

NEBRASKA ADMINISTRATIVE CODE

TITLE 69, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 11

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

EXECUTION PROTOCOL

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001 Authority. When the Director of the State of Nebraska Department of Correctional Services (Director) receives an order of the Nebraska Supreme Court directing the enforcement of a sentence of death, that order will be carried out pursuant to Laws 2009, L.B. 36. The Director has the authority to create and modify this protocol.

002 Location. Executions will be performed in the execution chamber at the Nebraska State Penitentiary.

003 Execution Team. The Director shall appoint and remove all members of the Execution Team at his or her discretion. The Execution Team ~~shall~~ may consist of the following:

003.01 The Director

003.02 The Warden of the Nebraska State Penitentiary (Warden)

003.03 ~~The Nebraska State Penitentiary Staff Communicator (Staff Communicator)~~
Public Information Officer

003.04 An Escort Team consisting of an Escort Team Leader and an Escort Team comprised of ~~at least six additional individuals~~ a sufficient number of individuals, as determined and selected by the Director, to provide security escort for the condemned prisoner.

003.05 An IV Team consisting of an IV Team Leader and ~~a single~~ at least one additional IV Team Member.

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003.06 A pharmacist or pharmaceutical chemist.

004 Execution Team Qualifications.

004.01 The Director, Warden and ~~Staff Communicator~~ Public Information Officer are qualified by the responsibilities of the positions they hold within the Department and the completion of any specific training required by this protocol.

004.02 Escort Team. The Escort Team shall be correctional employees with training or experience in escorting secured prisoners on behalf of the Department.

004.03 IV Team. The IV Team Leader and IV Team Member(s) shall be individuals trained in venipuncture and catheter placement to maintain an open intravenous line; shall have ~~successfully~~ completed training as an emergency medical technician and training in phlebotomy; shall have completed training to determine and reasonably verify whether a person is unconscious; shall have ~~successfully~~ completed training to initiate the flow of saline solution by IV, the injection of substances into an IV line, and to select ~~a syringe set(s)~~ the equipment capable of accomplishing the requirements of this protocol.

004.04 Pharmacist. Any pharmacist team member is qualified by an educational degree in pharmacy and professional training as a pharmacist.

004.05 Pharmaceutical Chemist. Any pharmaceutical chemist team member is qualified by a Bachelor of Science degree in chemistry and specialty training or experience in drug compounding.

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005 Execution Team Duties.

005.01 The Director (1) has the responsibility to obey orders of the Nebraska Supreme Court directing the enforcement of a sentence of death; (2) appoints and removes members of the Execution team at his or her discretion; (3) supervises, directs and maintains a record of the qualifications and training of the Execution Team pursuant to this protocol; (4) shall be physically present at the execution; (5) shall direct the administration of all substances to the prisoner in accordance with this protocol; (6) shall procure a health professional qualified to determine the death; (7) shall summon ~~a~~ the county coroner to pronounce upon determination of the death of the condemned inmate; and ~~(7)~~ (8) shall certify the death of the condemned inmate to the appropriate court.

005.02 The Warden, under the supervision of the Director, shall (1) assure that court ordered executions in Nebraska are conducted pursuant to this protocol; and (2) be physically present at the execution; ~~(3) be trained in and shall conduct the consciousness checks required by this protocol after the administration of the sodium thiopental;~~ (4) if he or she is unable to reasonably verify that the condemned inmate is unconscious, he or she shall communicate to the Director that an additional dose of sodium thiopental should be administered; and (5) after he or she has reasonably verified that the condemned inmate is unconscious shall communicate that fact to the Director.

005.03 ~~Nebraska State Penitentiary Staff Communicator~~ The Public Information Officer, under the supervision of the Warden, shall (1) maintain a written record of activities related to this protocol beginning when the Escort Team delivers the condemned

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prisoner to the execution chamber; and (2) serve as the Director's communication liaison with representatives of the Nebraska Department of Justice.

005.04 The Escort Team shall (1) ~~assume custody of the condemned inmate at the Nebraska State Penitentiary Hospital; (2) secure the condemned inmate; (3) escort or otherwise deliver the condemned inmate from the Nebraska State Penitentiary Hospital~~ deliver the condemned inmate to the execution chamber; (4) (2) place and secure the condemned inmate on the table in the execution chamber; (5) ~~secure the condemned inmate to the table in the execution chamber;~~ (6) (3) exit the execution chamber; and (7) (4) remain outside the execution chamber to respond to any inmate control issues that may arise until dismissed by the Director.

005.05 The IV Team Leader shall (1) obtain and maintain appropriate materials and equipment to accomplish his or her responsibilities under this protocol; (2) at least 48 hours before the scheduled execution date examine the condemned inmate to determine appropriate locations for intravenous catheter placement and report the results of that examination to the Director; (3) if the Execution Team does not include a pharmacist or pharmaceutical chemist, deliver to the execution chamber the substance or substances and quantity determined by the Director under subsection 008 of ~~on the date of the execution, obtain, prepare and deliver to the execution chamber the substances identified by this protocol for injection into the condemned inmate;~~ (4) once the condemned inmate is secured by the Escort Team on the table in the execution chamber, establish a functioning intravenous line capable of administering the ~~lethal~~ substance or substances identified by the protocol into a vein of the condemned inmate; (5) establish a backup functioning intravenous line capable of administering the substance or substances into a vein of the condemned inmate; (6) test the viability of

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the intravenous sites with a low-pressure saline drip through intravenous tubing; (7) attach a heart monitor to the condemned inmate; ~~(6) exit the execution chamber; (7) (8)~~ be prepared to correct any issues with respect to the intravenous line or condemned inmate's vascular system that might prevent or impede the injection of the lethal substances; ~~(8) (9)~~ at the order of the Director, administer to the condemned inmate through the established intravenous line the ~~lethal substance or substances and quantity determined by the Director under subsection 008 of~~ identified by this protocol in the order described by this protocol; (10) throughout the procedure, monitor the condemned inmate's level of consciousness and heart monitor readings; (9) (11) remain at his or her post until dismissed by the Director; ~~(10) (12)~~ dispose of any substances or equipment employed in meeting the requirements of this protocol after the inmate has been pronounced dead.

005.06 The IV Team shall assist the IV Team Leader as directed and at least one IV Team member shall be prepared to assume the responsibilities of the IV Team Leader should the IV Team Leader become unable to perform his or her responsibilities.

005.07 If the Execution Team includes a pharmacist or pharmaceutical chemist, such person shall deliver to the execution chamber the substance or substances and quantity determined by the Director under subsection 008 of this protocol for injection into the condemned inmate.

006 Execution Team Training.

006.01 Training schedule.

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006.01.01 When no execution date has been set by the Nebraska Supreme Court, the members of the Execution Team shall train at least once every six months at a time established by the Director. The Escort Team and the IV Team may train independently of the other members of the Execution Team.

006.01.02 When an execution date has been set by the Nebraska Supreme Court the Execution Team will train at least weekly at times established by the Director.

006.02 Training required. In addition to the qualifications noted in this protocol, the Execution Team shall train as follows.

006.02.01 Execution Team as a Whole. When the training schedule requires weekly training, all members of the Execution Team shall participate in training as a unit, review this protocol, and engage in training activities so that all members will be adequately trained to carry out their individual responsibilities ~~one or more drills in which all members enact their individual responsibilities (with the exception of intravenous catheter placement and use of saline and lethal substances) as established by this protocol.~~

006.02.02 Warden. ~~The Warden will be trained in performing the consciousness checks required by this protocol. The Warden will be trained by the IV Team Leader or other individual(s) familiar with the consciousness check techniques required by this protocol in order to reasonably verify whether the condemned inmate is unconscious.~~

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006.03 Training documentation. All training of the members of the Execution Team will be documented noting the date and duration of the training, who supervised the training, and the activities undertaken.

007 Consciousness Checks.

007.01 The first or only substance injected must be capable of rendering the convicted person unconscious. The IV Team Leader shall make a determination sufficient to reasonably verify that the convicted person is unconscious before administering any second or additional substances.

~~As used in this protocol the consciousness checks to be performed on the condemned inmate shall consist of the following.~~

~~007.01.01—Brushing the eye lashes of one eye of the condemned inmate with the fingers of a hand, observing any involuntary muscular response; and~~

~~007.01.02—Opening one eye of the condemned inmate and passing over it a light source observing the pupil's reaction to the light.~~

008 Lethal Substance or substances to be employed in an execution by lethal injection.

008.01 Executions shall be accomplished by the intravenous injection of a substance or substances in a quantity sufficient to cause death without the unnecessary and wanton infliction of pain. The substance or substances shall be administered in compliance with this execution protocol.

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~~Executions shall be accomplished by the intravenous injection of the following substances into the condemned inmate by the method described in this protocol.~~

~~008.01.01 Sodium thiopental~~

~~008.01.02 Pancuronium bromide~~

~~008.01.03 Potassium chloride~~

008.02 The Director shall determine which substance or substances and quantity are to be employed in an execution by lethal injection. If more than one substance is to be employed in an execution by lethal injection, the first substance injected must be capable of rendering the convicted person unconscious. The Director’s determination of the substance or substances to be employed in an execution by lethal injection may be based on the availability of necessary substances provided that the substance or substances can be intravenously injected in a quantity sufficient to cause death without the unnecessary and wanton infliction of pain. The Director shall notify the condemned inmate of the determination of the substance or substances, quantity and, if more than one substance is to be employed in an execution by lethal injection, the order the substances will be administered, at least 60 days prior to the Nebraska Attorney General requesting an execution warrant from the Nebraska Supreme Court.

~~The lethal substances shall be administered to the condemned inmate by the mechanism described in this protocol. They shall be administered in the following order and dosages.~~

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~~008.02.01~~—Sodium thiopental will initially be administered in one 3 gram dose. There will be a waiting period of at least one minute between the administration of the sodium thiopental and conducting the consciousness checks. If unconsciousness is not verified by the Warden after the administration of the initial dose, additional 3 gram doses will be administered and consciousness checks conducted after the administration of each dose until unconsciousness is verified.

~~008.02.02~~—Once unconsciousness is verified, pancuronium bromide will be administered in one dose of 50 mg/100 ml.

~~008.02.03~~—Once the pancuronium bromide has been administered, potassium chloride will be the third lethal substance administered in one dose of 240 Meq.

~~008.02.04~~—A 50cc saline flush will be administered following each injection of a lethal substance.

~~008.02.05~~—If the coroner does not pronounce the condemned inmate dead at the conclusion of this process, the Director shall order the execution process repeated in the manner described by this protocol.

008.03 The substance or substances may be directly purchased or obtained through the Department Pharmacy or obtained through any other appropriate source, including pharmaceutical or chemical compounding.

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008.04 The substances shall be clearly labelled and maintained by the Department in a clean, secure, and safe environment under controlled room temperature storage conditions.

008.05 A chemical analysis to verify the substance or substances to be employed in the execution by lethal injection shall be performed at least 60 days prior to the Nebraska Attorney General requesting an execution warrant from the Nebraska Supreme Court.

008.06 The inventory of substances will be reviewed every six months, and upon receipt of an execution order from the Nebraska Supreme Court.

008.07 Any expired substances will be removed from inventory.

009 ~~Procurement and inventory of lethal substances~~ Documented process for obtaining the necessary substances

009.01 Documentation shall include the Director's orders, directions, and all Department records for obtaining the necessary substances for execution. ~~The Director shall purchase two complete sets of the described lethal substances unless the Director determines that additional quantities should be kept in inventory.~~

009.02 Records of any order to obtain the necessary substances as well as the acquisition and receipt of the substances shall be maintained by the Department. ~~The described lethal substances shall be purchased through the Department Pharmaceutical Supervisor or through some other appropriate source.~~

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~~009.03~~ In accordance with Neb. Rev. Stat. 83-965(2)(f), the Director may authorize any records or information identifying a person, company, or entity supplying the substance or substances to be employed in an execution by lethal injection to be confidential. ~~The purchase of the lethal substances will be treated as the purchase of high-security items and their receipt and delivery are not subject to standard business delivery procedures, but will be delivered directly into the custody of the Director.~~

~~009.04~~ ~~The Director shall document the order and receipt of the lethal substances and provide for their maintenance and storage.~~

~~009.05~~ ~~The inventory of lethal substances will be reviewed every six months and also immediately upon receipt of an execution order from the Nebraska Supreme Court.~~

~~009.06~~ ~~Expired lethal substances will be cleared from inventory and replaced.~~

010 Determination of death

010.01 A health professional qualified to determine death shall be designated by the Director to determine whether the inmate is deceased at the conclusion of the execution process. If the designated health professional determines that the condemned inmate is not dead, the Director shall order that the intravenous injection of the substance or substances shall be repeated by the IV Team Leader.