

Defendant/Petitioner

SCPO

The State of Ohio, Franklin County, ss

To: Attorney Process Server Sheriff of County, Ohio Greetings:

YOU ARE HEREBY COMMANDED TO SUBPOENA THE FOLLOWING NAMED PERSON, To wit:

Person Business

Gray

Last Name / Business Name

c/o Zoe Saadey, Ohio Attorney General's Office

Street Address

Stephen

Mr.

150 E. Gay Street

First Name

Middle Init.

Designation

Address Line 2

16th Floor

Address Line 3

Columbus

Ohio

43215

City

State

Zip Code

To be and appear before the Court of Common Pleas of the County of Franklin, General Division, 345 South High Street, Columbus, Ohio 43215, OR at on the 16th day of October 2018, at 10:30 o'clock a.m. of said day in court room # 6E to:

- ATTEND AND GIVE TESTIMONY AT A TRIAL, HEARING OR DEPOSITION ON THE DATE, TIME AND AT THE PLACE SPECIFIED ABOVE.
ATTEND AND PRODUCE DOCUMENTS, ELECTRONICALLY STORED INFORMATION OR TANGIBLE THINGS AT A TRIAL, HEARING OR DEPOSITION ON THE DATE, TIME AND AT THE PLACE SPECIFIED ABOVE.
PRODUCE AND PERMIT INSPECTION AND COPYING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED ABOVE, OF ANY DESIGNATED DOCUMENTS OR ELECTRONICALLY STORED INFORMATION THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.
PRODUCE AND PERMIT INSPECTION AND COPYING, TESTING OR SAMPLING, ON THE DATE AND AT THE TIME AND PLACE SPECIFIED ABOVE, OF ANY TANGIBLE THINGS THAT ARE IN YOUR POSSESSION, CUSTODY OR CONTROL.
PERMIT ENTRY UPON THE FOLLOWING DESCRIBED LAND OR OTHER PROPERTY, FOR THE PURPOSES DESCRIBED IN CIV. R. 34(A)(3), ON THE DATE AND AT THE TIME SPECIFIED ABOVE.

DESCRIPTION OF LAND OR OTHER PREMISES:

DESCRIPTION OF ITEMS TO BE PRODUCED: All documents produced or obtained in any form that were used or generated by you as the policy owner in the development of 01-COM-11(Oct.7, 2016).

S. Adele Shank

[Signature]

3380 Tremont Rd Columbus, OH 43221 0022148

Attorney

Address/Phone # (Required)

Supreme Court #

Choose One:

Plaintiff

Defendant

Other (Specify):

WITNESS my hand and seal of said court Maryellen O'Shaughnessy, Clerk of Court of Common Pleas

[Signature of Maryellen O'Shaughnessy]

SHERIFF FEES

Service

Mileage

Copy

Total 00.00

RETURN OF SERVICE

I received this subpoena on 9/28/2018 and served the above named party by e-mail to Zoe Saadey as agreed by counsel on 9/28/2018

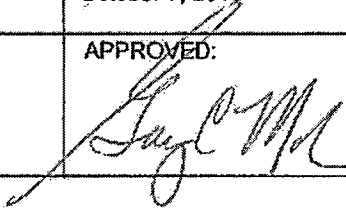
I was unable to complete service for the following reason:

[Signature of S. Adele Shank]

Signature of Serving Party

Check one: Deputy Sheriff Attorney Process Server Deputy Clerk



|  |  |
|--|--|
| SUBJECT:<br>Execution                        | PAGE <u>1</u> OF <u>21</u>   |
|  | NUMBER: 01-COM-11  |
| RULE/CODE REFERENCE:<br>ORC 2949.22; 2949.25 | SUPERSEDES:<br>01-COM-11 dated 06/29/15  |
| RELATED ACA STANDARDS:                       | EFFECTIVE DATE:<br>October 7, 2016   |
|  | APPROVED:<br> |

**I. AUTHORITY**

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

**II. PURPOSE**

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

**III. APPLICABILITY**

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

**IV. DEFINITIONS**

**Auxiliary Team Member** - A physician, advanced level provider or registered nurse who has been designated by the Director to provide advice and consultation as described in this policy.

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

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

SUBJECT: Execution PAGE 2 OF 21

**Death House** - A physical location within the Southern Ohio Correctional Facility (SOCF) used for the execution of a death-sentenced prisoner.

**Death Row** - (1) A housing area at the Chillicothe Correctional Institution (CCI) or Ohio State Penitentiary (OSP) that has been designated by the Director of the Ohio Department of Rehabilitation and Correction to house male prisoners who are committed to the Department with a sentence of death; (2) A housing area at the Ohio Reformatory for Women (ORW) that is similarly designated to house female prisoners committed to the Department with a sentence of death; (3) A housing area at the Franklin Medical Center (FMC) that has been designated by the Director of the Ohio Department of Rehabilitation and Correction to house male or female prisoners whose medical needs are inconsistent with assignment to CCI, ORW, or OSP pursuant to DRC policy 68-MED-13, Medical Classification; or such other facility as may be deemed appropriate by the Director. Death Row is also a reference to a housing status for prisoners sentenced to death; it is not a security classification.

**Director** - As used in the policy, the term "Director" refers to the current Director of the Ohio Department of Rehabilitation and Correction (DRC) or the Director's designee.

**Drug Administrator** - Any qualified member of the Medical Team who administers any execution drug or witnesses the preparation and administration of any execution drug. A Drug Administrator shall be currently qualified under Ohio Law to administer and prepare drugs for intravenous injections. A Drug Administrator may also establish, or assist in, establishing, or assess, IV connections.

**Execution Drugs** - As used in this policy, the terms "Execution Drugs" means any of the following three options, under whatever names those drugs may be available to DRC from a pharmacy, manufacturer, supplier, wholesaler, distributor, pharmacist, or compounding pharmacy:

- 1) Pentobarbital; or
- 2) Thiopental sodium; or
- 3) A three-drug combination of:
  - a. Midazolam Hydrochloride; and
  - b. One of the following three drugs:
    - i. Vecuronium bromide; or
    - ii. Pancuronium bromide; or
    - iii. Rocuronium bromide; and
  - c. Potassium Chloride.

**Execution Team** - A group consisting of no less than twelve (12) members designated by the Warden of the Southern Ohio Correctional Facility (SOCF) to carry out court-ordered executions. The Warden shall designate one team member to be the Team Leader who shall communicate with the Warden and the Director as necessary to carry out the terms of this Policy. The Team's duties also include preparation and testing of equipment, carrying out pre- and post-execution activities, and counseling with the prisoner.

**Execution Timeline** - A record of events before and during an execution to include the specific information required to be recorded by this policy and other information at the discretion of the Execution Team.



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| SUBJECT: Execution | PAGE <u>3</u> OF <u>21</u> |
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**Medical Team Member** - A person who is a member of the Execution Team and who is currently qualified under Ohio Law to administer and prepare drugs for intravenous injections, or who has at least one year experience as a certified medical assistant, phlebotomist, EMT, paramedic, or military corpsman, or who is currently certified or licensed within the United States as a registered nurse or nurse practitioner.

**Religious Services Administrator (RSA)** - The Religious Services Administrator is the coordinator and administrator for religious services for the Ohio Department of Rehabilitation and Correction (DRC). The RSA will provide counseling and support services for the offender and others consistent with the provisions of this policy.

**Reprieve** - The postponement of an execution.

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

**Support Staff** - Support Staff shall mean those individuals who have specified roles in this policy including, but not limited to, medical staff, mental health staff, Health Care Administrators (HCAs), appointed designees, correction officers at DRC institutions, the RSA, SOCF Chief of Security or his/her designee, SOCF Deputy Warden(s), the Special Assistant designated in this policy, and/or other general DRC staff. Support Staff are not members of the Execution Team. Overhead management staff at DRC are not Support Staff, and not members of the Execution Team. As defined above in this section IV, only those individuals designated by the Warden to carry out court-ordered executions shall be Execution Team members. The Director and the Warden(s) are not members of the Execution Team.

**Warden** - As used in the policy, the term "Warden" refers to the current Warden of the Southern Ohio Correctional Facility (SOCF), or his or her current Deputy Warden, or the Director's designee, unless the policy uses language which indicates another Warden of another institution.

**V. POLICY**

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

The procedures set forth in this policy are to be strictly followed. Any situation that arises that would make following these policies difficult, impractical, or impossible shall be immediately reported to the Director or the Warden. Any variations of a substantial nature must be approved by the Director as described in this policy.

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| SUBJECT: Execution | PAGE 4 OF 21 |
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There will be no variations from the following requirements:

1. At least three (3) Medical Team Members, two (2) of whom are authorized to administer drugs under Ohio law, shall be used in the conduct of court-ordered executions.
2. The drugs required by this policy shall be used.
3. Functions required to be performed by medically-qualified persons, as described in this policy, shall be performed by Medical Team Members.
4. All Execution Team functions shall be performed by appropriately trained and qualified members of the Execution Team.
5. Only the Director can authorize a variation from the procedures stated in this policy but not a variation from the four requirements listed immediately above in subsections V.1.2.3 and 4 of this policy.

## VI. PROCEDURES

### A. General Guidelines

1. All prisoners sentenced to death by a court of law shall be transported to a reception center within the Ohio Department of Rehabilitation and Correction (DRC) for initial processing. Upon completion of the reception process, the prisoner shall immediately be transferred to the designated institution: CCI or OSP for male prisoners or ORW for female prisoners. The Director may designate FMC or another appropriate DRC institution as necessary.
2. All court-ordered executions shall be carried out at the Southern Ohio Correctional Facility (SOCF) and will be planned to commence at approximately 10:00 a.m. on the scheduled execution date, subject to developing circumstances.
3. Unless otherwise designated by the Director/designee, the prisoner shall remain on Death Row until transferred to the Death House for scheduled execution.
4. The Ohio Supreme Court shall designate the date of execution. Upon receipt of a scheduled execution date, the Warden of the institution housing the prisoner shall notify the Director, the RSA, and the Warden at SOCF.
5. Attendance at the execution is governed by Ohio Revised Code section 2949.25 and includes:
  - a. The Warden or Acting Warden of the institution where the execution is to be conducted and such number of correction officers or other persons as the Warden or Acting Warden thinks necessary to carry out the death sentence.
  - b. The sheriff of the county in which the prisoner was tried and convicted.

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| SUBJECT: Execution | PAGE 5 OF 21 |
|--------------------|--------------|

- c. The Director of the Ohio Department of Rehabilitation and Correction (DRC), or designee, and any other person selected by the Director/designee to ensure that the death sentence is carried out.
  - d. Any Auxiliary Team Member whose role will be to provide consultation or advice as may be necessary. An Auxiliary Team Member shall attend such number of execution rehearsals as the Warden may consider necessary, but no less than one rehearsal per execution. An Auxiliary Team Member shall attend training sessions on topics identified in subsection VI.B.4.b of this policy, below. An Auxiliary Team Member shall not be required to attend an execution, but may, at the discretion of the Warden, attend an execution and provide consultation or advice to the Warden, the Director and the Medical Team.
  - e. The prisoner may select one or two of the following persons: the RSA, minister-of-record, clergy, rabbi, priest, imam, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination or sect, subject to the approval of the Warden.
  - f. Three (3) persons designated by the prisoner who are not confined in any state institution subject to the approval of the Warden or Acting Warden based on security considerations. The prisoner may also request that one or two attorneys attend the execution.
  - g. Three (3) persons designated by the immediate family of the victim, subject to the approval of the Warden or Acting Warden based on security consideration, as detailed in DRC policy 03-OVS-06, Victim Involvement in the Execution Process.
  - h. Representatives of the news media who are authorized by the Director, which may include representatives of the following: a newspaper, a television station, and a radio station.
6. Given the gravity of the sentence to be carried out, it is imperative that these procedures be strictly adhered to and all actions by Department personnel in carrying out the sentence be fully documented as required by this policy. However, due to the difficult and sometimes unpredictable nature of the tasks to be performed in carrying out the sentence it may not always be possible to follow these procedures to the letter. Thus, variations from the requirements of the policy may sometimes be necessary. Any Support Staff, overhead management staff at DRC, or member of the Execution Team who determines for any reason it is difficult, impractical, or impossible to strictly follow the procedures in this policy shall immediately report the same to the Warden or to the Director. The Director may then consult with the Warden and others as appropriate. Only the Director may authorize a variation from the procedures in this policy. Any such variation shall be documented as soon as possible.

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| SUBJECT: Execution | PAGE 6 OF 21 |
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**B. Execution Preparation – Approximately thirty (30) days prior to the scheduled execution date**

**1. Notification**

The Warden of the institution where the prisoner is housed shall notify the Director of an upcoming scheduled execution date. Notification may also be provided to the supervising Regional Director of SOCF, DRC Chief Counsel, DRC Managing Director of Operations, the Adult Parole Authority (APA), the Ohio State Highway Patrol (Portsmouth and Jackson), and the Office of Victim Services.

**2. Execution Drugs**

- a. The Warden shall determine whether there will be sufficient quantities of the Execution Drugs available for the scheduled execution and report those findings to the Director.
- b. The Warden’s assessment of what constitutes a sufficient quantity of Execution Drugs shall include ensuring a sufficient amount for a contingency against contamination or inadvertent loss.
- c. At his discretion, the Warden may, at any time, direct the SOCF HCA, the HCA’s designee, or SOCF’s responsible pharmacist, to order Execution Drugs from the Ohio Pharmacy Services of the Ohio Department of Mental Health and Addiction Services, or from a pharmacy, manufacturer, supplier, wholesaler or distributor, or from any other licensed pharmacist.
- d. All Execution Drugs delivered to SOCF shall be maintained in a secured location.
- e. If compounded Execution Drugs are to be used, a sample from the batch of those drugs will be analytically tested before they are used. The sample will be tested for identity and potency, pursuant to the applicable USP/NF monograph. DRC will only use the batch of compounded drugs if its sample is properly identified as the intended drug and its tested potency is within the applicable monograph standard. At the discretion of the Director, a sample of non-compounded Execution Drugs may also be tested for identity and potency pursuant to the applicable monograph standard.

**3. Assessment of Prisoner**

- a. Every possible effort shall be made to anticipate and plan for foreseeable difficulties in establishing and maintaining the intravenous (IV) lines. The prisoner shall be evaluated by appropriately trained medical staff approximately twenty-one (21) days prior to the execution to evaluate the prisoner’s veins and plan for the insertion of the IV lines. This evaluation shall include a “hands-on” examination as well as a review of the medical chart to establish any unique factors which may impact the manner in which the Execution Team carries out the execution. Potential problems shall be noted and discussed, and potential solutions considered, in advance of the execution. Concerns or potential issues shall be communicated to the Warden or designee at

|                    |              |
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| SUBJECT: Execution | PAGE 7 OF 21 |
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SOCF as soon as possible. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.

- b. Any evaluation that is conducted by medical staff pursuant to subsection VI.B.3.a of this policy, above shall be noted in the prisoner's medical chart.
- c. The prisoner's medical condition shall be assessed in order to identify any necessary accommodations or contingencies that may arise from the prisoner's medical condition or history. Any medical condition or history that may affect the performance of the execution shall be communicated as soon as possible to the Warden of SOCF, who shall confer with others as necessary to plan such accommodations or contingencies. The fact of the assessment and any conclusions shall be documented in the prisoner's medical chart. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.
- d. Any concerns for establishing or maintaining IV lines and any concerns or plans for medical accommodations or contingencies shall be communicated to the Execution Team in order that these things may be discussed and addressed in execution trainings or rehearsals.
- e. An appropriate member of the mental health staff shall evaluate the prisoner approximately twenty-one (21) days prior to the execution to evaluate his or her stability and mental health in light of the scheduled execution. Any concerns or contingencies affecting the execution process shall be communicated to the Warden of SOCF as soon as possible. The fact of the assessment and any conclusions shall be documented in the prisoner's mental health record. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.
- f. Beginning approximately thirty (30) days prior to the scheduled execution date until the prisoner's transfer from Death Row to SOCF, the prisoner shall be evaluated by mental health staff to determine the prisoner's appropriate observation level, housing status, and access to personal property. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.

4. Training

- a. The Execution Team shall begin conducting weekly training sessions at least thirty (30) days before the scheduled date of execution. The training shall address any accommodations or contingencies that might be identified or anticipated.
- b. Training in the following topics shall be provided for every member of the Execution Team, and any Auxiliary Team Member designated by the Director, prior to service and at least once per year thereafter:
  - i. The general nature and effects of the Execution Drugs that are used during the execution process;

SUBJECT: Execution PAGE 8 OF 21

- ii. Drug administration procedures, including the insertion of the IV needles and administration of injections;
- iii. Signs or symptoms of problems when administering the Execution Drugs; and
- iv. Any legal developments of significance.

5. Other Preparations

- a. The RSA shall make contact with the prisoner to establish counseling and family contact information.
- b. Prior to commencement of the initial training session, the Warden or the Team Leader shall verify and document the qualifications of the Medical Team members. Medical team members shall provide evidence of certification status at least once per year and upon any change in status.
- c. The Team Leader shall ensure that each member of the Execution Team has received a copy of the current version of this execution policy. Each member of the Execution Team shall sign for its receipt.

C. Execution Preparation - Approximately fourteen (14) days prior to the execution

- 1. The Warden of the institution where the prisoner is housed shall have the Execution Information Release (DRC1808) completed by the prisoner. This form will verify information on the prisoner, visitors, witnesses, spiritual advisor, attorney, requested witness, property, and funeral arrangements.
- 2. The names of official witnesses/media witnesses shall be supplied to the Warden, as outlined in this policy.
- 3. The names and relationships of the victim's witnesses shall be supplied to the Warden.
- 4. The RSA shall provide family information from the prisoner to the Warden.
- 5. Approximately fourteen (14) days prior to the execution, the Warden shall determine whether a sufficient quantity of Execution Drugs is available for use at the scheduled execution.
  - a. If a sufficient quantity of the Execution Drugs is available, then the Warden shall select one of the following drug options to be intravenously administered at the scheduled execution:
    - i. Pentobarbital; or
    - ii. Thiopental sodium; or
    - iii. A three-drug combination of:
      - (a) Midazolam Hydrochloride; and
      - (b) One of the following three drugs:

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SUBJECT: Execution

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- (i) Vecuronium Bromide; or
  - (ii) Pancuronium Bromide; or
  - (iii) Rocuronium Bromide; and
  - (c) Potassium Chloride.
- b. If a sufficient quantity of the Execution Drugs is not available, or if at any time any of the selected Execution Drugs is deemed unsuitable or unusable by the Medical Team, then the Warden shall consult with the Director and they shall notify the Governor.
  - c. Notice of the Warden's determination, concerning the selection of Execution Drugs or insufficient quantities of such drugs to be used for intravenous administration, shall be provided to the prisoner.
  - d. If the scheduled execution date is postponed for any reason, and:
    - i. Such postponement is less than ten (10) days, then no later than four (4) days prior to the re-scheduled execution date, the Warden shall make the determination set forth above in subsection VI.C.5 of this policy.
    - ii. Such postponement is between ten (10) and thirty (30) days, then no later than seven (7) days prior to the re-scheduled execution date, the Warden shall make the determination set forth above in subsection VI.C.5 of this policy.
    - iii. Such postponement is more than thirty (30) days, then approximately fourteen (14) days prior to the re-scheduled execution date, the Warden shall make the determination set forth above in subsection VI.C.5 of this policy.
  - e. The Warden shall ensure that sufficient quantities of the execution drugs, which have been determined to be used for the scheduled execution, have been delivered to SOCF and stocked within an appropriate secured location and then notify the Director.
- D. Execution Preparation - Approximately twenty-four (24) hours prior to the scheduled execution**
- 1. The prisoner shall be transferred from Death Row and housed in the Death House at SOCF. The prisoner shall be constantly monitored by at least three (3) members of the Execution Team. An Execution Timeline shall be maintained.
  - 2. An Authorized Independently Licensed Mental Health Professional shall interview the prisoner periodically and submit progress reports to the Warden. All prisoner files shall be maintained in the Warden's office at SOCF, unless otherwise directed by the Warden.
  - 3. The Warden shall establish a line of communication with DRC legal staff, the Attorney General's Office, and the Governor's Office for notice of case status and/or other significant legal changes.
  - 4. The RSA shall provide counseling and spiritual support unless the prisoner requests not to have such contact.

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5. Beginning with his/her arrival at SOCF, the prisoner shall not be forced to meet with non-staff visitors that he or she does not wish to see.

E. Execution Preparation - The following events shall take place upon the prisoner's arrival at the Death House

1. Once the prisoner is at SOCF, the Death House shall be restricted to the following:

- Director or his/her designee;
- Warden;
- Members of the Execution Team;
- Managing Directors or Regional Directors;
- Communications Chief or his/her designee;
- Institution Deputy Warden;
- Administrative Assistant to the Warden;
- Chaplain;
- Physician;
- Independently Licensed Mental Health Professional;
- Chief of Security;
- Maintenance Superintendent;
- Any other person as deemed necessary by the Warden or Director.

2. The prisoner shall be evaluated by medical staff on the day of arrival at SOCF to evaluate the prisoner's veins and plan for the insertion of the IV lines. This initial evaluation shall include a "hands-on" examination as well as a review of the medical chart. At a minimum, a "hands-on" examination shall also occur later that evening. Potential problems shall be discussed, and potential solutions considered. The performance of these two evaluations shall be noted in the Execution Timeline. Any relevant portion of the medical file may be kept in the Death House for appropriate reference as needed. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.

3. SOCF chaplains shall make periodic visits to the prisoner, if requested by the prisoner.

4. The Deputy Warden shall assign security personnel to staff entrances, checkpoints, and to assist the Ohio State Highway Patrol (OSHP).

5. The Team Leader shall ensure that the prisoner's property is inventoried in front of the prisoner. The prisoner will have previously, pursuant to subsection VI.C.1 of this policy above, specified who is to receive his or her personal effects. The Team Leader shall ensure that the Inmate Property Record Disposition and Release (DRC2055), correctly specifies this information, and the Team Leader shall sign it to confirm the review.

6. The prisoner shall, pursuant to subsection VI.C.1 of this policy above, specify in writing his/her request for funeral arrangements, which shall be recorded in the Execution Information Release, (DRC1808).



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7. The prisoner shall be allowed contact visits with family, friends and/or private clergy, as approved by the Warden, between approximately 4:30 p.m. and 7:30 p.m. on the day prior to the scheduled execution. If the prisoner requests an attorney meeting, the prisoner shall be allowed one confidential attorney-client meeting, not to exceed an hour, on the day prior to the execution, following the prisoner's intake at SOCF. This visit will take place in an area where conversation is not audible to DRC staff. The visit will be visually monitored and recorded on video only. Before such meeting, all attorneys shall be subject to a thorough, gender-specific search of their person and property. Cell front visits as approved by the Warden shall be permitted between approximately 6:30 a.m. and 8:00 a.m. on the day of the scheduled execution. The attorney and spiritual advisor may continue to visit with the prisoner until approximately 8:45 a.m. The Warden may modify the frequency and duration of the visiting opportunities at his or her discretion.
8. The Team Leader shall ask the prisoner to identify his or her special meal request. The special meal shall be served the day prior to the scheduled execution at a time to be determined by the Warden.
9. The Warden shall brief key personnel, to include medical and mental health staff, in order to allow intake information to be obtained.
10. The Warden shall receive updates from security personnel and the OSHP on crowd control, demonstrations, pickets, etc.
11. The Chief of Security or designee shall brief the Warden on the level of tension within the remainder of the prison population.
12. The Warden shall relay any out of the ordinary activity to the Regional Director supervising SOCF.
13. The Execution Team shall continue to prepare as needed.

**F. Execution Preparation – Morning of Execution Day. At any time, as determined by the Team Leader, on the morning of the execution:**

1. The prisoner shall be permitted to take a shower and dress in the designated clothing the morning of the execution.
2. Vein Assessment

A "hands-on" examination of the prisoner's veins shall be made by a Medical Team Member before the IV is established. If any potential problems are identified they shall be discussed between the Medical Team, the Warden, the Director, and any Auxiliary Team Member, and potential solutions shall be considered. The performance of this evaluation shall be noted in the Execution Timeline.

3. Possession of Execution Drugs

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A Drug Administrator, in the presence of a second Drug Administrator, shall take possession of the Execution Drugs from the SOCF responsible pharmacist or another appropriately licensed pharmacist at the secured pharmacy storage area, and shall document possession of the Execution Drugs by signing form Order for Execution Medications (DRC2001). The Drug Administrator taking possession of the Execution Drugs, accompanied by a second Drug Administrator shall deliver the Execution Drugs to the Death House. These persons shall complete form Order for Execution medications (DRC2001).

4. Drug Preparation

- a. The Execution Drugs shall be prepared for injection by a Drug Administrator. The preparation of the drugs shall be monitored by a second Drug Administrator who shall independently verify the preparation and dosage of the Execution Drugs. Both Drug Administrators shall complete form Order for Execution Medications (DRC2001).
- b. If the Warden determines that a sufficient quantity of pentobarbital is available and has been selected to be used, then a Drug Administrator shall prepare the drug as follows:
  - i. Syringes 1 and 2: Five (5) grams of pentobarbital shall be withdrawn and divided into two (2) syringes labeled "1" and "2".
  - ii. Syringes 3 and 4: Five (5) additional grams of pentobarbital shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless the primary dose of five (5) grams proves to be insufficient for the procedure. If prepared, these two (2) additional syringes shall be labeled "3" and "4".
- c. If the Warden determines that a sufficient quantity of thiopental sodium is available and has been selected to be used, then a Drug Administrator shall prepare the drug as follows:
  - i. Syringes 1, 2, 3, 4 and 5: Five (5) grams of thiopental sodium shall be withdrawn and divided into five (5) separate syringes, labeled "1", "2", "3", "4" and "5".
  - ii. Syringes 6, 7, 8, 9 and 10: Five (5) additional grams of thiopental sodium shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless the primary dose of five grams proves to be insufficient for the procedure. If prepared, these five (5) additional syringes shall be labeled "6", "7", "8", "9" and "10".

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d. If the Warden determines that a sufficient quantity of the three-drug combination is available and has been selected to be used, then a Drug Administrator shall prepare those three drugs as follows:

FIRST DRUG:

- i. Syringes 1 and 2: The first drug shall be prepared as follows: Five hundred (500) milligrams of midazolam hydrochloride shall be withdrawn and divided into two separate syringes, labeled "1" and "2".
ii. Syringes A and B: If needed for contingent use, an additional amount of the first drug shall be prepared as follows: Five hundred (500) milligrams of midazolam hydrochloride shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless directed by the Warden or the primary dose of 500 milligrams of midazolam hydrochloride proves to be insufficient for the procedure. If prepared, these two (2) additional syringes shall be labeled "A" and "B".

SECOND DRUG:

- i. Syringes 3 and 4: The second drug shall be prepared as follows:
a) If the Warden has selected Vecuronium Bromide, then one hundred (100) milligrams of Vecuronium Bromide shall be withdrawn and divided into two separate syringes, labeled "3 and "4".
b) If the Warden has selected Pancuronium Bromide, then one hundred (100) milligrams of Pancuronium Bromide shall be withdrawn and divided into two separate syringes, labeled "3 and "4".
c) If the Warden has selected Rocuronium Bromide, then one thousand (1000) milligrams of Rocuronium Bromide shall be withdrawn and divided into two separate syringes, labeled "3 and "4".

THIRD DRUG:

- i. Syringes 5 and 6: The third drug shall be prepared as follows: Two hundred forty (240) milliequivalents of Potassium Chloride shall be withdrawn and divided into two separate syringes, labeled "5" and "6".
e. The drug preparation shall be documented as follows:
i. The Drug Administrator who prepared the Execution Drugs and the Drug Administrator who witnessed the preparation shall complete form Order for Execution Medications (DRC2001).

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ii. A Drug Administrator shall inform the Command Center of the time when all of the Execution Drugs have been prepared, and the Command Center shall record in the Execution Timeline the time that the all of the drugs were prepared.

- 5. Official witnesses to the execution will report to the institution. The victim's witnesses shall report to the Portsmouth Highway Patrol Post, or other Post or location designated by the Highway Patrol, for escort to the institution by designated SOCF personnel.
- 6. The prisoner shall be allowed to have visits as described in subsection VI.E.7 of this policy, above.
- 7. The RSA shall be present to counsel and provide spiritual support to the prisoner and staff.
- 8. All communication equipment shall be tested, including primary and secondary communication, with both the Governor's Office and the Office of the Attorney General.
  - a. Primary communications shall be via a telephone line opened directly to the Command Center from the execution chamber. This line shall be tested one (1) hour prior to the scheduled execution. Other than testing, this line shall remain open.
  - b. Secondary communications shall be via cellular telephone.
  - c. In the event that both the primary and secondary communications are inoperable, the execution shall be delayed until communications are established.

**G. Execution Preparation - Approximately fifteen (15) minutes prior to the scheduled execution**

- 1. Witnesses Transported to Death House.
 

All authorized witness groups shall be escorted to the Death House separately by designated staff. Witnesses shall be escorted to viewing rooms before the death warrant is read.
- 2. Phone for Prisoner's Counsel
 

If the prisoner chooses to have his or her counsel as a witness, at all times after counsel enters the witness room, counsel shall have free access to the phone near the entrance door of the Death House.

  - a. The phone in the Death House foyer will enable counsel to call into the waiting room for prisoner's counsel in the prison compound where another person, whose presence is arranged by counsel for the prisoner and whose presence satisfies the prison's security concerns, and which person is acting on behalf of the prisoner and his or her counsel, will be situated during all times after the death warrant is read.

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b. The Warden shall allow this other person to have access to his or her own laptop computer and to a phone that can connect that person to an outside line.

3. Death Warrant

The Warden shall read the death warrant to the prisoner.

4. Closed-Circuit Camera Activated

Immediately after the death warrant is read, the closed-circuit camera in the execution chamber shall be turned on so that witnesses in the witness rooms can view the subsequent activities in the execution chamber on the television screen in those rooms.

5. Prisoner Enters Execution Chamber

The Warden and Execution Team shall escort the prisoner to the execution chamber, assist the prisoner onto the bed and secure the straps. The team shall roll up the prisoner's sleeves or take other steps to ensure that the arms are plainly visible to persons in the chamber and to those in the equipment room.

6. Curtain Closed

Once the prisoner is secured to the bed, the curtain shall be closed prior to the insertion of the IV needles. The closed-circuit camera shall remain on to allow the witnesses to view the establishment of IV site(s).

7. IV Site(s) Preparation & Establishment

a. The Medical Team shall enter the Execution Chamber to prepare IV site(s).

b. The Medical Team shall establish one or two viable IV sites.

i. The arm veins near the joint between the upper and lower arm shall be utilized as the preferred site for the IV injection.

ii. In the event that the Medical Team member is unable to establish an IV at a preferred site, the Medical Team member(s) may establish an IV at alternative site(s) for use by the Drug Administrator when administering execution drugs.

iii. The Execution Team may utilize any non-invasive device such as a light, illuminator or ultrasound device, if desired, to assist in locating a vein.

c. The Medical Team member(s) shall be allowed as much time as is necessary to establish viable IV site(s).

d. If the Medical Team member(s) are unable to establish viable IV site(s), the Medical Team members shall consult with the Warden, the Director, and any Auxiliary Team

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Member for the purpose of determining whether or how long to continue efforts to establish viable IV site(s).

8. Confirming & Recording Establishment of IV Site(s)

- a. A Medical Team member shall test the viability of the IV site with a low-pressure saline drip through IV tubing. If necessary, a heparin lock may be attached to the IV needle as an alternative to the saline drip.
- b. The Warden, Team Leader, and a Drug Administrator shall all confirm the visibility of the IV sites.
- c. The Medical Team member(s) shall exit the Execution Chamber and shall announce the number of attempts made to establish viable IV site(s) to the Command Center contact who shall then inform the Command Center, for capture on the Execution Timeline.
- d. The Command Center shall record in the Execution Timeline the number of attempts.

9. Curtain Opened

The curtain shall be opened after the establishment of viable IV site(s). The curtain shall remain open during the remainder of the execution until the examination for the pronouncement of death, unless the execution is abandoned or halted.

10. Last Words

The Warden shall ask the prisoner if he or she has any last words. If the prisoner has a last statement, he or she will be allowed to make it while the witnesses are present in the adjacent viewing rooms, and are able to see him or her and hear him or her via microphone.

- a. There shall generally be no restriction on the content of the prisoner's statement and no unreasonable restriction on the duration of the prisoner's last statement.
- b. The Warden may impose reasonable restrictions on the length of the statement. The Warden may also terminate a statement that he or she believes is intentionally offensive to the witnesses.

H. Commencement of Execution

i. Execution by IV Injection

- a. If the Warden has decided, pursuant to subsection VI.C.5 of this policy above, to proceed with pentobarbital, then upon the Warden's signal, a Drug Administrator shall intravenously administer the previously prepared syringes 1 and 2 of pentobarbital.

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- b. Alternatively, if the Warden has decided, pursuant to subsection VI.C.5 of this policy above, to proceed with thiopental sodium, then upon the Warden's signal, a Drug Administrator shall intravenously administer the previously prepared syringes 1, 2, 3, 4 and 5 of thiopental sodium.
- c. Alternatively, if the Warden has decided, pursuant to subsection VI.C.5 of this policy above, to proceed with the three-drug combination, then upon the Warden's signal, a Drug Administrator shall proceed as follows:
  - i. FIRST DRUG: intravenously administer the previously prepared syringes 1 and 2 of midazolam hydrochloride.
  - ii. Following administration of syringes 1 and 2 and before the administration of the second and third drugs described in this subsection below, a Drug Administrator shall reenter the Execution Chamber to assess the prisoner's consciousness.
    - (a) If the prisoner is found to be unconscious, then the process shall continue with the administration of the second and third drugs, as described below.
    - (b) If the prisoner is found to be conscious, then the Drug Administrator shall consult with a Second Drug Administrator, the Warden and the Director, and any Auxiliary Team Member. After consultation, the IV sites may be checked and changed. The Warden shall decide how to proceed, including but not limited to waiting for the passage of time, requesting an additional assessment by a Drug Administrator, and/or directing the administration of contingency-use syringes A and B.
    - (c) If syringes A and B are administered, a Drug Administrator shall reenter the Execution Chamber following administration and assess the prisoner's consciousness.
      - (i) If the prisoner is found to be unconscious, then the process shall continue with the administration of the second and third drugs, as described below.
      - (ii) If the prisoner is found to be conscious, then the Drug Administrator shall consult with a Second Drug Administrator, the Warden and the Director, and any Auxiliary Team Member. After consultation, the IV sites may be checked and changed. The Warden shall decide how to proceed, including but not limited to waiting for the passage of time, requesting an additional assessment by a Drug Administrator, and/or directing the administration of additional syringes of the first drug. If requested, additional syringes of the first drug shall be prepared by a Drug Administrator, in the same manner as contingent syringes A and B, with new consecutively lettered labels.
  - iii. SECOND DRUG: Following administration of the first drug and confirmation that the prisoner is unconscious, the Drug Administrator shall intravenously administer the previously prepared syringes 3 and 4 of the selected drug.

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- iv. THIRD DRUG: Following administration of the first and second drugs, the Drug Administrator shall intravenously administer the previously prepared syringes 5 and 6 of potassium chloride.
  - d. The low-pressure saline drip shall be allowed to flush saline through the line(s) during and following completion of the IV drug administration.
  - e. A second Drug Administrator shall be present in the equipment room to observe the administration of the Execution Drugs. This Drug Administrator shall announce the start and finish times of each injection to the Command Center contact who shall then inform the Command Center for capture on the Execution Timeline.
  - f. The Command Center shall record in the Execution Timeline the start and finish times of each injection.
  - g. Following administration of all of the Execution Drugs, a Drug Administrator shall reenter the Execution Chamber to inspect the IV site for evidence of incontinence or infiltration and to listen to the prisoner for breathing and heart sounds.
  - h. If a sufficient time for death to occur has passed but the prisoner has not died, a Drug Administrator shall consult with a second Drug Administrator, the Warden and the Director, and any Auxiliary Team Member. The Warden, after consultation with the Director, shall determine whether to proceed with any additional syringes of Execution Drugs, and may order a Drug Administrator to prepare such additional syringes, as necessary, and intravenously administer them, in accordance with the terms of this policy, above.
  - i. At the completion of the process and after a sufficient time for death to have occurred, the curtain shall be closed and an appropriate medical professional shall evaluate the prisoner to confirm death. The curtain shall then be re-opened and the Warden shall announce the time of death. In the event that the appropriate medical professional cannot confirm that death has occurred, the curtain shall be reopened until an appropriate time has passed to reevaluate the prisoner.
2. Using Alternative IV Sites
- a. The Team Leader, a Medical Team member, and the Warden shall observe the prisoner during the injection process to look for signs of swelling or infiltration at the IV site, blood in the catheter, and leakage from the lines and other unusual signs or symptoms.
  - b. The Execution Team shall communicate to the Drug Administrators any problems detected during the administration of the Execution Drugs.
  - c. The Drug Administrator who is administering the Execution Drugs shall determine whether it is necessary to use another viable IV site.



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- d. In the event that the Drug Administrator who is administering the Execution Drugs detects a problem in the administration of the drugs, the Drug Administrator shall use any other viable IV site. No prior consultation with the Warden or other members of the Execution Team is required.
  - e. Whenever it is necessary to change IV sites, the Drug Administrator shall administer a full dosage of the Execution Drugs through the alternate, viable IV site using additional syringes, as necessary, prepared in accordance with the terms of this policy, above.
  - f. In the event the Drug Administrator changes to another viable IV site, the Drug Administrator shall inform the Command Center contact, who shall then inform the Command Center for capture on the Execution Timeline. The Command Center shall record in the Execution Timeline any change in IV site(s).
3. Establishing Other IV Sites(s)
- a. In the event there is no alternative viable IV site, the Medical Team shall consult with the Warden and Director.
  - b. The Warden, following consultation with the Director, shall determine whether to proceed with execution by IV injection.
  - c. In the event the Warden determines to proceed with execution by IV injection, the Execution Team shall repeat the steps in subsections VI.G.6-8 of this policy, above, and continue with the execution as provided for in subsection VI.H of this policy, above.
  - d. The Warden shall ensure the Command Center is informed of his decision. The Command Center shall record the Warden's decision in the Execution Timeline.

**I. Post-Execution**

- 1. The Warden, or his/her designee, shall notify the Director that the execution has been carried out.
- 2. The Medical Team shall remove the IV equipment and clean the IV sites.
- 3. The RSA or the prisoner's Spiritual Advisor shall anoint the body of the prisoner if requested by the prisoner.
- 4. The RSA shall coordinate the burial of the prisoner's body with local chaplains if the prisoner's family does not want the body.
- 5. The Execution Team shall remove the deceased from the execution bed and place him or her on a gurney.

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6. Disposition of the body shall be in accordance with arrangements made prior to the execution at the prisoner's request.
7. The Warden shall sign and return the death warrant to the Court, indicating the execution has been carried out.
8. Prepared Execution Drugs
  - a. A Drug Administrator shall properly dispose of any Execution Drugs that have been prepared for administration but not been utilized.
  - b. A Second Drug Administrator shall witness the disposal.
  - c. Both Drug Administrators shall document the disposal in form Order for Execution Medications (DRC2001).
9. Unprepared Execution Drugs
  - a. A Drug Administrator shall properly return any unprepared Execution Drugs to the secured pharmacy storage area.
  - b. A Second Drug Administrator shall witness the return of the unprepared Execution Drugs.
  - c. Both Drug Administrators shall document the return of the unprepared Execution Drugs in form Order for Execution Medications (DRC2001).
10. Recording Used Execution Drugs
  - a. A Drug Administrator shall document the name or description, and any expiration date or beyond use date, of the Execution Drugs used, in form Order for Execution medications (DRC2001).
  - b. An Execution Team member shall save the packaging of the used Execution Drugs or take photographs of such packaging. None of the functions described in this subsection shall be governed by subsection V.3 of this policy, above.
11. After-Action Review

Immediately following an execution, the Execution Team and the on-site administrators directly involved in the execution process shall meet to review the process of the execution. Any unique or unusual events shall be discussed, as well as opportunities for improvement and successful procedures. Actions and documentation of the events shall be reviewed to identify any discrepancies. Discrepancies from the policy shall be clearly described and noted in a written record. The record shall be signed and dated by the Warden.

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- 12. Critical Incident Debriefing
  - a. The Warden shall ensure that critical incident debriefings are available for the Execution Team and staff participants immediately following the execution.
  - b. The Critical Incident Debriefing team shall conduct interviews in accordance with CIM guidelines.
  - c. The RSA shall be available for debriefing for the family of the prisoner.

13. Quality Assurance Review

The Director shall designate a Special Assistant for Execution Policy and Procedures. The Special Assistant shall evaluate the performance of the Execution Team, review the conduct of court-ordered executions and report to the Director of the Department. His or her duties will consist of reviewing documentation, training, and professional qualifications, to ensure compliance with the written policy. The Special Assistant may utilize assistants as necessary to compile or assess the information, and may consult with others consistent with the confidentiality of the process. Whenever appropriate, the Special Assistant shall consult with a properly trained medical person when reviewing the medical aspects of the execution procedures. The Special Assistant will also provide consultation and advice concerning modifications in the written policy. The Special Assistant will prepare a report to the Director following each execution, with any suggestions or recommendations that are appropriate.

**Related Department Forms:**

|  |         |
|--|---------|
| Execution Information Release                  | DRC1808 |
| Order for Execution Medications                | DRC2001 |
| Inmate Property Record Disposition and Release | DRC2055 |

## DRC Policy Impact Analysis

2. Are there any overlaps or conflicts with existing agency directives? This includes, but is not limited to, Administrative Regulations, Department Policies, Operations Manuals, ORC, etc. If yes, please list the related directives and explain why the directive was not consolidated into the pre-existing directive:

None.

3. List any facilities, entities, or groups who should be exempted from the policy directive (i.e. inmates, DPCS, private prisons, contractors, CTA, OPI, etc.) Refer to the Applicability Statement in the policy to ensure consistency.

None.

4. Please answer yes or no to the following questions. Please provide a summary in the below text box for any "YES" responses.

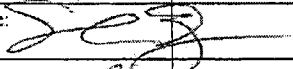
| Does the new directive or proposed revision:  | Yes                                 | No                                  |
|---|-------------------------------------|-------------------------------------|
| <b>Require updates to any DRC forms?</b><br><i>If yes, explain the impact including whether old forms can be bought out or the form is electronic.</i>                            | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |
| <b>Have an impact on other areas of the agency?</b><br><i>If yes, include evidence that such revisions were discussed with the impacted area.</i>                                 | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <b>Have an impact on ACA Accreditation?</b>   | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <b>Have an impact on Labor Relations or Human Resources?</b>  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <b>Have a fiscal impact or impact on Information Technology?</b>  | <input type="checkbox"/>            | <input checked="" type="checkbox"/> |
| <b>Have a training impact on any part of the agency?</b><br><i>Directives are NOT to contain a new training component without the express approval of the CTA Superintendent.</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            |

**Please provide a summary to any of the above questions with a "YES" response:**

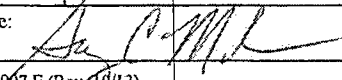
DRC Forms 2001, 4083, 4084 and 4085 will be updated to be consistent with the terms of the updated Policy. The Execution Team will be trained on the new, updated Policy, consistent with terms of the Policy.

All proposed new or revised policies must be submitted by the policy owner or designee and approved by the appropriate Managing Director, Deputy Director, or Regional Director or designee. Please indicate below that such review and approval has been granted.

**Submitted by:**

|   |                            |                  |
|---|----------------------------|------------------|
| Name:  | Title: Chief Legal Counsel | Date: 10-12-2016 |
|---|----------------------------|------------------|

**Approved by:**

|   |                 |               |
|---|-----------------|---------------|
| Name:  | Title: Director | Date: 6/12/16 |
|---|-----------------|---------------|

**From:** stephen.gray@odrc.state.oh.us  
**Sent:** Friday, October 07, 2016 11:23 AM  
**To:** Jondrea.Parrish@odrc.state.oh.us  
**Subject:** 01-COM-11 -revised policy  
**Attachments:** 01-COM-11 (eff 7 October 2016).docx

Steve Gray  
Chief Counsel and Managing Director of Risk Management  
Ohio Department of Rehabilitation and Correction  
614-752-1773

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STATE OF OHIO



DEPARTMENT OF REHABILITATION AND CORRECTION

|  |  |
|--|--|
| SUBJECT:<br>Execution                        | PAGE <u>1</u> OF <u>22</u>   |
|  | NUMBER: 01-COM-11  |
| RULE/CODE REFERENCE:<br>ORC 2949.22; 2949.25 | SUPERSEDES:<br><br>01-COM-11 dated 06/29/15<br><del>04/09/15</del> |
| RELATED ACA STANDARDS:                       | EFFECTIVE DATE:<br><br><del>June 29, 2015</del><br>October 7, 2016 |
|  | APPROVED:  |

**I. AUTHORITY**

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

**II. PURPOSE**

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

**III. APPLICABILITY**

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

**IV. DEFINITIONS**

**Auxiliary Team Member** – A physician, advanced level provider or registered nurse who has been designated by the Director to provide advice and consultation as described in this policy.

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

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

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- Exploring religious convictions and feelings.

**Death House** - A physical location within the Southern Ohio Correctional Facility (SOCF) used for the execution of a death-sentenced prisoner.

**Death Row** - (1) A housing area at the Chillicothe Correctional Institution (CCI) or Ohio State Penitentiary (OSP) that has been designated by the Director of the Department of Rehabilitation and Correction to house male prisoners who are committed to the Department with a sentence of death; (2) A housing area at the Ohio Reformatory for Women (ORW) that is similarly designated to house female prisoners committed to the Department with a sentence of death; (3) A housing area at the Franklin Medical Center (FMC) that has been designated by the Director of the Department of Rehabilitation and Correction to house male or female prisoners whose medical needs are inconsistent with assignment to CCI, ORW, or OSP pursuant to Department Policy 68-MED-13, Medical Classification; or such other facility as may be deemed appropriate by the Director. Death Row is also a reference to a housing status for prisoners sentenced to death; it is not a security classification.

**Director** - As used in the policy, the term "Director" refers to the current Director of the Ohio Department of Rehabilitation and Correction or the Director's designee.

**Drug Administrator** - Any qualified member of the Medical Team who administers any execution drug or witnesses the preparation and administration of any execution drug. A Drug Administrator shall be currently qualified under Ohio Law to administer and prepare drugs for intravenous injections. A Drug Administrator may also establish, or assist in, establishing, or assess, IV connections.

**Execution Drugs** - As used in this policy, the terms "Execution Drugs" means any of the following three options, under whatever names those drugs may be available to DRC from a pharmacy, manufacturer, supplier, wholesaler, distributor, pharmacist, or compounding pharmacy:

- 1) Pentobarbital; or
- 2) Thiopental sodium; or
- 3) A three-drug combination of:
  - a. Midazolam Hydrochloride; and
  - b. One of the following three drugs:
    - i. Vecuronium bromide; or
    - ii. Pancuronium bromide; or
    - iii. Rocuronium bromide; and
  - c. Potassium Chloride.

**Execution Team** - A group consisting of no less than twelve (12) members designated by the Warden of the Southern Ohio Correctional Facility to carry out court-ordered executions. **The Warden shall designate one team member to be the Team Leader who shall communicate with the Warden and the Director as necessary to carry out the terms of this Policy. The Team's ~~Their~~ duties also include preparation and testing of equipment, carrying out pre- and post-execution activities, and counseling with the prisoner.**

**Execution Timeline** - A record of events before and during an execution to include the specific information required to be recorded by this policy and other information at the discretion of the Execution Team.

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**Medical Team Member** – A person who is a member of the Execution Team and who is currently qualified under Ohio Law to administer and prepare drugs for intravenous injections, or who has at least one year experience as a certified medical assistant, phlebotomist, EMT, paramedic, or military corpsman, or who is currently certified or licensed within the United States as a registered nurse or nurse practitioner.

**Religious Services Administrator (RSA)** - The Religious Services Administrator is the coordinator and administrator for religious services for the Ohio Department of Rehabilitation and Correction (DRC). The RSA will provide counseling and support services for the offender and others consistent with the provisions of this ~~policy~~ **directive**.

**Reprieve** - The postponement of an execution.

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

**Support Staff** – Support Staff shall mean those individuals who have specified roles in this policy including, but not limited to, medical staff, mental health staff, Health Care Administrators (HCAs), appointed designees, correction officers at DRC institutions, the RSA, SOCF Chief of Security or his/her designee, SOCF Deputy Warden(s), the Special Assistant designated in this policy, and/or other general DRC staff. Support Staff are not members of the Execution Team. Overhead management staff at DRC are not Support Staff, and not members of the Execution Team. As defined above in this section IV, only those individuals designated by the Warden to carry out court-ordered executions shall be Execution Team members. The Director and the Warden(s) are not members of the Execution Team.

**Warden** – As used in the policy, the term “Warden” refers to the current Warden of the Southern Ohio Correctional Facility (SOCF), or his or her current Deputy Warden, or the Director’s designee, unless the policy uses language which indicates another Warden of another institution.

**V. POLICY**

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

The procedures set forth in this policy are to be strictly followed. Any situation that arises that would make following these policies difficult, impractical, or impossible shall be immediately reported to the Director or the Warden. Any variations of a substantial nature must be approved by the Director as described in this policy.

There will be no variations from the following requirements:



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1. At least three Medical Team Members, two of whom are authorized to administer drugs under Ohio law, shall be used in the conduct of court-ordered executions.
2. The drugs required by this policy shall be used.
3. Functions required to be performed by medically-qualified persons, as described in this policy, shall be performed by Medical Team Members.
4. All Execution Team functions shall be performed by appropriately trained and qualified members of the Execution Team.
5. Only the Director can authorize a variation from the procedures stated in this policy but not a variation from the four requirements listed immediately above in subsections V.1.2.3. and 4. of this policy.

## VI. PROCEDURES

### A. General Guidelines

1. All prisoners sentenced to death by a court of law shall be transported to a reception center within the Department of Rehabilitation and Correction for initial processing. Upon completion of the reception process, the prisoner shall immediately be transferred to the designated institution: CCI or OSP for male prisoners or ORW for female prisoners. The Director may designate FMC or another appropriate DRC institution as necessary.
2. All court-ordered executions shall be carried out at the Southern Ohio Correctional Facility and will be planned to commence at **approximately** 10:00 a.m. on the scheduled execution date, subject to developing circumstances.
3. Unless otherwise designated by the Director/designee, the prisoner shall remain on Death Row until transferred to the Death House for scheduled execution.
4. The Ohio Supreme Court shall designate the date of execution. Upon receipt of a scheduled execution date, the Warden of the institution housing the prisoner shall notify the Director, the RSA, and the Warden at SOCF.
5. Attendance at the execution is governed by Ohio Revised Code section 2949.25 and includes:
  - a. The Warden or Acting Warden of the institution where the execution is to be conducted and such number of correction officers or other persons as the Warden or Acting Warden thinks necessary to carry out the death sentence.
  - b. The sheriff of the county in which the prisoner was tried and convicted.

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- c. The Director of the Department of Rehabilitation and Correction, or designee, and any other person selected by the Director/designee to ensure that the death sentence is carried out.
  - d. Any Auxiliary Team Member whose role will be to provide consultation or advice as may be necessary. An Auxiliary Team Member shall attend such number of execution rehearsals as the Warden may consider necessary, but no less than one rehearsal per execution. An Auxiliary Team Member shall attend training sessions on topics identified in subsection VI.B.4.b. of this policy, below. An Auxiliary Team Member shall not be required to attend an execution, but may, at the discretion of the Warden, attend an execution and provide consultation or advice to the Warden, the Director and the Medical Team.
  - e. The prisoner may select one or two of the following persons: the RSA, minister-of-record, clergy, rabbi, priest, imam, or regularly ordained, accredited, or licensed minister of an established and legally cognizable church, denomination or sect, subject to the approval of the Warden.
  - f. Three persons designated by the prisoner who are not confined in any state institution subject to the approval of the Warden or Acting Warden based on security considerations. The prisoner may also request that one or two attorneys attend the execution.
  - g. Three persons designated by the immediate family of the victim, subject to the approval of the Warden or Acting Warden based on security consideration, as detailed in Department Policy 03-OVS-06, Victim Involvement in the Execution Process.
  - h. Representatives of the news media who are authorized by the Director, which may include representatives of the following: a newspaper, a television station, and a radio station.
6. Given the gravity of the sentence to be carried out, it is imperative that these procedures be strictly adhered to and all actions by Department personnel in carrying out the sentence be fully documented as required by this policy. However, due to the difficult and sometimes unpredictable nature of the tasks to be performed in carrying out the sentence it may not always be possible to follow these procedures to the letter. Thus, variations from the requirements of the policy ~~directive~~ may sometimes be necessary. Any Support Staff, overhead management staff at DRC, or member of the Execution Team who determines for any reason it is difficult, impractical, or impossible to strictly follow the procedures in this policy ~~directive~~ shall immediately report the same to the Warden or to the Director. The Director may then consult with the Warden and others as appropriate. Only the Director may authorize a variation from the procedures in this policy ~~directive~~. Any such variation shall be documented as soon as possible.

**B. Execution Preparation – Approximately thirty (30) days prior to the scheduled execution date**

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## 1. Notification

The Warden of the institution where the prisoner is housed shall notify the Director of an upcoming scheduled execution date. Notification may also be provided to the supervising Regional Director of SOCF, DRC Chief Counsel, DRC Managing Director of Operations, the Adult Parole Authority (APA), the Ohio State Highway Patrol (Portsmouth and Jackson), and the Office of Victim Services.

## 2. Execution Drugs

- a. The Warden shall determine whether there will be sufficient quantities of the ~~E~~execution ~~D~~drugs available for the scheduled execution and report those findings to the Director.
- b. The Warden's assessment of what constitutes a sufficient quantity of ~~E~~execution ~~D~~drugs shall include ensuring a sufficient amount for a contingency against contamination or inadvertent loss.
- c. At his discretion, the Warden may, at any time, direct the Health Care Administrator, the Health Care Administrator's designee, or SOCF's responsible pharmacist, to order ~~E~~execution ~~D~~drugs from a ~~licensed pharmacist at the Ohio Pharmacy Office of Support Services~~ of the Ohio Department of Mental Health and Addiction Services, or from a pharmacy, manufacturer, supplier, **wholesaler** or distributor, or from any other licensed pharmacist.
- d. All ~~E~~execution ~~D~~drugs delivered to SOCF shall be maintained in a secured location.
- e. If compounded ~~E~~execution ~~D~~drugs are to be used, a sample from the batch of those drugs will be analytically tested before they are used. The sample will be tested for identity and potency, pursuant to the applicable USP/NF monograph. DRC will only use the batch of compounded drugs if its sample is properly identified as the intended drug and its tested potency is within the applicable monograph standard. At the discretion of the Director, a sample of non-compounded ~~E~~execution ~~D~~drugs may also be tested for identity and potency pursuant to the applicable monograph standard.

## 3. Assessment of Prisoner

- a. Every possible effort shall be made to anticipate and plan for foreseeable difficulties in establishing and maintaining the intravenous (IV) lines. The prisoner shall be evaluated by appropriately trained medical staff approximately twenty-one (21) days prior to the execution to evaluate the prisoner's veins and plan for the insertion of the IV lines. This evaluation shall include a "hands-on" examination as well as a review of the medical chart to establish any unique factors which may impact the manner in which the Execution Team carries out the execution. Potential problems shall be noted and discussed, and potential solutions considered, in advance of the execution. Concerns or potential issues shall be communicated to the Warden or designee at SOCF as soon as possible. None of the functions described in this subsection shall be governed by subsection V.3. of this policy, above.

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- b. Any evaluation that is conducted by medical staff pursuant to subsection VI.B.3.a. of this policy, above shall be noted in the prisoner's medical chart.
- c. The prisoner's medical condition shall be assessed in order to identify any necessary accommodations or contingencies that may arise from the prisoner's medical condition or history. Any medical condition or history that may affect the performance of the execution shall be communicated as soon as possible to the Warden of SOCF, who shall confer with others as necessary to plan such accommodations or contingencies. The fact of the assessment and any conclusions shall be documented in the prisoner's medical chart. None of the functions described in this subsection shall be governed by subsection V.3. of this policy, above.
- d. Any concerns for establishing or maintaining IV lines and any concerns or plans for medical accommodations or contingencies shall be communicated to the Execution Team in order that these things may be discussed and addressed in execution trainings or rehearsals.
- e. An appropriate member of the mental health staff shall evaluate the prisoner approximately twenty-one (21) days prior to the execution to evaluate his or her stability and mental health in light of the scheduled execution. Any concerns or contingencies affecting the execution process shall be communicated to the Warden of SOCF as soon as possible. The fact of the assessment and any conclusions shall be documented in the prisoner's mental health record. None of the functions described in this subsection shall be governed by subsection V.3. of this policy, above.
- f. Beginning approximately thirty (30) days prior to the scheduled execution date until the prisoner's transfer from Death Row to SOCF, the prisoner shall be evaluated by mental health staff to determine the prisoner's appropriate observation level, housing status and access to personal property. None of the functions described in this subsection shall be governed by subsection V.3. of this policy, above.

#### 4. Training

- a. The Execution Team shall begin conducting **weekly** training sessions **at least 30 days before** ~~no less than once per week until~~ the scheduled date of execution. The training shall address any accommodations or contingencies that might be **identified or** anticipated.
- b. Training in the following topics shall be provided for every member of the Execution Team, and any Auxiliary Team Member designated by the Director, prior to service and at least once per year thereafter:
  - i. The general nature and effects of the ~~E~~execution ~~D~~drugs that are used during the execution process;
  - ii. Drug administration procedures, including the insertion of the IV needles and administration of injections;
  - iii. Signs or symptoms of problems when administering **the Execution D**drugs; and

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iv. Any legal developments of significance.

5. Other Preparations

- a. The RSA shall make contact with the prisoner to establish counseling and family contact information.
- b. Prior to commencement of the initial training session, the Warden or the Team Leader shall verify and document the qualifications of the Medical Team members. Medical team members shall provide evidence of certification status at least once per year and upon any change in status.
- c. The Team Leader shall ensure that each member of the Execution Team has received a copy of the current version of this execution policy. Each member of the Execution Team shall sign for its receipt.

C. Execution Preparation - Approximately fourteen (14) days prior to the execution

1. The Warden of the institution where the prisoner is housed shall have the Execution Information Release (DRC1808) completed by the prisoner. This form will verify information on the prisoner, visitors, witnesses, spiritual advisor, attorney, requested witness, property, and funeral arrangements.
2. The names of official witnesses/media witnesses shall be supplied to the Warden, as outlined in this policy.
3. The names and relationships of the victim's witnesses shall be supplied to the Warden.
4. The RSA shall provide family information from the prisoner to the Warden.
5. Approximately fourteen (14) days prior to the execution, the Warden shall determine whether a sufficient quantity of **Execution Drugs** ~~pentobarbital (under whatever name it may be available from a pharmacy, manufacturer, supplier, distributor, pharmacist, or compounding pharmacy) or a sufficient quantity of thiopental sodium (under whatever name it may be available from a pharmacy, manufacturer, supplier, distributor, pharmacist, or compounding pharmacy)~~ is available for use at the scheduled execution.
  - a. If a sufficient quantity of **the Execution Drugs** ~~pentobarbital or thiopental sodium~~ is available, then the **Warden shall select one of the following drug options to be intravenously administered at the** scheduled execution: ~~shall proceed with intravenous administration of either pentobarbital or thiopental sodium, as determined by the Warden, in accordance with the terms of this policy.~~
    - i. **Pentobarbital; or**
    - ii. **Thiopental sodium; or**
    - iii. **A three-drug combination of:**
      - (a) **Midazolam Hydrochloride; and**
      - (b) **One of the following three drugs:**

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- (i) Vecuronium Bromide; or
- (ii) Pancuronium Bromide; or
- (iii) Rocuronium Bromide; and

(c) Potassium Chloride.

- b. If a sufficient quantity of ~~the Execution Drugs pentobarbital or thiopental sodium~~ is not available, or if at any time ~~any of the selected Execution Drug~~ ~~the available pentobarbital or thiopental sodium~~ is deemed **unsuitable** or unusable by the Medical Team, then the Warden shall consult with the Director and they shall notify the Governor.
- c. Notice of the Warden's determination, concerning the selection of ~~E~~execution ~~D~~drugs or insufficient quantities of such drugs to be used for intravenous administration, shall be provided to the prisoner.
- d. If the scheduled execution date is postponed for any reason, and:
  - iv. such postponement is less than ten (10) days, then no later than four (4) days prior to the re-scheduled execution date, the Warden shall make the determination set forth above in subsection VI.C.5. of this policy.
  - v. such postponement is between ten (10) and thirty (30) days, then no later than seven (7) days prior to the re-scheduled execution date, the Warden shall make the determination set forth above in subsection VI.C.5. of this policy.
  - vi. such postponement is more than thirty (30) days, then approximately fourteen (14) days prior to the re-scheduled execution date, the Warden shall make the determination set forth above in subsection VI.C.5. of this policy.
- e. The Warden shall ensure that sufficient quantities of the execution drugs, which have been determined to be used for the scheduled execution, have been delivered to SOCF and stocked within an appropriate secured location and then notify the Director.

**D. Execution Preparation - Approximately twenty-four (24) hours prior to the scheduled execution**

1. The prisoner shall be transferred from Death Row and housed in the Death House at SOCF. The prisoner shall be constantly monitored by at least three (3) members of the Execution Team. An Execution Timeline shall be maintained.
2. An Authorized Independently Licensed Mental Health Professional shall interview the prisoner periodically and submit progress reports to the Warden. All prisoner files shall be maintained in the Warden's office at SOCF, unless otherwise directed by the Warden.

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3. The Warden shall establish a line of communication with DRC legal staff, ~~and the Attorney General's Office, and the Governor's Office~~ for notice of case status and/or other significant legal changes.
4. The RSA shall provide counseling and spiritual support unless the prisoner requests not to have such contact.
5. Beginning with his/her arrival at SOCF, the prisoner shall not be forced to meet with non-staff visitors that he or she does not wish to see.

**E. Execution Preparation - The following events shall take place upon the prisoner's arrival at the Death House**

1. Once the prisoner is at SOCF, the Death House shall be restricted to the following:

Director or his/her designee(s);  
Warden;  
Members of the Execution Team;  
Managing Directors or Regional Directors;  
Communications Chief/designee;  
Institution Deputy Warden;  
Administrative Assistant to the Warden;  
Chaplain;  
Physician;  
Independently Licensed Mental Health Professional;  
Chief of Security;  
Maintenance Superintendent;  
Any other person as deemed necessary by the Warden or Director.

2. The prisoner shall be evaluated by medical staff on the day of arrival at SOCF to evaluate the prisoner's veins and plan for the insertion of the IV lines. This initial evaluation shall include a "hands-on" examination as well as a review of the medical chart. At a minimum, a "hands-on" examination shall also occur later that evening. Potential problems shall be discussed, and potential solutions considered. The performance of these two evaluations shall be noted in the Execution Timeline. Any relevant portion of the medical file may be kept in the Death House for appropriate reference as needed. None of the functions described in this subsection shall be governed by subsection V.3. of this policy, above.
3. SOCF chaplains shall make periodic visits to the prisoner, if requested by the prisoner.
4. The Deputy Warden shall assign security personnel to staff entrances, checkpoints, and to assist the Ohio State Highway Patrol (OSHP).
5. The Team Leader shall ensure that the prisoner's property is inventoried in front of the prisoner. The prisoner will have previously, pursuant to subsection VI.C.1. of this policy above, specified who is to receive his or her personal effects. The Team Leader shall ensure that the Inmate Property Record Disposition and Release (DRC2055), correctly specifies this information, and the Team Leader shall sign it to confirm the review.

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6. The prisoner shall, pursuant to subsection VI.C.1. of this policy above, specify in writing his/her request for funeral arrangements, which shall be recorded in the Execution Information Release, (DRC1808).
  7. The prisoner shall be allowed contact visits with family, friends and/or private clergy, as approved by the Warden, between approximately 4:30 p.m. and 7:30 p.m. on the day prior to the scheduled execution. If the prisoner requests an attorney meeting, the prisoner shall be allowed one confidential attorney-client meeting, not to exceed an hour, on the day prior to the execution, following the prisoner's intake at SOCF. This visit will take place in an area where conversation is not audible to DRC staff. The visit will be visually monitored and recorded on video only. Before such meeting, all attorneys shall be subject to a thorough, gender-specific search of their person and property. Cell front visits as approved by the Warden shall be permitted between approximately 6:30 a.m. and 8:00 a.m. on the day of the scheduled execution. The attorney and spiritual advisor may continue to visit with the prisoner until approximately 8:45 a.m. The Warden may modify the frequency and duration of the visiting opportunities at his or her discretion.
  8. The Team Leader shall ask the prisoner to identify his or her special meal request. The special meal shall be served the day prior to the scheduled execution at a time to be determined by the Warden.
  9. The Warden shall brief key personnel, to include medical and mental health staff, in order to allow intake information to be obtained.
  10. The Warden shall receive updates from security personnel and the OSHP on crowd control, demonstrations, pickets, etc.
  11. The Chief of Security or designee shall brief the Warden on the level of tension within the remainder of the prison population.
  12. The Warden shall relay any out of the ordinary activity to the Regional Director supervising SOCF.
  13. The Execution Team shall continue to prepare as needed.
- F. Execution Preparation – Morning of Execution Day. At any time, as determined by the Team Leader, on the morning of the execution:**
1. The prisoner shall be permitted to take a shower and dress in the designated clothing the morning of the execution.
  2. Vein Assessment
- A "hands-on" examination of the prisoner's veins shall be made by a Medical Team Member before the IV is established. If any potential problems are identified they shall be discussed between the Medical Team, the Warden, the Director, and any Auxiliary



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Team Member, and potential solutions shall be considered. The performance of this evaluation shall be noted in the Execution Timeline.

3. Possession of Execution Drugs

A Drug Administrator, in the presence of a second Drug Administrator, shall take possession of the ~~Execution D~~erugs from the SOCF responsible pharmacist or another appropriately licensed pharmacist at the secured pharmacy storage area, and shall document possession of the **Execution D**erugs by signing form Order for Execution Medications (DRC2001). The Drug Administrator taking possession of the **Execution D**erugs, accompanied by a second Drug Administrator shall deliver the **Execution D**erugs to the Death House. These persons shall complete form Order for Execution medications (DRC2001).

4. Drug Preparation

- a. The **Execution D**erugs shall be prepared for injection by a Drug Administrator. The preparation of the drugs shall be monitored by a second Drug Administrator who shall independently verify the preparation and dosage of the **Execution D**erugs. Both Drug Administrators shall complete form Order for Execution Medications (DRC2001).
- b. If the Warden determines that a sufficient quantity of pentobarbital is available and has been selected to be used, then a Drug Administrator shall prepare the ~~execution~~ drugs as follows:
  - i. Syringes 1 and 2: Five (5) grams of pentobarbital, ~~100 ml of a 50mg/mL solution,~~ shall be withdrawn and divided into two syringes labeled "1" and "2".
  - ii. Syringes 3 and 4: Five (5) additional grams of pentobarbital, ~~100 ml of a 50mg/mL solution,~~ shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless the primary dose of five grams proves to be insufficient for the procedure. **If prepared, these** two additional syringes **shall be** labeled "3" and "4" ~~shall be kept available for contingent use.~~
- c. If the Warden determines that a sufficient quantity of thiopental sodium is available and has been selected to be used, then a Drug Administrator shall prepare the ~~execution~~ drugs as follows:
  - i. Syringes 1, 2, 3, 4 and 5: Five (5) grams of thiopental sodium, ~~200 ml of a 25mg/ml solution,~~ shall be withdrawn and divided into five separate syringes, labeled "1", "2", "3", "4" and "5".
  - ii. Syringes 6, 7, 8, 9 and 10: Five (5) additional grams of thiopental sodium, ~~200 ml of a 25mg/ml solution,~~ shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless the primary dose of five grams proves to be insufficient for the procedure. **If prepared, these** ~~These~~ five additional syringes **shall be** labeled "6", "7", "8", "9" and "10" ~~shall be kept available for contingent use.~~

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- d. If the Warden determines that a sufficient quantity of the three-drug combination is available and has been selected to be used, then a Drug Administrator shall prepare those three drugs as follows:

**FIRST DRUG:**

- i. Syringes 1 and 2: The first drug shall be prepared as follows: Five hundred (500) milligrams of midazolam hydrochloride shall be withdrawn and divided into two separate syringes, labeled "1" and "2".
- ii. Syringes A and B: If needed for contingent use, an additional amount of the first drug shall be prepared as follows: Five hundred (500) milligrams of midazolam hydrochloride shall be obtained and kept available in the Equipment Room, but need not be withdrawn into syringes unless directed by the Warden or the primary dose of 500 milligrams of midazolam hydrochloride proves to be insufficient for the procedure. If prepared, these two additional syringes shall be labeled "A" and "B".

**SECOND DRUG:**

- i. Syringes 3 and 4: The second drug shall be prepared as follows:
- a) If the Warden has selected Vecuronium Bromide, then One hundred (100) milligrams of Vecuronium Bromide shall be withdrawn and divided into two separate syringes, labeled "3 and "4".
- b) If the Warden has selected Pancuronium Bromide, then One hundred (100) milligrams of Pancuronium Bromide shall be withdrawn and divided into two separate syringes, labeled "3 and "4".
- c) If the Warden has selected Rocuronium Bromide, then One thousand (1000) milligrams of Rocuronium Bromide shall be withdrawn and divided into two separate syringes, labeled "3 and "4".

**THIRD DRUG:**

- iv. Syringes 5 and 6: The third drug shall be prepared as follows: Two hundred forty (240) milliequivalents of Potassium Chloride shall be withdrawn and divided into two separate syringes, labeled "5" and "6"

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de. The drug preparation shall be documented as follows:

- i. The Drug Administrator who prepared the Execution Drugs and the Drug Administrator who witnessed the preparation shall complete form Order for Execution Medications (DRC2001).
  - ii. A Drug Administrator shall inform the Command Center of the time when all of the Execution Drugs have been prepared, and the Command Center shall record in the Execution Timeline the time that the all of the drugs were prepared.
5. Official witnesses to the execution will report to the institution. The victim's witnesses shall report to the Portsmouth Highway Patrol Post, or other Post or location designated by the Highway Patrol, for escort to the institution by designated SOCF personnel.
  6. The prisoner shall be allowed to have visits as described in subsection VI.E.7. of this policy, above.
  7. The RSA shall be present to counsel and provide spiritual support to the prisoner and staff.
  8. All communication equipment shall be tested, including primary and secondary communication, with both the Governor's Office and the Office of the Attorney General.
    - a. Primary communications shall be via a telephone line opened directly to the Command Center from the execution chamber. This line shall be tested one (1) hour prior to the scheduled execution. Other than testing, this line shall remain open.
    - b. Secondary communications shall be via cellular telephone.
    - c. In the event that both the primary and secondary communications are inoperable, the execution shall be delayed until communications are established.

**G. Execution Preparation - Approximately fifteen (15) minutes prior to the scheduled execution**

1. Witnesses Transported to Death House.

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All authorized witness groups shall be escorted to the Death House separately by designated staff. Witnesses shall be escorted to viewing rooms before the death warrant is read.

2. Phone for Prisoner's Counsel

If the prisoner chooses to have his or her counsel as a witness, at all times after counsel enters the witness room, counsel shall have free access to the phone near the entrance door of the Death House.

- a. The phone in the Death House foyer will enable counsel to call into the waiting room for prisoner's counsel in the prison compound where another person, whose presence is arranged by counsel for the prisoner and whose presence satisfies the prison's security concerns, and which person is acting on behalf of the prisoner and his or her counsel, will be situated during all times after the death warrant is read.
- b. The Warden shall allow this other person to have access to his or her own laptop computer and to a phone that can connect that person to an outside line.

3. Death Warrant

The Warden shall read the death warrant to the prisoner.

4. Closed-Circuit Camera Activated

Immediately after the death warrant is read, the closed-circuit camera in the execution chamber shall be turned on so that witnesses in the witness rooms can view the subsequent activities in the execution chamber on the television screen in those rooms.

5. Prisoner Enters Execution Chamber

The Warden and Execution Team shall escort the prisoner to the execution chamber, assist the prisoner onto the bed and secure the straps. The team shall roll up the prisoner's sleeves or take other steps to ensure that the arms are plainly visible to persons in the chamber and to those in the equipment room.

6. Curtain Closed

Once the prisoner is secured to the bed, the curtain shall be closed prior to the insertion of the IV needles. The closed-circuit camera shall remain on to allow the witnesses to view the establishment of IV site(s).

7. IV Site(s) Preparation & Establishment

- a. The Medical Team shall enter the Execution Chamber to prepare IV site(s).
- b. The Medical Team shall establish one or two viable IV sites.

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- i. The arm veins near the joint between the upper and lower arm shall be utilized as the preferred site for the IV injection.
    - ii. In the event that the Medical Team member is unable to establish an IV at a preferred site, the Medical Team member(s) may establish an IV at alternative site(s) for use by the Drug Administrator when administering execution drugs.
    - iii. The Execution Team may utilize any non-invasive device such as a light, illuminator or ultrasound device, if desired, to assist in locating a vein.
  - c. The Medical Team member(s) shall be allowed as much time as is necessary to establish viable IV site(s).
  - d. If the Medical Team member(s) are unable to establish viable IV site(s), the Medical Team members shall consult with the Warden, the Director, and any Auxiliary Team Member for the purpose of determining whether or how long to continue efforts to establish viable IV site(s).
8. Confirming & Recording Establishment of IV Site(s)
  - a. A Medical Team member shall test the viability of the IV site with a low-pressure saline drip through IV tubing. If necessary, a heparin lock may be attached to the IV needle as an alternative to the saline drip.
  - b. The Warden, Team Leader, and a Drug Administrator shall all confirm the visibility of the IV sites.
  - c. The Medical Team member(s) shall exit the Execution Chamber and shall announce the number of attempts made to establish viable IV site(s) to the Command Center contact who shall then inform the Command Center, for capture on the Execution Timeline.
  - d. The Command Center shall record in the Execution Timeline the number of attempts.
9. Curtain Opened

The curtain shall be opened after the establishment of viable IV site(s). The curtain shall remain open during the remainder of the execution until the examination for the pronouncement of death, unless the execution is abandoned or halted.
10. Last Words

The Warden shall ask the prisoner if he or she has any last words. If the prisoner has a last statement, he or she will be allowed to make it while the witnesses are present in the

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adjacent viewing rooms, and are able to see him or her and hear him or her via microphone.

- a. There shall generally be no restriction on the content of the prisoner's statement and no unreasonable restriction on the duration of the prisoner's last statement.
- b. The Warden may impose reasonable restrictions on the length of the statement. The Warden may also terminate a statement that he or she believes is intentionally offensive to the witnesses.

## H. Commencement of Execution

### 1. Execution by IV Injection

- a. If the Warden has ~~decided~~determined, pursuant to subsection VI.C.5. of this policy above, to proceed with pentobarbital, then upon the Warden's signal, a Drug Administrator shall intravenously administer the previously prepared syringes 1 and 2 of pentobarbital.
- b. Alternatively, if the Warden has ~~decided~~determined, pursuant to subsection VI.C.5. of this policy above, to proceed with thiopental sodium, then upon the Warden's signal, a Drug Administrator shall intravenously administer the previously prepared syringes 1, 2, 3, 4 and 5 of thiopental sodium.
- c. **Alternatively, if the Warden has decided, pursuant to subsection VI.C.5. of this policy above, to proceed with the three-drug combination, then upon the Warden's signal, a Drug Administrator shall proceed as follows:**
  - i. **FIRST DRUG: intravenously administer the previously prepared syringes 1 and 2 of midazolam hydrochloride.**
  - ii. **Following administration of syringes 1 and 2 and before the administration of the second and third drugs described in this subsection below, a Drug Administrator shall reenter the Execution Chamber to assess the prisoner's consciousness.**
    - (a) **If the prisoner is found to be unconscious, then the process shall continue with the administration of the second and third drugs, as described below.**
    - (b) **If the prisoner is found to be conscious, then the Drug Administrator shall consult with a Second Drug Administrator, the Warden and the Director, and any Auxiliary Team Member. After consultation, the IV sites shall be checked and changed if necessary. The Warden shall decide how to proceed, including but not limited to waiting for the passage of time, requesting an additional assessment by a Drug Administrator, and/or directing the administration of contingency-use syringes A and B.**

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(c) If syringes A and B are administered, a Drug Administrator shall reenter the Execution Chamber following administration and assess the prisoner's consciousness.

(i) If the prisoner is found to be unconscious, then the process shall continue with the administration of the second and third drugs, as described below

(ii) If the prisoner is found to be conscious, then the Drug Administrator shall consult with a Second Drug Administrator, the Warden and the Director, and any Auxiliary Team Member. After consultation, the IV sites shall be checked and changed if necessary. The Warden shall decide how to proceed, including but not limited to waiting for the passage of time, requesting an additional assessment by a Drug Administrator, and/or directing the administration of additional syringes of the first drug. If requested, additional syringes of the first drug shall be prepared by a Drug Administrator, in the same manner as contingent syringes A and B, with new consecutively lettered labels.

iii. **SECOND DRUG:** Following administration of the first drug and confirmation that the prisoner is unconscious, the Drug Administrator shall intravenously administer the previously prepared syringes 3 and 4 of the selected drug.

iv. **THIRD DRUG:** Following administration of the first and second drugs, the Drug Administrator shall intravenously administer the previously prepared syringes 5 and 6 of potassium chloride.

- d. The low-pressure saline drip shall be allowed to flush saline through the line(s) **during and** following completion of the IV drug administration.
- e. A second Drug Administrator shall be present in the equipment room to observe the administration of the execution drugs. This Drug Administrator shall announce the start and finish times of each injection to the Command Center contact who shall then inform the Command Center for capture on the Execution Timeline.
- f. The Command Center shall record in the Execution Timeline the start and finish times of each injection.
- g. Following administration of **all of the Execution Drugs**~~IV drugs~~, a Drug Administrator shall reenter the Execution Chamber to inspect the IV site for evidence of incontinence or infiltration and to listen to the prisoner for breathing and heart sounds.
- hg. If a sufficient time for death to occur has passed but the prisoner has not died, ~~the a Drug Administrator~~~~Medical Team~~ shall consult with a **second Drug Administrator**, the Warden and the Director, and any Auxiliary Team Member. The Warden, after consultation with the Director, shall determine whether to proceed with

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any additional syringes of ~~E~~execution ~~D~~erugs, and may order a ~~D~~rug ~~A~~Administrator~~the Medical Team~~ to prepare such additional syringes, as necessary, and intravenously administer them, in accordance with the terms of this policy, above.

ih. At the completion of the process and after a sufficient time for death to have occurred, the curtain shall be closed and an appropriate medical professional shall evaluate the prisoner to confirm death. The curtain shall then be re-opened and the Warden shall announce the time of death. In the event that the appropriate medical professional cannot confirm that death has occurred, the curtain shall be reopened until an appropriate time has passed to reevaluate the prisoner.

2. Using Alternative IV Sites

- a. The Team Leader, a Medical Team member, and the Warden shall observe the prisoner during the injection process to look for signs of swelling or infiltration at the IV site, blood in the catheter, and leakage from the lines and other unusual signs or symptoms.
- b. The Execution Team shall communicate to the Drug Administrators any problems detected during the administration of the ~~E~~execution ~~D~~erugs.
- c. The Drug Administrator who is administering the ~~E~~execution ~~D~~erugs shall determine whether it is necessary to use another viable IV site.
- d. In the event that the Drug Administrator who is administering the ~~E~~execution ~~D~~erugs detects a problem in the administration of the drugs, the Drug Administrator shall use any other viable IV site. No prior consultation with the Warden or other members of the Execution Team is required.
- e. Whenever it is necessary to change IV sites, the Drug Administrator shall administer a full dosage of the ~~E~~execution ~~D~~erugs through the alternate, viable IV site using additional syringes, as necessary, prepared in accordance with the terms of this policy, above.
- f. In the event the Drug Administrator changes to another viable IV site, the Drug Administrator shall inform the Command Center contact, who shall then inform the Command Center for capture on the Execution Timeline. The Command Center shall record in the Execution Timeline any change in IV site(s).

3. Establishing Other IV Sites(s)

- a. In the event there is no alternative viable IV site, the Medical Team shall consult with the Warden and Director.
- b. The Warden, following consultation with the Director, shall determine whether to proceed with execution by IV injection.



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- c. In the event the Warden determines to proceed with execution by IV injection, the Execution Team shall repeat the steps in subsections VI.G.6. – 8. of this policy, above, and continue with the execution as provided for in subsection VI.H. of this policy, above.
- d. The Warden shall ensure the Command Center is informed of his decision. The Command Center shall record the Warden's decision in the Execution Timeline.

#### **I. Post-Execution**

1. The Warden, or his/her designee, shall notify the Director that the execution has been carried out.
2. The Medical Team shall remove the IV equipment and clean the IV sites.
3. The RSA or the prisoner's Spiritual Advisor shall anoint the body of the prisoner if requested by the prisoner.
4. The RSA shall coordinate the burial of the prisoner's body with local chaplains if the prisoner's family does not want the body.
5. The Execution Team shall remove the deceased from the execution bed and place him or her on a gurney.
6. Disposition of the body shall be in accordance with arrangements made prior to the execution at the prisoner's request.
7. The Warden shall sign and return the death warrant to the Court, indicating the execution has been carried out.
8. Prepared Execution Drugs
  - a. A Drug Administrator shall properly dispose of any Execution Drugs that have been prepared for administration but not been utilized.
  - b. A Second Drug Administrator shall witness the disposal.
  - c. Both Drug Administrators shall document the disposal in form Order for Execution Medications (DRC2001).
9. Unprepared Execution Drugs
  - a. A Drug Administrator shall properly return any unprepared Execution Drugs to the secured pharmacy storage area.
  - b. A Second Drug Administrator shall witness the return of the unprepared Execution Drugs.

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- c. Both Drug Administrators shall document the return of the unprepared Execution Drugs in form Order for Execution Medications (DRC2001).

10. Recording Used Execution Drugs

- a. A Drug Administrator shall document the name or description, and any expiration date or beyond use date, of the Execution Drugs used, in form Order for Execution medications (DRC2001).
- b. An Execution Team member shall save the packaging of the used Execution Drugs or take photographs of such packaging. None of the functions described in this subsection shall be governed by subsection V.3. of this policy, above.

11. After-Action Review

Immediately following an execution, the Execution Team and the on-site administrators directly involved in the execution process shall meet to review the process of the execution. Any unique or unusual events shall be discussed, as well as opportunities for improvement and successful procedures. Actions and documentation of the events shall be reviewed to identify any discrepancies. Discrepancies from the policy ~~directive~~ shall be clearly described and noted in a written record. The record shall be signed and dated by the Warden.

12. Critical Incident Debriefing

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

13. Quality Assurance Review

The Director shall designate a Special Assistant for Execution Policy and Procedures. The Special Assistant shall evaluate the performance of the Execution Team, review the conduct of court-ordered executions and report to the Director of the Department. His or her duties will consist of reviewing documentation, training, and professional qualifications, to ensure compliance with the written policy ~~directive~~. The Special Assistant may utilize assistants as necessary to compile or assess the information, and may consult with others consistent with the confidentiality of the process. Whenever appropriate, the Special Assistant shall consult with a properly trained medical person when reviewing the medical aspects of the execution procedures. The Special Assistant will also provide consultation and advice concerning modifications in the written

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~~policy.directive-~~ The Special Assistant will prepare a report to the Director following each execution, with any suggestions or recommendations that are appropriate.

**Related Department Forms:**

- |  |         |
|--|---------|
| Execution Information Release                  | DRC1808 |
| Order for Execution Medications                | DRC2001 |
| Inmate Property Record Disposition and Release | DRC2055 |

**From:** stephen.gray@odrc.state.oh.us  
**Sent:** Friday, October 07, 2016 4:03 PM  
**To:** Jondrea.Parrish@odrc.state.oh.us; JoEllen.Smith@odrc.state.oh.us  
**Subject:** DRC -new policy  
**Attachments:** 01-COM-11 (eff 7 Oct 2016).pdf

Please post.  
Thank you.

Steve Gray  
Chief Counsel and Managing Director of Risk Management  
Ohio Department of Rehabilitation and Correction  
614-752-1773

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 21, 2020 I forwarded a true copy of the foregoing Supplement to Merit Brief of Appellant Cleveland Jackson by email to all attorneys of record in the above-captioned case, to wit:

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*/s/ Richard A. Cline* \_\_\_\_\_

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