

2. Execution by Lethal Injection Procedures, Florida Department of Corrections.



**FLORIDA
DEPARTMENT of
CORRECTIONS**

An Equal Opportunity Employer

2601 Blair Stone Road • Tallahassee, FL 32399-2500
Phone: (850) 488-7480

Governor
CHARLIE CRIST

Secretary
JAMES R. McDONOUGH

<http://www.dc.state.fl.us>
Fax: (850) 922-2848

July 31, 2007

The Honorable Charlie Crist
Executive Office of the Governor
PL 05, The Capitol
400 South Monroe Street
Tallahassee, Florida 32399-0001

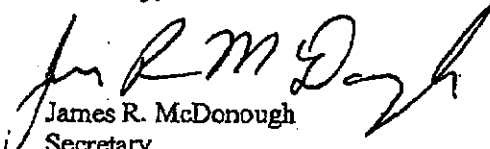
Dear Governor Crist:

For your consideration, enclosed please find the revised lethal injection procedures that I have signed today, effective for executions after August 1, 2007. Pursuant to these procedures, I represent the following:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process is not going to involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.

Sincerely,


James R. McDonough
Secretary



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EXECUTION BY LETHAL INJECTION PROCEDURES
Effective for executions after August 1, 2007

PURPOSE: To establish the procedures for the execution by lethal injection of inmates sentenced to death, pursuant to the dictates of Chapter 922, Florida Statutes and adhering to the requirements imposed under the Constitution of the State of Florida and the United States Constitution. The foremost objective of the lethal injection process is a humane and dignified death.

DEFINITIONS:

- (1) **Execution team**, where used herein, refers to correctional staff and other persons who are selected by the team warden designated by the Secretary to assist in the administration of an execution by lethal injection, and who have the training and qualifications, including the necessary licensure or certification, required to perform the responsibilities or duties specified. Individuals on the execution team will be referred to as "execution team member" or "team member" in these procedures.
- (2) **Executioner**, where used herein, refers to an individual selected by the team warden to initiate the flow of lethal chemicals into the inmate. The executioner's sole function is to inject the chemicals into the IV access port by physically pushing the chemicals from the syringe. The executioner is only authorized to carry out this specific function under the direction of the team warden. An executioner shall be an adult, undergo a criminal background check and be sufficiently trained to administer the flow of lethal chemicals. The executioner must demonstrate to the satisfaction of the team warden, that s/he is competent, trained, and of sufficient character to carry out the required function under the team warden's direction.
- (3) **Institutional warden**, where used herein, refers to the warden of Florida State Prison, who shall be responsible for handling support functions necessary to carry out the lethal injection process.
- (4) **Team warden**, where used herein, refers to the warden designated by the Secretary. The team warden shall be a person who has demonstrated through experience, training, and good moral character the ability to perform an execution by lethal injection. The team warden has the final and ultimate decision making authority in every aspect of the lethal

injection process. No deviation from any part of this procedure is authorized unless approved and directed by the team warden.

SPECIFIC PROCEDURES:

- (1) **Receipt of Warrant:** These execution procedures will commence upon receipt of the Governor's Warrant of Execution. The institutional warden will schedule the execution for a date and time certain that is within the period of time designated in the warrant. The institutional warden will provide a copy of the Warrant of Execution to the department's Secretary and General Counsel, deliver a copy to the named inmate and the team warden, and notify the Florida Department of Law Enforcement, any state correctional institutions, and any local agencies that may be affected by the issuance of the warrant and of the date and time selected for the execution.
- (2) **Selection of the Executioners:**
 - (a) The team warden will select two (2) executioners who are fully capable of performing the designated functions to carry out the execution. The team warden will provide each executioner with a copy of this procedure and will explain fully their respective duties and responsibilities and assure that each executioner is trained for the function assigned. The identities of the executioners will be kept strictly confidential as provided by statute.
 - (b) The team warden will designate one of the selected executioners as the primary executioner and the other as the secondary executioner. The primary executioner will be solely responsible for administering the flow of lethal chemicals into the inmate during the execution. The secondary executioner will be present and available during the execution to assume the role of the primary executioner if the primary executioner becomes unable for any reason, as determined by the team warden, to carry out his/her functions.
- (3) **Selection of the Execution Team:** The team warden will designate the execution team members and verify that each team member has the training and qualifications, and possesses current, necessary licensure or certification, required to perform the responsibilities or duties specified. The team warden will ensure that all execution team members and other involved staff have been adequately trained to perform their requisite functions in the execution process. The team warden shall select personnel with sufficient training and experience to perform the technical procedures needed to carry out an execution by lethal injection, including the mixing of the chemicals and placement of the venous access lines. The identities of any team members with medical qualifications shall be strictly confidential.
 - (a) The team warden shall select the team member(s) responsible for achieving and monitoring peripheral venous access from the following classes of trained professionals: a phlebotomist certified by the American Society of Clinical Pathologists (ASCP), National Certification Agency for Medical Laboratory Personnel (NCA), American Society of Phlebotomy Technicians (ASPT) or American Medical Technologists (AMT); a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed under Chapter 464, Florida Statutes, or a

physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.

- (b) The team warden shall select the team member(s) responsible for achieving and monitoring central venous access, if necessary, from the following classes of trained professionals: an advanced registered nurse practitioner licensed under Chapter 464, Florida Statutes; a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (c) The team warden shall select the team member(s) responsible for examining the inmate prior to execution to determine health issues from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed under Chapter 464, Florida Statutes, or a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (d) The team warden shall select the team member(s) responsible for attaching the leads to the heart monitors and observing the monitors during the administration of execution from the following classes of trained professionals: a paramedic or emergency medical technician, certified under Chapter 401, Florida Statutes; a licensed practical nurse, a registered nurse, or an advanced registered nurse practitioner licensed under Chapter 464, Florida Statutes, or a physician or physician's assistant licensed under Chapter 458 or Chapter 459, Florida Statutes.
- (e) The team warden shall select the team member(s) responsible for purchasing, maintaining and mixing the lethal chemicals from the following classes of trained professionals: a physician, licensed under Chapter 458 or Chapter 459, Florida Statutes or a pharmacist licensed under Chapter 465, Florida Statutes.
- (f) The team warden shall select other execution team members to carry out the following tasks:
 - 1. Showering and preparation of the inmate.
 - 2. Ensuring that the equipment necessary for an execution is in proper working order.
 - 3. Escorting the inmate from his/her cell to the execution chamber.
 - 4. Applying restraints to the inmate prior to applying the heart monitor leads and acquiring venous access.
 - 5. Maintaining the open telephone line with the Office of the Governor.
 - 6. Reporting the actions inside the executioner's room to the team warden.
 - 7. Maintaining the checklists that detail the events surrounding the execution.
 - 8. Opening and closing the window covering to the witness gallery and turning on and off the public address system.

This list is not intended to be exhaustive. There may be other necessary tasks to carry out an execution and such tasks will be assigned by the team warden.

Each execution team member is responsible and authorized to raise concerns that become apparent during the execution and bring them to the attention of the team warden.

- (4) **Training of the Execution Team and Executioners:** There shall be sufficient training to ensure that all personnel involved in the execution process are prepared to carry out their distinct roles for an execution. All team members shall be instructed on the effects of each lethal chemical. All simulations or reviews of the process shall be considered training exercises. The team warden, or his/her designee, will conduct simulations of the execution process on a quarterly basis at a minimum or more often as needed as determined by the team warden. Additionally, a simulation shall be conducted the week prior to any scheduled execution. All persons involved with the execution should participate in the simulations. If a person cannot attend the simulation, the team warden shall provide for an additional training opportunity or otherwise ensure that the person is adequately trained to complete his or her assigned task. There shall be a written record of any training activities. The simulations should anticipate various contingencies. Examples of possible contingencies shall include:

- (a) Issues related to problems with equipment needed to carry out an execution.
- (b) Problems related to venous access of the inmate, including the necessity to obtain an alternate venous access site during the execution process.
- (c) The inmate is not rendered unconscious after the administration of the sodium pentothal.
- (d) Combative inmate.
- (e) Incapacity of any execution team member or executioner.
- (f) Unanticipated medical emergency concerning the inmate, an execution team member or executioner.
- (g) Problems related to the order and security at the Florida State Prison.
- (h) Power failure or other facility problems.

This list is not meant to be exhaustive but only provides examples of the types of contingencies that could arise during the course of an execution. The team warden is responsible for ensuring that training addresses, at a minimum, the above situations.

- (5) **Use of Checklists:** Compliance with this procedure will be documented on appropriate checklists. Upon completion of each step in the process, an execution team member will indicate when the step has been completed. Prior to the administration of the lethal chemicals, the team warden will consult with the designated team member and verify that all steps in the process have been performed properly. At the conclusion of the process, the team warden will again consult with the designated team member and verify that the remaining steps in the process were performed properly. The team warden will then sign the forms, attesting that all steps were performed properly.
- (6) **Purchase and Maintenance of Lethal Chemicals:** A designated execution team member will purchase, and at all times ensure a sufficient supply of, the chemicals to be used in the lethal injection process. The designated team member will ensure that the lethal chemicals have not reached or surpassed their expiration dates. The lethal chemicals will be stored securely at all times as required by state and federal law. The FDLE agent in charge of

monitoring the preparation of the chemicals shall confirm that all lethal chemicals are correct and current.

(7) FDLE Monitors:

- (a) Two FDLE agents shall serve as monitors and shall be responsible for observing the actions of the execution team and the condition of the condemned inmate at all times during the execution process.
- (b) The first FDLE agent shall be located in the executioner's room and is responsible for observing the preparation of the lethal chemicals and documenting and keeping a detailed log as to what occurs in the executioner's room at a minimum of two minute intervals. A copy of the log shall be provided to the team warden and shall be available at the post-execution debriefings.
- (c) The second FDLE agent shall be located in the execution chamber, and will be responsible for keeping a detailed log of what is occurring in the execution chamber at a minimum of two minute intervals. A copy of the log shall be provided the team warden and shall be available for the post execution debriefings.

(8) Approximately One (1) Week Prior to Execution:

- (a) The team warden will designate one or more execution team members to review the inmate's medical file and to make a limited physical examination of the inmate to determine whether there are any medical issues that could potentially interfere with the proper administration of the lethal injection process. The team member(s) will verbally report his/her findings to the team warden as soon as is practicable following the file review and physical examination. The results of this examination shall be documented in the inmate's file. After reviewing the results of the examination which should include a determination of the best access site and conferring with the team member(s) that performed the examination, the team warden shall conclude what is the more suitable method of venous access (peripheral or femoral) for the lethal injection process given the individual circumstances of the condemned inmate based on all information provided.
- (b) If a team member reports any issue that could potentially interfere with the proper administration of the lethal injection process, the team warden will consult with any or all of the members of the execution team and resolve the issue.

(9) On the day of execution:

- (a) A food service director, or his/her designee, will personally prepare and serve the inmate's last meal. The inmate will be allowed to request specific food and non-alcoholic drink to the extent such food and drink costs forty dollars (\$40) or less, is available at the institution, and is approved by the food service director.
- (b) The inmate will be escorted by one or more team members to the shower area where a team member of the same gender will supervise the showering of the inmate. Immediately thereafter, the inmate will be returned to his/her assigned cell and issued appropriate clothing. A designated member of the execution team will obtain and deliver the clothing to the inmate.

- (c) A designated execution team member will ensure that the telephone in the execution chamber is fully functional and that there is a fully-charged, fully-functional cellular telephone in the execution chamber. Telephone calls will be placed from the telephone to ensure proper operation. Additionally, a member of the team shall ensure that the two-way audio communication system and the visual monitoring equipment are fully functional.
- (d) A designated execution team member will ensure that the public address (P.A.) system is fully functional.
- (e) The only staff authorized to be in the Execution Chamber area are members of the execution team and others as approved by the team warden, including two monitors from the Florida Department of Law Enforcement.
- (f) A designated execution team member, in the presence of one or more additional team members and an independent observer from the Florida Department of Law Enforcement, will prepare the lethal injection chemicals as follows, ensuring that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein:
 - (1) Sodium pentothal: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw ten milliliters (10ml) of sterile water for injection from a vial containing same and then inject those ten milliliters (10ml) of sterile water for injection into a vial containing 500 milligrams of sodium pentothal to create a five percent (5%) solution of sodium pentothal. This procedure will be repeated until twenty (20) vials of sodium pentothal have been reconstituted, for a total of ten grams (10g) of sodium pentothal in solution. The syringe used to reconstitute the sodium pentothal will be discarded. A new, sterile, disposable, sixty cubic centimeter (60cc) syringe and needle will be used to draw the entire contents of five vials of sodium pentothal in solution, for a total of two and one-half grams (2.5g) of sodium pentothal in solution. That syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube), clearly labeled with the number one (1), and placed in the first slot on a stand designed to hold eight (8) such syringes in separate slots. The stand will be clearly labeled with the letter "A." This process will be repeated with a second syringe, which will be clearly labeled with a number two (2) and placed in the second slot on stand "A." Two additional syringes will be drawn in the same manner, fitted with the blunt cannula, and clearly labeled with the numbers one (1) and two (2), respectively. These two syringes will be placed in the first two slots on a second stand that has been clearly labeled with the letter "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
 - (2) Pancuronium bromide: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw fifty milligrams (50mg) of pancuronium bromide from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing fifty milligrams (50mg) of pancuronium bromide, for a total of 200 milligrams. Two syringes will be clearly labeled with the numbers four (4) and five (5), respectively, and

placed into slots four (4) and five (5) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately and placed in slots four (4) and five (5), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.

- (3) Potassium chloride: A sterile, disposable sixty cubic centimeter (60cc) syringe will be used to draw one hundred twenty milliequivalents (120mEq) of potassium chloride from one or more vials containing same. The syringe will then be fitted with an eighteen (18) gauge, one (1) inch blunt cannula (tube). This procedure will be repeated until there are four (4) syringes, each containing one hundred twenty milliequivalents (120mEq) of potassium chloride, for a total of 480 milliequivalents. Two syringes will be clearly labeled with the numbers seven (7) and eight (8), respectively, and placed into slots seven (7) and eight (8) on stand "A." This procedure will be repeated with the other two syringes, each of which will be fitted with a blunt cannula, labeled appropriately, and placed in slots seven (7) and eight (8), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
- (4) Saline solution: A sterile, disposable twenty cubic centimeter (20cc) syringe will be used to draw twenty milliliters (20ml) of sterile saline solution from one or more vials containing same. This procedure will be repeated until there are four (4) syringes, each containing twenty milliliters (20ml) of sterile saline solution, for a total of eighty (80) milliliters. Each syringe will then be fitted with an eighteen (18) gauge, one (1) inch, blunt cannula (tube). Two syringes will be clearly labeled with the numbers three (3) and six (6), respectively, and placed into slots three (3) and six (6) on stand "A." This procedure will be repeated with the other two syringes, each of which will be placed in slots three (3) and six (6), respectively, on stand "B." All materials used to prepare these syringes will be removed from the work area and discarded pursuant to state and federal law.
- (g) The execution team member who has prepared the lethal chemicals will transport them personally, in the presence of one or more additional members of the execution team, to the executioner's room. Stand "A" will be placed on the worktop for use by the primary executioner, to be used during the execution by lethal injection. Stand "B" will be placed on a shelf underneath the worktop within easy reach of the executioners should they be needed during the execution. Stand "B" will not be used unless expressly ordered to be used by the team warden. The lethal chemicals will remain secure until the executioners arrive. No one other than the executioners will have access to the lethal chemicals, unless a stay is granted, in which case the execution team member who prepared the lethal chemicals will retrieve them from the locked room and dispose of them according to state and federal law.
- (h) A designated execution team member will prepare, using an aseptic technique, two (2) standard intravenous (IV) infusion sets, each consisting of a pre-filled, sterile plastic bag of normal saline for IV use (a solution of sodium chloride at 0.9% concentration) with an attached drip chamber, a long sterile tube fitted with a back check valve and a clamp to regulate the flow, a connector to attach to the access device, and an extension set fitted with a luer lock tip for a blood cannula to allow for the infusion of the lethal

chemicals into the line. The extension set that will be used to infuse the lethal chemicals into the primary injection line will be clearly marked with a "1," and the additional extension set that will be attached to the secondary injection line will be clearly marked with a "2."

- (i) The team warden will explain the lethal injection preparation procedure to the inmate and ensure the provision of any medical assistance or care deemed appropriate. The inmate will be offered and, if accepted, will be administered an intramuscular injection of diazepam, in an appropriate dosage relative to weight, to ease anxiety.
- (j) Authorized media witnesses will be picked up at the designated media on-looker area located at New River Correctional Institution by two designated Department of Corrections escort staff, transported to the main entrance of Florida State Prison as a group, cleared by security, and escorted to the population visiting park, where they will remain until being escorted to the witness room of the execution chamber by the designated escort staff.
- (k) The team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each execution team member. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. Upon the arrival of the executioners to perform their duties, the team warden will administer both a presumptive drug test (oral swab method) and a presumptive alcohol test (breath analyzer) to each executioner. A positive indication for the presence of alcohol or any chemical substance that may impair their normal faculties will disqualify that person from participating in the execution process. If one or both of the executioners is disqualified, the team warden will continue to select and test as many additional executioners as is necessary to ensure the presence of two qualified executioners at the execution.

(10) Approximately Thirty (30) Minutes Prior to Execution:

- (a) A designated execution team member will establish telephone communication with the Governor's office on behalf of the team warden. The phone line will remain open to the Governor's office during the entire execution procedure. The team member will use this open line to report the ongoing activities of the execution team and other personnel to the Governor's office.
- (b) A designated member of the execution team will escort the two executioners into the executioner's room, where they will remain until the execution process is complete.
- (c) The team warden will read the Warrant of Execution to the inmate. The inmate may waive the reading of the warrant.
- (d) Designated members of the execution team will apply wrist restraints to the inmate and escort him/her from his cell to the execution chamber.
- (e) Designated members of the execution team will assist the inmate, if necessary, in positioning himself/herself onto the execution gurney in the execution chamber.

- (f) Designated members of the execution team will secure the restraining straps.
 - (g) One or more designated members of the execution team will attach the leads to two (2) heart monitors to the inmate's chest, ensuring that the monitors are operational both before and after the chest restraints are secured.
 - (h) Unless the team warden has previously determined to gain venous access through a central line, a designated team member will insert one intravenous (IV) line into each arm at the medial aspect of the antecubital fossa of the inmate and ensure that the saline drip is flowing freely. The team member will designate one IV line as the primary line and clearly identify it with the number "1." The team member will designate the other line as the secondary line and clearly identify it with the number "2." If venous access cannot be achieved in either or both of the arms, access will be secured at other appropriate sites until peripheral venous access is achieved at two separate locations, one identified as the primary injection site and the other identified as the secondary injection site.
 - (i) If peripheral venous access cannot be achieved, a designated team member will perform a central venous line placement, with or without a venous cut-down (wherein a vein is exposed surgically and a cannula is inserted), at one or more sites deemed appropriate by that team member. If two sites are accessed, each line will be identified with a "1" or a "2," depending on their identification as the primary and secondary lines.
 - (j) One or more designated members of the execution team will remove, one at a time, from the pole attached to the gurney, the two (2) saline bags and pass the bags, along with the extension sets attached to lines labeled "1" and "2," through a small opening into the executioner's room, where a team member will hang the bags on separate hooks inside the room. The designated team member(s) will ensure that the tubing from the IV insertion points to the bags has not been compromised and that the saline drip is flowing freely. The team member will be responsible for continuously monitoring the viability of the IV lines prior to and during the administration of the execution.
- (11) Approximately Fifteen (15) Minutes Prior to Execution:**
- (a) Official witnesses will be secured in the witness room of the execution chamber by two designated Department of Corrections escort staff.
 - (b) Authorized media witnesses will be secured in the witness room of the execution chamber.
 - (c) The only persons authorized in the witness room are: twelve (12) official witnesses, including family members of the victim, four (4) alternate official witnesses, one (1) nurse or medical technician, twelve (12) authorized media representatives, one (1) representative from the department's public affairs office, one (1) designated staff escort, and one (1) designated team member. Any exception must be approved by the institutional warden.
 - (d) The execution chamber will be secured. Only the team warden, one additional execution team member and one FDLE monitor shall be allowed in the chamber during the administration of the execution. Any exception must be approved by the team warden.

- (c) The executioner's room will be secured. Only the executioners, the team member reporting actions in the executioner's room to the warden, the team member reporting actions to the Office of the Governor, the team member observing the heart monitors, the team member maintaining the checklists, and the FDLE agent assigned to the executioner's room shall be allowed in the executioner's room. Any exception must be approved by the team warden.

(12) Administration of Execution:

- (a) An execution team member will open the covering to the witness gallery window. The team warden will use the open telephone line to determine from the Governor whether there has been a stay of execution. If the team warden receives a negative response, s/he will then proceed with the execution.
- (b) An execution team member will turn on the public address (P.A.) system. The team warden will permit the inmate to make an oral statement, which will be broadcast into the witness gallery over the P.A. system. At the conclusion of the inmate's statement, or if the inmate declines to make a statement, the team warden will announce that the execution process has begun. A designated member of the execution team will turn off the P.A. system.
- (c) In the presence of the secondary executioner and within sight of one or more execution team members and one of the FDLE monitors, the primary executioner will administer the lethal chemicals in the following manner:
 - (1) The executioner will remove from the stand on the worktop the syringe labeled number one (1), which contains two and one-half grams (2.5g) of sodium pentothal in solution, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (2) The executioner will remove from the stand on the worktop the syringe labeled number two (2), which contains two and one-half grams (2.5g) of sodium pentothal in solution, place the blunt cannula into the open port of the IV extension set connected to the primary line and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (3) The executioner will remove from the stand on the worktop the syringe labeled number three (3), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

- (4) At this point, the team warden will assess whether the inmate is unconscious. The team warden must determine, after consultation, that the inmate is indeed unconscious. If the inmate is unconscious and the team warden orders the executioners to continue, the executioners shall proceed to step (6).
- (5) In the event that the inmate is not unconscious, the team warden shall signal that the execution process is suspended and note the time and order the window covering to the witness gallery to be closed. The execution team shall assess the viability of the secondary access site. If the secondary access site is deemed viable, then the team member shall designate this site as the new primary access site. If the secondary access site is compromised, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the team has secured a viable access site, the team warden shall order the drapes to be opened and signal that the execution process will resume. The executioners will then be directed to initiate the administration of lethal chemicals from stand "B" into the newly established primary line, starting with the syringes of sodium pentothal, labeled one (1) and two (2) and the first syringe of saline. The executioners will continue to use the remaining chemicals from stand "B" throughout the execution at the direction of team warden. The team warden will then again proceed to step (4) and assess whether the inmate is unconscious.
- (6) The executioner will remove from the stand on the worktop the syringe labeled number four (4), which contains fifty milligrams (50mg) of pancuronium bromide, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (7) The executioner will remove from the stand on the worktop the syringe labeled number five (5), which contains fifty milligrams (50mg) of pancuronium bromide, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (8) The executioner will remove from the stand on the worktop the syringe labeled number six (6), which contains twenty milliliters (20ml) of saline solution, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
- (9) The executioner will remove from the stand on the worktop the syringe labeled number seven (7), which contains one hundred twenty milliequivalents (120mEq) of potassium chloride, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents

of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.

- (10) The executioner will remove from the stand on the syringe labeled number eight (8), which contains one hundred twenty milliequivalents (120mEq) of potassium chloride, place the blunt cannula into the open port of the IV extension set connected to the primary line, and push the entire contents of that syringe into the IV port at a rate that meets the injection resistance of the cannula. When the syringe is depleted, s/he will hand the empty syringe to the secondary executioner for safe disposal.
 - (11) The primary executioner shall at all times administer the lethal injection chemicals. Only if the primary executioner becomes incapacitated shall the secondary executioner administer the lethal chemicals. At no time shall more than one executioner inject any lethal chemicals to complete the execution.
- (d) If at any time during the administration of the lethal chemicals the primary venous access becomes compromised, the team warden shall order the execution process stopped and order the window covering to the witness gallery to be closed. The execution team shall assess the primary access site and assess the viability of the secondary access site and take appropriate remedial action at the access site, if necessary. If neither access site is viable, a designated execution team member will secure peripheral venous access at another appropriate site or will perform a central venous line placement, with or without a venous cut-down, at one or more sites deemed appropriate by that team member. Once the team warden is assured that the execution team has secured a viable access site, the warden shall order the drapes to be opened and direct that the execution process will resume using the newly established primary line. The executioners will be directed to initiate the administration of lethal chemicals from stand "B" into the IV set attached to the newly established primary line, starting with the syringes of sodium pentothal, labeled one (1) and two (2) and the first syringe of saline, labeled number three (3). The team warden will then proceed to step (c)(4), as described above.
 - (e) Throughout the execution process, one or more designated execution team members will observe the heart monitors. If the heart monitors reflect a flat line reading during or following the complete administration of the lethal chemicals, a physician will examine the inmate to determine whether there is complete cessation of respiration and heartbeat.
 - (f) Once the inmate is pronounced dead by the physician, a designated member of the execution team will record the time of death on the appropriate lethal injection procedures checklist.
 - (g) The team warden will notify the Governor via the open phone line that the sentence has been carried out and the time of death.
 - (h) A designated execution team member will turn on the P.A. system. The team warden shall make the following announcement to the witnesses in the gallery: "The sentence of the State of Florida vs. [Inmate Name] has been carried out at [time of day]."

- (i) The designated Department of Corrections escort staff will escort the official witnesses and all of the media pool from the witness room of the execution chamber.

(13) Immediate Post-Execution Procedures:

- (a) Designated execution team members will dispose of the equipment and any remaining chemicals as required by state and federal law.
- (b) The institutional warden will coordinate the entry of hearse attendants for recovery of the inmate's body.
- (c) The inmate's body will be removed from the execution table by hearse attendants under the supervision of the designated team member.
- (d) The institutional warden, or his/her designee, will obtain a certification of death from the physician and will deliver the certification to the hearse attendants prior to their departure.
- (e) The inmate's body will be transported by the hearse attendants to the medical examiner's office in Alachua County for an autopsy.
- (f) The team warden shall conduct a brief debriefing interview with every execution team member and the executioners, documenting any exceptional circumstances that arose during the execution. Subsequent debriefings will take place, as appropriate.

(14) Follow-Up Procedures:

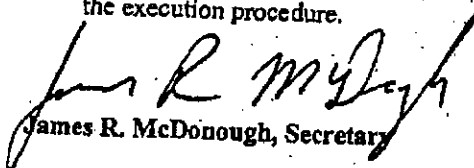
- (a) The institutional warden will forward the Warrant of Execution and a signed statement of the execution to the Secretary of State.
- (b) The institutional warden will file an attested copy of the Warrant of Execution and a signed statement of the execution with the clerk of the court that imposed the sentence.
- (c) The institutional warden, or his/her designee, will advise central office records by e-mail of the inmate's name and the date and time of death by execution.

- (15) Periodic Review and Certificate from Secretary:** There will be a review of the lethal injection procedure by the Secretary of the Florida Department of Corrections, at a minimum, once every two years, or more frequently as needed. The review will take into consideration the available medical literature, legal jurisprudence, and the protocols and experience from other jurisdictions. The Secretary of the Department of Corrections shall, upon completion of this review, certify to the Governor of the State of Florida confirming that the Department is adequately prepared to carry out executions by lethal injection. The Secretary will confirm with the team warden that the execution team satisfies current licensure and certification and all team members and executioners meet all training and qualifications requirements as detailed in these procedures. A copy of the certification shall be provided to the Attorney General and the institutional warden shall provide a copy to a condemned inmate and counsel for the inmate after a warrant is signed.

The certification shall read:

As Secretary of the Florida Department of Corrections, I have reviewed the Department's Execution by Lethal Injection Procedures to ensure proper implementation of the Department's statutory duties under Chapter 922, Florida Statutes. The procedure has been reviewed and is compatible with evolving standards of decency that mark the progress of a maturing society, the concepts of the dignity of man, and advances in science, research, pharmacology, and technology. The process is not going to involve unnecessary lingering or the unnecessary or wanton infliction of pain and suffering. The foremost objective of the lethal injection process is a humane and dignified death. Additional guiding principles of the lethal injection process are that it should not be of long duration, and that while the entire process of execution should be transparent, the concerns and emotions of all those involved must be addressed.

I hereby certify that the Department is prepared to administer an execution by lethal injection and has the necessary procedures, equipment, facilities, and personnel in place to do so. The Department has available the appropriate persons who meet the minimum qualifications under Florida Statutes and in addition have the education, training, or experience, including the necessary licensure or certification, required to perform the responsibilities or duties specified and to anticipate contingencies that might arise during the execution procedure.


James R. McDonough, Secretary

31 July 2007
Date

3. Governor's Commission on Administration of Lethal Injection, Record of Proceedings
(electronic submission).

The Governor's Commission on Administration of Lethal Injection

John W. "Bill" Jennings
Senator Victor Crist
Rodney Doss
Harley Lappin
Honorable Stan Morris
Dr. Steve Morris



Representative Dennis Ross
Harry K. Singletary
Dr. Peter Springer
Carolyn Snurkowski
Dr. David Varlotta

March 1, 2007

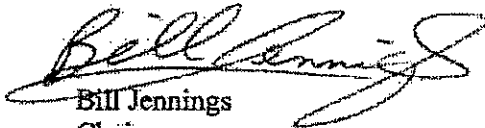
The Honorable Charlie Crist
Office of the Governor
The Capitol
Tallahassee, FL 32999-0001

Dear Governor Crist:

Please find enclosed the final report of the Governor's Commission on Administration of Lethal Injection. A copy of this report was electronically mailed to you on March 1, 2007. I want to thank you for the opportunity to be of service to you and the citizens of the State of Florida. Every member of your staff that I interacted with on this project has demonstrated a positive attitude and a dedication to helping the Commission.

I will personally deliver a copy of the transcripts and all the other documents received or generated by the Commission to your legal office early next week. If I can be of further assistance to you on this or any other matter, please do not hesitate to contact me.

Respectfully,


Bill Jennings
Chairman

The Governor's Commission on Administration of Lethal Injection

**John W. "Bill" Jennings
Senator Victor Crist
Rodney Doss
Harley Lappin
Honorable Stan Morris
Dr. Steve Morris**



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Final Report With Findings and Recommendations

*Presented to the
Honorable Charlie Crist
Governor of Florida
March 1, 2007*

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The Governor's Commission on Administration of Lethal Injection

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March 1, 2007

INTRODUCTION

On December 13, 2006, the execution of Angel Diaz created concerns whether Florida's lethal injection protocols were being adequately implemented by the Florida Department of Corrections. The amount of time required to effectuate death, eyewitness accounts of the execution and the preliminary autopsy findings prepared by William Hamilton, M.D., the Chief Medical Examiner for the Eighth Circuit, called into question the adequacy of the lethal injection protocols and the Department of Corrections' ability to implement them in a manner consistent with the Eighth Amendment to the United States Constitution.

As a result, then Governor Jeb Bush issued Executive Order 06-260 on December 15, 2006, which created the Governor's Commission on Administration of Lethal Injection to "review the method in which the lethal injection protocols are administered by the Department of Corrections and to make findings and recommendations as to how administration of the procedures and protocols can be revised". The Commission's purpose and mission was limited to evaluating these protocols and not the "policy decisions of the Legislature in enacting a death penalty or the means chosen by the Legislature for implementing the state's death penalty." While limited to evaluating Florida's lethal injection procedures and protocols, the Commission was given broad authority to re-evaluate the lethal injection process including "enforcement of those procedures and protocols."

Chapter 922 is the only legislative expression of Florida's method of execution which, under section 922.105, Florida Statutes (2006), calls for executions to be by either electrocution or lethal injection. Chapter 922 does not delineate with any detail how Florida's death penalty by lethal injection is to be implemented. The promulgation of procedures and protocols for implementing the death penalty by lethal injection was left to the discretion of the Department of Corrections.

Once this Commission was fully comprised by the current Governor, the commissioners set out to fully investigate Florida's method of execution consistent with the mandate of the Executive Order.

THE COMMISSION'S MEETINGS

The Commission met eight times in a manner that was open, transparent and conducive to citizen input on this vital issue consistent with Article I, Section 24(b) of the Florida Constitution and Florida's "Sunshine Act" under Chapter 286 of the Florida Statutes. The Commission first convened on January 29, 2007, and met subsequently on February 5th, 9th, 12th, 19th, 24th, 25th, and 28th. During these meetings, numerous witnesses testified before the Commission, pages of documentary evidence were received and public comments, both oral and written, were given. An account of the evidence received by the Commission follows.

January 29th, 2007

The Commission heard testimony from the Following witnesses:

Neal Dupree: The Capital Collateral Regional Counsel for the Southern Region of Florida and attorney for Angel Diaz.

Randall Bryant: Warden of the Florida State Prison.

Randall Polk: Assistant Warden of the Florida State Prison.

William F. Mathews, P.A.: A physician's assistant employed by the Florida Department of Corrections.

February 5th, 2007

The Commission heard testimony from the following witness:

Denise Clark, D.O.: an osteopathic physician trained in vein therapy.

February 9th, 2007

The Commission heard testimony from the following witnesses:

Timothy J. Westveer: Inspector with the Office of Executive Investigations, Internal Affairs Unit, for the Florida Department of Law Enforcement.

Nikolaus Gravenstein, M.D.: An anesthesiologist and professor at the University of Florida.

Primary Executioner: Anonymous testimony from the primary executioner employed by the Florida Department of Corrections.

A Medically Qualified Member of the Execution Team: Anonymous testimony from a medically qualified member of the execution team.

The Commission also received comments from the public:

Carol Wehrer

Gavin Lee

Mark Elliot

Sol Otero

February 12th, 2007

The Commission heard testimony from the following witnesses:

Brenda Whitehead: A correctional specialist employed by the Florida Department of Corrections who witnessed the execution of Angel Diaz.

Bruce A. Goldberger, Ph.D, D.A.B.F.T.: A forensic toxicologist employed at the University of Florida who conducted a blood analysis on samples taken from Angel Diaz.

Mark Heath, M.D.: An anesthesiologist employed by Columbia University.

William F. Hamilton, M.D.: The Medical Examiner for the Eighth District of Florida who performed the autopsy on Angel Diaz.

February 19th, 2007

The Commission heard testimony from the following witnesses:

Mark Dershwitz, M.D., Ph.D.: An anesthesiologist with a Ph.D. in Pharmacology with the Department of Anesthesiology at the University of Massachusetts.

George B. Sapp: Assistant Secretary for Institutions for the Florida Department of Corrections.

James R. McDonough: Secretary of the Florida Department of Corrections.

A Medically Qualified Member of the Execution Team: Anonymous testimony from a medically qualified member of the execution team.

Bonita Sorenson, M.D.: An employee of the Florida Department of Health and a member of the December 15, 2006, Department of Corrections' Task Force.

Maximillian J. Changus: Attorney supervisor in the Office of General Counsel for the Florida Department of Corrections and member of the December 15, 2006, Department of Corrections' Task Force.

The Commission also received comments from the public:

Mary Berglund

February 24th, 2007

The Commission conducted a workshop session concerning this report.

February 25th, 2007

The Commission conducted a workshop session concerning this report.

February 28th, 2007

The Commission met telephonically by means of a conference call and conducted a workshop session concerning this report. As a result of this meeting, the final draft of this report was written and approved.

AREAS OF INQUIRY

Much of the Commission's work focused on the execution of Angel Diaz on December 13, 2006. This was aided by the *Summary of Findings of the Department of Corrections' Task Force Regarding the December 13, 2006, Execution of Angel Diaz* which was submitted on December 20, 2006, to James R. McDonough, Secretary of the Florida Department of Corrections. In summary, the task force report offered adequate details surrounding the execution of Angel Diaz, finding that several protocols were not followed that day.

The Commission built on this foundation by calling several individuals of the execution team from the Department of Corrections responsible for carrying out the lethal injection protocols during the execution of Angel Diaz. This proved to be a difficult task, complicated by the executioners' desire for anonymity under Florida Statutes and a number of medical personnel requests to maintain their anonymity. The task was also complicated because the Commission lacked the ability to subpoena witnesses.

Further restraints were placed on the Commission by the very nature of the lethal injection procedure itself. The use of medical personnel in capital punishment presents a profound dilemma. Every medical organization that has commented has taken a similar position. Medical personnel are prohibited from participating in executions and rendering technical advice. This prohibition hindered the Commission's ability to gather information. Many members of the medical profession were reluctant to appear in front of the Commission and were likewise reluctant to testify in the context of lethal injection. The Commission was also concerned that this prohibition may limit the best advice, the latest technology and the most capable individuals to enact lethal injection. This issue also limited the medical members of the Commission from offering advice or recommending suggestions during this process. Although the execution by lethal injection process is not a medical procedure; the process does require some qualified medical personnel to successfully accomplish a humane and lawful execution.

Both medical and legal ethics regulating each profession limited inquiry of those commissioners affiliated with either profession. These Commission members appreciate the other Commissioners' understanding of these ethical issues.

Despite the above issues, the Commission was able to convene in a manner that was collegial, deliberate and dedicated to the mandate bestowed upon it by the Governor. As a result, the Commission is proposing several findings and recommendations to be considered by those who create policy and those charged with its implementation.

LEGAL OVERVIEW

Lethal injection is currently the method of execution used by 37 of the 38 capital punishment states. The Florida Supreme Court, like other State and federal courts, has regularly rejected arguments that lethal injection as a method of execution is cruel and unusual. *Sims v. State*, 754 So. 2d 657 (Fla. 2000); *Rolling v. State*, 944 So. 2d 176, 179 (Fla. 2006); *Rutherford v. State*, 926 So. 2d 1100, 1113-14 (Fla. 2006); *Hill v. State*, 921 So. 2d 579, 582-83 (Fla. 2006); *Diaz v. State*, 945 So. 2d 1136 (Fla. 2006). No court thus far has held that lethal injection is cruel and unusual punishment in violation of the Eighth Amendment of the United States Constitution. The courts and legal articles acknowledge that humane concerns formed a large part of the motivation in adopting lethal injection as the presumptive method of execution in most states, and it has been observed that "with lethal injection, we know exactly what the person is going through because it's exactly what someone undergoing surgery experiences." Jonathan S. Abernethy, *The Methodology of Death: Re-examining the Deterrence Rationale*, 27 Colum. Hum. Rts. L. Rev. 379, 414 (1996).

The lethal injection procedure used by most states, originated in Oklahoma when Senator Bill Dawson asked Dr. Stanley Deutsch, then chair of the Anesthesiology Department at Oklahoma University Medical School, to recommend a method for executing prisoners through the administration of intravenous drugs. In a responsive letter, Dr. Deutsch recommended the administration of an "ultra short acting barbiturate" to induce unconsciousness, followed by the administration of a neuromuscular blocking drug to induce paralysis and death. See Deborah W. Denno, *When Legislatures Delegate Death: The Troubling Paradox Behind State Uses of Electrocuting and Lethal Injection and What It Says About Us*, 63 Ohio St. L.J. 63, 95-97 (2002). Shortly thereafter, in 1977, Oklahoma became the first state to adopt lethal injection as an execution method, employing the protocol described in Dr. Deutsch's letter. See Rebecca Brannan, *Sentence and Punishment: Change Method of Executing Individuals Convicted of Capital Crimes from Electrocuting to Lethal Injection*, 17 Ga. St. U. L. Rev. 116, 121 (2000). The first lethal injection execution occurred in Texas in 1982. Christina Michalos, *Medical Ethics and the Execution Process in the United States of America*, 16 Med. & L. 125, 126 (1997).

The Eighth Amendment prohibits punishments that are "incompatible with 'the evolving standards of decency that mark the progress of a maturing society.'" *Estelle v. Gamble*, 429 U.S. 97, 102, 50 L. Ed. 2d 251, 97 S. Ct. 285 (1976) (quoting *Trop v. Dulles*, 356 U.S. 86, 101, 2 L. Ed. 2d 630, 78 S. Ct. 590 (1958)(*plurality opinion*)). In the context of executions, the Eighth Amendment prohibits punishments that "involve the unnecessary and wanton infliction of pain," *Gregg v. Georgia*, 428 U.S. 153, 173, 49 L. Ed. 2d 859, 96 S. Ct. 2909 (1976), "involve torture or a lingering death," *In re Kemmler*, 136 U.S. 436, 447, 34 L. Ed. 519, 10 S. Ct. 930 (1890), or do not accord with "the dignity of man, which is the basic concept underlying the Eighth Amendment," *Gregg*, 428 U.S. at 173 (internal quotation marks and citation omitted). The Ninth Circuit, for example, has held that execution by hanging under the State of Washington's protocols did not constitute cruel and unusual punishment based on the district court's findings that the "mechanisms involved in bringing about unconsciousness and death in judicial hanging occur extremely rapidly, that unconsciousness was likely to be immediate or within a matter of

seconds, and that death would follow rapidly thereafter." *Campbell v. Wood*, 18 F.3d 662, 687 (9th Cir. 1994) (*en banc*); Note: *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459 (1946).

The Eighth Amendment prohibits punishments that involve the unnecessary and wanton inflictions of pain, or that are inconsistent with evolving standards of decency that mark the progress of a maturing society. *Estelle v. Gamble*, 429 U.S. 97, 102-03 (1976); *Furman v. Georgia*, 408 U.S. 238, 269-70 (1972); *Gregg v. Georgia*, 428 U.S. at 173 (opinion of Stewart, Powell, Stevens, JJ.). Punishments are cruel when they involve torture or a lingering death. *In re Kemmler*, 136 U.S. 436, 447 (1890). A method of execution is considered to be cruel and unusual punishment under the Federal Constitution when the procedure for execution creates "a substantial risk of wanton and unnecessary infliction of pain, torture or lingering death". *Gregg v. Georgia*, *supra*. In reviewing whether the method of execution is a constitutional violation, courts must consider whether it is contrary to evolving standards of decency that mark the progress of a maturing society. See *Baze v. Rees*, 2006 Ky. LEXIS 301 (Ky. 2006); *Trop v. Dulles*, 356 U.S. 86 (1958); *Roper v. Simmons*, 543 U.S. 551 (2005); *Solem v. Helm*, 463 U.S. 277, 292 (1983).

The United States Supreme Court has analyzed challenges to a method for carrying out the punishment, as to: (1) whether a method of execution comports with the contemporary norms and standards of society, ("the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." *Penry v. Lynaugh*, 492 U.S. 302, 331 (1989)); (2) whether a method of execution offends the dignity of the prisoner and society; (3) whether a method of execution inflicts unnecessary physical pain; and (4) whether a method of execution inflicts unnecessary psychological suffering. *Weems v. United States*, 217 U.S. 349, 373 (19-20). In considering objections to a particular execution method, the "methodology review focuses more heavily on objective evidence of the pain involved in the challenged method." *Campbell*, 18 F.3d at 682. To that end, "the objective evidence, though of great importance, [does] not 'wholly determine' the controversy, 'for the Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment.'" *Atkins v. Virginia*, 536 U.S. 304, 312, 153 L. Ed. 2d 335, 122 S. Ct. 2242 (2002) (quoting *Coker*, 433 U.S. at 597). See *Beardslee v. Woodford*, 395 F.3d 1064, 1070-71 (9th Cir. 2005).

These factors dictate that punishments may not include "torture, lingering death, wanton infliction of pain, or like methods." *Estelle v. Gamble*, 429 U.S. 97, 102 (1976); *In re Kemmler*, 136 U.S. 436, 447 (1890), but the Court has likewise held that the afore-noted does not contemplate a totally painless execution.

FINDINGS AND RECOMMENDATIONS

As a result of the review of testimony, written reports, Commission transcripts, articles and documents submitted to the Commission, it is the conclusion of the Commission that there are conflicts that the Commission believes that it has resolved that lead to our findings and recommendations. Examples of these resolved conflicts are as follows:

1. The execution team failed to ensure that a successful IV access was maintained throughout the execution of Angel Diaz.
2. Failure of the execution team to follow the existing protocols in the delivery of the chemicals.
3. The protocols as written are insufficient to properly carry out an execution when complications arise.
4. Failure of the training of the execution team members.
5. Failure of the training to provide adequate guidelines when complications occur.
6. There was a failure of leadership as to how to proceed when a complication arose in the execution process.
7. There was inadequate communication between the execution team members and the warden who was not informed of the problem and the changes implemented.

However, the Commission discovered during its investigation that there are other conflicts which remain unresolved. Examples of these unresolved conflicts are as follows:

1. Observations of the inmate during the execution process, including movement of the body, facial movements and verbal comments
2. Conflicting testimony of the expert medical witnesses regarding the impact of drugs, absorption of drugs, etc.

FINDINGS

1. Execution of inmate Diaz took 34 minutes, which was substantially longer than in any previous lethal injection execution in Florida. This was reflected in the testimony of all witnesses or participants in the Diaz execution, who had also witnessed prior executions by lethal injection.
2. The preponderance of physical evidence demonstrates that venous access at the time of execution was improperly maintained and administered. This was derived from the testimony of William F. Mathews P.A., Dr. William F. Hamilton, M.D. and FDLE Inspector Timothy J. Westveer.
3. The Department of Corrections failed to follow their August 16, 2006 Protocols, which resulted in the administration of the lethal chemicals to inmate Diaz at least in part subcutaneously. This was derived from the December 20, 2006, Department of Corrections report and testimony of William F. Mathews, P.A., Dr. William F. Hamilton, M.D. and FDLE Inspector Timothy J. Westveer.

4. There was inadequate training as to the August 16, 2006 Protocols. This was derived from testimony of the Primary Executioner, FDLE Inspector Westveer, and a Medically Qualified Member of the Execution Team.
5. Failure to adhere to Department of Corrections Protocol 14 (e) and the fact that this protocol inadequately provides direction when changing to the secondary site (B), that the lethal chemicals are to commence from the second rack (B) in the order described in protocol 14 (d). In this instance, the sequence in which the drugs were actually administered and the rack from which they were taken, created the opportunity, with or without the venous access failure, to allow the second chemical, pancuronium bromide, and the third chemical, potassium chloride, to take affect before the first drug, sodium pentothal, was able to fully take effect.
6. Because of the findings above, it is impossible for the Commission to reach a conclusion as to whether inmate Angel Diaz was in pain.

RECOMMENDATIONS: (see attachment (A) for The Physicians' Statement)

The Commission recommends that the Florida Department of Corrections, in consultation with other entities in the State of Florida, consider modifications to its written policies and procedures:

- a. Related to the implementation of lethal injections carried out by officers and agents of the State of Florida;
- b. Implement written policies, practices, and procedures related to ensuring optimal supervision and management of every lethal injection procedure by the appropriate officials, including the selection of personnel involved in each part of the lethal injection procedure;
- c. Implement a comprehensive, systematic procedure for ensuring that persons selected to perform these official duties related to carrying out lethal injections are suitably qualified and trained to perform the assigned duties.

A. PROTOCOLS, PROCEDURES, CHECKLISTS AND DOCUMENTATION:

1. EXECUTION PROTOCOL

- a. Develop and implement written procedures that clearly establish the chain of command in the lethal injection process, to include that the Warden (or other such person designated by the Secretary, Florida Department of Corrections) has final and ultimate decision making authority in each and every aspect of the lethal injection process.

b. Develop and implement procedures to insure that there is effective two-way audio communication between the execution team members in the Chemical Room and the execution team members in the Death Chamber (for example, a dedicated frequency should be considered).

2. DOCUMENTATION OF ACTIONS AND PROCEDURES:

a. Develop and implement procedures which require that any step or function which is required to be documented on a checklist or other document(s) be verified by utilization of the execution team member's initials or other identifier.

b. Develop and implement procedures to monitor and document all stages of the lethal injection process, including the administration of the lethal chemicals.

c. Change the designation of the lines used for the IVs and racks holding the lethal chemicals so that one has a number designation and the other has a letter designation.

d. Implement a change so that the primary FDLE agent will be located in the Chemical Room, and the agent's responsibilities are to include documenting and keeping a detailed log as to what occurs in the Chemical Room at a minimum of 30 second intervals. The log should be available at the post execution debriefing.

e. A second FDLE agent should be added to the procedures. This agent will be located in the Witness Room, and will be responsible for keeping a detailed log of what is occurring in the Death Chamber at a minimum of 30 seconds intervals. The log should be available for the post execution debriefing.

f. The duties of both the primary and secondary FDLE Agent should be defined in detail by the Department of Corrections and the Florida Department of Law Enforcement.

g. The debriefing process following an execution should be a formal process that details who should participate and what should be covered. A written record of the debriefing should be produced.

3. LETHAL INJECTION CHEMICAL PREPARATION

Develop and implement a procedure to ensure that each syringe used in the lethal injection process is appropriately labeled, including the name of the chemical contained therein.

4. ESTABLISHING INTRAVENOUS (IV) ACCESS:

a. Develop and implement a procedure which requires that the condemned inmate be individually assessed by appropriately trained and qualified persons at a minimum of one

week prior to the scheduled execution. The results of this examination shall be documented in the appropriate record.

b. Develop and implement a process to determine the most suitable method of venous access (peripheral or femoral) for the lethal injection process, considering the technical skills of available personnel and the individual circumstances of the condemned inmate.

c. Develop and implement procedures for gaining venous access to the condemned inmate which do not require movement of the condemned person after venous access is obtained. These procedures should optimize the length of tubing, so that it is as short as possible.

d. Develop and implement procedures to ensure that unexpected event(s) are identified, including inability to access a venous site, problems with tubing, apparent consciousness of the inmate, etc. In the event that an above describe event(s) occurs, the execution process should be interrupted, appropriate persons advised, and corrective steps discussed and implemented before resuming the execution process.

e. Develop and implement procedures to allow for the monitoring of the condemned inmate's restraints and the adhesive tape to eliminate the risk of restricting the flow of lethal chemicals through the IV line.

f. Develop and implement procedures to insure that a closed circuit monitoring of the inmate in the Death Chamber by the execution team members in the Chemical Room. This should include at a minimum the condemned inmate's face and IV access points. No recordings by the closed circuit monitor should be made.

5. ADMINISTRATION OF LETHAL CHEMICALS:

a. Develop and implement procedures to ensure that the condemned inmate is unconscious after the administration of the first lethal chemical, sodium pentothal, before initiating administration of the second and third lethal chemicals. Under no circumstances should the execution continue with the second and third lethal chemical without the Warden's authorization.

b. Develop and implement procedures to ensure that if at any stage of the administration of the lethal chemicals a decision is made to change IV sites or utilize a secondary site, that the entire lethal chemical administration process is re-initiated from the beginning (syringe # 1 {sodium pentothal}), unless the Warden, in consultation with available medical staff, determines that the process may be re-initiated at a different stage.

B. DEVELOPMENT OF COMMAND STRUCTURE AND INFLUENCE AND SELECTION OF PERSONNEL INVOLVED IN THE LETHAL INJECTION PROCESS:

1. Develop and implement written procedures that clearly establish and define the role of each person in the lethal injection process, including the duties required of the position, the expected outcome of each duty or function to be observed or performed, the necessity for compliance with established procedures, that person's responsibility to perform duties as set forth in the protocol or procedure, and to provide necessary information to supervisory level personnel as is needed or required.
2. Consider limiting appointment of persons as members of the execution team, who are otherwise responsible for the routine care and custody of condemned inmates.
3. Consider assigning as few individuals to the Death Chamber as possible to enhance an unobstructed view of the condemned inmate.
4. Develop and implement clearly defined duties for the two FDLE agents who should document what occurs during the execution.
5. Establish that the Warden is responsible for each and every decision during the execution, after receiving input from other members of the execution team.

C. DEVELOPMENT AND IMPLEMENTATION OF TRAINING PROCEDURES FOR PERSONS INVOLVED IN THE LETHAL INJECTION PROCESS:

1. Develop and implement a training program for all persons involved in the lethal injection process. This training program should consider including a requirement for periodic exercises involving all team members and the representative(s) from FDLE. If not feasible for persons to be involved in the periodic training, a procedure should be established to ensure that the person performing a given function is proficient to perform that task. The training program should be documented as to the participants (by name or other identifier) and the function rehearsed. A procedure should be developed and implemented in which each training exercise is critiqued at all levels to address contingencies and the response to those contingencies.
2. Develop and implement procedures which review foreseeable lethal injection contingencies and formulate responses to the contingencies which are rehearsed in the periodic training.
3. Develop and implement written policies, practices, and procedures requiring all team members who participate in an actual execution to have completed, to the satisfaction of the Warden or designee, any and all training necessary to ensure the team member is qualified to perform the specific function or task in a lethal injection.

**D. MISCELLANEOUS RECOMMENDATIONS RELATED TO THE FLORIDA
LETHAL INJECTION PROCESS:**

1. Develop and implement procedures to ensure that a member of the execution team is able to communicate in the primary language of the inmate being executed.
2. Install additional clocks and any additional necessary lighting in the Death Chamber.
3. It is the Commission's opinion that an agency following the procedures framed in our recommendations can carry out an execution utilizing the three proscribed chemicals identified in the Florida Department of Corrections' August 16, 2006, protocol within the existing parameters of the Constitution. However, the Commission suggest, that the Governor have the Florida Department of Corrections on an ongoing basis explore other more recently developed chemicals for use in a lethal injection execution with specific consideration and evaluation of the need of a paralytic drug like pancuronium bromide in an effort to make the lethal injection execution procedure less problematic.

Respectfully Submitted,

The Commission

CHAIRMAN'S CLOSING COMMENTS

I feel it is important to recognize several individuals for their contribution to the Commission's effort in fulfilling the task assigned to it by the Governor. I wish to thank Governor Crist for giving me the opportunity to serve the citizens of the State of Florida. Next, I wish to recognize the enormous sacrifice of time and energy by each and every commissioner. Without their dedication to this task, it would have been impossible for the Commission to have accomplished its work in a timely manner. Additionally, Gerald Curington, Deputy Chief of the Governor's Legal Staff, was instrumental in assisting the Commission in navigating the early fiscal and structural requirements. Kathy Torian, Governor's Deputy Press Secretary, cheerfully provided all the meeting notifications to the news media on what always seemed like short notice. A special thanks to Max Changus, Deputy Council for the Department of Corrections, who was constantly required to produce Department of Corrections' personnel to testify before the Commission with only minimum notice. The Florida Bar's willingness in providing a meeting room, and daily assistance with the little details was of significant assistance to the Commission in its work. I wish to voice my appreciation to Pat Gleason of the Governor's staff, who was continually providing much appreciated advice on the Florida Sunshine Law requirements. Finally, I would like express my appreciation to the members of my office, who were constantly required to assist me on this project, while continuing to perform their normal duties. In particular, I wish to mention the efforts of Peter Cannon of my staff, who worked tirelessly behind the scenes, so that the Commissioners had all of the materials, as well as coordinating the witnesses and producing the meeting agendas. I hope that by acknowledging these individuals that it is apparent to everyone that this was a group effort, which was made possible by the dedication, congeniality and perseverance of everyone, but especially the Commission members.

APPENDIX A

The Physicians' Statement

The American Medical Association has maintained a Code of Ethics for Physicians since 1847. This Code is regularly updated and revised and is currently relevant, it is also extremely specific when addressing physician participation in legal executions, including lethal injection. According to the Code a physician is prohibited from participating in an execution, observing an execution, and assisting in an execution including providing technical advice. Indeed, countless organizations representing medical and clinical professions have adopted a similar position.

When asked to participate in the Lethal Injection Commission for the State of Florida we physicians were faced with a dilemma. Should we decline the request of the State and let others decide the direction of the Commission's actions, or should we involve ourselves at the risk of being labeled unethical physicians? Ultimately we agreed to serve as we trust that the State neither wants to create unethical physicians, nor would it be interested in consulting physicians willing to operate outside of their ethical boundaries.

It is our contention from testimony of witnesses and interacting with the other Commission members that authoritative bodies in this country are tending to require more sophisticated medical techniques and personnel to administer the lethal injection. This is a legal and societal problem, not a medical one. A physician must always act in the best interest of the individual as they apply their knowledge and skill; otherwise they risk damage to the trust that patients place in their physician. Maintaining a patient's trust is paramount. A physician must always place the individual's interest above all else. Physician participation in lethal injection places this trust in jeopardy.

We physicians are aware that the Commission rendered specific recommendations in its report. We have refrained from rendering our medical expertise or consent to these specific recommendations. After hearing the testimony of the witnesses and through our deliberations, it is of great concern to us that this task may require the use of medical personnel. The participation of these individuals requires them to operate outside the ethical boundaries of their profession. This is a unique situation. We know of no other occasion where the State employs the services of individuals operating outside of the ethical boundaries of their profession. This is not a desirable situation. It is also our conclusion that because of the above noted points, the inherent risks, and therefore the potential unreliability of lethal injection cannot be fully mitigated.

Respectfully,

Steve Morris, M.D.

Peter Springer, M.D., F.A.C.E.P.

Dave Varlotta, D.O.

APPENDIX B

February 28, 2007

Mr. John W. "Bill" Jennings
Chairman
Governor's Commission on
Administration of Lethal Injection
3801 Corporex Drive, Suite 210
Tampa, Florida 33619

RE: Objection to Commission Statement

Dear Chairman:

I must first observe that it has been a great pleasure to work with you and the other esteemed members of the Governor's Commission on Administration of Lethal Injection. While the task assigned the Commission was serious and challenging, getting to know and work with the Commission members was rewarding and educational.

I write this letter however, to register my concerns that, in questioning whether the lethal drugs utilized in Florida's method of execution should be evaluated, the Commission has moved beyond the mission and purpose assigned by Governor Bush in Executive Order 06-260. That Order set forth that the Commission's "purpose and mission shall be limited to evaluating Florida's lethal injection procedures and protocols, including enforcement of those procedures and protocols, and shall not extend to re-evaluating the policy decisions of the Legislature in enacting a death penalty or the means chosen by the Legislature for implementing the state's death penalty."

While the Commission clearly addressed a number of very important issues regarding needed enhancements of the existing protocols and shoring up identified lapses in the adherence to the existing protocols, the issues identified by the Commission dealt with personnel matters, the failure to properly deliver the lethal drugs and the failure to follow current protocols once a problem was detected, not the use of particular drugs set forth in the Department of Corrections' protocols.

Because I believe the Commission was not authorized to expand its charge beyond the Governor's Executive Order, I must respectfully voice my dissent regarding the overreaching of the Commission's remarks on this point.

Sincerely yours,

Carolyn M. Snurkowski