

CAPITAL PUNISHMENT (DEATH BY LETHAL INJECTION)

Division 024

Temporary Adoption and Notice of Intent to Amend

291-024-0005

Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of this rule is to establish Department of Corrections policy and specific procedures for administration of capital punishment in accordance with Oregon statutes. In addition, the rule establishes specific procedures for the care, custody and treatment of condemned inmates from the time an inmate is received through execution, and identifies responsibilities for preparation and carrying out of death sentences imposed under Oregon law.

(3) Policy:

(a) It is the policy of the Department of Corrections to discharge its statutory responsibility to carry out death sentences imposed under Oregon law in a manner that is consistent with Oregon statutes, and with the safe, secure and orderly management and operation of the Department of Corrections institution in which the execution takes place, the safety and security of Department staff and other persons directly involved in the execution process, and their families, with due regard for the dignity of the condemned inmate, and within the limitations of space and resources. Consistent with these policies, executions will be conducted in a manner designed to protect as completely as possible the anonymity of Department staff and other persons involved. All executions shall take place within the enclosure of a Department of Corrections institution designated by the Director of the Department of Corrections.

(b) Conscience Clause: Except as provided by statute, no employee of the Department of Corrections shall be required to participate in the execution of an inmate sentenced to death.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0010

Definitions

(1) Basic Visiting: The opportunity for an inmate and approved visitor to see and talk with each other, on a scheduled basis for a reasonable period of time, with no physical contact.

(2) Execution Camera Monitoring System: Non-recording camera installed over execution gurney with monitors for witness viewing of condemned inmate's placement in restraints on the gurney and insertion of IV's.

(3) Execution Room: The location where executions will take place.

(4) Immediate Family of the Victim: The victim's parents, spouse or domestic partner, siblings, children, grandparents, including step relationships.

(5) Inmate: Any person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

(6) Superintendent: Any person within the Department of Corrections who reports to the Assistant Director(s) ~~Institutions~~ of Operations and Institutions Administrator and has the responsibility for the delivery and coordination of programs operations in a specific facility/institution.

(7) Victim: The person or persons for whose murder the inmate was sentenced to death.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

PROCEDURES

291-024-0015

Reception, Orientation, and Housing

When an inmate is received at an Oregon Department of Corrections institution with a sentence of death, the inmate will be immediately classified as maximum custody. The inmate will be housed in a ~~maximum~~ **Level 5** custody cell or unit at a Department of Corrections institution designated for the housing of inmates sentenced to death.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0016

Receipt of Death Warrant

(1) Notifications:

(a) The Superintendent will personally notify the Director that the execution will commence at ~~12:01 a.m.~~ **7:00 p.m.** or as soon thereafter as possible on the date specified in the warrant ordering execution. Such notification will be followed by a letter from the Superintendent to the Director confirming this information. The Director will subsequently notify the Governor of the date and time of the pending execution.

(b) The Superintendent, with the Assistant Superintendent of Security, will interview the inmate to be executed, provide the inmate with a copy of the death warrant, and document the interview.

(c) The Superintendent will send a letter to the medical examiner indicating the date and time of the scheduled execution, requesting that the medical examiner or his/her representative be present at the execution and be prepared to issue the certificate of death. The letter to the medical examiner will be sent by certified mail with a return receipt requested.

(d) The Superintendent or his/her designee will notify the Oregon State Police Superintendent's Office of the scheduled date and time of the execution, followed by a letter confirming the information.

(2) Assembly of Supplies and Equipment:

(a) The Director ~~shall prepare~~ **will issue** a written order to purchase the lethal substances as described in ORS 137.473 and attach a certified copy of the judgment of the court imposing the punishment. The written order and copy of the judgment shall be submitted to any wholesale drug outlet as defined in ORS 689.005, registered with the State Board of Pharmacy under ORS.689.305 at the time the lethal substances are purchased.

(b) The Superintendent or his/her designee will assemble the supplies and prepare the equipment necessary to effect the execution consistent with ORS 137.473.

(c) The Superintendent or his/her designee will ensure the execution camera monitoring system is in place and operational.

(3) Selection of Executioner(s): The selection of the executioner(s) will be the responsibility of the Superintendent. The identity of the executioner(s) will remain confidential.

(4) Arrangement will be made to ensure that the telephone company has installed two dedicated telephone lines, hereafter referred to as the emergency telephone lines, which will ring directly into the execution room. The Director will advise the Governor and the Attorney General of the telephone process.

(5) Special Security Team Preparations:

(a) The Assistant Superintendent of Security, or his/her designee subject to the Superintendent's approval, will select no less than ~~six~~ **eight** primary security staff ~~and no less than six alternate security staff from a previously identified pool of security staff~~ to assist in conducting the execution procedure. These selected security staff will be referred to as the ~~S~~special ~~S~~security ~~T~~team.

(b) The Assistant Superintendent of Security or his/her designee will conduct training with the ~~S~~special ~~S~~security ~~T~~team to ensure that all members are fully aware of their roles during the procedure, and that the team is prepared to deal with any disruptive behavior which might be demonstrated by the inmate.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0020

Programming: From Date of Receipt of Death Warrant Until Four Days Prior to the Scheduled Execution Date

(1) Media Contact: Consistent with OAR 291-204-0060(3), media interviews with the condemned inmate will generally not be permitted. Exceptions may be made by the Superintendent or designee, in his or her sole discretion, in extraordinary circumstances, with the inmate's consent, if in the judgment of the Superintendent the interview is consistent with the Department's mission and goals and the safe, secure and orderly management and operation of the facility. ~~Interviews by media representatives with the condemned inmate will be permitted only with the consent of the inmate, and with the prior approval of the Superintendent or his/her designee. Media contacts will be coordinated between the Superintendent (or his/her designee) and the Department of Corrections Communications Manager. If approved, media representatives will be admitted to the appropriate Department of Corrections institution to conduct the interview(s), provided they are properly credentialed and attired. Any interview by a media representative, if permitted, shall be conducted as basic visiting. A camera (i.e., still photography or video) may be used during the interview if its use is approved in advance by the Superintendent or his/her designee.~~

(2) Visiting: All visits will be basic visiting and arranged by appointment through the institution visiting desk staff. Visitor(s) must be on the approved visiting list.

(3) Invitation to Witness the Execution:

(a) Prior to the scheduled execution date, the Superintendent shall invite the following persons to attend and witness the execution:

(A) One or more physicians;

(B) The Attorney General;

(C) The sheriff of the county in which the judgment was rendered;

(D) The district attorney of the county in which the judgment was rendered;

(E) If requested by the condemned inmate, no more than two religious representatives designated by the inmate;

(F) If requested by a member of the immediate family of the victim, one or more members of the victim's immediate family as determined by the Superintendent; and

(G) Designated media representatives:

(i) The media representatives will consist of two persons selected by the Oregon Association of Broadcasters, two persons selected by the Oregon Newspaper Publisher's Association (one of the two persons will represent a newspaper from the county in which the judgment was rendered), and one person selected by the Associated Press (AP).

(ii) Only designated media representatives who are properly credentialed, and who agree to act as pool reporters for other media present following the execution, will be admitted inside the secure perimeter of the institution to attend and witness the execution.

(b) In addition to those persons listed above, the Superintendent may, in his/her discretion, invite the following persons to attend and witness the execution:

(A) No more than a total of five of the inmate's friends and relatives designated by the inmate, and

(B) Such other persons as the Superintendent thinks expedient, including but not limited to peace officers.

(c) The total number of persons invited to attend and witness the execution shall be determined by the Superintendent, taking into account the limitations of space and resources.

(d) In order to enter the secure perimeter of the institution, all persons witnessing the execution shall:

(A) Be 18 years of age or older;

(B) Undergo and pass a criminal history and security check;

(C) Be properly attired in accordance with the Superintendent's instructions.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0025

Four Days Prior to Scheduled Execution Date

~~(1 5)~~ The Assistant Superintendent of Security or his/her-designee will ensure the final preparations are made for the ~~S~~special ~~S~~security ~~T~~eam.

~~(2 7)~~ The ~~Oregon State Police~~ will be notified by the Assistant Superintendent of Security **will notify and request assistance from the Oregon State Police** so that adequate perimeter security will be established around the institution on the evening ~~preceding~~ **of** the execution.

~~(3 8)~~ The execution camera monitoring system shall be tested by the physical plant manager or designee.

~~(1) Housing Assignment:~~

~~(a) No less than four days prior to the scheduled execution date, the condemned inmate will be moved to the.~~

~~(b) Security:~~

~~(A) Security staff will be assigned by the Assistant Superintendent of Security or his/her designee to provide a 24-hour watch on the condemned inmate. The assigned security staff will maintain a log of all activities. The log entries must be written in ink, and cross-outs shall be legible and initialed. Copies of the logs will be hand-delivered to the Superintendent daily.~~

~~(B) Any unusual incident shall be documented in accordance with the Department of Corrections procedure on Unusual Incident Reports.~~

~~(2) Institutional Privileges:~~

~~(a) Mail: All incoming mail will be photocopied the last four days to ensure the inmate does not receive drug-infiltrated paper. The original letters will be maintained in the condemned inmate's property and a photocopy sent to the inmate.~~

~~(b) Visiting: At the discretion of the Superintendent, there may be daily visits with members of the inmate's family, approved religious representative(s), and such other persons as approved by the Superintendent or his/her designee, if they are on the approved visiting list and requested by the inmate. Visits must be arranged by appointment (i.e., dates, times and durations) through the Superintendent's Office. All visits will be restricted to basic visiting unless otherwise designated by the Superintendent.~~

~~(c) Telephone: Telephone privileges will be provided as approved by the Superintendent or his/her designee.~~

~~(d) Exercise: The condemned inmate will be permitted to exercise only in his/her cell.~~

~~(e) Clothing: New institutional clothing will be issued to the inmate and will be exchanged as needed. Clothing will be maintained in the secure confines of the facility.~~

~~(3) Personal Property Disposition: The Assistant Superintendent of Security or his/her designee will assure that a Personal Property Records form (CD 353P) is signed by the inmate for disposition of personal property.~~

~~(4) Food Preparations: The inmate will be served the same food as other inmates assigned to the facility. At the discretion of the Superintendent, the inmate may be permitted a last meal of the inmate's choosing.~~

~~(6) The Assistant Director for Institutions or his/her designee and the Assistant Director for Programs or his/her designee will jointly work to ensure that the equipment and supplies for the lethal injection are collected and deposited in secure storage located within the execution room.~~

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0055

Forty-eight Hours Prior to Execution

(1) The Superintendent or his/her-designee will ensure that all arrangements as required by these rules have been accomplished.

(2) Housing Assignment:

(a) No less than two days prior to the scheduled execution date, the condemned inmate will be moved to the death watch cell.

(b) Security:

(A) Security staff will be assigned by the Assistant Superintendent of Security or his/her designee to provide a 24-hour watch on the condemned inmate. The assigned security staff will maintain a log of all activities. The log entries must be written in ink, and cross-outs shall be legible and initialed. Copies of the logs will be hand-delivered to the Superintendent as requested for review.

(B) Any unusual incident shall be documented in accordance with the Department of Corrections policy on Unusual Incident Reporting Process, #40.1.6.

(3) Institutional Privileges:

(a) Mail: All incoming mail will be photocopied the last two days to ensure the inmate does not receive drug infiltrated paper. The original letters will be maintained in the condemned inmate's property and a photocopy sent to the inmate.

(b) Visiting: At the discretion of the Superintendent, there may be daily visits with members of the inmate's family, approved religious representative(s), and such other persons as approved by the Superintendent or designee, if they are on the approved visiting list and requested by the inmate. Visits must be arranged by appointment (i.e., dates, times and durations) through the

Superintendent's Office. All visits will be restricted to basic visiting unless otherwise designated by the Superintendent.

(c) Telephone: Telephone privileges will be provided as approved by the Superintendent or designee.

(d) Exercise: The condemned inmate will be permitted to exercise only in his/her cell.

(e) Clothing: New institutional clothing will be issued to the inmate and will be exchanged as needed. Clothing will be maintained in the secure confines of the facility.

(4) Personal Property Disposition: The Assistant Superintendent of Security or designee will assure that a Personal Property Records form (CD 353P) is signed by the inmate for disposition of personal property.

(5) Food Preparations: The inmate will be served the same food as other inmates assigned to the facility. At the discretion of the Superintendent, the inmate may be permitted a last meal of the inmate's choosing.

(6) 2) The Assistant Superintendent of Security or his/her designee will conduct training with the Sspecial Ssecurity Tteam to ensure that all team members are familiar with their duties and responsibilities.

(7) 3) The Assistant Superintendent of Security or his/her designee will have a process of identifying all witnesses and visitors who will be entering the institution on the evening of the execution.

(8) 4) The Superintendent or his/her designee will ensure that a sufficient number of staff have been scheduled to work the evening preeeding of the execution.

(9) 5) The Superintendent or his/her designee will ensure the necessary execution documents have been prepared and / obtained to include:

(a) An appropriate certificate of death that reflects the cause of death as execution by lethal injection in the manner prescribed in ORS 137.473; and

(b) A form authorizing release of the body to be signed by the mortician (CD 728P).

(10) The Assistant Director of Operations and the Superintendent or their designees will jointly work to ensure that the equipment and supplies for the lethal injection are collected and deposited in secure storage located within the execution room.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0060

Final Twenty-Four Hours to Execution

(1) An up-to-date log will be maintained on all execution related events which occur during the final 24 hours.

(2) The Assistant Director ~~for Programs~~ **of Operations** or his/her designee will work with the Assistant Superintendent of ~~Program~~ **Transitional** Services to ensure that a medically trained individual will prepare and secure the necessary syringes with the lethal solutions. The necessary back-up syringes with the lethal solutions will be prepared and secured separately. This equipment and solutions will be provided to the Assistant Superintendent of Security or his/her designee for secure storage.

(3) The Assistant Director ~~for Programs~~ **of Operations** or his/her designee will work with the Assistant Superintendent of ~~Program~~ **Transitional** Services to ensure that a medically-trained ~~individual~~ **person or persons** will be available to insert an intravenous catheter(s) into an appropriate vein(s) of the condemned inmate.

~~(4) The Superintendent will distribute written orders that all employees selected for special assignment duty will report to the institution at the designated time.—~~

~~(4 5)~~ The execution camera monitoring system shall be tested by the Physical Plant Manager or designee.

~~(5 6)~~ The Assistant Superintendent of Security will ensure that:

(a) All living units will be checked regularly;

~~(b) All towers will be posted;~~

~~(b e)~~ The reception desk staff will be provided with a list of the approved visitors and witnesses; and

~~(c d)~~ Escort officers will be identified for moving witnesses and visitors to the execution area.

~~(6 7)~~ The emergency telephone lines to the execution room will be checked **periodically.** ~~at 6:00 p.m. and again at 9:00 p.m. Beginning at 9:30 p.m. and every half hour until 11:30 p.m.~~ **The last check will be a half hour prior to the scheduled execution.**

~~(7 8)~~ Approved Witnesses and Designated Media Representatives:

(a) Upon entering institution grounds, approved witnesses will remain in a designated staging area under staff supervision. Designated media representatives will remain in the Media Center until directed by staff to move to their designated staging area.

(b) At the appropriate time, witnesses and media representatives will be properly identified, pass through the metal detector, be frisk searched and have the back of their right hand stamped.

(c) Note pads, and pens or pencils issued by the institution to approved witnesses and media representatives will be the only items/equipment permitted inside the secure perimeter of the institution.

(d) The Department of Corrections Communications Manager will be stationed at the Media Center and will be the Department's contact person with the media.

~~(8 9)~~ The Assistant Superintendent of ~~Programs~~ **Transitional** Services or his/her designee will be assigned to the Administration Building and will be responsible for screening calls to the institution and ensuring that no unauthorized persons enter the institution.

~~(9 10)~~ The Assistant Superintendent of ~~Programs~~ **Transitional** Services or his/her designee will establish radio contact with the officer-in-charge of the unit housing the execution room to ensure that messages can be conveyed in the event that the institutional telephone line or the emergency telephone lines become inoperable.

~~(11) At 11:30 p.m., the Assistant Superintendent of Security or his/her designee will confirm the accurate time for the clock used to conduct the execution.~~

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0066

Forty Minutes Prior to Execution

The Assistant Superintendent of General Services and/or other assigned personnel will escort the witnesses and all other approved visitors from the designated staging area to the processing station where they will enter the witness area. ~~Two~~ Correctional ~~captains~~ staff will also be stationed **and act as monitors** in the witness area.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0071

Thirty Minutes Prior to Execution

- (1) There will be no visits after the inmate has been moved to the execution room.
- (2) Witnesses will be taken to the execution witness viewing room at a time coordinated with the Assistant Superintendent Security or his/her designee.
- (3) Execution camera monitoring system will be activated.
- (4) At 6:30 p.m., the Assistant Superintendent of Security or designee will confirm that the clock used in the conduct of the execution is set to the correct time.**
- (5)** (4) Movement of Condemned Inmate to Execution Room:
 - (a) The death watch is suspended. All duties are assumed by the Special Security Team.
 - (b) The Special Security Team Leader will supervise the activities of the ~~S~~pecial ~~S~~ecurity ~~T~~eam members. The ~~six~~ ~~S~~pecial ~~S~~ecurity ~~T~~eam members will escort the inmate in security restraints from the cell and position and properly restrain the inmate on the gurney in the execution room.
 - (c) A trained person(s) will connect the heart monitor machine to the inmate.
 - (d) A medically trained person(s) will insert **and** / connect intravenous catheters for lethal injection.
- (6)** (3) At the appropriate time, the Superintendent will accompany the executioner(s) to the execution room, and ensure that the confidentiality of the executioner(s) has not been compromised.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0080

Execution Procedure

- (1) The Assistant Superintendent of Security or his/her designee shall make a final inspection of all straps, and with the assistance of medically trained staff, make final inspection of the intravenous catheters, and the injection equipment. When it is determined all is in order, he/she shall so advise the Superintendent.
- (2) Upon receiving a signal from the Superintendent, the Assistant Superintendent of Security or his/her designee shall open the window coverings so that the witnesses can see the inmate in position on the gurney.
- (3) At ~~12:01 a.m.~~ **7:00 p.m.** or as soon thereafter as possible, the Superintendent **will ask the condemned inmate for a brief statement. Following the inmate's statement, the Superintendent** shall signal the executioner(s) to begin injection of lethal solutions by syringe(s) into the injection port of the intravenous catheters. As prescribed by ORS 137.473, the lethal solutions will include an ultra-short acting barbiturate in combination with a chemical paralytic agent and potassium chloride or other equally effective substances sufficient to cause death.
- (4) The executioner(s) shall signal the Superintendent when infusion of the lethal injection has been completed. Upon determining death of the inmate and time, the Superintendent will summon a medical professional to certify the inmate's death.
- (5) Once the inmate has been pronounced dead, the witnesses will be escorted from the witness area.
- (6) The camera monitoring system will be turned off.
- (7) The Communications Manager will be notified of the time of the death and will inform the media assembled in the Media Center. Media witnesses will be escorted to the Media Center where they will share information as prearranged.

(8) The Assistant Superintendent **of** ; Security ; or his/her designee will remain with the body in the execution room and supervise the removal of the body.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0085

Stay of Execution

If, during any stage of the execution prior to infusion of the lethal injection, the Superintendent is notified that a stay of execution has been ordered, execution procedures shall be halted and the witnesses shall be removed.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

291-024-0090

Post-Execution Procedure

(1) The medical examiner or representative will process the death certificate and provide it to the Superintendent as soon as reasonably possible following the execution.

(2) The Superintendent or his/her designee will make arrangements with the funeral home for removal of the body. The Assistant Superintendent of Security or his/her designee will properly identify the inmate's body with identification photographs prior to release of the body. The State Police will be notified when the execution is completed and the body is ready for removal.

(3) The Superintendent will submit a final report to the Director.

Stat Auth: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075

Stat Impl: ORS 137.463, 137.473, 179.040, 423.020, 423.030, and 423.075