

## 1.3.D.3 Execution of an Inmate

### I Policy Index:



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**Office of Primary Responsibility:** DOC Administration

### II Policy:

The Department of Corrections (DOC) will carry out the execution of an inmate in accordance with chapter 23A-27A. The execution will be conducted in a professional, humane and dignified manner.

### III Definitions:

#### Lethal Injection:

The intravenous (IV) injection of a substance or substances in a lethal quantity (See SDCL § [23A-27A-32](#)).

#### Staff Member:

For the purposes of this policy, a staff member is any person employed by the Department of Corrections (DOC), full or part time, including an individual under contract assigned to the DOC or an employee of another State agency assigned to the DOC.

#### Witnesses:

People authorized to attend an execution as referenced in SDCL §§ [23A-27A-34](#) and [23A-27A-34.2](#).

### IV Procedures:

#### 1. General Provisions:

- A. Inmate executions are carried out by means of lethal injection (See SDCL § [23A-27A-32](#)).
  1. At no time will any correctional health staff participate in the execution.
  2. Lethal injection is not the practice of medicine in South Dakota (See SDCL § [23A-27A-32](#)).
  3. The inmate who is to be executed will be connected to two (2) IV lines, normally one (1) in each arm. One (1) IV line will be the primary line for the lethal injection and the other IV line is designated as a backup.
  4. The lethal injection process involves the administration of drugs, each in a lethal quantity, pursuant to a 3-Drug, 2-Drug, or 1-Drug protocol, depending on the date of the inmate's conviction and the availability of the necessary drugs:

- a. 3-Drug Protocol
    - 1) The first drug, Sodium Pentothal (aka Sodium Thiopental) or Pentobarbital, is administered in a quantity sufficient to ensure the inmate is not subjected to the unnecessary and wanton infliction of pain.
    - 2) The second drug, Pancuronium Bromide, stops the inmate's breathing.
    - 3) The third drug, Potassium Chloride, stops the inmate's heart.
  - b. 2-Drug Protocol
    - 1) The first drug, Sodium Pentothal, (aka Sodium Thiopental) or Pentobarbital, is administered in a quantity sufficient to ensure the inmate is not subjected to the unnecessary and wanton infliction of pain.
    - 2) The second drug, Pancuronium Bromide, stops the inmate's breathing.
  - c. 1-Drug Protocol – Sodium Pentothal (aka Sodium Thiopental) or Pentobarbital is administered in a lethal quantity sufficient to ensure the inmate is not subjected to the unnecessary and wanton infliction of pain.
5. Any person convicted of a capital offense or sentenced to death prior to July 1, 2007 may choose to be executed in the manner provided in this policy or in the manner provided by South Dakota law at the time of the person's conviction or sentence (SDCL § [23A-27A-32.1](#)).
- a. The inmate will indicate his/her choice in writing to the Warden of the South Dakota State Penitentiary (SDSP) (for male inmates) or Warden of the South Dakota Women's Prison (SDWP) (for female inmates), not less than seven (7) days prior to the scheduled week of execution.
  - b. If the inmate fails or refuses to choose a manner of execution within the time provided, the inmate will be executed as provided in SDCL § [23A-27A-32](#) (See SDCL § [23A-27A-32.1](#)).
- B. Executions are conducted under the direction of the Warden of the South Dakota State Penitentiary, or other staff member as appointed by the Secretary of Corrections if the Warden is unable to perform the duties to carry out the warrant of death (See SDCL § [23A-27A-37.1](#)).
1. The Warden or appointee will select qualified persons to participate in the execution.
  2. The Warden or appointee will identify one (1) or more individuals trained to administer intravenous injections to carry out the lethal injection.
    - a. The Warden will present information regarding the individual's(s') qualifications to the Secretary of Corrections for final approval (See SDCL § [23A-27A-32](#)).
    - b. The individual's(s') qualifications must demonstrate adequate training to competently carry out each technical step of the lethal injection (See *Baze v. Rees*, 553 U.S. 35 (2008) and *Taylor v. Crawford*, 487 F. 3d 1072 (8<sup>th</sup> Cir. 2007)).
    - c. The name, address, qualifications and other identifying information relating to the identity of any individual or entity supplying drugs for use in intravenous injections under SDCL § [23A-27A](#) is confidential. Disclosure of such information is a Class 1 Misdemeanor under state law (See SDCL § [23A-27A-31.2](#)). Any pharmacist or pharmaceutical supplier is authorized to dispense to the Warden, the substance or substances used without a prescription, notwithstanding any other provision of law.
    - d. The name, address, qualifications and other identifying information relating to the identity of any individual administering the intravenous injections under SDCL § [23A-](#)

[27A](#) is confidential. Disclosure of such information may not be authorized or ordered. Disclosure of such information is a Class 1 Misdemeanor under state law (See, SDCL § [23A-27A-31.2](#)).

- C. Male inmates sentenced to death will be housed in the South Dakota State Penitentiary (SDSP) or Jameson Prison Annex. Female inmates sentenced to death will be housed in the South Dakota Women's Prison (See DOC policy 1.3.D.2 - [Capital Punishment Housing](#)) and will be moved to SDSP for the final execution process (See SDCL § [23A-27A-33](#)).
1. Inmates sentenced to death are segregated from other inmates and single-celled (See SDCL § [23A-27A-31.1](#)).
  2. Physical access to an inmate sentenced to death is limited to staff members, the inmate's legal counsel, members of the clergy, if requested by the inmate, and members of the inmate's family who are approved to access the facility. No other person may be allowed access to the inmate without an order of the trial court (See SDCL § [23A-27A-31.1](#)). Access to the inmate by family and clergy is subject to approval by the Warden.
  3. If the inmate to be executed is female, the Warden of SDWP will notify the Warden of SDSP to arrange for the transfer of the female inmate to a designated cell within the Penitentiary or Jameson Prison Annex when the execution date is set.
- D. The Governor may investigate the circumstances of the case of an inmate sentenced to death in a manner he/she deems appropriate, and may require the assistance of the Attorney General (See SDCL § [23A-27A-19](#)). The Governor has the power to reprieve or suspend the execution for up to ninety (90) days to complete his/her investigation (See SDCL § [23A-27A-20](#)).
- E. If there is a question on an inmate's mental competence to proceed with the execution, the Warden of the Penitentiary will notify the Governor, Secretary of Corrections and the sentencing court. If the sentencing court determines there is a substantial threshold showing of incompetence to be executed, the sentencing court will conduct hearings and order mental examinations (See SDCL § [23A-27A-22](#), through § [23A-27A-26](#)). As long as the inmate is considered incompetent, the inmate may not be executed (See SDCL §§ [23A-27A-24](#) and [23A-27A-26](#)).
- F. Notwithstanding any other provision of law, the death penalty may not be imposed upon any person who was intellectually disabled at the time of the commission of the offense and whose intellectual disability was manifested and documented before the age of eighteen years (See SDCL §§ [23A-27A-26.1](#) through [23A-27A-26.7](#)).
- G. A pregnant inmate may not be executed, pursuant to SDCL §§ [23A-27A-27](#) through [23A-27A-29](#).
- H. The death penalty cannot be imposed on an inmate who committed an act punishable by death while under eighteen (18) years of age (See SDCL § [23A-27A-42](#)).
- I. Inmate appeals regarding the death penalty are outside the responsibility of the DOC. Inquiries on the status of any inmate appeal(s) should be directed to the Office of the Attorney General or the inmate's legal counsel.

## 2. Warrant of Execution:

- A. The sentencing judge, or his/her successor in office, will have a signed and certified Warrant of Death Sentence and Execution provided to the Warden of the Penitentiary (See SDCL §§ [23A-27A-15](#) and [23A-27A-16](#)).

- B. The Warrant of Death Sentence and Execution will set the week within which the inmate is to be executed (See SDCL § [23A-27A-15](#)).
- C. The Warden of the Penitentiary may carry out the execution at any time within the week stated in the Warrant of Death Sentence and Execution. (See, SDCL §§ [23A-27A-15](#) and [23A-27A-16](#)).

### 3. Time and Place of Execution:

- A. All executions will take place at the South Dakota State Penitentiary (See SDCL § [23A-27A-32](#)).
- B. Advance notice of the day and hour set by the Warden of the Penitentiary for the execution will be kept secret and only divulged to those invited or requested to be present at the execution (See SDCL § [23A-27A-37](#)).
- C. No person may divulge the day and hour set for the execution prior to the Warden's public announcement (See SDCL § [23A-27A-37](#)).
- D. The Warden of the Penitentiary will publicly announce the day and hour of the execution not less than forty-eight (48) hours in advance (See SDCL § [23A-27A-17](#)). The release of information to the media outlets shall be coordinated with the DOC Communications and Information manager. All other DOC staff is expressly prohibited from providing information about the execution not readily available in the public domain.

### 4. Selection of Witnesses:

- A. No person under the age of eighteen (18) will be allowed to witness an execution (See SDCL § [23A-27A-36](#)).
- B. Only persons authorized by the Warden of the Penitentiary and those authorized by SDCL §§ [23A-27A-32](#), [23A-27A-34](#), [23A-27A-34.1](#), [23A-27A-34.2](#) and [23A-27A-36](#) are allowed to attend the execution.
  - 1. The following witnesses are required to be invited to witness the execution by state law. Notice shall be provided at least two days prior to the scheduled day of the execution (See SDCL § [23A-27A-34](#)):
    - a. The attorney general of South Dakota.
    - b. The trial judge before whom the conviction was had or his /her successor in office.
    - c. The state's attorney of the county where the crime was committed.
    - d. The sheriff of the county where the crime was committed.
    - e. Representatives of the victim.
      - 1) There are no specific statutory requirements for how the Warden selects which representatives of the victim(s) may witness the execution.
      - 2) The victim's(s') family(ies) may suggest the names of individuals who they would like to attend.
      - 3) In the event the victim's(s') family(ies) cannot or will not prioritize their list of individuals, the Warden will make the choice in the following manner:
        - i. Close relatives of the victim(s) will be given preference to witness the execution. The order of preference is spouse, parents/stepparents, adult children/stepchildren, siblings, and other family members (grandparents, aunts, uncles, nieces, nephews, cousins, etc.)

- ii. Friends of the victim(s)
  - f. The Warden will select at least two (2) members of the media (See section on [Media Relations](#)).
  - g. A number of reputable citizens to be determined by the Warden.
  - h. The inmate is allowed to request the attendance of up to five (5) persons to serve as witnesses. These persons may include but are not limited to legal counsel, members of the clergy, relatives, friends, or other individuals as approved by the Warden. (See SDCL § [23A-27A-34.2](#)). All the requested witnesses shall be on the inmate's approved visit list and must be at least eighteen (18) years of age (See DOC policy 1.5.D.1 [Inmate Visiting](#)).
- C. Space and seating for witnesses is limited by the size of the room(s), the viewing windows, and concerns for the safety and security of the witnesses and staff.
- D. Preference will be given to accommodating as many representatives of the victim as possible, given the space constraints and the requirements in state law that other persons also serve as witnesses.
- E. The Warden of the Penitentiary has final approval of all witnesses not specifically required by law to be invited.
- F. All witnesses other than the Attorney General, trial judge, States Attorney and Sheriff are subject to the same background check as a visitor to the facility, unless exempted by the Warden.

## 5. Witness Behavior:

- A. Because the execution will take place inside the Penitentiary, where many other inmates and staff are present and in close proximity, all witnesses are expected to follow the rules and procedures of the SDSP and directives/orders of staff for the safety and security of all involved.
  - 1. Failure by a witness to comply with the rules and procedures of SDSP, or orders of staff, may result in denial of entry into the facility or room, or removal of the witness from the facility or room, as ordered by the Warden.
  - 2. Witnesses shall follow the approved dress code for visitation at the facility. Witnesses will be provided the approved dress code and related information in sufficient advance of the execution (See DOC policy 1.5.D.1 [Inmate Visiting](#)).
  - 3. Witnesses are subject to search, including hand-held wand and/or metal detector and pat searches by DOC staff (See DOC policy 1.3.A.5 [Searches - Institutions](#)).
    - a. Witnesses may be searched more than one (1) time.
  - 4. Personal property items not allowed inside the witness area.
    - a. Purses, cameras, pictures, pocketknives, watches, cell phones, signs, recording devices, other electronic equipment, etc. are not permitted. These items should be secured in a vehicle or lockers that are available for storage of personal property in the Penitentiary lobby.

- b. No drugs, alcohol, tobacco products or unauthorized firearms are allowed inside the Penitentiary. Anyone suspected of being under the influence of drugs or alcohol will be denied entry or removed from the facility.
- B. All witnesses are cautioned to refrain from verbal outbursts or inappropriate/disorderly action or behaviors while inside the Penitentiary.
- C. No cameras or recording devices of any type are allowed inside the facility, witness area or the area surrounding the execution chamber (See DOC policy 1.1.A.4 [Relationship with News Media, Public and Other Agencies](#)), unless an exception is granted by the Secretary of Corrections.

## 6. Media Relations:

- A. Requests for execution information exclusive to the DOC (does not include information under the authority of legal counsel) and requests for interviews of DOC staff from media representatives, shall be directed to the DOC Communications and Information Manager (See DOC policy 1.1.A.4 [Relationship with News Media, Public and Other Agencies](#)). Reasonable efforts will be made to accommodate representatives of the news media before, during and after a scheduled execution. The DOC reserves the right to regulate media access to ensure the orderly and safe operation of the facility and to preserve the penological interests of the DOC.
  1. The Warden of the Penitentiary can discuss procedures under their authority and control which affect an execution with media. Examples of procedures which may be discussed include the following:
    - a. The timelines of the execution, from issuance of the warrant of execution to the certificate of execution, return of the deceased inmate's body and final disposition of the body, i.e. burial/cremation, transfer.
    - b. The various steps that go along with the execution; i.e. sequence of events, last meal, last words, visitors, etc.
    - c. Witness information (See sections on [Selection of Witnesses](#) and [Witness Behavior](#)).
    - d. A description of the visit procedures at the Penitentiary.
  2. Questions regarding the process for the Governor to investigate the circumstances of the case will be directed to the Governor's Office, Attorney General's Office or DOC legal staff.
- B. The decision to grant tours of the execution chamber is at the discretion of the Warden of the Penitentiary.
- C. The decision to permit photos/video recordings of the execution chamber prior to or following an execution is subject to the approval of the Secretary or designee.
- D. At least two (2) media witnesses will be selected to attend the execution.
  1. If possible, at least one media witness will be selected from a media outlet located in the proximity of where the crime took place.
- E. Media witnesses shall not possess cameras or recording devices of any type while in the witness area or surrounding area of the execution chamber.
  1. Each media witness attending the execution may have writing material in the waiting area but must leave those materials behind when moved to the witness area.

2. Each media witness attending the execution will be offered paper and writing utensil by a DOC official when he/she arrives in the witness area.

## 7. Final Visit Arrangements:

- A. Reasonable accommodations for visits by approved immediate family will be made after the inmate has been moved to a holding cell near the execution chamber.
  1. Visits are allowed between 8:00 AM and 8:00 PM, except for the day of the execution (See item "E" in this section).
  2. All visits will be class II (non-contact) (See DOC policy 1.5.D.1 [Inmate Visiting](#)).
  3. Telephone calls and video visits may be substituted for personal visits.
- B. Visits will be supervised by DOC staff and must be arranged in advance through the Warden or Deputy Warden.
  1. Visitors are subject to search prior to, during and after a visit with the inmate (See DOC policy 1.3.A.5 [Searches - Institutions](#)).
  2. Visitors must abide by the rules and regulations of the facility and the DOC.
  3. Failure to abide by the rules, regulations and staff directives may result in termination of visit privileges.
- C. Visitors will be escorted and supervised by staff at all times.
- D. The following members of the inmate's immediate family are allowed Class II visits with the inmate, father, mother, stepfather, stepmother, brother(s), sister(s), stepbrother(s), stepsister(s), biological/legally adopted children and spouse.
- E. Visits with approved family members will cease at least six (6) hours prior to the scheduled time of execution. Visitors are subject to criteria consistent with DOC policy 1.5.D.1 [Inmate Visiting](#).
- F. Inmate access to their legal counsel/attorney will be accommodated as much as possible, consistent with preservation of the penological interests of the DOC.
  1. Any legal documents to be shared with the inmate will first be passed to staff and inspected for contraband, consistent with procedures described in DOC policy 1.5.D.3 [Inmate Correspondence](#). Approved documents will be given to the inmate.
  2. Attorney/legal counsel must leave the holding cell area at least one (1) hour before the scheduled execution time.
- G. Clergy may be allowed additional visits with the inmate until one (1) hour before the scheduled execution time, upon request of the inmate and approval by the Warden.

## 8. The Execution:

- A. An execution involves strict security procedures that are intended to protect witnesses, staff, inmates and the public at large. These security procedures are confidential and will not be discussed with the public, media, or unauthorized sources.
- B. The Governor, Attorney General and Chief Justice of the State Supreme Court or designee will be provided with the telephone numbers of the Warden's Office, the chemical room and multiple

backup telephone numbers, including personal cell phone numbers of the Warden and Deputy Warden of the Penitentiary for the purpose of emergency or last-minute notification. The Warden and Deputy Warden of the Penitentiary will be equipped with Penitentiary issued radios and cell phones.

- C. After confirming with the Governor's Office, the Attorney General and the Chief Justice of the State Supreme Court that no last-minute appeals have been initiated and no stays have been ordered, the inmate will be moved to the execution chamber and secured to the table.
- D. Two (2) intravenous injection (IV) sites will be prepared and inserted, normally one (1) in each of the inmate's arms.
- E. A bag of sterile saline solution will be connected to each IV site. Each IV will be checked and verified as running properly before witnesses are escorted into the viewing rooms.
- F. The witnesses will be brought into the respective witness rooms one (1) group at a time.
- G. The curtains outside the witness rooms will remain closed until the Warden of the State Penitentiary is satisfied everything is ready and orders them opened.
- H. The Warden will give the inmate an opportunity to make a final statement. A transcript will be made of the inmate's statement and the transcript will be made public.
- I. For 3-Drug or 2-Drug protocol executions, the Sodium Pentothal or Pentobarbital will be administered and allowed to take effect prior to administering the subsequent drugs.
- J. After the lethal injections have been administered, the Warden will wait a brief period before summoning a person capable of examining the inmate for the presence of respirations and heartbeat and, if appropriate, a person authorized to pronounce death, including the time of death. A heart monitor or similar device may be used.
  - 1. If the county coroner is on the premises, the Warden of the Penitentiary will ask the county coroner to pronounce death, including the time of death and then take charge of the body.
  - 2. If the county coroner is not on the premises, the Warden will direct the inmate's body to be taken to a nearby morgue, where the county coroner will be summoned to examine it and pronounce death.
- K. After death has been pronounced, the curtains of the witness rooms will be closed, and the witness groups will be escorted away from the area separately.

## 9. Post-Execution Procedures:

- A. The certificate of execution will be prepared and signed by the Warden or other DOC staff member assigned to be in charge of the execution. The certificate of execution document shall also be signed by each of the witnesses of the execution attending as allowed in SDCL §§ [23A-27A-34](#) and [23A-27A-34.2](#). (See SDCL §§ [23A-27A-34](#), [23A-27A-34.2](#) and [23A-27A-40.1](#)). The certificate shall be filed with the clerk of the sentencing court within ten (10) days of the execution. Copies of the death certificate, postmortem examination and any autopsy report shall be filed with the clerk of the sentencing court within ten (10) days of receipt of the report(s).
- B. The Warden will ensure the county coroner is permitted to investigate the death, pursuant to SDCL §§ [23-14-18\(3\)](#) and [24-1-27](#). The coroner shall conduct a postmortem examination of the body and report in writing the results of the examination. This report shall be included in the certificate of execution (See SDCL § [23A-27A-37.2](#)).



1. If the county coroner is on the premises, the body of the executed inmate will not be removed from the execution chamber until after the county coroner has certified the death of the inmate.
  2. Following the death of the inmate, the body is subject to an autopsy, pursuant to SDCL § 24-1-27 and Chapter 23-14. Any final autopsy report shall be filed with the certificate of death.
- C. After the county coroner has completed the investigation, the body of the inmate (unless claimed by a relative or personal representative), will be interred in a cemetery within Minnehaha County (Also see SDCL § 23A-27A-39 and DOC policy 1.4.E.6 *Death of an Offender or Unresponsive Offender*).
- D. Within ten (10) days following the execution, the certificate of execution and return will be filed with the Clerk of Courts of the county where the offense occurred. (See SDCL § 23A-27A-40.1).

## 10. Post-execution Media Briefing

- A. The DOC Communication and Information Manager will conduct a post-execution media briefing for recognized news media outlets (See DOC policy 1.1.A.4 *Relationship with News Media, Public and Other Agencies*) on the Penitentiary grounds.
1. Recognized news media outlets will be required to provide a list of staff identified to cover the briefing and any protests or support rallies on the Penitentiary grounds on the day of a scheduled execution.
    - a. Recognized news media are required to have identification, either a media ID badge, or a state issued identification card during this time.
  2. Only approved media members and witnesses will be allowed to attend the media briefing.
- B. The DOC Communication and Information Manager will announce the execution has been carried out and provide other information such as a timeline of the execution during the press briefing.
- C. Media witnesses to the execution are required to attend the post-execution press briefing to share information about the execution with other media members.
- D. Other witnesses to the execution will be provided an opportunity to speak at the press briefing.

## V Related Directives:

SDCL chapter 23-14, chapter 23A-27A and 24-1-27

Baze v. Rees, 217 S. W. 3d 207, (May 7, 2008)

Taylor v. Crawford, 487 F. 3d 1072 (8<sup>th</sup> Cir. 2007)

DOC policy 1.1.A.4 – *Relationship with News Media, Public and Other Agencies*

DOC policy 1.3.A.5 – *Searches - Institutions*

DOC policy 1.3.D.2 – *Capital Punishment Housing*

DOC policy 1.4.E.6 – *Death of an Offender or Unresponsive Offender*

DOC policy 1.5.D.1 – *Inmate Visiting*

DOC policy 1.5.D.3 – *Inmate Correspondence*

SDSP Emergency Response Manual A.12C

## VI Revision Log:

**August 2006:** New policy.

**June 2007:** **Revised** the policy statement. **Revised** the definition of lethal injection. **Removed** medical doctors as witnesses required to be invited to the execution. **Deleted** references and procedures related to SDCL § 23A-27A-38. **Revised** the post-execution procedures. **Moved** some information from the section on Media Relations and placed it in a new section titled The Execution. **Added** a reference to DOC policy 1.3.A.10. **Added** language about death penalty appeals. **Added** a statement regarding security measures. **Added** the circumstances in which an inmate may choose the current lethal injection procedures or revert back to existing law at the time of conviction or sentence. **Clarified** which individuals the victim's family may request as witnesses. **Added** a statement on the trained individuals' experience and qualifications. **Added** more specific procedures on administering the lethal dosages. **Added** a reference to *Taylor v. Crawford*.

**August 2007:** **Changed** "medical procedure" to "technical procedure" to avoid any possibility of confusion regarding an execution being considered the practice of medicine. **Updated** the procedures involving the county coroner in the section on The Execution.

**June 2008:** **Revised** formatting of policy in accordance with 1.1.A.2. **Changed** policy because of recent law changes to the capital punishment chapter, SDCL 23A-27A by the SD Legislature, 2008, SB 53 and the United States Supreme Court in **Baze v. Rees**, \_\_\_ US \_\_\_\_, (2008). **Revised** definition of Lethal Injection. **Changed** "through" to "and" and "36" to "34-2" in definition of Witnesses. **Deleted** reference to DOH policy in subsection (ss) (A1), **revised** wording in ss (A2), **added** "each in a lethal quantity" in ss (A4), **deleted** comment about remaining unconscious in ss (A4a), **replaced** "person" with "inmate" in ss (5A and B), **added** comment about state statute and statute 32-1 in ss (5B), **replaced** "at least two (2)" to "one (1) or more" in ss (B2), **revised** section reading properly trained to read adequately trained and referenced court cases in ss (B2b), **clarified** on the information that is to remain confidential for those assisting with administering the intravenous injection in ss (b2c), **revised** wording of how inmates are housed and **replaced** statute 16 with 31.1 in ss (C1), **replaced** statute 16 with 31.1 in ss (C2), **added** that the Secretary of DOC and sentencing court will be notified regarding any question regarding an inmate's mental competence and **replaced** statement regarding a commission may be appointed with language from statute 22 through 26, and **replaced** statutes in ss (E) and **deleted** "/exaction" and "and/" in ss (I), of General Provisions section. **Revised** statement regarding sentencing judge in ss (A), **replaced** "delivered" with "provided in ss (A), **added** "Death Sentence and" to "Execution" regarding the certified Warrant in ss (A, B and C) and **added** statute 16 in ss (A and C) of Warrant of Execution section. **Replaced** "the witnesses" with "those" in ss (B), **revised** ss (C) to state no person will divulge within Time and Place of Execution section. **Added** statute 36 in ss (A), **replaced** "DOC staff, law enforcement officers" with "persons", **added** statute 32, 24-2, 36 and **replaced** 35 with 34.1 in ss (B), **deleted** former ss (B2), **replaced** "no more than ten (10)" with "a number of" in ss (C), **deleted** ss (C1), **moved** ss (C2) to above ss (C), **added** new ss (C1 and C2), **revised** wording regarding selection of witnesses in ss (D, D1, D2 and D2a), **deleted** former ss (D2c) regarding multiple victims, **deleted** "(Attorney General, trial judge, states attorney and sheriff)" in ss (E) and **added** ss (G) in Selection of Witnesses section **Clarified** that no cameras or recording devices are allowed inside SDSP or area surrounding the execution chamber in ss (C) of Witness Behavior section. **Revised** wording in ss (A), **deleted** statement regarding photo requests of the execution chamber in ss (B) and **added** a new ss (C) regarding requests to take photos of the execution chamber, of the Media Relations section **Deleted** statement regarding pursuant to SDCL 23A-27A-35 in ss (G) of Final Visit Arrangements section. **Revised** ss (D) to include two intravenous injection (IV) sites will be prepared and inserted, **added** "site" when referencing IV in ss (E), **added** "the transcript" in ss (H), **deleted** "to render the inmate unconscious" in ss (I), **replaced** "EMT" with "a person capable of examining" and **added** "for the presence of respirations and heartbeat and if appropriate" to ss (J), **deleted** statement about county coroner examining the inmate and **added** statement about taking charge of the body in ss (J2) and **deleted** statement regarding EMT and county coroner and **added** statement about death being pronounced ss (K) of

The Execution section. **Replaced** “persons” with “witnesses”, **deleted** statute 40, **added** statutes 34, 34.2, 40.1 in ss (A), **added** statute 24-1-27 in ss (B), **replaced** “declared” with “certified” in ss (B1) **added** statute 40.1 in ss (F) and **revised** bullets to read accordingly within the Post-Execution Procedures section. **Added** Baze v. Rees, \_\_\_\_\_ US \_\_\_\_\_, (May 7, 2008), Taylor v. Crawford, 487 F. 3d 1072 (8<sup>th</sup> Cir., 2007) and DOC policy when referencing policies throughout policy **Revised** other grammatical, spacing and sentence structure throughout policy.

**July 2009:** **Added** site code to Baze v Rees throughout policy **Added** hyperlinks throughout policy. **Deleted** SDCL 23A-27A-30 in ss (G of General Provisions).

**July 2010:** **Revised** formatting of Section 1 **Replaced** SDSP with SD DOC in ss (A1 of General Provisions).

**September 2011:** **Reviewed with no changes.**

**October 2011:** **Deleted** “a” in IV.1.A. **Added** 3-Drug, 2-Drug, and 1-Drug protocol descriptions in Part IV.1. A.4. **Added** IV.1.B.1.c. moved former IV.1.B.2.c. to IV.1.B.2.d. **Updated** Baze cites to published U.S. citation throughout. **Deleted** “Pancuronium Bromide” and “Potassium Chloride” from IV.8.1 and **added** “For 3-Drug or 2-Drug protocol executions” and “subsequent drugs.” **Deleted** “dosages of Sodium Pentothal, Pancuronium Bromide and Potassium Chloride” from IV.8.J and **added** “injections”.

**February 2013:** **Added** “the Warden, subject to the approval of the Secretary of Corrections, shall determine the substances and the quantity of substances to be used for the execution” in Section 1 A. 5. b. **Deleted** “warden” and **Replaced** with “Warden of the state penitentiary” within the policy. **Deleted** “may not be authorized except pursuant to the terms of a court order” and **Replaced** with “is a class 1 misdemeanor under state law” in Section 1 B. 2. c. **Deleted** “Class 2” and **Replaced** with “Class 1” in Section 1 B. 2. d. **Deleted** “attorney’s, clergy, DOC staff, other state or contractual staff stationed at the respective prison, people authorized by the respective Warden or any other person authorized to access the inmate through a court order” and **Replaced** with “penitentiary staff, Department of Corrections staff, inmate’s counsel, member of the clergy if requested by the inmate, and members of the inmate’s family. No other person may be allowed access to the inmate without an order of the trial court.” in Section 1 C. 2. **Added** 3. to Section 1 C. **Added** “The release of information to the media outlets shall be coordinated with the DOC Communications and Information manager. All other DOC staff are expressly prohibited from providing information about the execution not readily available in the public domain” in Section 3 D. **Added** “Reasonable efforts will be made to accommodate representatives of the news media before, during and after a scheduled execution however; the DOC reserves the right to regulate media access to ensure the orderly and safe operations of its facilities.” to Section 6 A.

**July 2013:** **Deleted** “the state penitentiary” and **Replaced** with “either the South Dakota State Penitentiary or the South Dakota Women’s Prison” in Section 1 A. 5. a. **Deleted** “by state law at the time of the execution, the Warden, subject to the approval of the Secretary of Corrections, shall determine the substances and the quality of substances to be used for the execution” and **Replaced** with “in SDCL 23A027A-32) in Section 1 A.5 b. **Deleted** “the state penitentiary” and **Replaced** with either the SDSP or SDWP” in Section 1 B. **Added** e. “Representatives of the victim” to Section 4. **Added** 1)-3) and 3) a. to Section 4 B. 1. **Added** F. “At least one member of the news media” to Section 4 B. 1. **Added** G. “A number of reputable citizens to be determined by the Warden” to Section 4 B. 1. **Deleted** The Warden of the state penitentiary will select a number of reputable adult citizens to witness the execution and two (2) members of the media (See section on Media Relations).” in Section 1 C. **Deleted** “1. Space and seating for witnesses is limited by the size of the rooms, the viewing windows and concerns for the safety and security of the witnesses” in Section 4 C. **Deleted** 2. “Preference will be given to accommodating as many representatives of the victim as possible give the space constraints and the requirements in state law that other persons also serve as witnesses” in Section 4. **Deleted** “There are no specific statutory requirements for how the Warden of the state penitentiary selects which representatives of the victim(s) may witness the execution” in Section 4. **Deleted** 1. “The victim’s family or families may suggest the names of the individuals who should attend” in Section 4 D. **Deleted** 2. “In the event the victim’s family or families cannot or will not prioritize their list of individuals, the Warden of the state penitentiary will make the choice in the following manner:” and **Deleted** 1 (1-6) referencing the list of family in Section 4 D. **Renumbered** items that followed **Added** new C. “Spaced and seating for witnesses is limited by the size of the rooms, the viewing windows and concerns for the safety and security of the witnesses” in Section 4 **Added** new D. “Preference will be given to accommodating as

many representatives of the victim as possible given the space constraints and the requirements in state law that other persons also service as witnesses” in Section 4.

**July 2014:** Reviewed with no changes.

**July 2015:** Added definition of “Staff Members”. Added “approved to access the facility” in Section 1 C. 1. Deleted “Department of Corrections staff” and Replaced with “staff members” in Section 1 C. 2.

**January 2017:** Reviewed with no changes.

**July 2018:** Reviewed with no changes.

**August 2019:** Deleted “employed by the South Dakota Department of Corrections (DOC) or under contract with the DOC” in Section 1 A. 1. Deleted “(for male inmates) or the South Dakota Women’s Prison (for female inmates) and Added “or other staff member as appointed by the Secretary of Corrections if the Warden is unable to perform the duties to carry out the warrant of death” in Section 1 B. Added “Any pharmacist or pharmaceutical supplier is authorized to dispense to the Warden the substance or substances used without a prescription, notwithstanding any other provision of law” in Section 1 B.2. c. Added “Access to the inmate by family and clergy is subject to approval by the Warden” in Section 1 C 2. Added “to a designated cell within the Penitentiary or Jameson Prison Annex” to Section 1 C. 3. Deleted “mentally retarded” and Replaced with “intellectually disabled” in Section 1 F. Added “Notice shall be provided at least two days prior to the scheduled day of the execution” in Section 4 B. 1. Added “at least” to Section 4 B. 1. f. Added “or other individuals as approved by the Warden” in Section 4 B. 1. h. Added “as ordered by the Warden” in Section 5 A. 1. Deleted “SDSP” and Replaced with “execution chamber” in Section 5 A. 4. Added “unless an exception is granted by the Secretary of Corrections” in Section 5 C. Added “and preserve the penological interests of the DOC” in Section 6 A. Added “DOC legal staff” in Section 6 A. 2. Deleted “The first media representative will be selected from the Associated Press” in Section 6 D. 1. Deleted “The second media representative” and Replaced with “If possible, at least one media representative” in Section 6 D. 2. Added “prior to or following an execution” and Added “designee” to Section 6 C. Deleted “pencil” and Replaced with “writing utensil” in Section 6 E. 2. Added “video visits” to Section 7 A. 3. Added “Visitors are subject to criteria consistent with DOC policy 1.5.D.3 *Inmate Correspondence*” in Section 7 E. Added “consistent with preservation of the penological interests of the DOC” in Section 7 F. Deleted “will” and Replaced with “may” and Added “upon request of the inmate and approval of the Warden” in Section 7 G. Added “consistent with procedures described in DOC policy 1.5.D.3 *Inmate Correspondence*” in Section 7 F. 1. Added “and cell phones” in Section 8 B. Added “with the public, media or unauthorized sources” to Section 8 A. Added “A heart monitor or similar device may be used” in Section 8 J. Deleted “certify” and Replaced with “pronounce” in Section 8 J 2. Added “The certificate shall be filed with the clerk of the sentencing court within 10 days of the execution. Copies of the death certificate, postmortem examination and any autopsy report shall be filed with the clerk of the sentencing court within 10 days of receipt of the report(s)” in Section 9 A. Added “The coroner shall conduct a postmortem examination of the body and report in writing the results of the examination. This report shall be included in the certificate of execution” in Section 9 B. Added 2. to Section 9 B. Deleted D. “After the execution is complete, the DOC Communication and Information Manager will announce the fact in a press briefing that will be conducted on the Penitentiary grounds” in Section 9 and Deleted E. “Media representatives present at the execution are required to attend the post-execution press conference to share information about the execution with other media” in Section Added new Section 10.

**July 2020:** Added “directives” to Section 5 A. Added “into the facility or room” to Section 5 A. 1.

Added “unauthorized” to Section 5 A. 4. b. Added “At least” to Section 6 D.

**August 2021:** Reviewed with no changes.

*Tim Reisch (original signature on file)*

Tim Reisch, Interim Secretary of Corrections

08/30/2021

Date