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17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19
20 LOS ANGELES TIMES
COMMUNICATIONS LLC, KQED, INC.,
21 SAN FRANCISCO PROGRESSIVE MEDIA
CENTER,

22 Plaintiffs,

23 v.

24 SCOTT KERNAN, SECRETARY OF THE
25 CALIFORNIA DEPARTMENT OF
CORRECTIONS AND
26 REHABILITATION, RONALD DAVIS,
WARDEN OF THE CALIFORNIA STATE
27 PRISON AT SAN QUENTIN,

28 Defendants.

Case No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF [42 U.S.C. § 1983]**

NATURE OF ACTION

1
2 1. “To determine whether lethal injection executions are fairly and humanely
3 administered, or whether they ever can be, citizens must have reliable information about the
4 ‘initial procedures,’ which are invasive, possibly painful and may give rise to serious
5 complications. This information is best gathered first-hand or from the media, which serves as the
6 public’s surrogate.” *Cal. First Amendment Coal. v. Woodford*, 299 F.3d 868, 876 (9th Cir. 2002)
7 (citation omitted).

8 2. This action is brought to vindicate the right of the press and the public to attend,
9 meaningfully observe, and gather and report on important information at California executions.
10 These executions are administered by the California Department of Corrections and
11 Rehabilitation and the California State Prison at San Quentin. These entities are responsible for
12 developing and implementing the protocols that govern the method for carrying out executions by
13 lethal injection.

14 3. Specifically, the Defendants have constructed an execution chamber and
15 developed a corresponding execution protocol that intentionally places critical portions of the
16 execution beyond public observation. Pursuant to Defendants’ regulations, the preparation and
17 administration of the lethal drugs occurs in a so-called “Infusion Control Room,” while the
18 inmate is located in the separate “Lethal Injection Room.” Pursuant to Defendants’ regulations,
19 the public has an opportunity to view the activities in the Lethal Injection Room, but is denied
20 any opportunity to view the activities in the Infusion Control Room. In addition, pursuant to
21 Defendants’ regulations, the curtain to the viewing windows on the Lethal Injection Room is to
22 be closed and the public address system turned off, if the inmate does not die after administration
23 of three doses of the lethal injection chemical. The public is thereby prevented from observing
24 Defendants’ response when the execution does not proceed as intended. This Federal Court has
25 enjoined the Defendants—and their predecessors in the California government—from engaging
26 in similar efforts to conceal portions of the execution process. It should do the same here.

27 4. The First Amendment of the United States Constitution guarantees the right at
28 issue. Members of the press effectuate the right by attending executions and serving as surrogates

1 for the public at large. Plaintiffs, media organizations that report on California executions, seek
2 injunctive relief to prevent the Defendants from executing any death row inmates in a manner that
3 conceals important information to which the public is constitutionally entitled. Specifically, the
4 public is constitutionally entitled to observe the processes and procedures by which the State puts
5 an inmate to death.

6 5. Plaintiffs bring this action to vindicate the public's right of access to executions,
7 and to prevent the State of California from carrying out significant portions of executions behind
8 closed doors. Plaintiffs have a right to observe the preparation and administration of lethal drugs,
9 but Defendants have arbitrarily chosen to locate these critical portions of the execution process in
10 the Infusion Control Room. Plaintiffs also have a right to observe the provision of "medical
11 assistance" to an inmate if administration of the lethal injection chemical does not cause death,
12 but Defendants have arbitrarily chosen to block visual and aural observation of this critical
13 portion of the execution process in the Lethal Injection Room. The First Amendment right of
14 access enables the press and the public to obtain essential categories of information, including,
15 but not limited to, information about how the lethal injection chemical is prepared and
16 administered, if execution staff properly prepared or administered the chemical, the number of
17 doses used in the execution, how the prisoner reacted to each dose, how effectively and
18 professionally the execution staff performed, and how effectively and professionally the
19 execution staff perform if the execution does not proceed as intended. In contrast to other
20 methods of executions, executions by lethal injection involve more numerous and more complex
21 steps and procedures—resulting in much greater room for error. As a result, the press and the
22 public have an even greater interest in observing each step in the process than with other methods
23 of executions that have historically been open to public observation but that are carried out with a
24 less elaborate set of procedures and discretion.

25 6. This lawsuit is not a challenge to the death penalty or to all lethal-injection
26 executions. Rather, Plaintiffs contend that California must not execute death row inmates in a
27 manner that violates the First Amendment rights of the press and of the public. The public
28 requires information to make informed decisions, via democratic processes, about whether

1 executions should be conducted at all, and if so, how. This First Amendment claim, therefore,
2 vindicates the public’s right of access to information related to that democratic decision-making
3 process.

4 **JURISDICTION AND VENUE**

5 7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), § 1343
6 (civil rights violations), § 2201 (declaratory relief), and § 2202 (further relief). This action arises
7 under the First Amendment to the United States Constitution and under 42 U.S.C. § 1983.

8 8. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the California State
9 Prison at San Quentin in San Quentin, California, is located in this District. All executions
10 conducted by the State of California (“State”) occur at San Quentin, which is located in Marin
11 County. The events giving rise to this complaint will occur in this District.

12 9. Pursuant to Local Rule 3-2(c) and (d), assignment to the San Francisco Division is
13 proper because a substantial portion of the events giving rise to this action occurred and will
14 occur in Marin County.

15 **THE PARTIES**

16 10. Plaintiff Los Angeles Times Communications LLC (“LA Times”) covers U.S. and
17 international news. First published in 1881, the LA Times has a daily readership of 1.4 million
18 and Sunday readership of 2.4 million through latimes.com and the newspaper. The LA Times,
19 which has won 44 Pulitzer Prizes, regularly covers criminal proceedings involving defendants
20 who have been sentenced to death and has been actively involved in covering death penalty
21 issues. It has previously sent reporters to witness and report on executions in California,
22 including the executions of Robert Alton Harris, Stephen Wayne Anderson, and Robert Lee
23 Massie. The LA Times also intends to send reporters to witness and report on future executions
24 in California. Witnessing the entirety of an execution is crucial to the LA Times’ ability to
25 accurately report on and provide its readers with a full and complete description of the lethal
26 injection process as carried out in California.

27 11. Plaintiff KQED, Inc. (“KQED”) is a non-profit media organization founded in
28 1953 that operates public television and radio stations. The television and radio stations operated

1 by KQED produce some of the most-watched and most-listened-to television and radio programs
2 in the country. These stations produce news programs that regularly report on, among other
3 things, the application of the death penalty in California. KQED has previously sent reporters to
4 witness and report on executions in California, including the executions of William Bonin and
5 Daniel Williams. KQED intends to send reporters from its television and radio news programs to
6 witness and report on future executions in California. Witnessing the entirety of an execution is
7 crucial to KQED's ability to accurately report on and provide its audience with a full and
8 complete description of the lethal injection process as carried out in California. KQED has
9 previously challenged abridgments of the media's right to access correctional facilities. *See*
10 *Houchins v. KQED, Inc.*, 438 U.S. 1 (1978).

11 12. Plaintiff San Francisco Progressive Media Center is a non-profit founded in 2013
12 that publishes the website 48hills.com. Stories published on 48hills.com include feature-length
13 commentary, news analysis, and investigative reporting. The founder of the San Francisco
14 Progressive Media Center is Tim Redmond, the former executive editor of the San Francisco Bay
15 Guardian. While at the Bay Guardian, Mr. Redmond sent a reporter to witness and report on an
16 execution conducted in San Quentin. The San Francisco Progressive Media Center intends to
17 continue reporting on what eyewitnesses to California executions observe during an execution by
18 lethal injection and intends to send reporters to witness and report on future executions in
19 California. Witnessing the entirety of an execution is crucial to the San Francisco Progressive
20 Media Center's ability to accurately report on and provide its readers with a full and complete
21 description of the lethal injection process as carried out in California.

22 13. Defendant Scott Kernan is the Secretary of the California Department of
23 Corrections and Rehabilitation ("the Department"). Kernan, or those under the control of the
24 Secretary of the Department, developed the regulations setting forth California's execution
25 protocol and is responsible for implementing it.

26 14. Defendant Ronald Davis is the Warden of the California State Prison at San
27 Quentin ("San Quentin Prison"). California death row inmates are incarcerated and executed at
28 San Quentin Prison. Davis, or those under the control of the Warden of San Quentin Prison,

1 developed the regulations setting forth California's execution protocol, and is responsible for
2 implementing it.

3 **ALLEGATIONS IN SUPPORT OF DECLARATORY AND INJUNCTIVE RELIEF**

4 15. In response to concerns raised by the United States District Court for the Northern
5 District of California in *Morales v. Tilton*, 465 F. Supp. 2d 972 (N.D. Cal. 2006), about deficient
6 conditions at the execution facilities at San Quentin Prison, the office of then-Governor Arnold
7 Schwarzenegger began construction of a new lethal injection facility in 2007. Despite the new
8 construction costing approximately \$853,000, no one from Governor Schwarzenegger's office
9 sought approval from the California Legislature for the project.

10 16. Construction of the new lethal injection facility was completed in 2008. The
11 facility includes a central death chamber ("Lethal Injection Room") where an inmate is strapped
12 to a gurney and ultimately executed. Surrounding the Lethal Injection Room are three separate
13 rooms where witnesses can view the execution. A fourth room where prison officials prepare and
14 administer the lethal injection chemical (the "Infusion Control Room") is also located directly
15 adjacent to the Lethal Injection Room, but provides witnesses no viewing access. This execution
16 chamber was therefore constructed with a layout that conceals the activities inside the Infusion
17 Control Room from the press and the public.

18 17. Under California law, death sentences shall be carried out by "administration of a
19 lethal gas or by an intravenous injection of a substance or substances in a lethal quantity sufficient
20 to cause death, by standards established under the direction of the Department of Corrections and
21 Rehabilitation." Cal. Penal Code § 3604(a). The statute prescribes no specific drugs, dosages,
22 drug combinations, or manner of intravenous line access to be used in the execution process; nor
23 does the statute prescribe any certification, training, or licensure required of those who participate
24 in the execution process. By statute, the Department must determine all of these aspects of the
25 execution process using lethal injection.

26 18. Title 15 of the California Code of Regulations § 3349, *et seq.* (the "Lethal
27 Injection Regulations") sets forth the lethal injection protocol adopted by the Department. The
28 Lethal Injection Regulations that went into effect on March 1, 2018 are the latest version of

1 California's lethal injection procedure—formerly known as San Quentin Operational Procedure
2 No. 770 (“Procedure 770”)—which has evolved since it was first adopted in the mid-1990’s. A
3 copy of the current procedure is appended to this Complaint as Exhibit A.

4 19. On January 29, 2018 the Department adopted new revisions to the Lethal Injection
5 Regulations. A central feature of the change enacted by these revisions is a reduction in the
6 number of different drugs used to carry out an execution by lethal injection. Prior to the adoption
7 of the most recent revisions to the Lethal Injection Regulations, executions were carried out via
8 injections of a lethal combination of three chemical substances, in the following order: first,
9 sodium pentothal, a short-acting barbiturate; second, pancuronium bromide, which paralyzes all
10 voluntary muscles; and third, potassium chloride, which causes cardiac arrest.

11 20. Under the current iteration of the Lethal Injection Regulations, executions are
12 carried out by injecting a single chemical selected from among two choices: pentobarbital or
13 thiopental. Cal. Code Regs. tit. 15, § 3349.5(f)(2)(C). The Warden of San Quentin selects the
14 chemical to be used in any given execution on a case-by-case basis, taking into account different
15 factors like the availability of each chemical. Cal. Code Regs. tit. 15, § 3349.5(f)(2)(A). Nothing
16 in the Lethal Injection Regulations requires the Warden to inform the public of whether an
17 execution will proceed using pentobarbital or thiopental. The FDA-approved manufacturers of
18 pentobarbital have prohibited their use in executions. Thiopental is not available domestically
19 and cannot lawfully be imported into the country.

20 21. At all times, the activities inside the Infusion Control Room are not visible to
21 witnesses attending the execution. These activities are concealed from the public and the press.

22 22. A witness in the Infusion Control Room would be able to discern if an execution is
23 proceeding with pentobarbital or thiopental. During the execution, if the selected lethal injection
24 chemical is pentobarbital, it is administered by a dose consisting of 7.5 grams and delivered by
25 means of three syringes, each containing 2.5 grams of the chemical. Cal. Code Regs., tit. 15,
26 § 3349.6(g)(4)(A). If the selected lethal injection chemical is thiopental, it is administered by a
27 dose consisting of 7.5 grams and delivered by means of five syringes, each containing 1.5 grams
28

1 of the chemical. Cal. Code Regs., tit. 15, § 3349.6(g)(4)(B). The drugs are administered from the
2 Infusion Control Room, regardless of which is selected.

3 23. “Approximately three hours prior to the initial scheduled execution date and time,”
4 a team of prison officials prepares three doses of the lethal injection chemical (for a total of 9
5 syringes for pentobarbital and 15 syringes for thiopental) in the Infusion Control Room. Cal.
6 Code Regs. tit. 15, § 3349.6(g)(4)(C).

7 24. “[T]wo hours prior to the initial scheduled execution date and time,” witnesses are
8 escorted into designated witness rooms where they have a view of the Lethal Injection Room and
9 can listen to activities in the Lethal Injection Room through a public address system. Cal. Code
10 Regs. tit. 15, § 3349.6(h), § 3349.7(b)(4). Again, witnesses cannot see into the Infusion Control
11 Room.

12 25. “Approximately 15 minutes before an initial scheduled execution date and time,”
13 the inmate is escorted into the Lethal Injection Room. Cal. Code Regs. tit. 15, § 3349.6(k)(1).
14 After the inmate is escorted into the Lethal Injection Room and secured to a gurney, a first set of
15 prison officials attaches intravenous lines to the inmate. Cal. Code Regs. tit. 15, § 3349.7(a)(3).
16 These lines extend to the Infusion Control Room. The Infusion Control Room is where a second
17 set of prison officials administers doses of the lethal injection drug directly into the intravenous
18 lines. Cal. Code Regs. tit. 15, § 3349.7(b)(5).

19 26. Infusion begins after “a statement detailing the court order mandating the
20 execution is read aloud” and prison staff provide “an opportunity for the inmate to make a brief
21 final statement” on the public address system. Cal. Code Regs. tit. 15, § 3349.7(b). The Lethal
22 Injection Regulations address the contingency that death might not result from administration of a
23 single 7.5 gram dose. If the first 7.5 gram dose of the drug has been administered and the inmate
24 is still alive, prison officials in the Infusion Control Room administer up to two additional doses
25 of the chemical. Cal. Code Regs. tit. 15, § 3349.7(c). Efforts to execute the inmate continue until
26 up to three doses have been administered; efforts to execute the inmate cease only upon the
27 inmate’s death or ten minutes following the administration of a third dose, whichever occurs first.
28 Cal. Code Regs., tit. 15, § 3349.7(c)(12).

1 27. If the inmate has not died after administration of the third dose, the protocol calls
2 for the Warden to “stop the execution,” and “summon medical assistance” for the inmate. Cal.
3 Code Regs. tit. 15, § 3349.7(c)(12), § 3349.7(d). At this juncture, the curtains on the viewing
4 windows to the Lethal Injection Room are closed, the public address system is turned off, and
5 witnesses are escorted away from the Lethal Injection Facility. Cal. Code Regs. tit. 15,
6 § 3349.7(d). The protocol does allow witnesses to view efforts to provide “medical assistance.”

7 28. A limited number of members of the public are permitted to witness executions in
8 California. The continued right of the public to witness executions in California is codified in
9 California Penal Code § 3605, which provides that “at least 12 reputable citizens” must be invited
10 to be present at the execution.

11 29. Journalists routinely serve as witnesses at executions and, in that capacity, proxies
12 for the general public. These eyewitnesses serve as surrogates for those members of the press and
13 the public who are not able to attend executions personally. Members of the press have, in the
14 past, regularly served as eyewitnesses to executions in California and have reported on their
15 observations. Those journalists selected to witness an execution shared, as a matter of practice
16 and as required by former Procedure 770, what they saw with other journalists that were not
17 selected to attend. These observations were shared freely and regardless of affiliation. As a
18 result, information about an inmate’s execution was disseminated to a variety of news outlets. By
19 serving as surrogates to the public in this manner, members of the press and other witnesses to an
20 execution effectuate the First Amendment rights of the public and the press to attend and
21 meaningfully observe executions.

22 30. Public access to such information about the manner by which convicted criminals
23 are put to death enhances the proper functioning of the execution process and promotes public
24 confidence in the integrity of the criminal justice system. An informed public debate is critical in
25 determining whether execution by lethal injection comports with “the evolving standards of
26 decency which mark the progress of a maturing society.” *Cal. First Amendment Coal.*, 299 F.3d
27 at 876. “To determine whether lethal injection executions are fairly and humanely administered,
28 or whether they ever can be, citizens must have reliable information about the ‘initial procedures,’

1 which are invasive, possibly painful and may give rise to serious complications.” *Id.* The
2 disclosure of relevant information about execution procedures reduces the risk that improper,
3 ineffective, or defectively prepared drugs are used and promotes the proper functioning of the
4 execution process.

5 31. The issue of whether California’s lethal injection protocol functions properly has
6 received substantial media attention in California and nationwide, and is of great interest to the
7 public. Defendants did not provide the public with an opportunity to comment on the current
8 regulations. But when the Department was drafting the predecessor to the current regulations, it
9 received approximately 168,000 comments from approximately 35,000 organizations and
10 members of the public, which demonstrates the intensity of the public’s interest in executions by
11 lethal injection.

12 32. Members of the press and the public who witness executions at San Quentin are
13 unable to observe and report on significant aspects of the execution process. Specifically,
14 witnesses are unable to view or otherwise observe any procedures that occur in the Infusion
15 Control Room, including the preparation of the lethal injection drugs and the administration of
16 doses of those drugs during the execution process.

17 33. An important consideration in determining whether or not the public has a First
18 Amendment right of access to governmental proceedings is whether those proceedings have
19 historically been open to the press and general public. Historically, executions—and information
20 concerning how executions are conducted and the preparation of the instrumentalities of an
21 execution—have been open to the public. As the United States Court of Appeals for the Ninth
22 Circuit has noted, “[h]istorically . . . [e]xecutions were fully open events in the United States.”
23 *Cal. First Amendment Coal.*, 299 F.3d at 875. “With historical executions, the actual means of
24 execution was open and obvious to the public: rope, sodium cyanide gas, and electricity. The
25 public could not only view the prisoner’s death, they could see the precise cause and its effects.
26 The public and the press therefore historically were allowed to see the specific means used to
27 execute the prisoner.” *Schad v. Brewer*, No. CV-13-2001-PHX-ROS, 2013 WL 5551668, at *5
28 (D. Ariz. Oct. 7, 2013).

1 34. Hangings, for example, were conducted using scaffolds that were specifically
2 constructed to accommodate large crowds. *See* Stuart Banner, *The Death Penalty, An American*
3 *History* 10-11 (2002). The citizens who attended and witnessed such executions often numbered
4 in the thousands. *See* Deborah Denno, *Is Electrocutation an Unconstitutional Method of Execution?*
5 *The Engineering of Death over the Century*, 35 Wm. & Mary L. Rev. 551, 564 (1994). The public
6 also had access to detailed information about the size, quality, and production of the rope used in
7 hangings. *See, e.g., The Ropes Made, A peculiar mark of identification upon each*, Cincinnati
8 *Enquirer* (Mar. 16, 1897) at 12; *Hanged, Jackson and Walling Jerked Into Eternity*, Spokane
9 *Daily Chron.* (Mar. 20, 1897) at 1.

10 35. The procedures barring witnesses from observing (1) the process of preparing and
11 administering the lethal injection chemical and (2) efforts to provide “medical assistance” to an
12 inmate in the event administration of the lethal injection chemical does not result in death serve
13 no legitimate functional or penological purpose in the lethal injection protocol. Even if a
14 legitimate penological purpose existed, the damage done to the First Amendment interests by
15 concealing that information would outweigh the penological purpose. Keeping secret the
16 activities that occur in the Infusion Control Room and, in some instances, in the Lethal Injection
17 Room serves no purpose other than suppressing important information about the execution
18 process from the public and the press. Defendants know that the only function of preventing
19 witnesses from seeing these procedures is to conceal information, but they continue to do so
20 despite this knowledge.

21 36. Defendants prepare and administer the lethal injection chemical in the Infusion
22 Control Room, and provide “medical assistance” to an inmate in the Lethal Injection Room,
23 beyond the observation of witnesses, in a manner that conceals important information from the
24 press and the public. In the past, Defendants and their predecessors incorporated into the lethal
25 injection process procedures intentionally aimed at suppressing important information from those
26 observing the execution. Specifically, in *California First Amendment Coalition*, 299 F.3d at 880,
27 the plaintiff media organization challenged the San Quentin Prison and Department policy of
28 drawing a physical curtain in front of the lethal injection chamber while prison guards strapped

1 down the inmate and inserted intravenous lines into his arms. On the basis of an internal
2 Department of Corrections memo, the district court found and the Ninth Circuit affirmed that
3 “Procedure 770 was motivated, at least in part, by a concern that the strapping of a condemned
4 inmate, the injection of intravenous lines or other aspects of a lethal injection execution would be
5 perceived as brutal by the public and thus was, to that extent, prompted by considerations other
6 than legitimate concerns for prison personnel safety.” *Cal. First Amendment Coal.*, 299 F.3d at
7 880. Similarly, here, Defendants’ concealment of the preparation and administration of the lethal
8 injection chemical serves no legitimate purpose and instead prevents the public from learning this
9 information.

10 37. Observation of the preparation and administration of the lethal injection chemical
11 would allow witnesses to determine important issues, including but not limited to which drug
12 (thiopental or pentobarbital) Defendants are using in the execution and whether the execution
13 team is following protocols to avoid foreseeable errors in the execution process that could cause
14 pain to the inmate. Observing efforts to provide the inmate with “medical assistance” in the event
15 administration of the lethal injection chemical does not cause death would allow witnesses to
16 determine the nature of the execution team’s response when the execution does not proceed as
17 intended, and the impact of errors in the execution process on the inmate. Executions by lethal
18 injection follow many complex steps, requiring skill and training. Missteps by the execution
19 team, whether for lack of training, skill, competence, or other reasons, can cause prolonged and/or
20 painful procedures. The public and press have an interest in understanding whether Defendants
21 are conducting executions with a drug that is not lawfully available in this country, and the extent
22 to which actions or omissions of the execution team caused ultimate errors in an execution, as
23 well as the effect of those errors on the inmate. Because executions by lethal injection involve
24 procedures that are more numerous and more complex than other methods of execution, the press
25 and the public have an even greater interest in witnessing the process than with other methods of
26 executions that have historically been open to public observation but that are carried out with a
27 less elaborate set of procedures and discretion.

28

1 38. Defendants' concealment of the preparation and administration of the chemical
2 used in lethal injection procedures and the provision of any "medical assistance" to an inmate
3 necessarily impacts Plaintiffs' First Amendment rights. The sequestration of those processes
4 behind the walls of the Infusion Control Room prevents the press and the public from obtaining
5 essential categories of information, including information about what lethal injection chemical
6 was used, how the lethal injection chemical is prepared, how it is administered, if it was prepared
7 or administered properly, the number of doses administered, the prisoner's reaction to each dose,
8 the training and professionalism of the execution staff, and still other information that society
9 values. The press and the public are entitled to each of these types of information, all of which the
10 Lethal Injection Regulations conceal. Additionally, Defendants' infringement of Plaintiffs' First
11 Amendment rights is *per se* improper because Defendants acted with the purpose of concealing
12 these portions of executions from the press and public. Defendants have presented no cognizable
13 interest justifying the exclusion of witnesses from observing these procedures. This conduct
14 constitutes a *per se* violation of Plaintiffs' First Amendment rights to meaningfully witness and
15 obtain information at executions.

16 39. As independent witnesses to execution proceedings, members of the news media
17 and other witnesses to executions provide public scrutiny, which enhances the integrity of the
18 death penalty process and aids the public in its evaluation of whether executions are fairly and
19 humanely administered. Reporting by members of the press that are not associated with the
20 condemned, the victim, or the State of California is critical to assuring the public that they have
21 thorough and objective facts about the execution process, particularly in the immediate aftermath
22 of an execution, when public interest in and debate about the death penalty is at its peak.

23 40. The Lethal Injection Regulations result in irreparable injury to Plaintiffs because
24 the information suppressed and concealed by the protocol can never be reacquired.

25 41. This complete and permanent loss of socially valuable information to the press and
26 to the public cannot be redressed by legal remedies.

27 42. Defendants' prior intentional attempts to conceal information about the execution
28 process from the press and the public weigh in favor of injunctive relief.

1 43. An actual controversy exists between Plaintiffs and Defendants as to whether the
 2 Lethal Injection Regulations violate Plaintiffs’ First Amendment rights.

3 **CLAIM FOR RELIEF**

4 **FIRST AMENDMENT RIGHT OF ACCESS TO PUBLIC PROCEEDINGS**
 5 **(FIRST AMENDMENT AND 42 U.S.C. § 1983)**

6 44. Plaintiffs hereby reallege and incorporate by reference the paragraphs above as
 7 though fully set forth herein.

8 45. Defendants’ Lethal Injection Facility and Lethal Injection Regulations
 9 intentionally shield from public observation the activities in the Infusion Control Room and the
 10 provision of medical assistance to the inmate in the Lethal Injection Room. These actions prevent
 11 Plaintiffs and the public from viewing and listening to critical aspects of the execution process,
 12 including critical procedures that are inextricably intertwined with the execution process.

13 46. Defendants prevent Plaintiffs from observing the preparation of the lethal drugs,
 14 their administration, the effects of the lethal drugs on the inmate being executed, and the
 15 provision of “medical assistance” to the inmate in the event administration of the lethal injection
 16 chemical does not result in death.

17 47. The First Amendment provides the press and the public the right to observe
 18 executions and procedures inextricably intertwined with the execution process. Defendants
 19 cannot justify shielding from public observation the preparation and administration of the lethal
 20 injection chemical, or the provision of medical assistance to the inmate in the event
 21 administration of the lethal injection chemical does not result in death.

22 48. Defendants are acting under color of state law.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for:

- 25 1. A declaration of the First Amendment rights of Plaintiffs;
 26 2. Injunctive relief to enjoin the Defendants, their officers, agents, servants,
 27 employees, and all persons acting in concert with them from employing an execution procedure
 28

1 that conceals important information to which Plaintiffs and the public are entitled under the First
2 Amendment;

- 3 3. Reasonable attorneys' fees pursuant to 42 U.S.C. § 1988;
4 4. Costs of suit; and
5 5. Any such other relief as the Court deems just and proper.

6
7 Dated: April 11, 2018

KEKER, VAN NEST & PETERS LLP¹

8
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25 KQED, Inc. and Los Angeles Times
26 Communications LLC

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28 ¹ The undersigned hereby attests that he has obtained concurrence in the filing of this e-filed document from the other signatories to this document.

EXHIBIT A

**State of California
Office of Administrative Law**

In re:
**Department of Corrections and
Rehabilitation**

Regulatory Action:

Title 15, California Code of Regulations

Adopt sections: 3349.1, 3349.2, 3349.3,
3349.4, 3349.5, 3349.6,
3349.7, 3349.8, 3349.9

Amend sections: 3349

Repeal sections:

NOTICE OF FILING AND PRINTING ONLY

Government Code Section 11343.8

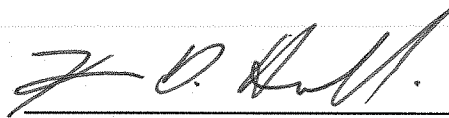
OAL Matter Number: 2018-0129-02

OAL Matter Type: File and Print Only (FP)

This request for filing and printing by the California Department of Corrections and Rehabilitation ("Department") concerns the lethal injection process for inmates condemned to death. This action is exempt from the Administrative Procedure Act pursuant to Penal Code section 3604.1.

OAL filed this regulation(s) or order(s) of repeal with the Secretary of State, and will publish the regulation(s) or order(s) of repeal in the California Code of Regulations.

Date: March 1, 2018



**Kevin D. Hull
Senior Attorney**

For: Debra M. Cornez
Director

Original: Scott Kernan, Secretary
Copy: Josh Jugum

NOTICE PUBLICATION/REGULATIONS SUBMISSION

See instructions on reverse)

For use by Secretary of State only

FILE PRINT

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
Z-		2018-0129-02FP	

For use by Office of Administrative Law (OAL) only

ENDORSED - FILED
In the office of the Secretary of State
of the State of California

MAR 01 2018

1:44pm

2018 JAN 29 P 1:17
OFFICE OF ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)
17-0347

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Administration of the Death Penalty - Lethal Injection	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)
ADOPT 3349.1, 3349.2, 3349.3, 3349.4, 3349.5, 3349.6, 3349.7, 3349.8, 3349.9
AMEND 3349
REPEAL
TITLE(S) 15

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input checked="" type="checkbox"/> File & Print <input checked="" type="checkbox"/> Other (Specify) Exempt Per Penal Code § 3604.1	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only <i>per agency request 3/11/18</i>

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))
 Effective on filing with Secretary of State
 \$100 Changes Without Regulatory Effect
 Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)
 Fair Political Practices Commission
 State Fire Marshal
 Other (Specify)

7. CONTACT PERSON Joshua Jugum	TELEPHONE NUMBER 916 445-2228	FAX NUMBER (Optional) 916 324-6075	E-MAIL ADDRESS (Optional) joshua.jugum@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE 1-29-18
TYPED NAME AND TITLE OF SIGNATORY SCOTT KERNAN, SECRETARY	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 01 2018

Office of Administrative Law

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates new text and ~~strikethrough~~ indicates deleted text.

California Code of Regulations, Title 15, Division 3.

Subchapter 4. GENERAL INSTITUTION REGULATIONS

Title of Article 7.5 is amended to read:

Article 7.5. ~~Execution-Administration~~ of Death Penalty

3349. Method of Execution.

Subsections 3349(a) through 3349(d) are amended to read:

(a) Inmates sentenced to death shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection. Upon being served with the Execution Warrant of execution, the inmate shall be served with ~~CDC Form 1801-B (4/98), Service of Execution Warrant, Warden's Initial Interview.~~ CDCR Form 1801-B (Rev. 01/18), Service of Execution Warrant, Warden's Initial Interview, which is incorporated by reference. The completed CDCR Form 1801-B shall be transmitted to the San Quentin Warden.

(b) The inmate shall be notified of the opportunity ~~for such selection~~ to elect lethal gas or lethal injection and that, if the inmate does not choose either lethal gas or lethal injection within ten calendar days after being served with the Execution Warrant, the penalty of death shall be imposed by lethal injection. The inmate's attestation to this service and notification shall be made in writing and witnessed utilizing the CDCR Form 1801 (Rev. 4/98 01/18), Notification of Execution Date and Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801 shall be transmitted to the San Quentin Warden.

(c) The inmate's selection shall be made in writing and witnessed utilizing the CDCR Form 1801-A (Rev. 4/98 01/18), Choice of Execution Method, which is incorporated by reference. The completed CDCR Form 1801-A shall be transmitted to the San Quentin Warden.

(d) The inmate's election shall be irrevocable, with the exception that, if the inmate sentenced to death is not executed ~~on the date set for execution~~ within the 10 day period specified by the Execution Warrant and a new Execution Warrant is issued ~~date is subsequently set~~, the ~~person~~ inmate again shall have the opportunity to elect to have the punishment imposed by lethal gas or lethal injection, according to the procedures set forth in Sections (a), (b), and (c).

NOTE: Authority cited: Sections 1227, 3604, 3604.1 and 5058, Penal Code. Reference: Sections 190, 1227, 3603, 3604 and 5054, Penal Code.

New Section Title 3349.1 is adopted to read:

3349.1 Definitions

New 3349.1 Presentence is adopted to read:

For the purpose of Subchapter 4, Article 7.5, the following definitions shall apply:

New Subsections 3349.1(a) through 3349.1(v) are adopted to read:

- (a) Administrative Assistant - Public Information Officer means the staff member or members responsible for responding to media inquiries and other duties as assigned.
- (b) Alienists means CDCR psychiatrists, all of whom must be from the medical staffs of the Department of Corrections and Rehabilitation who will perform the duties required by Penal Code Section 3700.5.
- (c) Designated Security Housing means the area designated by the San Quentin Warden where a condemned inmate shall be housed prior to the initial scheduled execution date.
- (d) Execution Report means the documents the Team Administrator routes through the San Quentin Chief Deputy Warden for the San Quentin Warden's review and signature after an execution. The Execution Report shall include: a CDCR Form 2177-A San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log – Pentobarbital or CDCR Form 2177-B San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log – Thiopental, CDCR Form 2179 San Quentin State Prison Lethal Injection Intravenous Sub-Team Execution Log, CDCR Form 2181 San Quentin State Prison Lethal Injection Team Administrator/Team Supervisor Execution Log, CDCR Form 2182 Lethal Injection Team Supervisor Execution Report, CDCR Forms 2183 Execution Report Team Member from all Lethal Injection Team members, and any documented use of force in accordance with Section 3268.1, Reporting and Investigating the Use of Force for Institution/Facility Staff. In addition, the Execution Report shall include all appropriate supplemental reports.
- (e) Execution Warrant means the court order specifying a period of ten days during which a judgment of death shall be carried out pursuant to Penal Code Section 1227.
- (f) Infusion Control Room means the space allocated for the Lethal Injection Chemical preparation area and is the room designed to accommodate the Infusion Sub-Team, designated members of the Intravenous Sub-Team, the Team Administrator, Team Supervisor, designated members of the Record Keeping Sub-Team, San Quentin Litigation Coordinator, and one representative each from the Governor's Office, the Inspector General's Office, and the Attorney General's Office.
- (g) Infusion Sub-Team means the Lethal Injection Team members who are responsible for receiving the Lethal Injection Chemical, preparation of the Lethal Injection Chemical, drawing the Lethal Injection Chemical into syringes, labeling and color coding the syringes and infusing the Lethal Injection Chemical.
- (h) Intravenous Sub-Team means the Lethal Injection Team members who are responsible for: placing electrocardiogram leads, insertion of the intravenous catheters, attaching and monitoring the intravenous lines, performing consciousness checks, and crimping, uncoupling, and detaching the intravenous lines.
- (i) Lethal Injection Chemical means a barbiturate used to perform an execution.
- (j) Lethal Injection Chemical Supplier means a licensed pharmacy, pharmacist, compounding pharmacy, manufacturer, supplier, wholesaler, or distributor.
- (k) Lethal Injection Facility means the dedicated structure at San Quentin consisting of three witness viewing rooms, an Infusion Control Room, the Lethal Injection Facility Holding Area, restrooms and the Lethal Injection Room.

(l) Lethal Injection Facility Holding Area means the cell and associated area where the inmate is held prior to an execution.

(m) Lethal Injection Room means the room where the inmate is executed.

(n) Lethal Injection Team means the individuals that comprise the three sub-teams described in this Article.

(o) Master Execution File means the permanent record of all documents related to an execution that is maintained at San Quentin.

(p) Ministers of the Gospel means a person serving as an agent specific to a system of beliefs, secular or otherwise.

(q) Pre-Execution Logbook means a record of documentation of the condemned inmate's activities, requests, conduct and behavior, which shall commence upon receipt of the Execution Warrant.

(r) Record Keeping Sub-Team means the Lethal Injection Team members who are responsible for documenting each element of the execution and for assembling those documents for inclusion in the Master Execution File.

(s) Selection Panel means the Associate Director Reception Centers, the San Quentin Warden, and the Team Administrator who recruit and select the Team Supervisor and Team members.

(t) Spiritual Advisor means a person who, by profession or practice, provides spiritual advice, assistance, or guidance, religious or otherwise.

(u) Team Administrator means the Associate Warden who is responsible for providing managerial oversight of the Lethal Injection Team's training, preparation and the performance of assigned duties during an execution.

(v) Team Supervisor means the Captain who is responsible for providing direct supervision of the Lethal Injection Team's training, preparation and performance of assigned duties during an execution.

NOTE: Authority cited: Sections 1227, 3604, 3604.1 and 5058, Penal Code. Reference: Sections, 190, 1227, 3600, 3601, 3602, 3603, 3604, 3605, 3607, 3700.5 and 5054, Penal Code; *Baze v. Rees* (2008) 553 U.S. 35 and *Towery v. Brewer* (2012) 672 F.3d 650.

New Section Title 3349.2 is adopted to read:

3349.2 Recruitment, Selection and Annual Review of Lethal Injection Team Members.

New Subsections 3349.2(a) through 3349.2(a)(2)(E) are adopted to read:

(a) Recruitment and Selection Process.

(1) The Director - Division of Adult Institutions, or designee, and the San Quentin Warden shall recruit and select an Associate Warden to serve as the Team Administrator. The Team Administrator is not a member of the Lethal Injection Team, but the screening criteria set forth in subsections (b)(2) and (3) and (c)(1)(A)-(H) shall apply.

(2) The Director - Division of Adult Institutions, or designee, with the Selection Panel, shall recruit and select the Team Supervisor and the Lethal Injection Team members. The Team Supervisor is not a member of the Lethal Injection Team, but the screening criteria set forth in subsections (b)(2) and (3) and (c)(1) shall apply. The Lethal Injection Team shall consist of CDCR employees, or contracted medical personnel, or a combination of both, and shall comprise a minimum of 12 members who shall be assigned to one of three sub-teams and who shall serve at the will of the Director – Division of Adult Institutions.

(A) The Selection Panel shall review qualifications of, interview, and recommend candidates for the Team Supervisor and Lethal Injection Team members. All recommendations shall be subject to the review and approval of the Director, Division of Adult Institutions. The Associate Director – Reception Centers shall chair the Selection Panel and ensure the Team Supervisor and Lethal Injection Team members are selected consistent with the criteria established in this section. After selection of the Lethal Injection Team members, the Team Administrator shall assign each member to one of the following Sub-Teams: Intravenous Sub-Team, Infusion Sub-Team, or Record keeping Sub-Team pursuant to the criteria as set forth in subsection (d) below. Each sub-team shall have a minimum of four members.

(B) The Team Administrator shall select an Intravenous Sub-Team leader from among the Intravenous Sub-Team members. The Intravenous Sub-Team leader shall be qualified in his or her profession to supervise medically trained personnel. The Intravenous Sub-Team leader shall be responsible for determining training curriculum for duties identified in subsection (d)(1) for the Intravenous Sub-Team, assessing performance of each Intravenous Sub-Team member during training and executions, and reporting any concerns about any Intravenous Sub-Team member to the Team Administrator and the Team Supervisor.

(C) The Team Administrator shall select an Infusion Sub-Team leader from among the Infusion Sub-Team members. The Infusion Sub-Team leader shall be qualified in his or her profession to supervise medically trained personnel. The Infusion Sub-Team leader shall be responsible for determining training curriculum for duties identified in subsection (d)(2) for the Infusion Sub-Team, assessing performance of each Infusion Sub-Team member during training and executions, and reporting any concerns about any Infusion Sub-Team member to the Team Administrator and the Team Supervisor.

(D) The CDCR may contract with medical personnel or a pharmacist to be members of the Lethal Injection Team. The CDCR may also contract with a physician to serve as the physician attending the execution to declare death. Contract personnel shall meet all the criteria set forth in subsections (b), (c), and (d).

(E) Names and identities of the Lethal Injection Team members shall remain confidential.

New Subsections 3349.2(b) through 3349.2(b)(3)(B)2. are adopted to read:

(b) Screening of Lethal Injection Team Candidates.

(1) The Selection Panel shall screen and ensure each candidate meets the criteria established for membership on one of the three designated sub-teams as set forth in subsection (d) below.

(2) The Selection Panel screening process shall include:

(A) Review of all the state employee candidate's available performance evaluations.

(B) Review of the state employee candidate's official personnel, supervisory, and training files.

(C) Review of the candidate's current Criminal Identification and Information Report from the California Department of Justice.

(3) As part of the screening process, the Selection Panel shall interview each candidate to determine the following:

(A) Personal history and background.

(B) Professional experience, including the following:

1. Professional experiences that would aid the candidate in performing Lethal Injection Team member duties.

2. Knowledge, composure, training, related skill and ability.

New Subsections 3349.2(c) through 3349.2(c)(2) are adopted to read:

(c) Criteria for Lethal Injection Team membership. Each Lethal Injection Team member shall be selected based on general qualifications and specific expertise necessary to effectively carry out the duties of one of the specialized sub-team functions.

(1) The following general criteria shall be utilized in the selection of all state-employed Lethal Injection Team members:

(A) Permanent full time CDCR employee.

(B) History of reliable job performance and professional demeanor.

(C) Reliable attendance record.

(D) No corrective action.

(E) No sustained adverse action as reflected in the CDCR Official Personnel File or State Personnel Board records.

(F) Most recent annual employee performance evaluation shall meet or exceed expected standards in all rated areas.

(G) If a CDCR employee, shall not be on probation in the candidate's current classification. This does not apply to promotions made subsequent to initial placement on the Lethal Injection Team.

(H) A member of the Lethal Injection Team must agree to not work or be assigned to any condemned housing unit. This includes any overtime.

(2) For contracted team members, verification of current licensure and review of any disciplinary action taken by any licensing board.

New Subsections 3349.2(d) through 3349.2(d)(3)(B) are adopted to read:

(d) In addition to the general selection criteria described in subsection 3349.2(c), each candidate for a specific Lethal Injection Team Sub-Team shall meet the following criteria:

(1) All members of the Intravenous Sub-Team shall be medically trained personnel: physician, physician assistant, registered nurse, emergency medical technician, paramedic, or medic.

(A) Intravenous Sub-Team members shall provide current certification and licensure to verify the ability to perform the following:

1. Insertion and maintenance of intravenous catheters into peripheral or appropriate veins.
2. Placement of the electrocardiogram leads used during the lethal injection process.

(B) Intravenous Sub-Team members shall have experience setting up intravenous lines in the last twelve months in the performance of their job duties, unrelated to their duties as a Lethal Injection Team member.

(2) Infusion Sub-Team shall have at least one member who is a physician, physician assistant, pharmacist, registered nurse, emergency medical technician, paramedic, or medic. All Infusion Sub-Team members shall:

(A) Be able to follow the directions provided by the Lethal Injection Chemical Supplier in preparing the Lethal Injection Chemical.

(B) Possess the organizational skills to appropriately label and color code the chemical used during the lethal injection process.

(3) Record Keeping Sub-Team members shall:

(A) Understand the importance of and how to keep accurate records during the lethal injection process.

(B) Demonstrate proficiency in report writing and record keeping.

New Subsections 3349.2(e) through 3349.2(e)(4) are adopted to read:

(e) Annual Review of the Lethal Injection Team members shall be conducted in order to ensure continued compliance with selection criteria. The annual review shall be conducted by the Team Administrator during the month of June. This shall include review of the following:

(1) Official personnel, supervisory and training files, if a state employee.

(2) Most recent performance evaluation, if a state employee.

(3) Criminal Identification and Information Report from the California Department of Justice.

(4) All related certifications and licensure to ensure they are current.

NOTE: Authority cited: Sections 3604, 3604.1 and 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604, and 5054, Penal Code; Section 19130, Government Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 1, 17, 27; Death-Penalty Case Protective Order dated 4/3/06, *Morales v. Woodford*, U.S. District Court Northern District of California (No. 5:06-cv-00219-JF).

New Section Title 3349.3 is adopted to read:

3349.3. Lethal Injection Team Training.

New Subsection 3349.3(a) is adopted to read:

(a) The Team Administrator shall ensure training on the lethal injection process is provided to each Lethal Injection Team member.

New Subsection 3349.3(b) is adopted to read:

(b) Each Lethal Injection Team member shall undergo training specific to their assigned duties during an execution.

New Subsections 3349.3(c) through 3349.3(c)(5) are adopted to read:

(c) Lethal Injection Training Session Requirements.

(1) Training shall be conducted at least once per month for a minimum of eight hours for all Lethal Injection Team members. Training dates will be scheduled by the Team Supervisor and approved by the Team Administrator and the San Quentin Warden. The Team Supervisor shall determine training curriculum for the Record Keeping Sub-Team and training for the Intravenous Sub-Team and Infusion Sub-Team other than that set forth in Section 3349.2(a)(2)(B) and (C). All Lethal Injection Team members must participate in all scheduled training, as specified, unless on approved leave. The Team Supervisor shall attend all Lethal Injection Team training, unless on approved leave.

(2) After an Execution Warrant has been served on an inmate, the Team Administrator shall ensure the Team Supervisor schedules training in the 30 calendar days immediately preceding the initial scheduled execution date.

(3) The Lethal Injection Team shall train for the three consecutive calendar days immediately preceding the initial scheduled execution date.

(4) The Lethal Injection Team members must participate in at least six training sessions prior to being assigned duties during an execution which includes each of the three daily training sessions immediately preceding the initial scheduled execution date.

(5) Any medical personnel who serves as the physician attending the execution, including one contracted pursuant to subsection 3349.2(a)(2)(D) must participate in at least one training session in the six months preceding the initial scheduled execution date and participate in each of the three daily training sessions immediately preceding the initial scheduled execution date.

New Subsections 3349.3(d) through 3349.3(d)(2) are adopted to read:

(d) Training for all Lethal Injection Team members shall include the following:

(1) A simulation of an execution by lethal injection.

(2) Identification of potential problems and recommendations for avoidance or resolution.

New Subsections 3349.3(e) through 3349.3(e)(6) are adopted to read:

(e) Training specific to the Intravenous Sub-Team shall include the following:

- (1) Use of an electrocardiogram for vital signs.
- (2) Setting up intravenous lines and intravenous drip.
- (3) The different sizes of intravenous catheters and determination of the proper size of the catheter(s) to be used, dependent on the size and condition of the vein.
- (4) Performance of consciousness checks in accordance with Subsection 3349.7(c).
- (5) Monitoring intravenous lines to ensure patency.
- (6) Crimping, uncoupling, and detaching intravenous lines.

New Subsections 3349.3(f) through 3349.3(f)(5) are adopted to read:

(f) Training specific to the Infusion Sub-Team shall include the following:

- (1) Preparation of the Lethal Injection Chemical used in the lethal injection process.
- (2) Level and rate of infusion of the Lethal Injection Chemical into the intravenous lines.
- (3) Labeling and color coding of the syringes used in the lethal injection process.
- (4) Sequence of syringes used in the lethal injection process and the physical effects the Lethal Injection Chemical can have on the inmate as it is administered.
- (5) Handling and accountability of the Lethal Injection Chemical.

New Subsections 3349.3(g) through 3349.3(g)(3) are adopted to read:

(g) Training specific to the Record Keeping Sub-Team shall include the following:

- (1) Accurate record keeping.
- (2) Report writing.
- (3) Preparation of specific records used to document an execution.

New Subsections 3349.3(h) through 3349.3(h)(2) are adopted to read:

(h) Training Documentation and Records.

(1) The Team Supervisor shall maintain a lethal injection training file. This training file shall contain a record of all lethal injection training sessions and shall be maintained in a secured location at San Quentin. A copy of the records for training conducted the three calendar days immediately preceding the initial scheduled execution date shall be included in the Master Execution File.

(2) During each training session, the designated Record Keeping Sub-Team member shall document the training on the following CDCR Forms, which are hereby incorporated by reference: CDCR Form 2177-A (01/18), San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log –

Pentobarbital, CDCR Form 2177-B (01/18), San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log – Thiopental, CDCR Form 2179 (01/18), San Quentin State Prison Lethal Injection Intravenous Sub-Team Execution Log- and CDCR Form 2181 (01/18), San Quentin State Prison Lethal Injection Team Administrator/Team Supervisor Execution Log.

NOTE: Authority cited: Sections 3604, 3604.1 and 5058, Penal Code. Reference: Sections 190, 3603, 3604, and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section Title 3349.4 is adopted to read:

3349.4 Execution Site Operation.

New Subsection 3349.4(a) is adopted to read:

(a) Security. All persons entering the Lethal Injection Facility shall have prior oral or written approval by the San Quentin Warden, or designee in the Warden's absence. This approval shall be documented by the San Quentin Warden, San Quentin Chief Deputy Warden, Team Administrator or Team Supervisor in the key control log. The San Quentin Warden shall maintain a record of all individuals approved to enter the Lethal Injection Facility.

New Subsections 3349.4(b) through 3349.4(b)(2) are adopted to read:

(b) The Lethal Injection Facility safe, and lockable enclosure containing a refrigerator, shall be permanently mounted within the Infusion Control Room.

(1) The combination to the safe shall be known only by the San Quentin Warden, the San Quentin Chief Deputy Warden, and the Team Administrator.

(2) The combination to the safe shall be changed after each execution to maintain quality control, accountability, and security of the Lethal Injection Chemical.

New Subsections 3349.4(c) through 3349.4(c)(4) are adopted to read:

(c) Key Procedure.

(1) The keys for the Lethal Injection Facility shall be located in the San Quentin key control area in a locked box secured under glass. All access shall be approved by the San Quentin Warden or designee.

(2) The key allowing access to the locked box shall only be issued to the San Quentin Warden, the Chief Deputy Warden, the Team Administrator or the Team Supervisor.

(3) Each person authorized to draw the key to the locked box shall be required to sign the key control log noting the time at key check out, reason for entry into the Lethal Injection Facility, and time of key return.

(4) Each person authorized to draw the keys to the Lethal Injection Facility shall personally return the keys and secure them in the locked box under glass.

New Subsections 3349.4(d) through 3349.4(d)(4) are adopted to read:

(d) The Team Supervisor shall conduct and document monthly security and operational inspections of the Lethal Injection Facility, to include the following:

(1) Functionality of equipment

(2) Supply inventory

(3) Building maintenance

(4) The Team Supervisor shall document the inspection on the CDCR Form 2137 (01/18), Monthly Security and Operational Inspection Sheet, which is incorporated by reference.

NOTE: Authority cited: Sections 3604, 3604.1 and 5058, Penal Code. Reference: Sections 190, 3603, 3604, 3605 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.

New Section Title 3349.5 is adopted to read:

3349.5 Responsibilities and Tasks Upon Receipt and Service of the Execution Warrant.

New Section 3349.5 Presentence is adopted to read:

Following CDCR's receipt of the Execution Warrant, the following shall occur:

New Subsections 3349.5(a) through 3349.5(d) are adopted to read:

(a) The Litigation Coordinator where the inmate is housed shall identify any pending litigation regarding the inmate or the scheduled execution and advise the Warden of the institution where the inmate is housed and the San Quentin Warden.

(b) The San Quentin Litigation Coordinator shall create a Master Execution File and insert a copy of all documents transmitted between San Quentin State Prison and the California Department of Corrections and Rehabilitation headquarters, the institution where the inmate is housed if other than San Quentin, or any other agency or organization, pertaining to a scheduled execution.

(c) The San Quentin Warden or the Warden where the inmate is housed shall notify the Director - Division of Adult Institutions, and other appropriate officials as necessary, within 24 hours of receipt of the Execution Warrant. The Director - Division of Adult Institutions shall notify the CDCR Secretary. The CDCR Secretary shall notify the Governor's Legal Affairs Secretary. A copy of the Execution Warrant shall be delivered to the Governor's Legal Affairs Secretary within 24 hours of receipt of the Execution Warrant.

(d) The Secretary shall, upon notification of the Execution Warrant, select and appoint three Alienists, as defined in Section 3349.1, to interview and evaluate the inmate to determine his/her sanity pursuant to Penal Code Section 3700.5. The Director - Division of Adult Institutions shall maintain a list of Alienists with a minimum of six names.

New Subsections 3349.5(e) through 3349.5(e)(6) are adopted to read:

(e) The San Quentin Warden, in conjunction with the Warden of the institution where the inmate is housed, shall:

(1) Coordinate transfer of the condemned male inmate to San Quentin State Prison.

(2) In the presence of an Associate Warden and the Litigation Coordinator of the institution where the inmate is housed, serve the Execution Warrant on the inmate to be executed, interview the inmate, and document the interview on a CDCR Form 1801-B (Rev. 01/18), Service of Execution Warrant - Warden's Initial Interview.

(A) Inform the inmate of the choices of execution method, either lethal injection or lethal gas, and document on the CDCR Form 1801 (Rev. 01/18), Notification of Execution Date and Choice of Execution Method.

(B) Instruct the inmate to indicate his/her election of execution method within ten calendar days of the inmate's receipt of the CDCR Form 1801-A (Rev. 01/18), Choice of Execution Method, with the explanation that if no election is made, lethal injection will be the method of execution.

(C) Provide the inmate a copy of CDCR Forms 1801-C (01/18), Request For Approval of Witnesses, 1801-D (01/18), Last Meal Request, and 1801-F (01/18), Release of Remains and Burial Arrangements, which are hereby incorporated by reference.

(3) If there is good reason to believe that a condemned female inmate may be pregnant, notify the District Attorney pursuant to Penal Code Section 3705, and comply with the provisions of Penal Code Section 3706.

(4) Ensure the inmate has a copy of the current California Code of Regulations, Title 15, Division 3, for review of general rules and procedures that shall be utilized during the days leading up to the date of execution.

(5) Ensure the appointed Alienists have access to interview and evaluate the inmate pursuant to Penal Code Section 3700.5.

(6) Ensure any information received which may be relevant to the inmate's sanity is immediately made available to the Alienists panel.

New Subsections 3349.5(f) through 3349.5(f)(2)(E) are adopted to read:

(f) The San Quentin Warden shall:

(1) Set the initial date and time for execution. The Execution Warrant shall specify a period of 10 days during which the judgment shall be executed. The execution may be carried out at any time within this period.

(2) If the inmate has chosen lethal injection on the CDCR Form 1801-A, Choice of Execution Method, or made no choice, select the Lethal Injection Chemical.

(A) Lethal Injection Chemical selection shall be done on a case-by-case basis, taking into account changing factors such as the availability of a supply of chemical. The San Quentin Warden shall make the selection in consultation with medical personnel and notify the CDCR Secretary of the selection.

(B) CDCR may contract with medical personnel to assist with chemical selection. Medical personnel shall be a medical doctor, clinical toxicologist, pharmacologist, anesthesiologist, or other appropriate expert.

(C) The San Quentin Warden shall determine which chemical shall be utilized to perform the execution and document the selection on the CDCR Form 1801-A (Rev. 01/18), Choice of Execution Method. CDCR considers the listed chemicals to be equally effective in carrying out the purpose of the regulations. The San Quentin Warden shall select one chemical from the following (or any name that they may be

known or sold by including their pharmaceutical name, foreign name, generic name, trade name or brand name):

Barbiturates:

- Pentobarbital
- Thiopental

(D) The San Quentin Warden shall ensure that the Lethal Injection Chemical is obtained from a Lethal Injection Chemical Supplier as defined in subsection 3349.1(i).

(E) If either chemical described in Subsection 3349.5(f)(1)(C) is declared unconstitutional for purposes of execution by a court with jurisdiction, the chemical shall not be considered for selection.

New Subsections 3349.5(f)(3) through 3349.5(f)(9) are adopted to read:

(3) Inform the Warden of the institution where the inmate is housed of the Lethal Injection Chemical selection.

(4) Inform the inmate of the scheduled execution date, that he/she shall be executed by lethal injection, the Lethal Injection Chemical and amount to be used, document this information on the CDCR Form 1801-A (Rev. 01/18), Choice Of Execution Method, and provide a copy of this form to the inmate.

(5) Meet with the Team Administrator, who shall notify the Team Supervisor and the Lethal Injection Team members of the Execution Warrant.

(6) Ensure the Team Administrator, the Team Supervisor and all Lethal Injection Team members involved in the lethal injection process understand their roles in the scheduled execution by reviewing the following:

(A) Training session performance assessments.

(B) Most recent staff performance in job duties for state-employed team members to include annual personnel evaluation and any corrective or adverse action, and any disciplinary action taken by a state licensing board against any team member.

(C) Any other information or concerns expressed by the Team Administrator, Team Supervisor or Lethal Injection Team Member.

(D) Any other information that causes the San Quentin Warden to believe persons identified in subsection (6) may be unprepared or unable to perform the duties during a scheduled execution.

(7) Refer the inmate to the Intravenous Sub-Team for a vein assessment to determine the size, location, and resilience of the veins. The vein assessment shall identify the primary, backup, and alternate backup locations. Vein assessment shall take into account individualized medical history and information including age, physical condition of vein site, scarring, body size, body weight, dehydration, skin texture, rolling veins, hardening of veins, bruising, vein or bone trauma. The alternate backup location may be a vein or a percutaneous portal vein access, if necessary. Upon completion of the vein assessment, the Warden shall obtain a copy of the results report and ensure it is placed in the Master Execution File.

(8) Ensure all institution staff members with specific lethal injection responsibilities are notified of the Execution Warrant.

(9) Select witnesses pursuant to Penal Code Section 3605.

New Subsections 3349.5(g) through 3349.5(g)(1)(C) are adopted to read:

(g) Following service of the Execution Warrant, the Warden of the institution where the inmate is housed shall ensure the following occur by the designated staff:

(1) The Associate Warden of the unit where the inmate is housed shall:

(A) Ensure the condemned unit staff create a Pre-Execution Logbook and at a minimum, conduct hourly checks and document the inmate's activities, requests, conduct and behavior in the inmate's Pre-Execution Logbook.

(B) Immediately report any behavior that is bizarre or unusual for any inmate or uncharacteristic for the particular inmate in writing on CDCR Form 128-B (4/74), General Chrono, which is incorporated by reference, to the Warden of the institution where the inmate is housed, the San Quentin Warden, and the Alienists.

(C) Visit the inmate's housing unit daily and sign in on the inmate's Pre-Execution Logbook with each visit.

New Subsections 3349.5(g)(2) through 3349.5(g)(2)(E) are adopted to read:

(2) The Correctional Counselor II – Condemned Unit at the institution where the inmate is housed shall:

(A) Maintain daily contact with the inmate and document the inmate's conduct and behavior in the inmate's Pre-Execution Logbook. Immediately report any behavior that is bizarre or unusual for any inmate or uncharacteristic for the particular inmate in writing to the Associate Warden of the institution where the inmate is housed, the Warden of the institution where the inmate is housed, the San Quentin Warden, and the Alienists.

(B) Update the inmate's Notification In Case Of Inmate Death, Serious Injury Or Serious Illness in the Strategic Offender Management System as defined in Section 3000.

(C) Submit a report to the San Quentin Warden via the Warden of the institution where the inmate is housed consisting of a review of the inmate's case factors and any observations of the inmate documented by the assigned Correctional Counselor I and/or custody staff to determine the inmate's past and present conduct and behavior for inclusion in the CDCR Form 2173 (01/18), 20-Day Pre-Execution Report, which is incorporated by reference.

(D) Collect the completed CDCR Forms 1801-C (01/18), Request For Approval of Witnesses, 1801-D (01/18), Last Meal Request, and 1801-F (01/18), Release of Remains and Burial Arrangements, within ten calendar days of providing the forms to the inmate and forward them to the Litigation Coordinator at the institution where the inmate is housed.

(E) Ensure all non-legal and non-Spiritual Advisor telephone calls made by the inmate on an institutional telephone are monitored. Legal and Spiritual Advisor calls shall not be monitored but shall be facilitated by staff. All calls shall be logged in the inmate's Pre-Execution Logbook.

New Subsections 3349.5(g)(3) through 3349.5(g)(5)(B) are adopted to read:

(3) The Litigation Coordinator at the institution where the inmate is housed shall:

(A) Ensure approval for visiting is on file for the inmate's attorney(s) and notify the Visiting Lieutenant.

(B) Notwithstanding Section 3178, schedule attorney visits expeditiously upon request of the inmate's attorney(s).

(4) The Warden's Administrative Assistant-Public Information Officer at the institution where the inmate is housed shall act as liaison between the inmate's family and the Warden of the institution where the inmate is housed.

(5) The Visiting Lieutenant at the institution where the inmate is housed shall:

(A) Ensure that the attorney(s) for the inmate is afforded expeditious access to the inmate. This may include facilitating attorney visits during weekends and holidays as necessary.

(B) Arrange for visiting pursuant to California Code of Regulations, Title 15, Division 3, Subchapter 2, Article 7, Visiting.

New Subsections 3349.5(h) through 3349.5(h)(5) are adopted to read:

(h) Sanity Review pursuant to Penal Code Section 3701.

(1) Attorneys may submit in writing any information they believe may have a bearing on evaluating the sanity of an inmate with a scheduled execution date at any time prior to the scheduled execution. This information shall be submitted to the San Quentin Warden who shall forward it to the Alienists.

(2) The Warden where the inmate is housed shall have available for review all psychiatric information pertaining to the inmate known to psychiatric staff. This information shall be submitted to the San Quentin Warden who shall forward it to the Alienists.

(3) The information in Subsection (h)(1) and (h)(2), together with any information forwarded to the Warden of the institution where the inmate is housed or the San Quentin Warden regarding the inmate's conduct or behavior, shall be used to determine if there is a good reason to believe the inmate has become insane at any time, pursuant to Penal Code Section 3701. Should the San Quentin Warden, in consultation with the Alienists, find there is a good reason to believe the inmate has become insane at any time, the San Quentin Warden shall notify the District Attorney pursuant to Penal Code Section 3701, via a CDCR Form 2174 (01/18), Notification By Warden To The District Attorney Concerning Sanity of Condemned Inmate, which is hereby incorporated by reference.

(4) The Warden where the inmate is housed and the San Quentin Warden shall notify the Director – Division of Adult Institutions and the Secretary of CDCR of any notification to the District Attorney concerning the sanity of the condemned inmate.

(5) The Secretary of CDCR shall notify the Governor's Legal Affairs Secretary in writing of all referrals to the District Attorney's office pursuant to Penal Code Section 3701.

NOTE: Authority cited: Sections 636, 1227, 3604; 3604.1; 3605; 3700.5, 3701; 5058, Penal Code, *Glossip v. Gross* (June 29, 2015, No. 14-7955) 576 U.S. [135 S.Ct. 2726, 2732] *Thorburn et al. v. Depart. of Corrections et al.* (1998) 66 Cal.App. 4th 1284; *Morales v. Tilton* (2006) 465 F.Supp.2d 972,

983. See also Heckler v. Chaney (1985) 470 U.S. 821; O'Bryan v. McKaskle, (5th Cir. 1984) 729 F.2d 991; Abdur'Rahman v. Bredesen, 181 S.W.3d 292 (Tenn. 2005), cert. denied, 126 S.Ct. 2288, 164 L.Ed.2d 813 (U.S. 2006); State v. Deputy, (Del. Super. Ct. 1994) 644 A.2d 411. Morales v. Hickman, Case Nos. C 06 219 JF and C 06 926 FJ RS, Document No. 78 (February 21, 2006 Order on Defendant's Motion to Proceed with Execution Under Alternative Condition to Order Denying Preliminary Injunction). Reference: Sections 190, 636, 1227, 3600, 3601, 3602, 3603, 3604, 3604.3, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, 3705, 3706 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27, Towerly v. Brewer (2012) 672 F.3d 650.

New Section Title 3349.6 is adopted to read:

3349.6 Chronology of events after Execution Warrant has been served.

New Section 3349.6 Presentence is adopted to read:

Once the Execution Warrant has been served on the inmate the following shall occur leading up to the scheduled execution date. The procedures established in this section are based on a timeline; however, the timeline is subject to change if needed to accommodate unforeseen events.

New Subsections 3349.6(a) through 3349.6(a)(5) are adopted to read:

(a) Approximately 20 calendar days prior to the initial scheduled execution date and time:

(1) The San Quentin Warden and the Warden of the institution where the inmate is housed shall ensure the three Alienists each complete the CDCR Form 2173 (01/18), 20-Day Pre-Execution Report pursuant to Penal Code Section 3700.5.

(2) Each Alienist shall complete the CDCR Form 2173, attach his or her independent psychiatric report regarding the inmate, and submit it to the San Quentin Warden or, if the inmate is female, the Central California Women's Facility Warden.

(3) The Alienists panel shall submit to the Governor and the San Quentin Warden or, if the inmate is female, the Central California Women's Facility Warden, a copy of the completed CDCR Form 2173 (01/18), 20-Day Pre-Execution Report, and shall include a summary of the examinations, interviews, and history stated in plain language.

(4) The San Quentin Warden or, if the inmate is female, the Central California Women's Facility Warden, shall submit the completed CDCR Form 2173 (01/18), 20-Day Pre-Execution Report with a cover letter, and the summary of the inmate's conduct and behavior, submitted by a Correctional Counselor II – Condemned Unit, to the Director – Division of Adult Institutions and the CDCR Secretary. If the San Quentin Warden or, if the inmate is female, the Central California Women's Facility Warden, has good reason to believe the inmate has become insane after reviewing any of the three 20-Day Pre-Execution Reports, the San Quentin Warden shall notify the District Attorney pursuant to Penal Code Section 3701. A single Alienist's report questioning the inmate's sanity is sufficient to trigger the requirement that the San Quentin Warden shall notify the District Attorney. The notification shall be via a CDCR Form 2174 (01/18), Notification By Warden To The District Attorney Concerning Sanity of Condemned Inmate, which is hereby incorporated by reference.

(5) The San Quentin Warden or, if the inmate is female, the Central California Women's Facility Warden, shall furnish a copy of the report to counsel for the defendant upon his or her request.

New Subsections 3349.6(b) through 3349.6(b)(7)(B) are adopted to read:

(b) Approximately five calendar days prior to the initial scheduled execution date, the following shall occur:

(1) The San Quentin Warden shall ensure the condemned male inmate has been moved to the Designated Security Housing area. Condemned female inmates shall be transferred to San Quentin in accordance with subsection (d) and will be housed in the Designated Security Housing area upon arrival.

(2) The Warden of the institution where the inmate is housed shall ensure the condemned inmate will be under observation 24 hours a day by an officer assigned for that purpose.

(3) The Associate Warden where the inmate is housed shall ensure monitoring of the inmate's behavior is continued by unit staff with documentation completed every hour in the inmate's Pre-Execution Logbook.

(A) Should the inmate display any conduct or behavior that is bizarre or unusual for any inmate or uncharacteristic for the particular inmate, the Warden of the institution where the inmate is housed and the San Quentin Warden shall be notified by institutional staff.

(B) The Warden of the institution where the inmate is housed and the San Quentin Warden shall monitor any reported changes in the inmate's behavior utilizing the provisions of Penal Code Section 3701. If there is good reason to believe that the inmate has become insane it shall be reported by the San Quentin Warden to the Secretary of the CDCR in writing via the Director – Division of Adult Institutions in addition to reporting it to the District Attorney.

(4) The Correctional Counselor II – Condemned Unit shall begin daily briefings for the Warden of the institution where the inmate is housed regarding the inmate's needs, requests, and behavior.

(5) The inmate shall have 24-hour access to a telephone for attorney contact. Legal calls will not be monitored but shall be facilitated by staff. All calls shall be logged in the inmate's Pre-Execution Logbook.

(6) Religious accommodations.

(A) State employed Spiritual Advisors selected by the inmate shall be allowed to perform their spiritual functions at the inmate's cell front between the hours of 0600 to 2200 and by telephone at any time.

(B) Pre-approved non-state employed Spiritual Advisors may visit the inmate utilizing the visitor process and shall be allowed to perform their spiritual functions at the inmate's cell front between the hours of 0600 to 2200 or by telephone at any time.

(7) The Team Administrator along with the Food Manager shall interview the inmate to confirm what request, if any, the inmate may have for a last meal as noted on the CDCR Form 1801-D (01/18), Last Meal Request.

(A) Accommodations for the last meal shall be reasonable and not exceed a fifty dollar (\$50.00) limit.

(B) The Food Manager shall determine if food services can fulfill the request or make arrangements to obtain the requested menu items.

New Subsections 3349.6(c) through 3349.6(c)(3) are adopted to read:

(c) Approximately three calendar days prior to the initial scheduled execution date:

(1) The Team Administrator shall ensure that Lethal Injection Team members assigned to specific functions begin daily training on their assignments. All Lethal Injection Team members designated as backups shall be involved in training for their specified backup functions.

(2) The Team Supervisor shall schedule and conduct daily required training for the Lethal Injection Team. The Intravenous Sub-Team leader or the Infusion Sub-Team leader shall conduct any training that requires medical knowledge.

(3) The Intravenous Sub-Team leader, Infusion Sub-Team leader, and the Team Supervisor shall begin daily assessments of the Lethal Injection Team members to ensure readiness for their assigned duties. If at any time the Intravenous Sub-Team leader, Infusion Sub-Team leader, or Team Supervisor believes a Lethal Injection Team member may be unable to complete the assigned duties, the Team Administrator shall be notified, and the Lethal Injection Team member shall be excused from participation in the scheduled execution.

New subsection 3349.6(d) is adopted to read:

(d) Pursuant to Penal Code Section 3602, condemned female inmates shall be transported to San Quentin no sooner than 72 hours prior to the initial scheduled execution date. A condemned female inmate shall be transported no later than 12 hours prior to the initial scheduled execution date and time. The female inmate shall be housed in the Designated Security Housing area upon transfer to San Quentin.

New Subsections 3349.6(e) through 3349.6(e)(2)(C) are adopted to read:

(e) Approximately 24 hours prior to the initial scheduled execution date and time:

(1) The San Quentin Warden shall confirm that all Lethal Injection Team members are fully prepared and ready to perform their assigned duties by reviewing the following:

(A) Training session performance assessments.

(B) Most recent staff performance in job duties for state-employed team members, to include annual personnel evaluation and any corrective or adverse action, and any disciplinary action taken by a state licensing board against any team member.

(C) Any other information or concerns expressed by the Team Administrator, Team Supervisor or Lethal Injection Team Member.

(D) Any other information that causes the San Quentin Warden to believe any team member may be unprepared or unable to perform the duties during a scheduled execution.

(2) The Team Administrator shall:

(A) Accompany the Team Supervisor and a Lethal Injection Team member to obtain the Lethal Injection Chemical and complete the CDCR Form 2176 (01/18), Lethal Injection Chain of Custody San Quentin State Prison, which is hereby incorporated by reference, to acknowledge receipt of the Lethal Injection Chemical.

(B) Ensure the Lethal Injection Chemical is properly controlled and secured in the Lethal Injection Facility safe or refrigerator.

(C) Ensure the CDCR Form 2176 (01/18), Lethal Injection Chain of Custody San Quentin State Prison, is completed upon any movement of the Lethal Injection Chemical. The original CDCR Form 2176 shall remain with the Lethal Injection Chemical. A copy of the form shall be distributed to the San Quentin Warden, the San Quentin Chief Deputy Warden, and forwarded to the San Quentin Litigation Coordinator for placement in the Master Execution File.

New Subsections 3349.6(f) through 3349.6(f)(2) are adopted to read:

(f) Approximately six hours prior to the initial scheduled execution date and time:

(1) The Team Supervisor shall:

(A) Brief the inmate on execution procedures.

(B) Supervise the movement of the inmate to the Lethal Injection Facility Holding Area cell.

(C) Secure the inmate in the Lethal Injection Facility Holding Area cell.

(D) Ensure assigned custody staff provide direct and constant observation of the inmate in the Lethal Injection Facility Holding Area and document all of the inmate's activities, requests, conduct, and behavior in the inmate's Pre-Execution Logbook with entries made approximately every 15 minutes.

(E) Ensure the last meal is delivered to the Lethal Injection Facility, inspected for contraband and served to the inmate in the Lethal Injection Facility Holding Area cell.

(F) Inform the inmate they may request additional food items, coffee, juice and soft drinks, programs on the radio or television, phone calls and mailing of letters.

(2) Once the condemned inmate is secured in the Lethal Injection Facility holding area cell, visiting, with the exception of an Attorney and a state employed or pre-approved non-state employed Chaplain or Spiritual Advisor, shall cease. No visitation shall occur between the hours of 2200 and 0600.

New Subsections 3349.6(g) through 3349.6(g)(2)(B) are adopted to read:

(g) Approximately three hours prior to the initial scheduled execution date and time, the following shall be initiated:

(1) The Team Supervisor shall:

(A) Ensure that all visiting shall cease. Attorneys and Spiritual Advisors may have access to the inmate by phone as requested by the Attorney, Spiritual Advisor, or the inmate.

(B) Ensure the Record Keeping Sub-Team member assigned to the Team Administrator/Team Supervisor initiates documentation on the CDCR Form 2181 (01/18), San Quentin State Prison Lethal Injection Team Administrator/Team Supervisor Execution Log.

(C) Remove the Lethal Injection Chemical from the Lethal Injection Facility safe or refrigerator and immediately transfer custody of the Lethal Injection Chemical to two members of the Infusion Sub-Team.

(D) Ensure accountability of the Lethal Injection Chemical. A minimum of two members of the Infusion Sub-Team shall verify receipt of the designated Lethal Injection Chemical at the time of transfer, and sign the CDCR Form 2176 (01/18), Lethal Injection Chain of Custody San Quentin State Prison.

(E) Ensure a Record Keeping Sub-Team member initiates documentation on the CDCR Form 2177-A (01/18), San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log - Pentobarbital or CDCR Form 2177-B (01/18), San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log – Thiopental, upon receipt of the Lethal Injection Chemical by the Infusion Sub-Team members and continue observation and documentation throughout the execution.

(2) The San Quentin Warden and Team Administrator shall meet with the inmate in the Lethal Injection Facility Holding Area and shall advise the inmate of the following:

(A) A written last statement may be prepared by the inmate which will be made available after the execution.

(B) A sedative may be requested, and if approved by a physician, the sedative shall be administered under the physician's direction.

New Subsections 3349.6(g)(3) through 3349.6(g)(4)(F) are adopted to read:

(3) The Lethal Injection Chemical shall be prepared according to the instructions provided by the Lethal Injection Chemical Supplier

(4) Preparation for administration of the Lethal Injection Chemical shall be as follows:

(A) If Pentobarbital is the designated Lethal Injection Chemical, it shall be administered by means of three syringes for a total of 7.5 grams. A fourth syringe shall be prepared with a saline flush.

(B) If Thiopental is the designated Lethal Injection Chemical, it shall be administered by means of five syringes for a total of 7.5 grams. A sixth syringe shall be prepared with a saline flush.

(C) The Infusion Sub-Team shall prepare the Lethal Injection Chemical for administration as follows:

1. Three identical trays shall be prepared. Each tray shall contain a total of 7.5 grams of the Lethal Injection Chemical.

2. Tray A shall be color-coded red and shall be the primary tray used for the lethal injection process.

3. Tray B shall be colored-coded blue and shall be the backup tray.

4. Tray C shall be color-coded yellow and shall be the alternate backup tray.

(D) If Pentobarbital has been designated, Trays A, B, and C shall each have three syringes containing the Lethal Injection Chemical, each color-coded to match the tray; and a fourth syringe, color-coded white, containing the saline flush. The syringes shall be labeled by sequence of administration as follows:

1. Three syringes, each containing 2.5 grams of Pentobarbital, shall be labeled #A-1, #A-2, and #A-3 for Tray A, #B-1, #B-2, and #B-3 for Tray B, and #C-1, #C-2, and #C-3 for Tray C.

2. Syringe #4 shall contain a saline flush and be labeled #A-4 for Tray A, #B-4, for Tray B, and #C-4 for Tray C.

(E) If Thiopental has been designated, Trays A, B, and C shall each have five syringes containing the Lethal Injection Chemical, each color-coded to match the tray; and a sixth syringe, color-coded white, containing the saline flush. The syringes shall be labeled by sequence of administration as follows:

1. Five syringes, each containing 1.5 grams of Thiopental, shall be labeled #A-1, #A-2, #A-3, #A-4, and #A-5 for Tray A, #B-1, #B-2, #B-3, #B-4, and #B-5 for Tray B, and #C-1, #C-2, #C-3, #C-4, and #C-5 for Tray C.

2. Syringe #6 shall contain a saline flush and be labeled #A-6 for Tray A, #B-6, for Tray B, and #C-6 for Tray C.

(F) A medically trained Infusion Sub-Team member shall prepare the syringes for Tray A, Tray B and Tray C. A separate medically trained Infusion Sub-Team member or Intravenous Sub-Team member shall verify proper preparation of the syringes for Tray A, Tray B and Tray C.

New Subsections 3349.6(h) through 3349.6(h)(1)(B) are adopted to read:

(h) Approximately two hours prior to the initial scheduled execution date and time:

(1) The San Quentin Warden shall:

(A) Ensure the curtain is open on the viewing windows prior to the witnesses' arrival. The curtain shall remain open throughout the execution process until the inmate is pronounced dead.

(B) Ensure all witnesses are escorted to the designated witness rooms in the Lethal Injection Facility.

New Subsection 3349.6(i) is adopted to read:

(i) Within one hour prior to the initial scheduled execution date and time, the Team Supervisor shall ensure that open dedicated phone lines with the Governor's Office, the Office of the Attorney General, California State Supreme Court and the San Quentin Warden's office complex are established in the Infusion Control Room.

New subsections 3349.6(j) through 3349.6(j)(2)(D) are adopted to read:

(j) Approximately 45 minutes before an initial scheduled execution date and time, the San Quentin Warden shall order the inmate to be prepared for the execution.

(1) Upon direction of the San Quentin Warden to prepare the inmate, the Team Supervisor shall:

(A) Order the inmate placed in restraints and removed from the Lethal Injection Facility Holding Area cell.

(B) Ensure a Record Keeping Sub-Team member initiates documentation on the CDCR Form 2179 (01/18), San Quentin State Prison Lethal Injection Intravenous Sub-Team Execution Log.

(C) Observe the Intravenous Sub-Team place the electrocardiogram leads on the inmate.

(2) Resistive inmates.

(A) In the event that an inmate refuses to comply with a direct order to be placed in restraints or to exit any area, the Team Supervisor shall advise the Team Administrator and the San Quentin Warden.

(B) The Team Supervisor shall speak to the inmate in an attempt to gain the inmate's compliance.

(C) If the inmate continues to refuse to comply with a direct order, force may be used in accordance with Section 3268, Use of Force.

(D) Any use of force shall be documented in accordance with Section 3268.1, Reporting and Investigating the Use of Force for Institution/Facility Staff, and a copy placed in the Master Execution File.

New Subsections 3349.6(k) through 3349.6(k)(5) are adopted to read:

(k) Approximately 15 minutes before an initial scheduled execution date and time, the San Quentin Warden shall:

(1) Order the inmate escorted to the Lethal Injection Room.

(2) Order the inmate to be secured to the gurney with restraints.

(3) Order the inmate's hands to be secured to the arm rests on the gurney with medical tape.

(4) Ensure the Team Administrator and Team Supervisor take positions in the Infusion Control Room. The Team Supervisor shall directly supervise infusion of the Lethal Injection Chemical and saline during the execution.

(5) Ensure the San Quentin Litigation Coordinator takes a position at the Lethal Injection Facility telephones at least 15 minutes prior to a scheduled execution to ensure constant communication with the Governor's Office, the Office of the Attorney General, California Supreme Court and the San Quentin Warden's office complex. The San Quentin Litigation Coordinator shall communicate all calls to the San Quentin Warden, the Team Administrator and the Team Supervisor.

New Subsection 3349.6(l) is adopted to read:

(l) In the event the execution is stayed for any reason, the procedures described in this Article shall be suspended as required by the stay of execution until the stay is lifted. Upon the stay being lifted, the execution may be resumed or, if necessary, rescheduled a minimum of three hours from the time at which the stay was lifted.

NOTE: Authority cited: Sections 1227, 3604, 3604.1 and 5058, Penal Code. Reference: Sections 190, 3600, 3601, 3602, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27; *Baze v. Rees* (2008) 553 U.S.35, *Towery v. Brewer* (2012) 672 F.3d 650.

New Section Title 3349.7 is adopted to read:

3349.7 Administration of the Lethal Injection Chemical.

New Subsections 3349.7(a) through 3349.7(a)(8) are adopted to read:

(a) After the inmate is secured in the Lethal Injection Room, the Intravenous Sub-Team members shall:

(1) Take their designated positions in the Lethal Injection Room.

- (2) Inspect the restraints to ensure that they do not restrict the inmate's circulation or interfere with the insertion of the catheters.
- (3) Attach the intravenous lines to the catheters and insert three catheters into pre-designated veins.
- (4) As each catheter is inserted, inform the Intravenous Sub-Team member in the Infusion Control Room to initiate the intravenous saline drip into the intravenous lines attached to the catheters.
- (5) Designate primary, backup and alternate backup intravenous lines.
- (6) Inform the San Quentin Warden when the intravenous lines have been successfully established.
- (7) One Intravenous Sub-Team member shall exit the Lethal Injection Room and report to the Infusion Control Room to continuously monitor the saline drips.
- (8) One Intravenous Sub-Team member shall remain in the Lethal Injection Room to continuously monitor the intravenous lines. This Intravenous Sub-Team member shall stand next to the inmate and assess the consciousness of the inmate throughout the execution in accordance with subsection (c)(4)(A).

New Subsections 3349.7(b) through 3349.7(b)(5) are adopted to read:

- (b) After the inmate's intravenous lines are successfully established, the San Quentin Warden shall:
 - (1) Take a position in the Lethal Injection Room in close proximity to the inmate.
 - (2) Confirm there is no matter pending before any court that precludes the execution from proceeding via the California Supreme Court, the Governor's Office, and the Office of the Attorney General.
 - (3) Ensure a statement detailing the court order mandating the execution is read aloud over the public address system.
 - (4) Provide an opportunity for the inmate to make a brief final statement on the public address system.
 - (5) Direct the Infusion Sub-Team to administer the Lethal Injection Chemical.

New Subsections 3349.7(c) through 3349.7(c)(12) are adopted to read:

- (c) Infusion.
 - (1) The infusion of the Lethal Injection Chemical shall begin with Tray A using the intravenous catheter designated as primary.
 - (2) The saline drip for the intravenous catheter that was designated as the primary infusion site shall be stopped prior to the infusion of the first syringe. The saline drip in the backup and alternate backup intravenous lines shall be continually maintained. Should the backup or alternate backup intravenous line be designated for infusion, the saline drip for that catheter shall be stopped prior to the infusion of the first syringe.
 - (3) A Record Keeping Sub-Team member in the Infusion Control Room shall initiate a ten minute countdown at the start of the infusion of syringe #1.

(4) If Pentobarbital has been designated, the Lethal Injection Chemical shall be administered, beginning with Tray A and using the primary intravenous catheter, as follows:

(A) #1 syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered, followed by a consciousness assessment of the inmate; the Intravenous Sub-Team Member shall brush the back of his/her hand over the inmate's eyelashes, and speak to and gently shake the inmate. Observations shall be documented. If the inmate is unresponsive, it will demonstrate that the inmate is unconscious. The process shall continue as follows:

(B) #2 syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.

(C) #3 syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.

(D) #4 syringe containing the saline flush.

(5) If Thiopental has been designated, the Lethal Injection Chemical shall be administered, beginning with Tray A and using the primary intravenous catheter, as follows:

(A) #1 syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered, followed by a consciousness assessment of the inmate; the Intravenous Sub-Team Member shall brush the back of his/her hand over the inmate's eyelashes, and speak to and gently shake the inmate. Observations shall be documented. If the inmate is unresponsive, it will demonstrate that the inmate is unconscious. The process shall continue as follows:

(B) #2 syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.

(C) #3 syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.

(D) #4 syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.

(E) #5 syringe containing the specified amount of the designated Lethal Injection Chemical shall be administered.

(F) #6 syringe containing the saline flush.

(6) If, following the administration of syringe #1 the assessment indicates the inmate is not unconscious, the Intravenous Sub-Team member shall check the catheter for patency. After checking for patency, syringe #2 shall be administered followed by a second consciousness assessment of the inmate in the same manner as described in subsection (c)(4)(A). If the assessment indicates the inmate is not unconscious, the San Quentin Warden shall direct that the injection through the primary intravenous catheter be discontinued and the entire sequence re-initiated with the Lethal Injection Chemical on the next sequential Tray using the associated intravenous catheter.

(7) If, at any time during the infusion of the Lethal Injection Chemical the intravenous catheter fails, the San Quentin Warden shall:

(A) Direct the lethal injection process using the intravenous catheter and the chemical on the Tray currently in use be discontinued.

(B) Direct the Lethal Injection Chemical administration process set forth in subsections (2)-(6) begin again, but using the Lethal Injection Chemical on the next sequential Tray and the associated catheter.

(8) The inmate's heart activity shall be monitored by an electrocardiogram.

(9) The attending physician shall monitor the electrocardiogram. Death shall be determined and declared by a physician. Once death is declared, infusion of any remaining Lethal Injection Chemical shall cease.

(10) In the event all syringes from Tray A have been administered, the ten minute countdown has elapsed and death has not been declared, or an intravenous site cannot be maintained at the primary site, the Record Keeping Sub-Team member shall advise the Team Supervisor, who shall then advise the Team Administrator and the San Quentin Warden. The San Quentin Warden shall direct the Lethal Injection Chemical administration process set forth in subsections (2) - (9) be repeated, but using the backup intravenous catheter and the syringes from Tray B.

(11) In the event all syringes from Tray B have been administered, the ten minute countdown has elapsed and death has not been declared, or an intravenous site cannot be maintained at the backup site, the Record Keeping Sub-Team member shall advise the Team Supervisor, who shall then advise the Team Administrator and the San Quentin Warden. The San Quentin Warden shall direct the Lethal Injection Chemical administration process set forth in subsections (2)-(9) be repeated, but using the alternate backup site and Tray C.

(12) In the event that all syringes of Lethal Injection Chemical from Tray C have been administered, ten minutes has elapsed, and death has not been declared, or an intravenous site cannot be maintained at the alternate backup site, the San Quentin Warden shall stop the execution and summon medical assistance for the inmate as set forth in subsection (d).

New Subsection 3349.7(d) is adopted to read:

(d) Should the execution be stayed or stopped for any reason after infusion of the Lethal Injection Chemical has commenced, the Team Administrator shall immediately request San Quentin medical personnel, or contracted medical personnel if there is no state civil service employee who is available and willing to perform the prescribed duties, respond to the Lethal Injection Facility to provide any medical care that is deemed necessary. The curtains on the viewing windows for witnesses shall be closed. The San Quentin Warden shall immediately go to the Infusion Control Room and ensure an announcement is made via the public address system notifying the witnesses the execution has been stayed or stopped. Immediately after the announcement, the public address system shall be turned off. The San Quentin Warden shall direct staff to escort the witnesses from the Lethal Injection Facility to the media center or off grounds. Stays issued prior to infusion shall be subject to the provisions of subsection 3349.6(l).

NOTE: Authority cited: Sections 3604, 3604.1 and 5058, Penal Code. Reference: Sections 190, 3600, 3603, 3604 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27; *Baze v. Rees* (2008) 553 U.S.35, *Towery v. Brewer* (2012) 672 F.3d 650.

New Section Title 3349.8 is adopted to read:

3349.8 Post Execution Procedure.

New Subsections 3349.8(a) through 3349.8(a)(3) are adopted to read:

(a) Immediately following the declaration of death of the inmate, the San Quentin Warden shall:

(1) Ensure a prepared statement is read aloud via the public address system notifying the witnesses the execution is complete.

(2) Ensure the curtains on the viewing windows for witnesses are closed.

(3) Direct staff to escort the witnesses from the Lethal Injection Facility to the media center or off grounds.

New Subsection 3349.8(b) is adopted to read:

(b) The Intravenous Sub-Team shall crimp closed and disconnect all intravenous lines. The catheter or needle shall not be removed from the inmate to allow for review by the Marin County Coroner.

New Subsection 3349.8(c) is adopted to read:

(c) The Team Supervisor shall ensure the inmate's body is placed with care and dignity into a post-mortem bag pending removal as pre-arranged with the contract mortuary.

New Subsections 3349.8(d) through 3349.8(d)(2) are adopted to read:

(d) Approximately one hour after the execution, the San Quentin Warden shall ensure:

(1) A statement to the media is issued advising the sentence has been carried out and announcing the time of death.

(2) The inmate's written statement is made available if applicable.

New Subsection 3349.8(e) is adopted to read:

(e) It is the responsibility of the Lethal Injection Team and assigned custody staff to clean each area of the Lethal Injection Facility after the inmate's body has been removed.

New Subsection 3349.8(f) is adopted to read:

(f) Any unused Lethal Injection Chemical and the reason why it was unused shall be documented on the CDCR Form 2176 (01/18), Lethal Injection Chain of Custody - San Quentin State Prison. The Infusion Sub-Team shall transfer the unused Lethal Injection Chemical to the Team Supervisor who shall place it in the Lethal Injection Facility safe to await disposal. The Lethal Injection Chemical transfer shall be documented on the CDCR Form 2176 (01/18), Lethal Injection Chain of Custody - San Quentin State Prison, and the final signature block signed by the Team Supervisor. The signed form shall remain with the Lethal Injection Chemical.

New Subsection 3349.8(g) is adopted to read:

(g) The Intravenous Sub-Team shall complete a post-execution inventory of all supplies and equipment that were used during the execution. The Intravenous Sub-Team shall give the inventory to the Team Supervisor, who shall arrange for replacement and replenishment of supplies.

New Subsections 3349.8(h) through 3349.8(h)(6) are adopted to read:

(h) Lethal Injection Reporting requirements:

(1) Immediately following the execution, the Team Supervisor shall complete a CDCR Form 2182 (01/18), San Quentin State Prison Execution Report – Team Supervisor, which is hereby incorporated by reference.

(2) Immediately following the execution, each Lethal Injection Team member shall complete a CDCR Form 2183 (01/18), San Quentin State Prison Execution Report – Team member, which is hereby incorporated by reference, documenting their actions and observations during the execution. The Lethal Injection Team members shall use identifiers assigned to their specific position (duties), rather than their names and/or classifications, when they submit their reports.

(3) Any use of force shall be documented and reviewed in accordance with Section 3268.1, Reporting and Investigating the Use of Force for Institution/Facility Staff.

(4) The Team Administrator shall review the completed Execution Report. The Execution Report shall be routed through the San Quentin Chief Deputy Warden for the San Quentin Warden's review and signature.

(5) A copy of the completed Execution Report shall be delivered to the Director – Division of Adult Institutions and the CDCR Secretary for review and follow up as needed.

(6) The original Execution Report shall be retained at San Quentin as part of the Master Execution File.

New Subsection 3349.8(i) is adopted to read:

(i) Assigned custody staff shall conduct a security inspection of the Lethal Injection Facility to ensure all doors are secured and no items were left behind.

New Subsection 3349.8(j) is adopted to read:

(j) The Team Supervisor shall secure the Lethal Injection Facility, return the keys and report directly to the Team Administrator and the San Quentin Warden that the Lethal Injection Facility has been secured.

New Subsections 3349.8(k) through 3349.8(k)(3) are adopted to read:

(k) Debriefing.

(1) The Team Administrator along with the Team Supervisor shall hold a debriefing with all Lethal Injection Team members prior to leaving the Lethal Injection Facility. All documents and records concerning the execution shall be collected by the Team Administrator for review and inclusion in the Execution Report.

(2) The Team Administrator along with the Team Supervisor shall offer the Lethal Injection Team members post trauma counseling.

(3) As soon as possible but no later than 24 hours after the execution, the San Quentin Warden shall arrange for a confidential individual debriefing by appropriate staff with the Team Administrator, the Team Supervisor, and each Lethal Injection Team member. Each individual may be accompanied by a person of his or her choosing to the individual debriefing. The San Quentin Warden shall offer the Team Administrator and Team Supervisor post trauma counseling

New Subsection 3349.8(l) is adopted to read:

(l) The San Quentin Litigation Coordinator shall assemble all appropriate reports, place them into the Master Execution File, and maintain the Master Execution File.

New Subsection 3349.8(m) is adopted to read:

(m) The San Quentin Warden shall ensure the CDCR Form 2178 (01/18), Return on Execution Warrant, which is hereby incorporated by reference, is completed and forward it and a copy of the Certificate of Death to the Clerk of the Court from which the inmate was under sentence of death pursuant to Penal Code Section 3607.

NOTE: Authority cited: Sections 3604, 3604.1, 3607, 5058 and 5061, Penal Code. Reference: Sections 190, 3600, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.; Baze v. Rees (2008) 553 U.S.35 Towery v. Brewer (2012) 672 F.3d 650.

New Section Title 3349.9 is adopted to read:

3349.9 Lethal Injection Record Keeping and Documentation.

New Subsection 3349.9(a) is adopted to read:

(a) Upon receipt of the Execution Warrant, the Litigation Coordinator at the institution where the inmate is housed shall be responsible for the security of all documents generated to be included in the Master Execution File prior to transfer of the inmate to the Lethal Injection Facility. Upon transfer the San Quentin Litigation Coordinator shall assume responsibility.

New Subsection 3349.9(b) is adopted to read:

(b) The Warden of the institution where the inmate is housed is responsible to ensure that all documents generated by staff associated with the inmate to be executed are accurate, completed in a timely manner, and forwarded to the Litigation Coordinator who shall retain a copy and send the original document to the San Quentin Warden.

New Subsection 3349.9(c) is adopted to read:

(c) The Team Supervisor shall ensure that all documents generated by the Lethal Injection Team are accurate, completed in a timely manner, and forwarded to the Team Administrator for review. Upon completion of review, the Team Administrator shall forward the documents to the San Quentin Litigation Coordinator for inclusion in the Master Execution File.

New Subsection 3349.9(d) is adopted to read:

(d) The San Quentin Litigation Coordinator shall maintain the Master Execution File at San Quentin in a secure location. The Master Execution File shall serve as a permanent record of all documents related to the execution.

New Subsections 3349.9(e) through 3349.9(e)(26) are adopted to read:

(e) The Master Execution File shall include the following documents:

(1) People's Application for Appointment of Execution Date.

(2) Execution Warrant.

- (3) CDCR Form 1801 (Rev. 01/18), Notification of Execution Date and Choice of Execution Method.
- (4) CDCR Form 1801-B (Rev. 01/18), Service of Execution Warrant - Warden's Initial Interview.
- (5) Notice of Execution Warrant to Director, Division of Adult Institutions.
- (6) Notice of Execution Warrant to Governor's Legal Affairs Secretary.
- (7) Memorandum identifying Alienist Panel.
- (8) CDCR Form 1801-A (Rev. 01/18), Choice of Execution Method.
- (9) CDCR Form 1801-C (01/18), Request For Approval of Witnesses.
- (10) CDCR Form 1801-D (01/18), Last Meal Request.
- (11) CDCR Form 1801-F (01/18), Release of Remains and Burial Arrangements.
- (12) CDCR Form 2173 (01/18), 20 Day Pre-Execution Report, pursuant to Penal Code 3700.5.
- (13) CDCR Form 2174 (01/18), Notification By Warden To The District Attorney Concerning Sanity of Condemned Inmate.
- (14) CDCR Form 2176 (01/18), Lethal Injection Chain of Custody San Quentin State Prison.
- (15) CDCR Form 2177-A (01/18), San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log - Pentobarbital or CDCR Form 2177-B (01/18), San Quentin State Prison Lethal Injection Infusion Sub-Team Execution Log – Thiopental.
- (16) CDCR Form 2178 (01/18), Return on Execution Warrant.
- (17) CDCR Form 2179 (01/18), San Quentin State Prison Lethal Injection Intravenous Sub-Team Execution Log.
- (18) CDCR Form 2181 (01/18), San Quentin State Prison Lethal Injection Team Administrator/Team Supervisor Execution Log.
- (19) CDCR Form 2182 (01/18), San Quentin State Prison Execution Report-Team Supervisor.
- (20) CDCR Form 2183 (01/18), San Quentin State Prison Execution Report – Team member.
- (21) Condemned inmate's Pre-Execution Logbook.
- (22) Copies of Lethal Injection Team training documentation for the three calendar days immediately preceding the execution.
- (23) Copies of Inmate Visiting Records.
- (24) If force was utilized at any point during the lethal injection process, CDCR Form 2182 (01/18), San Quentin State Prison Execution Report-Team Supervisor, shall be forwarded to the Executive Use of Force Review Committee to include in its review. When the Committee has completed their review of the Use of Force, the Executive Use of Force Review Committee findings and all associated documentation shall be added to the Master Execution File.
- (25) The Execution Report
- (26) Any and all other documents relative to the execution.

New Subsection 3349.9(f) is adopted to read:

(f) After an execution has concluded, the Team Administrator shall review the Master Execution File to ensure that all documents are accounted for and appropriately categorized.

New Subsection 3349.9(g) is adopted to read:

(g) In the event the execution is stayed, the Master Execution File shall be closed and remain at San Quentin in a secure location.

NOTE: Authority cited: Sections 3604, 3604.1, 5058 and 5061, Penal Code. Reference: Sections 190, 3600, 3601, 3602, 3603, 3604, 3605, 3700, 3700.5, 3701, 3702, 3703, 3704, 3705, 3706 and 5054, Penal Code; United States Constitution, Amendment VIII; California Constitution, Art. 1, Sections 17, 27.; *Baze v. Rees* (2008) 553 U.S.35 and *Towery v. Brewer* (2012) 672 F.3d 650.

NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO

NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO

NAME and NUMBER

CDC 128-B (Rev. 4/74)

DATE

GENERAL CHRONO

**NOTIFICATION OF EXECUTION DATE
AND CHOICE OF EXECUTION METHOD**
CDCR 1801 (REV. 01/18)

DISTRIBUTION:
WARDEN (ORIGINAL)
CENTRAL FILE - COPY
INMATE - COPY



ADOPT

On _____, I, _____, was served Execution
MONTH, DATE, AND YEAR PRINT OR TYPE FULL NAME AND CDCR #

Warrant number _____ issued by _____
NAME OF COUNTY

County Superior Court on _____, I was notified that I have an execution date of
MONTH, DATE, AND YEAR

_____ and that I may choose either lethal injection or lethal gas as the
MONTH, DATE, AND YEAR

method of execution. I understand that I have ten days from the date of the service of the Execution Warrant, or

_____ to make this choice in writing on CDCR Form 1801-A.
MONTH, DATE, AND YEAR

I also understand that if I do not make a choice, lethal injection will be the method of execution.

INMATE'S SIGNATURE	CDCR NUMBER	DATE SIGNED
SIGNATURE OF WITNESS		DATE SIGNED

COMMENTS OF WITNESS

DISTRIBUTION:
WARDEN (ORIGINAL)
CENTRAL FILE - COPY
INMATE - COPY



ADOPT

On _____, I, _____, was served Execution
MONTH, DATE, AND YEAR PRINT OR TYPE FULL NAME AND CDCR #

Warrant number _____ issued by _____
NAME OF COUNTY

County Superior Court on _____
MONTH, DATE, AND YEAR

I was notified that I have an execution date of _____ and that I may
MONTH, DATE, AND YEAR
choose either lethal injection or lethal gas as the method of execution. I understand that I had ten days from the
date of the service of the Execution Warrant, or until _____ to make this
MONTH, DATE, AND YEAR
choice in writing on a CDCR Form 1801-A, and that if I did not make a choice, lethal injection would be the
method of execution.

This is to notify the Warden that my choice is _____
LETHAL INJECTION OR LETHAL GAS

INMATE'S SIGNATURE	CDCR NUMBER	DATE SIGNED
SIGNATURE OF WITNESS		DATE SIGNED
COMMENTS OF WITNESS		

The chemical utilized for the lethal injection shall be _____ in the
NAME OF CHEMICAL
amount of _____. The inmate was informed of the choice and amount of chemical.
AMOUNT OF CHEMICAL

WARDEN'S SIGNATURE	DATE SIGNED
SIGNATURE OF WITNESS	DATE SIGNED

SERVICE OF EXECUTION WARRANT -

WARDEN'S INITIAL INTERVIEW

CDCR 1801-B (REV. 01/18)

ADOPT

I, _____, have received a copy of the Execution Warrant number _____ issued by
PRINT OR TYPE FULL NAME AND CDCR #

_____ County Superior Court on _____. I had the opportunity to discuss the Execution
NAME OF COUNTY MONTH, DAY, YEAR

Warrant with the Warden on _____. I understand that I am entitled to elect either lethal injection or lethal gas as the
MONTH, DAY, YEAR
method of execution. I further understand that I must make my choice in writing on a CDCR Form 1801-A within ten days of service
of the Execution Warrant. If I do not choose either lethal injection or lethal gas within ten days after the service of this Execution
Warrant, I understand the method of execution will be lethal injection. I further understand that if I receive a stay of execution, I will
again have the opportunity to choose the method of execution if I am served with another Execution Warrant. I understand I have
an execution date of _____.
MONTH, DAY, YEAR

X _____
INMATE'S SIGNATURE

() Inmate has received a copy of the Execution Warrant but refuses to sign for it.

X _____
WARDEN'S SIGNATURE

X _____
WITNESS' SIGNATURE

Staff shall initial the following, if applicable:

- () Inmate understands he/she may choose either lethal injection or lethal gas as the method of execution.
- () Inmate understands he/she must make his/her choice I writing on the CDCR Form 1801-A within ten days after service of the Execution Warrant. This ten day period expires on _____.
MONTH, DAY, YEAR
- () Inmate understands he/she will be contacted on the above date if the Warden has not received the form 1801-A, Choice of Execution Method.
- () Inmate understands that if he/she makes no choice, execution will be imposed by lethal injection.
- () Inmate understands he/she will be interviewed by psychiatric staff and a report of their findings will be provided to the Governor, the Secretary, the Director-Division of Adult Institutions, the San Quentin Warden or the Warden of CCWF, and the inmate's counsel upon request of counsel.
- () Inmate has been provided with a copy of Title 15 regulations, and has been given an explanation of the course of events following service of the Execution Warrant.
- () Effective communication was established: see comment section.

INTERVIEWER'S OBSERVATION AND COMMENTS

WARDEN PRINTED NAME	WARDEN SIGNATURE	DATE SIGNED
WITNESS' PRINTED NAME/ (Litigation Coordinator)	WITNESS' SIGNATURE	DATE SIGNED

ADOPT

REQUEST FOR APPROVAL OF WITNESSES

Per Penal Code Section 3605, I am requesting that the following person(s) be permitted to witness the execution. I understand that all requested witnesses must meet all visiting criteria pursuant to California Code of Regulations, Title 15, Division 3, Subchapter 2, Article 7. I understand that no witnesses under the age of 18 will be permitted.

PERSONS, RELATIVES OR FRIENDS			
NAME & AGE	ADDRESS	TELEPHONE #	RELATIONSHIP

MINISTERS OF THE GOSPEL		
NAME	ADDRESS	TELEPHONE #

_____ Inmate Name

_____ Inmate Signature

_____ CDCR #

- Witnesses contacted to obtain information needed to perform CLETS check
- CLETS check completed by Administrative Assistant (Attach reports)

APPROVED/DISAPPROVED _____

_____ Warden
 California State Prison at San Quentin

_____ Date

ADOPT

LAST MEAL REQUEST

I am requesting that the following food be provided for my last meal. I understand that all requests must be approved by the Food Manager and the Warden. Unreasonable requests shall not be accommodated. Last meal cost shall not exceed \$50.00.

Meal Items Requested

Inmate Name

Inmate Signature

CDCR #

APPROVED/DISAPPROVED

Food Manager

Date

APPROVED/DISAPPROVED

Warden
California State Prison at San Quentin

Date

ADOPT

RELEASE OF REMAINS AND BURIAL ARRANGEMENTS

I am requesting that my remains be released to the person or organization identified herein. I understand that the state of California does not accept financial responsibility for the disposition of my remains. I have designated the person who will accept that responsibility. If I do not designate these arrangements, or my designee does not accept this responsibility, the State will process my remains in accordance with Penal Code Section 5061 and California Code of Regulations, Title 15, Section 3357.

Funeral Home _____
Address _____

Telephone _____
Contact Person _____

Person financially responsible for the disposition of remains:

Name _____
Address _____

Telephone _____
Relationship _____

Inmate Name

Inmate Signature

CDCR #

Warden
California State Prison at San Quentin

Date

ADOPT

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Monthly Security and Operational Inspection Sheet

CDCR 2137 (01/18)

Page 1 of 1

	Building Maintenance	Good Working Order/Clean	Needs Repair/Cleaning	Comments/Work Order
	A) Doors/Locks/Keys B) Lights (Lamps) C) Electrical (switches and plugs) D) Refrigerator (Temp.) E) Safe – (Secure/No Obstruct) F) Plumbing- (Sinks/Toilets) G) Fire Ext. – (Ext./Sprinkler) H) Floors I) Walls J) Storage Rooms K) Restroom			
	Equipment	Operational	Needs Repair	Comments
	A) Restraints B) Locks C) Cut Down Tool D) Baton E) OC (MK-4) F) Camera G) PPE Kits			
	Supplies	Quantities		Items Ordered
	A) I.V. Supplies B) Infusion Supplies			

ADOPT

M e m o r a n d u m

Date :
To : WARDEN
From : San Quentin State Prison, San Quentin, CA 94964
Subject : **20-DAY PRE-EXECUTION REPORT**
_____ (NAME AND NUMBER OF INMATE)

This report is prepared pursuant to Title 15, Article 7.5 and Section 3700.5 of the California Penal Code. Inmate _____ (name), CDCR# _____ is scheduled for execution of his/her death sentence on _____ (date).

Inmate _____ (name) was advised that I was a psychiatrist and the purpose of the interview was to evaluate his/her competency to undergo execution. I advised that I was not his/her treating physician and that the results of the interview were not confidential but would be shared with others. The inmate said he/she understood/did not understand (circle one) the information above.

Inmate _____ (name)[describe: grooming, demeanor, orientation, speech, mood and any other features relevant to the documentation of the inmate's competency on a separate report and attach to this form.]

Inmate _____ (name), CDCR# _____ understood his/her circumstances and:

Understood the nature of the death penalty and the reasons it was imposed.

Did not understand the nature of the death penalty and the reasons it was imposed.

It is my opinion that Inmate _____ (name) is competent/not competent (circle one) to undergo execution.

(Print Name of Alienist)
Staff Psychiatrist

(Signature of Alienist)
Staff Psychiatrist Date

STATE OF CALIFORNIA
NOTIFICATION BY WARDEN TO DISTRICT ATTORNEY
CONCERNING SANITY OF CONDEMNED INMATE (PC § 3700)
CDCR 2174 (01/18)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

ADOPT

**NOTIFICATION BY WARDEN TO
DISTRICT ATTORNEY CONCERNING SANITY OF
CONDEMNED INMATE (PC § 3700, 3700.5, 3701)**

To: _____, District Attorney, County of Marin
From: _____, Warden, San Quentin State Prison
Re: Condemned Inmate _____, CDCR # _____

Pursuant to Penal Code § 3701, There is good reason to believe that the above named inmate/defendant, who is under sentence of death, has become insane.

This is based on the following:

A. Information concerning the inmate:

- 1. County from which the inmate is under sentence of death: _____
- 2. Charges convicted of: _____
- 3. Date set for execution: _____

B. Enclosed with this memorandum are the following:

- ____ 1. Copies of the reports of the three alienists who examined the Inmate/defendant per PC § 3700.5;
- ____ 2. A copy of the inmate's psychiatric file;
- ____ 3. Other _____

_____, Warden
California State Prison at San Quentin

Date: _____

**LETHAL INJECTION CHAIN OF CUSTODY
SAN QUENTIN STATE PRISON
CDCR 2176 (01/18)**

ADOPT

**LETHAL INJECTION CHAIN OF CUSTODY
SAN QUENTIN STATE PRISON**

This form is the chain of custody that accompanies the Lethal Injection Chemical scheduled for the execution of _____ at _____ on _____.
Inmate name CDCR # Time Date

STEP 1. Obtain the Lethal Injection Chemical from the Lethal Injection Chemical Supplier

--	--	--

Chemical name

Lot #

Expiration Date

--	--	--

Type and quantity of packages

Volume per package

Total amount

--

Name of Lethal Injection Chemical Supplier

Received by _____
Lethal Injection Team Member ID

Date _____ Time _____

Received by _____
Team Supervisor

Date _____ Time _____

Verified by _____
Team Administrator

Date _____ Time _____

STEP 2. Transfer of the Lethal Injection Chemical from the Lethal Injection Facility safe to the Infusion Sub-Team

--	--	--

Chemical name

Lot #

Expiration Date

--	--	--

Type and quantity of packages

Volume per package

Total amount

Received by _____
Infusion Sub-Team Member ID

Date _____ Time _____

Received by _____
Infusion Sub-Team Member ID

Date _____ Time _____

Verified by _____
Team Supervisor

Date _____ Time _____

ADOPT

STEP 3. Transfer of unused Lethal Injection Chemical from the Infusion Sub-Team to the Lethal Injection Facility safe (if necessary)

--	--	--

Chemical name

Lot #

Expiration Date

--	--	--

Type and quantity of packages

Volume per package

Total amount

--

Reason Lethal Injection Chemical Not Used

Received by _____
Team Supervisor

Date _____ Time _____

Verified by _____
Infusion Sub-Team Member ID

Date _____ Time _____

Verified by _____
Infusion Sub-Team Member ID

Date _____ Time _____

STEP 4. Final signature after completion of the lethal injection protocol.
(Original signed form to remain with Lethal Injection Chemical)

Team Administrator: _____
Print Name

_____/_____
Date Time

Signature

Team Supervisor: _____
Print Name

_____/_____
Date Time

Signature

ADOPT

**San Quentin State Prison Lethal Injection
 Infusion Sub-Team Execution Log - Pentobarbital**

Inmate Name	CDCR #	Date of Execution

Record Keeping Sub-Team Member Identification #: _____

Lethal Injection Chemical _____

Total Dose Per Syringe _____

Total Dose Per Tray _____

Step	Task	Time	Comments
1.	Infusion Sub-Team Members arrive at the Lethal Injection Facility.		
2.	Transfer of chemicals to Infusion Sub-Team.		
3.	Prepare Lethal Injection Chemical according to Lethal Injection Chemical Supplier instructions.		
TRAY A – Primary - Red			
4.	Draw 2.5 grams of the designated Lethal Injection Chemical into a syringe.		
5.	Label this syringe in red; A-1.		
6.	Repeat step 4 and label this syringe in red; A-2.		
7.	Repeat step 4 and label this syringe in red; A-3.		
8.	Draw saline flush into syringe and label in white; A-4.		
TRAY B – Backup - Blue			
9	Draw 2.5 grams of the designated Lethal Injection Chemical into a syringe.		
10.	Label this syringe in blue; B-1.		
11.	Repeat step 9 and label this syringe in blue; B-2		
12.	Repeat step 9 and label this syringe in blue; B-3		
13.	Draw saline flush into syringe and label in white; B-4.		
TRAY C – Alternate Backup - Yellow			
14.	Draw 2.5 grams of the designated Lethal Injection Chemical into a syringe.		
15.	Label this syringe in yellow; C-1.		
16.	Repeat step 14 and label this syringe in yellow; C-2.		
17.	Repeat step 14 and label this syringe in yellow; C-3.		
18.	Draw saline flush into syringe and label in white; C-4.		
INFUSION. Once death is declared, infusion of any remaining chemical shall cease.			
19.	Infusion Sub-Team member or Intravenous Sub-Team member verifies proper preparation of Trays A, B and C.		
20.	Saline drip for primary catheter stopped.		
21.	Inject syringe #A-1.		

Step	Task	Time	Comments
22.	Consciousness check. If the inmate is not unconscious, check the catheter for patency. Continue to step 23.		
23.	Inject syringe #A-2.		
24.	Consciousness check (if necessary). If the inmate is unconscious, continue to step 25. If the inmate remains conscious, discontinue Tray A and initiate Tray B in the backup intravenous catheter (step 27).		
25.	Inject syringe #A-3.		
26.	Inject syringe #A-4 Saline Flush.		
	Backup. If all four syringes in Tray A have been administered and death has not been declared after 10 minutes, or if at any time during infusion the primary catheter has failed, continue to Tray B.		
27.	Saline drip for backup catheter stopped.		
28.	Inject syringe # B-1.		
29.	Consciousness check. If the inmate is not unconscious, check the catheter for patency. Continue to step 30.		
30.	Inject syringe # B-2.		
31.	Consciousness check (if necessary). If the inmate is unconscious, continue to step 32. If the inmate remains conscious, discontinue Tray B and initiate Tray C in the alternate backup intravenous catheter (step 34).		
32.	Inject syringe # B-3.		
33.	Inject syringe # B-4 Saline Flush.		
	Alternate Backup. If all four syringes in Tray B have been administered and death has not been declared after 10 minutes, or if at any time during infusion the backup catheter has failed, continue to Tray C.		
34.	Saline drip for alternate backup catheter stopped.		
35.	Inject syringe # C-1.		
36.	Consciousness check. If the inmate is not unconscious, check the catheter for patency. Continue to step 37.		
37.	Inject syringe # C-2.		
38.	Consciousness check (if necessary). If the inmate is unconscious, continue to step 39. If the inmate remains conscious, discontinue Tray C. The execution shall be stopped and medical assistance summoned.		
39.	Inject syringe # C-3.		
40.	Inject syringe # C-4 Saline Flush.		
	Physician declares death.		

 Lethal Injection Team Administrator

 Date

**San Quentin State Prison Lethal Injection
 Infusion Sub-Team Execution Log - Thiopental**

ADOPT

Inmate Name	CDCR #	Date of Execution

Record Keeping Sub-Team Member Identification #: _____

Lethal Injection Chemical _____

Total Dose Per Syringe _____

Total Dose Per Tray _____

Step	Task	Time	Comments
1.	Infusion Sub-Team Members arrive at the Lethal Injection Facility.		
2.	Transfer of chemicals to Infusion Sub-Team.		
3.	Prepare Lethal Injection Chemical according to Lethal Injection Chemical Supplier instructions.		
TRAY A – Primary - Red			
4.	Draw 1.5 grams of the designated Lethal Injection Chemical into a syringe.		
5.	Label this syringe in red; A-1.		
6.	Repeat step 4 and label this syringe in red; A-2.		
7.	Repeat step 4 and label this syringe in red; A-3.		
8.	Repeat step 4 and label this syringe in red; A-4.		
9.	Repeat step 4 and label this syringe in red; A-5.		
10.	Draw saline flush into syringe and label in white; A-6.		
TRAY B – Backup - Blue			
11.	Draw 1.5 grams of the designated Lethal Injection Chemical into a syringe.		
12.	Label this syringe in blue; B-1.		
13.	Repeat step 11 and label this syringe in blue; B-2.		
14.	Repeat step 11 and label this syringe in blue; B-3.		
15.	Repeat step 11 and label this syringe in blue; B-4.		
16.	Repeat step 11 and label this syringe in blue; B-5.		
17.	Draw saline flush into syringe and label in white; B-6.		
TRAY C – Alternate Backup - Yellow			
18.	Draw 1.5 grams of the designated Lethal Injection Chemical into a syringe.		
19.	Label this syringe in yellow; C-1.		
20.	Repeat step 18 and label this syringe in yellow; C-2.		
21.	Repeat step 18 and label this syringe in yellow; C-3.		
22.	Repeat step 18 and label this syringe in yellow; C-4.		
23.	Repeat step 18 and label this syringe in yellow; C-5.		
24.	Draw saline flush into syringe and label in white; C-6.		

Step	Task	Time	Comments
INFUSION. Once death is declared, infusion of any remaining chemical shall cease.			
25.	Infusion Sub-Team member or Intravenous Sub-Team member verifies proper preparation of Trays A, B and C.		
26.	Saline drip for primary catheter stopped.		
27.	Inject syringe #A-1.		
28.	Consciousness check. If the inmate is not unconscious, check the catheter for patency. Continue to step 30.		
30.	Inject syringe #A-2.		
31.	Consciousness check (if necessary). If the inmate is unconscious, continue to step 32. If the inmate remains conscious, discontinue Tray A and initiate Tray B in the backup intravenous catheter (step 36).		
32.	Inject syringe #A-3.		
33.	Inject syringe #A-4.		
34.	Inject syringe #A-5.		
35.	Inject syringe #A-6 Saline Flush.		
	Backup. If all six syringes in Tray A have been administered and death has not been declared after 10 minutes, or if at any time during infusion the primary catheter has failed, continue to Tray B.		
36.	Saline drip for backup catheter stopped.		
37.	Inject syringe # B-1.		
38.	Consciousness check. If the inmate is not unconscious, check the catheter for patency. Continue to step 39 below.		
39.	Inject syringe # B-2.		
40.	Consciousness check (if necessary). If the inmate is unconscious, continue to step 41. If the inmate remains conscious, discontinue Tray B and initiate Tray C in the alternate backup intravenous catheter (step 45).		
41.	Inject syringe # B-3.		
42.	Inject syringe # B-4.		
43.	Inject syringe # B-5.		
44.	Inject syringe # B-6 Saline Flush.		
	Alternate Backup. If all six syringes in Tray B have been administered and death has not been declared after 10 minutes, or if at any time during infusion the backup catheter has failed, continue to Tray C.		
45.	Saline drip for alternate catheter stopped.		
46.	Inject syringe # C-1.		
47.	Consciousness check. If the inmate is not unconscious, check the catheter for patency. Continue to step 48 below.		
48.	Inject syringe # C-2.		

Step	Task	Time	Comments
49.	Consciousness check (if necessary). If the inmate is unconscious, continue to step 50. If the inmate remains conscious, discontinue Tray C. The execution shall be stopped and medical assistance summoned.		
50.	Inject syringe # C-3.		
51.	Inject syringe # C-4.		
52.	Inject syringe # C-5.		
53.	Inject syringe # C-6 Saline Flush.		
	Physician declares death.		

Lethal Injection Team Administrator

Date

STATE OF CALIFORNIA
RETURN ON EXECUTION WARRANT
CDCR 2178 (01/18)

DEPARTMENT OF CORRECTIONS AND REHABILITATION

ADOPT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF _____**

THE PEOPLE OF THE STATE OF CALIFORNIA)

) **Case No.** _____

vs.)

(_____) (inmate's name))

) **RETURN ON EXECUTION
WARRANT**

To the Honorable _____, Judge of the Superior Court of the State of California, County of _____:

I, _____, Warden of the California State Prison at San Quentin, in compliance with Section 3607 of the Penal Code of the State of California, do hereby certify:

The Execution Warrant entitled Judgment of Death and Commitment issued in this case on _____ (date) by the Honorable _____, Judge of the Superior Court for the County of _____, was received at this institution on _____ (date), as required by Penal Code Section 1227;

On _____ (date), shortly after 12:01 a.m., the above warrant was executed within the walls of San Quentin Prison, in compliance with the Execution Warrant, by administering a lethal injection to _____, until he/she was dead. A true and correct copy of the Certificate of Death is attached to this Return.

In accordance with the provisions of Penal Code Section 3605, I was present at this execution and invited the presence of those witnesses required by this Section.

DATED: _____

_____, Warden
California State Prison at San Quentin

ADOPT

**San Quentin State Prison Lethal Injection
Intravenous Sub-Team Execution Log**

Inmate Name	CDCR#	Date of Execution

Record Keeping Sub-Team Member Identification # _____

Step	Task	Time	Comments
1.	IV tubing and needles given final check.		
2.	ECG pads are placed on inmate's chest.		
3.	ECG leads attached to monitor.		
4.	Inspect inmate restraints to ensure circulation.		
5.	Insert intravenous catheter – Primary.		
6.	Primary catheter patency confirmed.		
7.	Intravenous drip initiated – Primary.		
8.	Insert intravenous catheter – Backup		
9.	Backup catheter patency confirmed.		
10.	Intravenous drip initiated – Backup.		
11.	Insert intravenous catheter - Alternate backup.		
12.	Alternate backup catheter patency confirmed.		
13.	Intravenous drip initiated - Alternate backup.		
14.	One Intravenous Sub-Team Member exits Lethal Injection Room and goes to Infusion Room to record infusion of chemicals on ECG graph paper.		
15.	One Intravenous Sub-Team Member takes position next to inmate to monitor intravenous lines and assess the consciousness of the inmate.		
INFUSION. Once death is declared, infusion shall cease.			
16.	Saline drip in primary infusion site is stopped.		
17.	Syringe #A-1 administered; mark ECG graph paper #A-1.		
18.	Sub-Team Member in Lethal Injection Room checks inmate for consciousness. Check catheter for patency if inmate is not unconscious.		
19.	Syringe #A-2 administered; mark ECG graph paper #A-2.		
20.	Sub-Team Member in Lethal Injection Room checks inmate for consciousness (if necessary).		
21.	Syringe #A-3 administered; mark ECG graph paper #A-3.		
22.	Syringe #A-4 administered; mark ECG graph paper #A-4.		
If Thiopental Is Used, Proceed to Step 23 Below.			
23.	Syringe #A-5 administered; mark ECG graph paper #A-5.		
24.	Syringe #A-6 administered; mark ECG graph paper #A-6.		
If chemicals on Tray B are used the backup catheter will be used.			
25.	Saline drip in backup site is stopped.		
26.	Syringe #B-1 administered; mark ECG graph paper #B-1.		

27.	Sub-Team Member in Lethal Injection Room checks inmate for consciousness. Check catheter for patency if inmate is not unconscious.		
28.	Syringe #B-2 administered; mark ECG graph paper #B-2.		
29.	Sub-Team Member in Lethal Injection Room checks inmate for consciousness (if necessary).		
30.	Syringe #B-3 administered; mark ECG graph paper #B-3.		
31.	Syringe #B-4 administered; mark ECG graph paper #B-4.		
If Thiopental Is Used, Proceed to Step 32 Below.			
32.	Syringe #B-5 administered; mark ECG graph paper #B-5.		
33.	Syringe #B-6 administered; mark ECG graph paper #B-6.		
If chemicals on Tray C are used the alternate backup catheter will be used.			
34.	Saline drip in alternate backup site is stopped.		
35.	Syringe #C-1 administered; mark ECG graph paper #C-1.		
36.	Sub-Team Member in Lethal Injection Room checks inmate for consciousness. Check catheter for patency if inmate is not unconscious.		
37.	Syringe #C-2 administered; mark ECG graph paper #C-2.		
38.	Sub-Team Member in Lethal Injection Room checks inmate for consciousness (if necessary).		
39.	Syringe #C-3 administered; mark ECG graph paper #C-3.		
40.	Syringe #C-4 administered; mark ECG graph paper #C-4.		
If Thiopental Is Used, Proceed to Step 41 Below.			
41.	Syringe #C-5 administered; mark ECG graph paper #C-5.		
42.	Syringe #C-6 administered; mark ECG graph paper #C-6.		
43.	Mark ECG graph paper when death is declared.		
44.	Prepare final report.		

Lethal Injection Team Administrator

Date

**San Quentin State Prison
Lethal Injection Team Administrator/Team Supervisor
Execution Log**

ADOPT

Inmate Name	CDCR #	Date of Execution

Record Keeping Sub-Team Member Identification # _____

Step	Task	Time	Comments
1.	3 hours prior: Assemble Record-Keeping Sub-Team and make assignments.		
Record Keeping Sub-Team activated; Execution Logs begin.			
2.	The Team Supervisor removes the Lethal Injection Chemical from the Lethal Injection Facility safe.		
3.	The Team Supervisor transfers custody of the Lethal Injection Chemical to two members of the Lethal Injection Infusion Sub-Team and completes the CDCR Form 2176 Lethal Injection Chain of Custody San Quentin State Prison.		
4.	The Team Administrator along with the Warden of San Quentin meet with the condemned inmate in the Lethal Injection Facility holding cell area. <ul style="list-style-type: none"> • Ask if the inmate wishes to write a last statement to be read after the execution. • Advise the inmate a sedative may be requested, and if approved by a physician, the sedative shall be administered under their direction. 		
5.	The Lethal Injection Team Administrator and Team Supervisor take positions in the Infusion Control room.		
6.	Infusion of Lethal Injection Chemical is initiated.		
7.	Flat line noted on ECG.		
8.	Death declared.		
9.	Witnesses notified that inmate has expired.		
10.	Curtains drawn on viewing windows.		
11.	Inmate's body prepared for Coroner/Mortuary.		
If chemicals on Tray B are used the backup catheter will be used.			
12.	Repeat protocol.		
13.	Flat line noted on ECG.		
14.	Death declared.		
15.	Witnesses notified that inmate has expired.		
16.	Curtains drawn on viewing windows.		
17.	Inmate's body prepared for Coroner/Mortuary.		
If chemicals on Tray C are used the alternate backup catheter will be used.			
18.	Repeat protocol.		
19.	Flat line noted on ECG.		

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION

**SAN QUENTIN STATE PRISON LETHAL INJECTION
TEAM ADMINISTRATOR/TEAM SUPERVISOR EXECUTION LOG**

CDCR 2181 (01/18)

Page 2 of 2

Step	Task	Time	Comments
20.	Death declared.		
21.	Witnesses notified that inmate has expired.		
22.	Curtains drawn on viewing windows.		
23.	Inmate's body prepared for Coroner/Mortuary.		

Lethal Injection Team Administrator: _____

Date: _____

ADOPT

**San Quentin State Prison
Team Supervisor Execution Report**

PAGE OF

EXECUTION TEAM SUPERVISOR:

DATE:

1. SUMMARY AND BRIEF DESCRIPTION OF EXECUTION:

Lined area for summary and brief description of execution.

2. UNUSUAL EVENT:

Lined area for unusual event.

3. NARRATIVE OF EXECUTION:

Lined area for narrative of execution.

INMATE NAME: LAST

FIRST

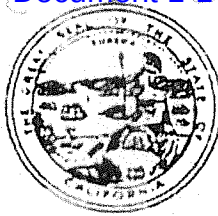
MIDDLE

CDCR #

STATE OF CALIFORNIA

NOTIFICATION OF EXECUTION DATE AND CHOICE OF EXECUTION METHOD

CRIMINAL JUSTICE DIVISION



DEPARTMENT OF CORRECTIONS
CRIMINAL JUSTICE DIVISION
1600 W. CENTRAL AVENUE
SACRAMENTO, CALIFORNIA 95833

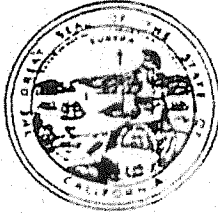
On _____ I, _____
MONTH, DATE, AND YEAR PRINT OR TYPE FULL NAME
was served Warrant of Execution number _____ issued by
_____ County Superior Court on _____
NAME OF COUNTY MONTH, DATE, YEAR

It was explained to me that I have an execution date of _____
and that I may choose either lethal gas or lethal injection as the method of execution. I
understand that I have ten days from the date of the service of the warrant, or
until _____ to make this choice in writing to the
MONTH, DATE, YEAR
Warden.

I also understand that if I do not make a choice, lethal injection will be the method of execution.

DEPUTY'S SIGNATURE	DEPUTY'S NAME	DATE
WITNESS'S SIGNATURE	WITNESS'S NAME	DATE
STATEMENTS OF WITNESS		

STATE OF CALIFORNIA
CHOICE OF EXECUTION MI 00
11/15/01 (Rev. 1/98)



STATEMENT OF PRISONER TO DO
DETENTION
BY WARDEN
OF CENTRAL FILE
NO. 00000000

On _____, I _____,
MONTH DATE YEAR WARRANT WAS SERVED PRINT OR TYPE FULL NAME
was served Warrant of Execution number _____ issued by the
_____ County Superior Court on _____
NAME OF COUNTY MONTH, DATE, YEAR

I have been notified that my execution date will be _____
MONTH DATE YEAR
and that I may choose either lethal gas or lethal injection as the method of execution.
I understand that I had ten days from the date the warrant was served, or
until _____ to make this choice in writing to the
MONTH DATE YEAR
Warden.

I also understand that if I do not make a choice lethal injection will be the method of execution.

This is to notify the Warden that my choice is _____
LETHAL GAS OR LETHAL INJECTION
(either lethal gas or lethal injection).

DATE OF SIGNATURE	BY WHOM	
DATE OF SIGNATURE	BY WHOM	
SIGNATURES OF WITNESS		

SERVICE OF EXECUTION WARRANT
WARDEN'S INITIAL INTERVIEW
(DC 1301B (4-98))

I, _____ have received a copy of the Warrant of Execution
number _____ issued by _____ County Superior Court on _____
MONTH, DAY, YEAR

I have had an opportunity to discuss its ramifications and other related issues with a prison administrator
on _____ I understand that I am entitled to elect either lethal gas or lethal injection as the
MONTH, DAY, YEAR
method of my execution. I further understand I must make my choice in writing to the warden. If I do not choose
either lethal gas or lethal injection within ten days after the service of this execution warrant, I understand the
method of execution will be lethal injection. I further understand if I receive a stay of execution, I will again have
the opportunity to choose the method of execution when I am served with another execution date. I understand I
have an execution date of _____
MONTH, DAY, YEAR

X _____
INMATE'S SIGNATURE

() Inmate has received a copy of the Warrant of Execution but refuses to sign for it

X _____
INMATE'S SIGNATURE

() Inmate understands he may choose either lethal gas or lethal injection as the method of execution

() Inmate understands he must make his choice in writing to the Warden within ten days after service of this
execution warrant. This ten day period expires on _____
MONTH, DAY, YEAR

() Inmate understands he will be recontacted on the above date if the Warden has not received his written
notice of choice.

() Inmate understands if he makes no choice, execution will be imposed by lethal injection

() Inmate understands the nature of the document and the possible ramifications

() Inmate has been in contact with legal counsel regarding this matter

() Inmate understands he will be interviewed by psychiatric staff and a report of their findings will be filed

() Inmate claims to be of the _____ faith

() Inmate understands he will be interviewed by a chaplain and a nonspecific report will be filed

() Inmate has had an explanation of the course of events set in motion by the Warrant of Execution

WARDEN/EMPLOYEE IDENTIFY NAME	WARDEN/EMPLOYEE SIGNATURE	DATE SIGNED

CIVIL COVER SHEET

JS 44 (Rev. 06/17)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
 LOS ANGELES TIMES COMMUNICATIONS LLC, KQED, INC.,
 SAN FRANCISCO PROGRESSIVE MEDIA CENTER

(b) County of Residence of First Listed Plaintiff Los Angeles
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
 KEKER, VAN NEST & PETERS LLP (additional counsel in complaint)
 Ajay S. Krishnan, Benjamin Berkowitz, Christopher S. Sun
 633 Battery St., San Francisco, CA 94111 (415) 391-5400

DEFENDANTS
 SCOTT KERNAN, Secretary of the California Department of
 Corrections and Rehabilitation; RONALD DAVIS, Warden of the
 California State Prison at San Quentin

County of Residence of First Listed Defendant Sacramento
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
 THE TRACT OF LAND INVOLVED.
 Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff
 2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)
 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities-Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Other: <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation - Direct File

(specify)

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
 42 United States Code Section 1983

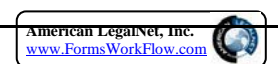
Brief description of cause:
 This is an action against State officials for violation of Plaintiffs' First Amendment rights.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0 (injunction/declaration only) CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE Hon. Richard Seeborg DOCKET NUMBER 3:06-cv-00219-RS

DATE April 11, 2018 SIGNATURE OF ATTORNEY OF RECORD /s/Ajay S. Krishnan



FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____