**Capital Case**
**Execution Scheduled Sept. 24, 2020**

**Case No. _____**

# In the Supreme Court of the United States

Christopher André Vialva,
*Petitioner,*

v.

United States of America,
*Respondent.*

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

## APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Execution Scheduled for Sept. 24, 2020 at 6:00 p.m.]


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## APPENDICES

# APPENDIX 1

# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
**FILED**
September 18, 2020
Lyle W. Cayce
Clerk

No. 20-70019

UNITED STATES OF AMERICA,

*Plaintiff—Appellee*,

*versus*

CHRISTOPHER ANDRE VIALVA,

*Defendant—Appellant*.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 6:04-CV-163, 6:99-CR-70-1

Before HIGGINBOTHAM, JONES, and DENNIS, *Circuit Judges*.

PER CURIAM:

Defendant Christopher Vialva asks this court to stay his execution pending consideration and disposition of appeal, and to vacate the district court's September 11, 2020 order confirming his September 24, 2020 execution date.[1] For the reasons set forth below, we affirm the district court order and deny Vialva's motion to stay in its entirety.

[1] Vialva claims his execution was "set for the first time by the district court [on] September 11, 2020." In fact, the court explicitly disclaims this characterization in its order, explaining that the order was being issued "out of an abundance of caution" in order

## I. Background

Vialva was convicted under federal law of capital murder, sentenced to death, and scheduled for execution on September 24, 2020. In its order denying injunctive relief, the district court described Vialva's conviction and procedural history at length. Suffice it to say, Vialva has had the benefit of lengthy procedural review since his conviction in 2000. Vialva's conviction was affirmed on direct appeal;[2] his 28 U.S.C. § 2255 challenge was denied;[3] and his effort to vacate denial of his § 2255 motion under Rule 60(b) of the Federal Rules of Civil Procedure failed.[4]

The Federal Bureau of Prisons ("BOP") scheduled Vialva's execution for September 24, 2020 and informed Vialva on July 31, 2020. Vialva subsequently filed a motion in the district court to enjoin his execution on various grounds. On September 11, 2020, the district court denied Vialva's motion for injunctive relief. At the same time, the district court issued another order clarifying that its judgment dated June 16, 2000 had authorized the Department of Justice to determine the time, place, and manner of Vialva's execution and to carry out that execution. Out of an

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to "confirm [the Department of Justice's] authority to select Vialva's execution date and implement his sentence of death." The district court considered its June 16, 2000 order enough to authorize the Department of Justice to determine the time, place, and manner of Vialva's execution.

[2] *United States v. Bernard*, 299 F.3d 467 (5th Cir. 2002), *cert. denied*, 539 U.S. 928 (2003).

[3] The district court denied Vialva's challenge under 28 U.S.C. § 2255 and his request for a certificate of appealability ("COA"). This court subsequently denied a COA, and the Supreme Court denied Vialva's petition for certiorari. *United States v. Bernard*, 762 F.3d 467 (5th Cir. 2014), *cert. denied*, 136 S. Ct. 1155 (2016).

[4] The district court dismissed the Rule 60(b) motion without prejudice, this court denied a COA on the issue, and the Supreme Court denied certiorari. *United States v. Vialva*, 904 F.3d 356 (5th Cir. 2018), *cert. denied*, 140 S. Ct. 860 (2020).

abundance of caution, the order lifted any hypothetical stay that may have been in place, ordered a United States marshal to carry out the execution, and determined that the sentence shall occur on a date designated by the Director of the BOP, namely, September 24, 2020. Vialva appeals those orders here.

## II. Discussion

We review a district court's decision to deny a stay of execution for abuse of discretion. *Diaz v. Stephens*, 731 F.3d 370, 374 (5th Cir. 2013) (citation omitted). When determining whether the district court abused its discretion, we review questions of law *de novo* and factual findings for clear error. *State v. Ysleta Del Sur Pueblo*, 955 F.3d 408, 413 (5th Cir. 2020). In deciding whether to issue a stay of execution, a court must consider: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Id.* at 379 (quoting *Nken v. Holder*. 556 U.S. 418, 434, 129 S. Ct. 1749, 1761 (2009)). Vialva fails to show that any of these factors favor granting a stay of execution.

First, we conclude that Vialva is unlikely to succeed on the merits. Vialva's primary argument on appeal is that Texas state law should have been followed with respect to the issuance of an execution warrant and the setting of execution dates. *See* Tex. Code Crim. Proc. art. 43.15(a), 43.141. Despite vigorously contesting the scope of the district court's June 2000 judgment, both parties recognize the authority of the district court to authorize and schedule Vialva's execution. Additionally, Vialva recognizes that, at the very least, the district court did authorize his execution scheduled for September 24, 2020 in its September 2020 order now under appeal. Vialva

emphasizes that the government did not follow its own procedures requiring it to file a proposed judgment and order with the sentencing court. But now that the district court has unambiguously directed a United States marshal to carry out the execution and adopted the September 24, 2020 execution date, these objections are beside the point.[5]

Vialva also argues that Texas law prohibits a court from setting an execution date earlier than the 91st day after the date the order setting the execution was ordered. The district court certainly did not comply with this requirement. Whether one counts from the date that the BOP scheduled execution or from the district court's September order, no one contests that the scheduled execution date fails to meet the 91-day requirement. Thus, the dispositive question is whether Texas state law applies to such pre-execution procedures. We conclude that it does not apply to either date-setting or warrant requirements.

Vialva asserts that Texas state law regarding date-setting and warrant requirements applies to his execution based on 18 U.S.C. § 3596(a) of the Federal Death Penalty Act ("FDPA"). Specifically, he argues that the FDPA requires application of these Texas laws when it states that a United States marshal "shall supervise implementation of the sentence in the

[5] Vialva also argues that DOJ regulations do not vest BOP with broad authority and discretion to set execution dates because (1) Congress has not delegated this power to the Attorney General and (2) the regulations "are premised on and fully honor the judiciary's prerogative to fix the execution date and command it to occur." In Vialva's case, no doubt exists at this stage as to whether the district court exercised its prerogative. Vialva does not clearly state whether or how the September 2020 order failed to comply with the Texas warrant requirements. As the government observes, strict compliance with Texas warrant requirements may be impossible in this case. In any case, we find that Texas law does not apply to either date-setting or warrant requirements.

manner prescribed by the law of the State in which the sentence is imposed."[6] 18 U.S.C. § 3596(a).

We disagree. Instead, we conclude that § 3596(a) is at least limited to procedures effectuating death and excludes pre-execution process requirements such as date-setting and issuing warrants. The text of the provision explicitly refers to the "implementation of the sentence" prior to referencing state law. 18 U.S.C. § 3596(a). The text simply does not extend to pre-execution date-setting and warrants. Our conclusion is consistent with other circuits that have recently looked at this provision. *See United States v. Mitchell*, No. 20-99009, 2020 WL 4815961, at *2 (9th Cir. 2020) ("In addition, we hold that procedures that do not effectuate death fall outside the scope of 18 U.S.C. § 3596(a)."); *Peterson v. Barr*, 965 F.3d 549, 554 (7th Cir. 2020) (concluding that § 3596(a) "cannot be reasonably read to incorporate every aspect of the forum state's law regarding execution procedure" and finding that state law governing execution witnesses falls outside the scope of the FDPA). Vialva's citation to *In re Fed. Bureau of Prisons' Execution Protocol Cases* is unavailing. 955 F.3d 106 (D.C. Cir. 2020). The debate among the judges in that case related to procedures effectuating death and not pre-execution procedures such as those at issue here. *See Peterson*, 965 F.3d at 554 (making the same distinction and finding that "the debate among the

[6] The entire provision is as follows: "A person who has been sentenced to death pursuant to this chapter shall be committed to the custody of the Attorney General until exhaustion of the procedures for appeal of the judgment of conviction and for review of the sentence. When the sentence is to be implemented, the Attorney General shall release the person sentenced to death to the custody of a United States marshal, who shall supervise implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed. If the law of the State does not provide for implementation of a sentence of death, the court shall designate another State, the law of which does provide for the implementation of a sentence of death, and the sentence shall be implemented in the latter State in the manner prescribed by such law." 18 U.S.C. § 3596(a).

D.C. Circuit judges was limited to state laws, regulations, and protocols governing *procedures for effectuating death*" (emphasis in original)). Vialva recognizes this limitation, emphasizing that cases interpreting whether § 3596(a) applies to technical and other in-chamber execution procedures "provide little guidance in answering whether § 3596(a) requires application of state law warrant and date-setting provisions." The FDPA simply does not reach warrant and date-setting provisions.

Having found that the FDPA does not require the application of state law to pre-execution procedures, we find it unpersuasive that historical practice requires the application of state law. Vialva's reliance on correspondence from 1818 notwithstanding, he has not sufficiently demonstrated that judicial practice requires courts to follow state law with respect warrant and date-setting requirements. Vialva concedes that "federal practice may have evolved to leave to the courts the duty to fix the date and issue an execution warrant," but simply asserts that this did not obviate the requirement to conform to state law. In any case, we do not recognize the existence of any such "judicially created law."

We also agree with the district court's conclusion that Vialva has not shown the remaining factors favor a stay of execution. Vialva has thoroughly litigated his conviction and sentence. He was given official notice well in advance of his execution date. Vialva is not challenging his death sentence, but only the pre-execution procedures for carrying it out. Although the death penalty itself is irreversible, there comes a time when the legal issues "have been sufficiently litigated and re-litigated so that the law must be allowed to run its course." *O'Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982) (per curiam) (quotation omitted). Vialva has sufficiently litigated his case. Furthermore, the public's interest in timely enforcement of the death sentence outweighs Vialva's request for more time. *Calderon v. Thompson*, 523 U.S. 538, 556, 118 S. Ct. 1489, 1501 (1998) (stating that delay "inflict[s]

a profound injury to the 'powerful and legitimate interest in punishing the guilty,' an interest shared by the State and the victims of crime alike" (quoting *Herrera v. Collins*, 506 U.S. 390, 421, 113 S. Ct. 853, 871 (1993) (O'Connor, J., concurring)).

A preliminary injunction is an extraordinary remedy never awarded as a matter of right. *Winter v. National Resource Defense Council, Inc.*, 555 U.S. 7, 24, 129 S. Ct. 365, 376 (2008) (citation omitted). This extraordinary remedy is not justified here. We AFFIRM the district court order and DENY Vialva's motion to stay execution pending consideration and disposition of appeal.

**Certified as a true copy and issued as the mandate on Sep 18, 2020**

**Attest:** Lyle W. Cayce

**Clerk, U.S. Court of Appeals, Fifth Circuit**

# APPENDIX 2

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF TEXAS**
**WACO DIVISION**

| | | |
|---|---|---|
| **UNITED STATES OF AMERICA** | § | |
| | § | **CRIMINAL NO. W-99-CR-070(1)-ADA** |
| **v.** | § | |
| | § | *** CAPITAL CASE *** |
| **CHRISTOPHER ANDRE VIALVA** | § | |

**ORDER ON MOTION FOR INJUNCTIVE RELIEF**

Defendant Christopher Vialva was convicted under federal law of capital murder and sentenced to death. He is scheduled to be executed on September 24, 2020, at the Federal Correctional Complex in Terre Haute, Indiana, where he currently resides. On August 14, 2020, Vialva filed a motion to enjoin the Federal Bureau of Prisons (BOP) and the United States Marshals Service (USMS) from executing him. ECF No. 675. Citing the Federal Death Penalty Act (FDPA), 18 U.S.C. § 3596, as well as the express terms of this Court's June 2000 judgment, Vialva contends that these agencies lack the legal authority to carry out his execution. The Government filed a response (ECF No. 680) disputing Vialva's assertions, to which Vialva has replied (ECF No. 683).

After carefully considering the pleadings and the governing legal authorities, the Court concludes that Vialva's motion does not meet the standards for injunctive relief. His motion (ECF No. 675) is therefore denied for the reasons discussed below.

## I. Background

In June 1999, Vialva led fellow gang members in the kidnapping, robbery, and ultimately murder of two youth ministers, Todd Bagley and his wife Stacie, on their way home from what would become their last Sunday morning worship service. The Bagleys stopped at a

convenience store when the young men chose them as the victims of their robbery scheme born the day before. After Vialva and his accomplices tricked the couple by asking for a ride to an uncle's house, Vialva pulled out a handgun and announced "the plans have changed." The gang stole their money, jewelry, and ATM cards, and then locked the Bagleys in the trunk of their own car while the gang drove around for hours attempting to withdraw money from the Bagleys' account and pawn Stacie's wedding ring.

Vialva insisted on killing the Bagleys and burning their car to eliminate evidence of the gang's crimes. While they poured lighter fluid inside the car, the Bagleys sang and prayed in the trunk. Stacie said, "Jesus loves you" and "Jesus, take care of us." Vialva then donned a ski mask, ordered the trunk open, and shot both Todd and Stacie in the head. Todd was instantly killed, but Stacie survived the gunshot long enough to burn alive after one accomplice, Brandon Bernard, set the car on fire.

In June 2000, Vialva and his co-defendant Brandon Bernard were jointly tried and convicted by a unanimous jury in the Western District of Texas who heard all of the evidence and decided their guilt for their part in the carjacking and murder of Todd and Stacie Bagley while on federal government property. Both were sentenced to death. Their convictions were affirmed on direct appeal and certiorari was denied by the United States Supreme Court. *United States v. Bernard*, 299 F.3d 467 (5th Cir. 2002), *cert. denied*, 539 U.S. 928 (2003). Vialva and Bernard then challenged their convictions and sentences by filing motions to vacate, set aside, or correct under 28 U.S.C. § 2255 alleging a myriad of constitutional violations. After careful consideration, the district court—the Honorable Judge Walter S. Smith, Jr. presiding[1]—denied an evidentiary hearing, denied the § 2255 motions and the claims raised therein, and denied a

[1] Judge Smith also presided over Bernard and Vialva's original trial.

certificate of appealability (COA). ECF No. 449. On appeal, the Fifth Circuit also denied Vialva and Bernard a COA and their petitions for certiorari review were again denied by the Supreme Court in early 2016. *United States v. Bernard*, 762 F.3d 467 (5th Cir. 2014), *cert. denied*, 136 S. Ct. 892 (2016).

Thereafter, Vialva and Bernard filed motions under Rule 60(b) of the Federal Rules of Civil Procedure asking the district court to vacate its previous denial of their § 2255 motions. ECF Nos. 553, 569. In both motions, the defendants argued that Judge Smith's alleged "unfitness" to preside over the § 2255 proceedings amounted to a defect in the integrity of the post-conviction review process sufficient to justify reopening the proceedings. The district court—the Honorable Judge Lee Yeakel presiding—construed the Rule 60(b) motions as successive petitions and dismissed them without prejudice for lack of jurisdiction. ECF No. 570. The Fifth Circuit denied COA on the issue and the Supreme Court denied certiorari in January 2020. *United States v. Vialva*, 904 F.3d 356 (5th Cir. 2018), *cert. denied*, 140 S. Ct. 860 (2020).

On July 31, 2020, the BOP, upon the direction of the Attorney General, scheduled Vialva's execution for September 24, 2020. That same day, Vialva was informed of the setting of his execution date, as was this Court. ECF Nos. 675-1, 673. Two weeks later, Vialva filed the instant motion to enjoin the BOP and USMS from carrying out his execution. According to Vialva, neither the June 2000 judgment (ECF No. 289), Department of Justice regulations, nor any other federal law presently empowers the Attorney General, USMS, or BOP to unilaterally set and carry out his execution.

Vialva provides four arguments to support this assertion: (1) this Court's June 2000 judgment stayed Vialva's execution "pending further order of this Court," and no further order has been issued; (2) the June 2000 judgment does not authorize the Attorney General or BOP to

determine the time, place, and manner of his execution; (3) federal law requires the issuance of an execution warrant from the trial court before the USMS is authorized to supervise an execution, and no such order has been issued by this Court; and (4) the BOP lacks authority under federal law to execution him because they have not followed the procedures set forth by Texas law governing the implementation of death sentences. Vialva asks this Court to enjoin the BOP from executing him "until it has the legal authority to do so and in a manner that comports with federal and Texas law." ECF No. 675 at 11.

## II. Analysis

To obtain a preliminary injunction, Vialva must establish: "(1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest." *Jones v. Tex. Dep't of Criminal Justice*, 880 F.3d 756, 759 (5th Cir. 2018) (quoting *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009)); *Ladd v. Livingston*, 777 F.3d 286, 288 (5th Cir. 2015) (citing *Trottie v. Livingston*, 766 F.3d 450, 451 (5th Cir. 2014)). This standard is essentially the same as the framework for deciding whether to grant a stay of execution. *See Adams v. Thaler*, 679 F.3d 312, 318 (5th Cir. 2012) (reiterating the four perquisites for obtaining a stay of execution as set forth in *Nken v. Holder*, 556 U.S. 418, 434 (2009)).

Notably, the party seeking injunctive relief must prove each of the four elements before a preliminary injunction can be granted. *Mississippi Power & Light Co. v. United Gas Pipeline*, 760 F.2d 618, 621 (5th Cir. 1985). Because a preliminary injunction is considered an "extraordinary and drastic remedy," however, it is not granted routinely, "but only when the movant, by a clear showing, carries the burden of persuasion." *Holland Am. Ins. Co. v.*

*Succession of Roy*, 777 F.2d 992, 997 (5th Cir. 1985). Even when a movant establishes each of the four requirements, the decision whether to grant or deny a preliminary injunction is left to the sound discretion of the district court, and the decision to grant a preliminary injunction is treated as the exception rather than the rule. *Mississippi Power & Light*, 760 F.2d at 621.

As explained below, these factors do not support Vialva's request for an injunction. Vialva has failed to present a substantial case on the merits, and the interests of other parties, including the public, weigh in favor of denying Vialva's request to stay his execution.

**A. Vialva's Arguments Lack Merit.**

1. The Court's June 2000 Judgment

Vialva first contends that the explicit terms of the Court's June 2000 judgment demonstrate that the BOP lacks the legal authority to execute him. In relevant part, the June 2000 judgment reads:

> […] As to [the capital counts], the defendant is hereby committed to the custody of the U.S. Bureau of Prisons until exhaustion of the procedures for appeal of the judgment of conviction and review of the sentences. Upon exhaustion of appeals, the sentence of DEATH will be implemented by the defendant being released from the custody of the U.S. Bureau of Prisons to the custody of the United States Marshals, who shall supervise the execution of the defendant in the manner prescribed by the laws of Texas.
>
> The time, place and manner of execution are to be determined by the Attorney General, provided the time shall not be sooner than 61 days nor later than 90 days after the date of this judgment. If an appeal is taken from this conviction and sentence, execution of the sentence shall be stayed pending further order of this Court upon receipt of the mandate of the Court of Appeals.
>
> The defendant is hereby committed to the custody of the Bureau of Prisons and shall be confined until the sentence of execution is carried out.

ECF No. 289 at 2.

Citing the second paragraph of the judgment, Vialva argues there is presently a stay of execution in place because no further order ever issued from the district court. He also asserts

that the Attorney General completely lacks the authority to set an execution date now because more than 90 days have passed since the judgment issued. The Court does not agree with either of Vialva's arguments. When read in context with the entire judgment, it is clear the second paragraph was intended to limit only the Attorney General's authority to set an execution date before Vialva had a chance to exhaust his appeals. There is no indication that a stay of execution—or the limitations placed on the Attorney General's authority to set an execution date—was meant to apply after Vialva had exhausted his appeals. This is evidenced by the first paragraph of the judgment indicating that the Government *will* implement Vialva's sentence upon the exhaustion of his appeals.

Nevertheless, the Court is aware that the June 2000 judgment may cause the discerning reader some confusion. The remedy to this confusion, however, is not to enjoin the Government from carrying out Vialva's lawful sentence, but rather clarify what the Court believes was meant all along—that there is no longer a stay in place and the Government has the authority to set and carry out Vialva's sentence of death. To that end, simultaneous with the filing of this Order, the Court will issue a separate Order lifting any theoretical stay and confirming the Government's authority to schedule and carry out Vialva's execution on September 24, 2020.

2. Federal Law

Vialva next alleges that federal law requires the issuance of a warrant from this Court before the USMS has authority to carry out his execution. Because no such warrant has been issued, Vialva argues, no one in the Executive Branch, including the Attorney General and USMS, has authority to implement his upcoming scheduled execution. He relies, in part, on a Department of Justice (DOJ) regulation instructing government attorneys on the type of proposed judgment and order they should file after a jury returns a verdict of death. *See* 28 C.F.R. § 26.2

("Whenever this part becomes applicable, the attorney for the government shall promptly file with the sentencing court a proposed Judgment and Order . . .").

There are at least two problems with Vialva's argument. First, there is nothing in the Constitution stating that the power to *implement* a sentence—as opposed to the power to *impose* a sentence—vests solely with the courts, and Vialva identifies no statute, case law, or regulation consistent with this position. Although Vialva refers to 28 C.F.R. § 26.2, his reliance on a regulation that governs only DOJ attorneys is misplaced. For one, the regulation does not indicate that the issuance of a judicial warrant is a prerequisite for obtaining authorization to implement a sentence.[2] And while incorporating the content of 28 C.F.R. § 26.2 may seem like a good idea, courts are not required to comply with the regulation in order to confer DOJ the authority to implement a lawfully imposed death sentence.

This leads to Vialva's second problem—he concedes that a district court *can* confer DOJ this authority. The Court did just that in the June 2000 judgment when it sentenced Vialva to death. In that judgment, the Court specifically stated that Vialva's sentence "will be implemented by the defendant being released from the custody of the U.S. Bureau of Prisons to the custody of the United States Marshals, who shall supervise the execution of the defendant in the manner prescribed by the laws of Texas." ECF No. 289 at 2. This is consistent with the FDPA, which directs the USMS to "supervise the implementation of the sentence in the manner prescribed by the law of the State in which the sentence is imposed." Thus, the Court long ago gave DOJ the authority to implement Vialva's sentence.

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[2] The regulation states that the proposed Judgment and Order filed by the government shall state (1) the sentence shall be executed by a United States Marshal designated by the Director of the United States Marshals Service; (2) the sentence shall be executed by intravenous injection of a lethal substance or substances in a quantity sufficient to cause death; (3) the sentence shall be executed on a date and at a place designated by the Director of the Federal Bureau of Prisons; and (4) the prisoner under sentence of death shall be committed to the custody of the Attorney General or his authorized representative for appropriate detention pending execution of the sentence. 28 C.F.R. § 26.2(a).

Regardless, assuming further judicial authorization is necessary, this Court's new Order—issued contemporaneously with this one—tracks the language of 28 C.F.R. § 26.2 and confirms DOJ's authority to implement Vialva's sentence. Injunctive relief is therefore unnecessary.

3. Texas Law

Lastly, Vialva contends he is entitled to an injunction because his sentence is not being implemented "in the manner prescribed by the laws of Texas" as required by the FDPA and the June 2000 judgment. Vialva focuses on three pre-execution procedures that are required under Texas law but allegedly have not been followed in this case: (1) that a court must enter an order setting the date of an execution in order to effectuate a death sentence; (2) that the execution date must be set at least 91 days in advance; and (3) that a court issue an execution warrant directing the relevant authority to carry out the execution, a copy of which must be served on counsel. *See* Tex. Code Crim. Pro. art. 43.141(a)-(c). Because none of these requirements have occurred, Vialva argues that carrying out his execution would be "blatantly illegal." The Court disagrees.

While the specific issue raised by Vialva is admittedly novel, every court to deal with a similar issue has come to the same conclusion—that the FDPA "cannot be reasonably read to incorporate every aspect of the forum state's law regarding execution procedure." *Peterson v. Barr*, 965 F.3d 549, 554 (7th Cir. 2020) (finding state law governing execution witnesses falls outside the scope of the FDPA); *United States v. Mitchell*, No. 20-99009, 2020 WL 4815961, at *2 (9th Cir. 2020) (finding procedures that do not effectuate death fall outside the scope of the FDPA); *In re Fed. Bureau of Prisons' Execution Protocol Cases*, 955 F.3d 106, 126 (D.C. Cir. 2020) (*Protocol Cases*) (same). Rather, federal law requires the Government to follow only

those state laws, regulations, and protocols that govern the procedure for "effectuating death." *Mitchell*, 2020 WL 4815961, at *2.

This Court agrees with the above Circuits and concludes that, even under a broad reading, the FDPA incorporates only those state procedures "that effectuate [] death, including choice of lethal substances, dosages, vein-access procedures, and medical-personnel requirements." *Peterson*, 965 F.3d at 554; *Protocol Cases*, 955 F.3d at 151 (Tatel, J., dissenting). The pre-execution procedures of Texas mentioned by Vialva are not pertinent to effectuating death and therefore do not fall under the scope of the FDPA. Consequently, Vialva fails to establish the substantial likelihood of success on the merits necessary to warrant injunctive relief. *Jones*, 880 F.3d 756, 759.

**B. <u>The Remaining Factors Weigh Against an Injunction</u>.**

A preliminary injunction is an extraordinary remedy never awarded as a matter of right. *Winter v. National Resource Defense Council, Inc.*, 555 U.S. 7, 24 (2008) (citing *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008)). In addition to evaluating a movant's likelihood of success on the merits, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Id*. (citation omitted). Courts should also "pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Id*. In this case, Vialva fails to show that the balance of equities—*i.e.* the remaining three prerequisites for obtaining an injunction—weigh in his favor.

To start, Vialva has not identified what "irreparable injury" would occur if an injunction is not issued. The gist of Vialva's motion is that the Government set his execution date without further order from this Court and without complying with Texas law. As explained at the zoom hearing held September 3, 2020, that means Vialva was given notice of his execution date only

55 days in advance as opposed to at least 90 days that is required under Texas law, thus cutting short his time to further challenge his conviction and sentence and request clemency. But while the death penalty itself is irreversible and sometimes "weighs heavily in the movant's favor," there must come a time when the legal issues "have been sufficiently litigated and re-litigated so that the law must be allowed to run its course." *O'Bryan v. Estelle*, 691 F.2d 706, 708 (5th Cir. 1982) (per curiam).

As discussed in more detail in the Background section, Vialva has thoroughly litigated the legality of his conviction and sentence for almost two decades on direct appeal and in post-conviction proceedings before this Court, the Fifth Circuit, and the Supreme Court. It is safe to say the legal issues have been "sufficiently litigated." And while the legal issues surrounding Vialva's execution date did not become ripe until the date was set, any argument that he has been prevented from fully and fairly litigating these issues is belied by his numerous legal filings since that time and a merits decision this week on his habeas corpus petition.[3] Petitioner has also filed a clemency petition and had a hearing regarding that petition scheduled for September 10, 2020. Thus, this Court can find no cognizable harm that will result to Vialva if his request for an injunction is denied.

Furthermore, the interests of the Government—and the public—in enforcing valid criminal sentences outweigh Vialva's request for more time. "[E]quity must be sensitive to the [s]tate's strong interest in enforcing its criminal judgments without undue interference from the

[3] In addition to the exemplary briefing provided in the instant case, Vialva has also requested habeas corpus relief from the Southern District of Indiana and challenged the constitutionality of the federal death penalty protocol in the D.C. district court, the D.C. Circuit Court, and the Supreme Court. *See Vialva v. Warden, et al*., No. 20-CV-00413 (S.D. Ind.), ECF No. 1 (Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 filed Aug. 10, 2020); *Vialva v. Barr, et al*., No. 1:20-cv-01693-TSC (D.D.C.), consolidated with *In Re Fed. Bureau of Prisons' Execution Protocol Cases*, No. 1:19-mc-00145-TSC (D.D.C.); *In re Fed. Bureau of Prisons' Execution Protocol Cases*, 955 F.3d 106 (D.C. Cir. 2020), *cert. denied sub nom. Bourgeois v. Barr*, No. 19-1348, 2020 WL 3492763 (U.S. June 29, 2020). The Southern District of Indiana has already ruled on the merits of Vialva's relief request. *See Vialva v. Warden*, No. 20-CV-00413 (S.D. Ind.), ECF No. 20 (Order Den. Petition for Writ of Habeas Corpus (Sept. 8, 2020)).

federal courts." *Crutsinger v. Davis*, 930 F.3d 705, 709 (5th Cir. 2019) (citing *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). The Supreme Court has frequently explained that "both the [Government] and the victims of crime have an important interest in the timely enforcement of a [death] sentence." *Bucklew v. Precythe*, 139 S. Ct. 1112, 1133 (2019); *Hill*, 547 U.S. at 584.

Granting Vialva an injunction would clearly inhibit the Government's vested interest in carrying out an otherwise valid sentence and would impair the finality of this Court's criminal judgment. When "lengthy federal proceedings have run their course"—as they have in this case—"finality acquires an added moral dimension." *Protocol Cases*, 955 F.3d at 126 (citing *Calderon v. Thompson*, 523 U.S. 538, 556 (1998)). Vialva committed the horrendous murders of Stacie and Todd Bagley over 21 years ago and has received the full panoply of procedural protections afforded under the Constitution and the FDPA. No further delay is warranted.

In short, Vialva fails to demonstrate "that the balance of equities tips in his favor, [or] that an injunction is in the public interest." *Winter*, 555 U.S. at 20; *Jones*, 880 F.3d at 759. The relief requested in his motion to enjoin his execution will therefore be denied.

## III. Conclusion

Vialva has failed to demonstrate a likelihood of success on the merits or that the balance of equities weighs in his favor. Accordingly, for the foregoing reasons, Vialva's Motion for Injunction, filed August 14, 2020 (ECF No. 675), is **DENIED**.

It is so **ORDERED.**

SIGNED this 11th day of September, 2020.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

# APPENDIX 3

**UNITED STATES DISTRICT COURT**
**WESTERN DISTRICT OF TEXAS**
**WACO DIVISION**

| | | |
|---|---|---|
| **UNITED STATES OF AMERICA** | **§** | |
| | **§** | **CRIMINAL NO. W-99-CR-070(1)-ADA** |
| **v.** | **§** | |
| | **§** | *** CAPITAL CASE *** |
| **CHRISTOPHER ANDRE VIALVA** | **§** | |

**ORDER**

In June 2000, Defendant Christopher Vialva was convicted under federal law of capital murder and sentenced to death. The district court's Judgment dated June 16, 2000 (ECF No. 289) authorized the Department of Justice (DOJ)—including the Attorney General, the Federal Bureau of Prisons and the United States Marshals Service—to determine the time, place, and manner of Vialva's execution and to carry out that execution. As explained in the other Order filed today, this Court does not believe another order is required to empower DOJ with this authority, nor does the Court believe that a stay is presently in effect as a result of the original Judgment. Nevertheless, out of an abundance of caution, the Court issues this Order to lift any theoretical stay and confirm DOJ's authority to select Vialva's execution date and implement his sentence of death.

Accordingly, to the extent there is presently a stay of execution in place, this Court hereby **ORDERS** that the stay and abeyance is **LIFTED**.

Furthermore, in accordance with 28 C.F.R. § 26.2, the Court **ORDERS**:

(1) The sentence of death, set forth in the Court's June 2000 Judgment (ECF No. 289), shall be executed by a United States Marshal designated by the Director of the United States Marshals Service;

(2) The sentence shall be executed by intravenous injection of a lethal substance or substances in a quantity sufficient to cause death;

(3) The sentence shall be executed on a date and at a place designated by the Director of the Federal Bureau of Prisons, namely, **September 24, 2020**, at the Federal Correctional Complex, Terre Haute, Indiana, or such other time and place as he may later designate; and

(4) The prisoner under sentence of death shall be committed to the custody of the Attorney General or his authorized representative for appropriate detention pending execution of the sentence.

Finally, nothing in this Order shall be deemed to prevent a court of competent jurisdiction from issuing a stay or injunction of the execution if that court deems such a stay to be necessary and appropriate. Nor does this Order prevent the President of the United States from granting clemency to the defendant.

It is so **ORDERED**.

SIGNED this 11th day of September, 2020.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

# APPENDIX 4

# UNITED STATES DISTRICT COURT
# WESTERN DISTRICT OF TEXAS
# WACO DIVISION

FILED

JUN 16 2000

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____ DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case Number W-99-CR-070(1)
USAO Number 1999R04888

CHRISTOPHER ANDRE VIALVA,

Defendant.

## JUDGMENT IN A CRIMINAL CASE
**(For Offenses Committed On or After November 1, 1987)**

The defendant, CHRISTOPHER ANDRE VIALVA, was represented by Stanley L. Schwieger and B. Dwight Goains.

The defendant was found guilty on Counts SS1, SS2, SS3, and SS4 by a jury verdict on June 13, 2000, after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such Counts, involving the following offenses:

| Title & Section | Nature of Offense | Date of Offense | Count Number(s) |
|---|---|---|---|
| 18 USC 2119 & 2 | Carjacking | 06/21/99 | SS1 |
| 18 USC 1117<br>{18 USC 1111(a)(b)} | Conspiracy to Commit Murder | 06/20/99 | SS2 |
| 18 USC 1111(a)(b)<br>18 USC 2 | First Degree Murder on a Government Reservation<br>Aiding and Abetting | 06/21/99 | SS3 |
| 18 USC 1111(a)(b)<br>18 USC 2 | First Degree Murder on a Government Reservation<br>Aiding and Abetting | 06/21/99 | SS4 |

As pronounced on June 13, 2000, the defendant is sentenced as provided in pages 2 through 3 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of $400.00, which shall be due immediately. Said special assessment shall be made to the Clerk, U.S. District Court; P.O. Box 608; Waco, TX 76703-0608.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 16th day of June, 2000.

Walter S. Smith

**WALTER S. SMITH, JR.**
**UNITED STATES DISTRICT JUDGE**

Defendant's SSN: 391-86-8225
Defendant's Date of Birth: 05/10/80
Defendant's address: 2808 Kim Drive; Killeen, TX 76543

875



289

Defendant: CHRISTOPHER ANDRE VIALVA
Case Number: W-99-CR-070(1)

**IMPRISONMENT**

As to Count SS2, the defendant is sentenced to LIFE without the possibility of release. As to Counts SS1, SS3, and SS4, the defendant is hereby committed to the custody of the U.S. Bureau of Prisons until exhaustion of the procedures for appeal of the judgment of conviction and review of the sentences. Upon exhaustion of appeals, the sentence of DEATH will be implemented by the defendant being released from the custody of the U.S. Bureau of Prisons to the custody of the United States Marshals, who shall supervise the execution of the defendant in the manner prescribed by the laws of Texas.

The time, place and manner of execution are to be determined by the Attorney General, provided the time shall not be sooner than 61 days nor later than 90 days after the date of this judgment. If an appeal is taken from this conviction and sentence, execution of the sentence shall be stayed pending futher order of this Court upon receipt of the mandate of the Court of Appeals.

The defendant is hereby committed to the custody of the Bureau of Prisons and shall be confined until the sentence of execution is carried out.

**RETURN**

I have executed this Judgment as follows:

_____

_____

_____

_____

Defendant delivered on _____ to _____

at _____, with a certified copy of this Judgment.

_____
United States Marshal

By _____
Deputy Marshal



816
847

Defendant: CHRISTOPHER ANDRE VIALVA
Case Number: W-99-CR-070(1)

**STATEMENT OF REASONS**

The presentence investigation report is waived as to Count SS2. The Court finds that there is information in the record sufficient to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. 3553.

**Guideline Range Determined by the Court:**

| | |
|---|---|
| Total Offense Level: | 43 |
| Imprisonment Range: | LIFE |

The Government has waived any claim that the defendant be assessed a fine and that the defendant be ordered to pay restitution to the victims.

# APPENDIX 5

**U.S. Department of Justice**
Federal Bureau of Prisons

*Federal Correctional Complex*
*Terre Haute, Indiana*

July 31, 2020

Mr. Christopher Andre Vialva
Reg. No. 91909-080
Special Confinement Unit
United States Penitentiary
Terre Haute, Indiana 47802

Dear Mr. Vialva:

The purpose of this letter is to inform you that a date has been set for the implementation of your death sentence, pursuant to the Judgment and Order issued on June 16, 2000, by Judge Walter S. Smith, Jr. of the United States District Court for the Western District of Texas. This letter will serve as official notification that pursuant to Title 28, Code of Federal Regulations, Section 26.3(a)(1), the Director of the Federal Bureau of Prisons has set September 24, 2020, as the date for your execution by lethal injection.

Under Title 28, Code of Federal Regulations, Sections 1.1 and 1.10, if you wish to seek commutation of sentence or reprieve from the President, petitions may be emailed directly to the DOJ Pardon Attorney at USPARDON.Attorney@usdoj.gov. If email is not available, petitions may be mailed to the Office of the Pardon Attorney, U.S. Department of Justice, 950 Pennsylvania Avenue, RFK Main Justice Building, Washington, D.C. 20530. The Office of the Pardon Attorney is responsible for receiving and processing on behalf of the President all requests for clemency. If you wish to apply for commutation of sentence your petition must be filed within 30 days of the date you receive this notice.

Soon, I will come to your housing unit to personally discuss with you many of the details surrounding the execution. At that time, I will be available to answer any questions you may have regarding the execution process.

Sincerely,

T.J. Watson
Complex Warden

cc: The Honorable Alan D. Albright, Judge, United States District Court (W.D. Texas)
Mr. Barry Knight, Clerk of the Court (W.D. Texas)
Mr. John F. Bash, United States Attorney (W.D. Texas)
Mr. Joseph H. Gay, Jr., Assistant United States Attorney (W.D. Texas)
Mr. Mark Frazier, Assistant United States Attorney (W.D. Texas)
Ms. Susan Otto, Federal Public Defender (W.D. Oklahoma)
Mr. Josh Minkler, United States Attorney (S.D. Indiana)
Mr. Joseph "Dan" McClain, U.S. Marshal (S.D. Indiana)
Mr. Ethan P. Davis, Acting Assistant Attorney General, Civil Division
Mr. Paul Perkins, Office of the Assistant Attorney General, Civil Division

# APPENDIX 6

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| | ) | |
| v. | ) | Case No. W-99-CR-070 (1) |
| | ) | (Capital Case) |
| | ) | |
| CHRISTOPHER ANDRE VIALVA. | ) | |

**GOVERNMENT'S NOTICE REGARDING EXECUTION DATE**

The United States hereby notifies the Court that the Director of the Federal Bureau of Prisons, upon the direction of the Attorney General, has scheduled the execution of Christopher Andre Vialva, in accordance with 28 C.F.R. Part 26, to take place on September 24, 2020.

Respectfully submitted,

JOHN F. BASH
United States Attorney

By: /s/Mark L. Frazier
MARK L. FRAZIER
Assistant United States Attorney

Dated: July 31, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Western District of Texas using the CM/ECF system on July 31, 2020. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/Mark L. Frazier
MARK L. FRAZIER
Assistant United States Attorney

# APPENDIX 7

# Survey of State Law Governing Setting of Execution Dates and Warrant Requirements

## ALABAMA

### *Laws Regarding Initial Date Setting and Issuance of Execution Warrants*

#### ALA. R. APP. PROC. 8(d)(1) (2020)

When pronouncing a sentence of death, the trial court shall not set an execution date, but it may make such orders concerning the transfer of the inmate to the prison system as are necessary and proper. The supreme court shall at the appropriate time enter an order fixing a date of execution, not less than 30 days from the date of the order, and it may make other appropriate orders upon disposition of the appeal or other review. The supreme court order fixing the execution date shall constitute the execution warrant.

#### ALA. CODE § 15-18-82 (2020)

(a) Where the sentence of death is pronounced against a convict, the sentence shall be executed at any hour on the day set for the execution, not less than 30 nor more than 100 days from the date of sentence, as the court may adjudge . . .

#### ALA. CODE § 15-18-80 (2020)

(a) Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced shall, within 10 days after sentence has been pronounced, issue a warrant under the seal of the court for the execution of the sentence of death, which warrant shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court and the time fixed for his execution, and which shall be directed to the warden of the William C. Holman unit of the prison system at Atmore, commanding him to proceed, at the time and place named in the sentence, to carry the same into execution, as provided in Section 15-18-82, and the clerk shall deliver such warrant to the sheriff of the county in which such judgment of conviction was had, to be by him delivered to the said warden, together with the condemned person as provided in subsection (b) of this section; provided, however, that in case of appeal to the Supreme Court of Alabama by the defendant and the suspension of execution of sentence by the trial court, said condemned person shall remain in the county jail of the county in which the conviction was had unless the

court in which the case is tried orders otherwise, in which case, upon the affirmation of the appeal by the Supreme Court, said warrant for the execution of the death sentence, under seal of the court, together with the person of the condemned shall be delivered within 10 days after such affirmation to the warden of Holman prison as provided above.
…

***Laws Regarding the Re-Setting of Execution Dates After Prior Dates Have Expired***

**ALA. CODE § 15-18-84 (2020)**

(a) If a condemned person escapes after sentence and before his delivery to the warden from Holman prison and is not rearrested until after the time fixed for execution, any person may arrest and commit him to the jail of the county in which he was sentenced. Thereupon, the court by whom the condemned was sentenced, on notice of such arrest being given by the sheriff, shall again appoint a time for the execution, not less than 30 days from such appointment, which appointment shall be by the clerk of said court immediately certified to the warden of Holman prison. Such clerk shall place such certificate in the hands of the sheriff, who shall deliver the same, together with the warrant for execution and the condemned person to the warden, who shall receipt the sheriff for the same and proceed at the appointed time to carry the sentence of death into execution as hereinabove provided.

(b) If a condemned person escapes after his delivery to the warden and is not retaken before the time appointed for his execution, any person may arrest and commit him to Holman prison, whereupon the warden shall certify the fact of his escape and recapture to the court in which sentence was passed. The court shall again appoint a time for the execution, which shall be not less than 30 days from the date of such appointment. Thereupon, the clerk of such court shall certify such appointment to the warden, who shall proceed at the time so appointed to execute the condemned as hereinabove provided.

**ALA. CODE § 15-18-86 (2020)**

(c) Whenever the Governor is satisfied that [a pregnant person] is no longer with child, he must issue his warrant to the sheriff appointing a day for her to be executed according to her sentence, and the sheriff or other officer must execute the sentence of the law on the day so appointed.

# ARIZONA

## *Laws Regarding Initial Date Setting and Issuance of Execution Warrants*

### ARIZ. R. CRIM. PROC. 31.23 (2020)

(a) *Issuance of Warrant.* After affirming a death sentence, the Supreme Court must issue a warrant of execution if the State files a notice stating that:

(1) the defendant has not filed a first Rule 32 petition for post-conviction relief and the time for filing a petition has expired;

(2) the defendant has not filed a petition for review seeking review of a superior court denial of the defendant's first Rule 32 petition for post-conviction relief and the time for filing a petition for review has expired; or

(3) the defendant has not initiated habeas corpus proceedings in federal district court within 15 days after the Supreme Court's denial of a petition for review seeking review of the denial of the defendant's first Rule 32 petition for post-conviction relief.

(b) *Post-Habeas Warrant.* On the State's motion, the Supreme Court must issue a warrant of execution when federal habeas corpus proceedings and habeas appellate review conclude.

(c) *Date and Time of Execution.* The warrant of execution must specify an execution date that is 35 days after the warrant's issuance. If the Supreme Court finds that it is impracticable to carry out an execution on that date, it may extend the execution date but may not extend it more than 60 days after the warrant's issuance. Additionally, the warrant must:

(1) state the date for starting the execution time period;

(2) state that the warrant is valid for 24 hours beginning at an hour to be designated by the director of the Arizona Department of Corrections;

(3) order the director to provide written notice of the designated hour of execution to the Supreme Court and each party at least 20 calendar days before the execution date; and

(4) authorize the director to carry out the execution at any time during the warrant's duration.

…

# ARKANSAS

## *Laws Regarding Initial Date Setting*

### ARK. CODE ANN. § 16-90-110 (West 2020)

Where judgment of death is pronounced, the day of the execution shall be fixed in the judgment. The day of execution shall not be in less than thirty (30) days after the judgment.

### ARK. R. CRIM. PROC. 37.5(g) (West 2020)

When the circuit court enters an order under subsection (b) of this rule [requirement of a hearing on appointment of an attorney], the court shall also enter an order staying any sentence of death. The stay of execution shall remain in effect until dissolved by a court with competent jurisdiction. The circuit court shall enter an order dissolving the stay of execution if:

(1) A timely petition is not filed under this rule; or

(2) A timely petition is filed under this rule but relief is denied by the circuit court under subsection (i) of this rule, and the time for filing an appeal from the denial of relief has expired without the filing of a notice of appeal.

## *Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired*

### ARK. CODE ANN. § 16-90-507 (West 2020)

(a) Whenever a judgment of death has not been executed on the day appointed therefor by the court from any cause whatever, the Governor shall fix the day of execution by a warrant under his or her hand and seal of the state.

(b) The warrant shall be obeyed by the Director of the Department of Correction and no one but the Governor may then suspend the execution.

# CALIFORNIA

## *Laws Regarding Initial Date Setting and Issuance of Execution Warrants*

### CAL. PENAL CODE § 1227(a) (West 2020)

If for any reason other than the pendency of an appeal pursuant to subdivision (b) of Section 1239 of this code [section governing automatic appeals] a judgment of death has not been executed, and it remains in force, the court in which the conviction was had shall, on application of the district attorney, or may upon its own motion, make and cause to be entered an order specifying a period of 10 days during which the judgment shall be executed. The 10-day period shall begin no less than 30 days after the order is entered and shall end no more than 60 days after the order is entered. Immediately after the order is entered, a certified copy of the order, attested by the clerk, under the seal of the court, shall, for the purpose of execution, be transmitted by registered mail to the warden of the state prison having the custody of the defendant; provided, that if the defendant be at large, a warrant for his apprehension may be issued, and upon being apprehended, he shall be brought before the court, whereupon the court shall make an order directing the warden of the state prison to whom the sheriff is instructed to deliver the defendant to execute the judgment within a period of 10 days, which shall not begin less than 30 days nor end more than 60 days from the time of making such order.

## *Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired*

### CAL. PENAL CODE § 1227.5 (West 2020)

Notwithstanding Section 1227, where a judgment of death has not been executed by reason of a stay or reprieve granted by the Governor, the execution shall be carried out on the day immediately after the period of the stay or reprieve without further judicial proceedings.

### CAL. PENAL CODE § 3706 (West 2020)

If it is found that [a] female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant the warden must suspend the execution of the judgment, and transmit a certified copy of the finding and certificate to the Governor. When the Governor receives from the warden a certificate that the defendant is no

longer pregnant, he must issue to the warden his warrant appointing a day for the execution of the judgment.

**CAL. PENAL CODE § 3704 (West 2020)**

. . . If the judge should determine that the defendant has recovered his sanity he must certify that fact to the Governor, who must thereupon issue to the warden his warrant appointing a day for the execution of the judgment, and the warden shall thereupon return the defendant to the state prison pending the execution of the judgment. . . .

# FLORIDA

***Laws Regarding Initial Date Setting and Issuance of Execution Warrants***

**FLA. STAT. ANN. § 922.052 (West 2020)**

…

(2)(a) The clerk of the Florida Supreme Court shall inform the Governor in writing certifying that a person convicted and sentenced to death, before or after the effective date of the act, has:

1. Completed such person's direct appeal and initial postconviction proceeding in state court and habeas corpus proceeding and appeal therefrom in federal court; or
2. Allowed the time permitted for filing a habeas corpus petition in federal court to expire.

(b) Within 30 days after receiving the letter of certification from the clerk of the Florida Supreme Court, the Governor shall issue a warrant for execution if the executive clemency process has concluded, directing the warden to execute the sentence within 180 days, at a time designated in the warrant.

(c) If, in the Governor's sole discretion, the clerk of the Florida Supreme Court has not complied with the provisions of paragraph (a) with respect to any person sentenced to death, the Governor may sign a warrant of execution for such person where the executive clemency process has concluded.

(3) The sentence shall not be executed until the Governor issues a warrant, attaches it to the copy of the record, and transmits it to the warden, directing the warden to execute the sentence at a time designated in the warrant.

(4) If, for any reason, the sentence is not executed during the week designated, the warrant shall remain in full force and effect and the sentence shall be carried out as provided in s. 922.06.

***Laws Regarding the Re-Setting of Execution Dates After Prior Dates Have Expired***

**FLA. STAT. ANN. § 922.06 (West 2020)**

…

(2)(a) If execution of the death sentence is stayed by the Governor, and the Governor subsequently lifts or dissolves the stay, the Governor shall immediately notify the Attorney General that the stay has been lifted or dissolved. Within 10 days after such notification, the Governor must set the new date for execution of the death sentence.

(b) If execution of the death sentence is stayed incident to an appeal, upon certification by the Attorney General that the stay has been lifted or dissolved, within 10 days after such certification, the Governor must set the new date for execution of the death sentence.

...

# GEORGIA

***Laws Regarding Initial Date Setting***

**GA. CODE ANN. § 17-10-34 (West 2020)**

When a person is sentenced to the punishment of death, the court shall specify the time period for the execution in the sentence. The time period for the execution fixed by the court shall be seven days in duration and shall commence at noon on a specified date and shall end at noon on a specified date. The time period shall commence not less than 20 days nor more than 60 days from the date of sentencing. However, if the person is a female who is pregnant at the time of sentencing, the court shall appoint a time period for execution after the female is no longer pregnant.

***Laws Regarding the Re-Setting of Execution Dates After Prior Dates Have Expired***

**GA. CODE ANN. § 17-10-40 (West 2020)**

(a) Where the time period for the execution of any convicted person in a capital case has passed by reason of a supersedeas incident to appellate review, a stay of execution by the State Board of Pardons and Paroles, or for any other reason, a judge of the superior court of the county where the case was tried shall have the power and authority to pass an order fixing a new time period for the execution of the original sentence without requiring the convicted person to be brought before him by a writ of habeas corpus. The order shall be recorded on the minutes of the court and a certified copy of the order shall be sent immediately to the convicted person's attorney of record, to the Attorney General, and to the superintendent of the state correctional institution at the place of execution.

(b) The new time period for the execution shall be seven days in duration and shall commence at noon on a specified date and shall end at noon on a specified date. The new time period for the execution fixed by the judge shall commence not less than ten nor more than 20 days from the date of the order.

(c) The Department of Corrections shall set the day and time for execution within the time period designated by the judge of the superior court. If the execution is not carried out on the day and at the time originally set by the Department of Corrections, the Department of Corrections is authorized to set new dates and times for execution within the period designated by the judge of the superior court.

# IDAHO

***Laws Regarding Initial Date Setting and Issuance of Execution Warrants***

**IDAHO CODE ANN. § 19-2705 (West 2020)**

(1) Whenever a person is sentenced to death, the judge passing sentence shall, in accordance with section 19-2719, Idaho Code [regarding post-conviction procedures], sign and file a death warrant fixing a date of execution not more than thirty (30) days thereafter.

(2) The warrant shall be directed to the director of the Idaho department of correction and shall be delivered to him forthwith.

…

***Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**IDAHO CODE ANN. § 19-2715 (West 2020)**

(1) Hereafter, no further stays of execution shall be granted to persons sentenced to death except that a stay of execution shall be granted during an appeal taken pursuant to section 19-2719, Idaho Code, during the automatic review of judgments imposing the punishment of death provided by section 19-2827, Idaho Code, by order of a federal court or as part of a commutation proceeding pursuant to section 20-240, Idaho Code.

(2) Upon remittitur or mandate after a sentence of death has been affirmed, the state shall apply for a warrant from the district court in which the conviction was had, authorizing execution of the judgment of death. Upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

(3) If a stay of execution is granted pursuant to subsection (1) of this section and as a result, no execution takes place on the date set by the district court, upon termination of the stay, the state shall apply for another warrant and upon such application, the district court shall set a new execution date not more than thirty (30) days thereafter.

(4) If for any reason, other than those set forth in subsection (1) of this section, a judgment of death has not been executed, and it remains in force, the state shall apply for another warrant. Upon such application, the district court may inquire into the facts, and if no legal reason exists against the execution of the judgment, must make an order that the warden execute the judgment at a special specified time. The warden must execute the judgment accordingly.

(5) Action of the district court under this section is ministerial only. No hearing shall be required for setting a new execution date and the court shall inquire only into the fact of an existing death sentence and the absence of a valid stay of execution.

(6) For purposes of this section, the phrase "stay of execution" shall refer to a temporary postponement of an execution as a result of a court order or an order of the governor postponing the execution while a petition for commutation is pending.

**IDAHO CODE ANN. § 19-2714 (West 2020)**

If it is found by the report [required by statute] that [a] female is not pregnant, the warden must execute the judgment; if it is found that she is pregnant, the warden must suspend the execution of the judgment, and transmit the report to the district court that imposed the sentence. When the district court that imposed the sentence is satisfied that the female is no longer pregnant, he may issue his warrant appointing a day for the execution of the judgment.

# INDIANA

***Laws Regarding Initial Date Setting and Issuance of Execution Warrants***

**IND. CODE ANN. § 35-38-6-2 (West 2020)**

The court in which a death sentence is ordered shall issue a warrant to the sheriff within fourteen (14) days of the sentence:

(1) that is under the seal of the court;
(2) that contains notice of the conviction and the sentence;
(3) that is directed to the warden of the state prison; and
(4) that orders the warden to execute the convicted person at a specified time and date in the state prison.

***Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**IND. CODE ANN. § 35-38-6-8 (West 2020)**

(a) If the execution of the death sentence is suspended, the department of correction shall note the reason for the delay on the warrant but shall proceed with the execution when the period of suspension ends.

(b) The warrant shall be returned to the clerk of the sentencing court after:

(1) the convicted person is executed;
(2) the convicted person has been pardoned;
(3) the convicted person's judgment has been reversed;
(4) the convicted person's sentence has been commuted; or
(5) the convicted person dies before his execution;

with a statement concerning the completion of the execution or the reason why the person was not executed.

**IND. CODE ANN. § 35-38-6-10 (West 2020)**

If the physician of the state prison and one (1) other physician certify in writing to the warden of the state prison and the sentencing court that a condemned woman is pregnant, the warden shall suspend the execution of the sentence. When the state prison physician and one (1) other physician certify in writing to the warden of the state prison and the sentencing court that the woman is no longer pregnant, the sentencing court shall immediately fix a new execution date.

# KANSAS

***Laws Regarding Initial Date Setting and Issuance of Execution Warrants***

**KAN. STAT. ANN. § 22-4013 (West 2020)**

…

(b) Upon receipt of an order of the district court as provided by this act, the supreme court shall issue to the secretary of corrections a warrant under seal of the supreme court, commanding the secretary or a warden designated pursuant to K.S.A. 22-4001 [governing execution procedures], and amendments thereto, to proceed to carry out the sentence of execution during the week designated by the supreme court. The week designated in the warrant shall be sufficient to enable the secretary to give notice as provided in subsection (c). A copy of the warrant shall be delivered to the secretary of corrections and the clerk of the district court. For purposes of this act, the term "week" shall mean the time period from 12:01 a.m. Sunday through and including 11:59 p.m. the following Saturday. If the week designated in the warrant commanding the execution of a death sentence begins on a day of the week other than a Sunday, or sets out a particular date for the execution, the secretary of corrections shall notify the clerk of the supreme court.

(c) The secretary of corrections shall carry out the execution commanded by the warrant issued by the supreme court during the week designated by the supreme court on a date selected by the secretary. The secretary shall give notice of the date selected by the secretary for the execution at least seven calendar days before the execution to the clerk of the supreme court, the clerk of the district court in which the defendant was convicted, the defendant, the defendant's counsel and the attorney general. The secretary may carry out the execution at any time during the date selected or as soon thereafter as the secretary deems appropriate.

***Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**KAN. STAT. ANN. § 22-4013 (West 2020)**

If a sentence of execution is suspended by an order of a court, the suspension shall continue until the supreme court orders otherwise. If the sentence is affirmed, the supreme court shall order the execution of the sentence of death and shall designate a week during which the sentence of execution shall be carried out if the week previously designated by the court has passed. Otherwise, the execution shall be carried out during the week previously designated by the court. It shall be the duty of the clerk of the supreme court to issue to the secretary of corrections a warrant under the seal of the court, commanding the secretary or a warden designated pursuant to K.S.A. 22-4001, and amendments thereto, to proceed to carry the sentence into execution during the week designated by the court. The week during which the sentence of execution is to be carried out shall be stated in the warrant. Upon receipt of the warrant it shall be the duty of the secretary of corrections to cause the sentence to be executed as provided by this act during the time designated by the court.

**KAN. STAT. ANN. § 22-4009 (West 2020)**

(a) If a convict under sentence of death appears to be pregnant or alleges to be pregnant, the person having custody of the convict shall notify the secretary of corrections. The secretary shall designate one or more licensed physicians to examine the convict to determine if the convict is pregnant. If the convict is not pregnant, the execution shall be carried out as previously ordered. If the convict is pregnant, the secretary of corrections shall notify the clerk of the supreme court. Upon receipt of the notice, the supreme court shall issue to the secretary of corrections a warrant under seal of the supreme court postponing the execution of the sentence of death. A copy of the warrant shall be delivered to the secretary of corrections and the clerk of the district court.

(b) When the execution of a sentence of death is postponed because of pregnancy, the secretary of corrections shall wait until the child is born or the pregnancy is otherwise terminated and then the secretary shall notify the clerk of the supreme court of the birth of the child or termination of the pregnancy. Upon receipt of the notice, the supreme court shall issue to the secretary of corrections a warrant under seal of the supreme court, commanding the secretary or a warden designated pursuant to K.S.A. 22-4001, and amendments thereto, to proceed to carry out the

sentence of execution during the week designated by the supreme court. A copy of the warrant shall be delivered to the secretary of corrections and the clerk of the district court. At any time during the postponement of the execution, the secretary may order an examination as provided in this section to determine whether the convict remains pregnant. The costs of each medical examination conducted pursuant to this section shall be paid by the county where the case originated.

**KAN. STAT. ANN. § 22-4011 (West 2020)**

If any person who has been sentenced to death escapes and is not retaken before the time fixed for execution, it shall be lawful for any sheriff or other officer or person to rearrest and return the person to the custody of the secretary of corrections. Upon such return to custody, the secretary of corrections shall give notice thereof to the clerk of the supreme court. Upon receipt of such notice, the supreme court shall issue to the secretary of corrections a warrant under seal of the supreme court, commanding the secretary or a warden designated pursuant to K.S.A. 22-4001, and amendments thereto, to proceed to carry out the sentence of execution during the week designated by the supreme court which shall be carried into effect in the same manner as provided by statute for the execution of an original sentence of death. A copy of the warrant shall be delivered to the secretary of corrections and the clerk of the district court.

# KENTUCKY

***Laws Regarding Initial Date Setting***

**KY. REV. STAT. ANN. § 431.218 (West 2020)**

When a judgment sentencing the defendant to death has been affirmed, the mandate shall fix the day of the execution as the fifth Friday following the date of the mandate of the court. The clerk of the Supreme Court shall transmit either by special messenger or by certified mail, return receipt requested, a certified copy of the mandate to the proper officer which shall be the authority of such officer to carry the mandate into effect. The officer receiving the copy shall report his action both to the governor and to the circuit court. If from any cause the execution does not take place on the day appointed in the mandate, the governor may from time to time appoint another day for execution until the sentence is carried into effect.

***Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**KY. REV. STAT. ANN. § 431.240 (West 2020)**

(1) Unless the execution is stayed for any cause, the warden of the institution or his deputy shall proceed, on the day named in the judgment of conviction, a governor's warrant, or an order of the court, to cause the condemned person to be executed. The execution shall take place at a time designated by the warden of the institution where the execution is to take place on the day designated in the judgment of conviction, the governor's warrant, or an order of the court.

(2) If the condemned person is insane, as defined in KRS 431.213 or pregnant with child on the day designated for the execution, the execution shall be suspended until the condemned is restored to sanity or is delivered of child. The execution shall then take place under the warrant of the Governor and at the time designated by him, unless stayed by due process of law. If execution is suspended on the ground of insanity, the commissioner of the Department of Corrections shall transfer the condemned person to the Kentucky Correctional Psychiatric Center until the time he is restored to sanity. Any administrative hearings authorized under authority of this section shall be conducted in accordance with KRS Chapter 13B.

(3) If the condemned person escapes from custody and is recaptured after the expiration of the date fixed for the execution, the Governor, upon receiving written notice of the recapture from the warden of the institution, shall send his warrant of execution to the warden by special messenger and shall name therein the day of execution. The warden shall then proceed to the execution thereof according to the provisions of KRS 431.215 to 431.270 [reciting execution procedures].

(4) When a judgment of death has not been executed on the day appointed therefor by the court, from any cause, the Governor, by a warrant under his hand and the seal of the Commonwealth, shall fix the day of the execution, which warrant shall be obeyed by the warden of the institution.

# LOUISIANA

***Laws Regarding Initial Date Setting, Issuance of Execution Warrants, and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**LA. STAT. ANN. § 15:567 (2020)**

…

(B) The court of original jurisdiction shall also issue a warrant commanding the secretary to cause the execution of the person condemned as provided by law. The warrant shall specify the date upon which the person condemned shall be put to death, which date shall be not less than sixty days nor more than ninety days from the date the warrant is issued. Upon receipt of the warrant the secretary shall cause a copy of the warrant to be delivered to the person condemned. A certified copy of the warrant shall be mailed, return receipt requested, to the governor and the return receipt filed in the record.

(C) If any federal or Louisiana court grants a stay of execution, or if the governor of Louisiana grants a reprieve, the trial court shall reset the execution date at not less than thirty days nor more than forty-five days from the dissolution of the stay order, or termination or expiration of the reprieve.

(D) The execution of a female who has been clinically diagnosed as being pregnant shall be suspended. The trial court shall reset the execution date at not less than ninety days nor more than one hundred twenty days from the date of delivery of the baby, a miscarriage, or voluntary termination of the pregnancy.

(E) The failure of the trial court to fix an execution date within the time limits of this Section shall not affect the validity of a sentence of death. In such a case, the attorney general shall bring a mandamus proceeding in any court of competent jurisdiction to have the trial court set the execution date at not less than thirty days nor more than forty-five days from the date of issuance of the mandamus order.

# MISSISSIPPI

## *Laws Regarding Issuance of Execution Warrants*

**MISS. CODE ANN. § 99-19-55 (2020)**

…

(2) When a person is sentenced to suffer death in the manner provided by law, it shall be the duty of the clerk of the court to deliver forthwith to the Commissioner of Corrections a warrant for the execution of the condemned person. It shall be the duty of the commissioner forthwith to notify the State Executioner of the date of the execution and it shall be the duty of the said State Executioner, or any person deputized by him in writing, in the event of his physical disability, as hereinafter provided, to be present at such execution, to perform the same, and have general supervision over said execution.

…

## *Laws Regarding Initial Date Setting and the Re-Setting of Execution Dates After Prior Dates Have Expired*

**MISS. CODE ANN. § 99-19-106 (2020)**

When judgment of death becomes final and a writ of certiorari to the United States Supreme Court has been denied or the time for filing such petition has expired, the court shall set an execution date for a person sentenced to the death penalty. Within sixty (60) days following the appointment of post-conviction counsel, upon declaration by counsel that he deems post-conviction review to be meritorious and that he intends to file an application for post-conviction review, the court may stay execution pending the disposition of the post-conviction proceeding. In the event no application for post-conviction relief is filed within one (1) year of the date of the disposition of the petition for writ of certiorari or the time for certiorari has expired, any stay entered by the court will automatically vacate. The filing of a declaration by counsel that he deems post-conviction review to be meritorious and intends to file an application for post-conviction review shall in no manner constitute the filing of an application for post-conviction review that would toll the running of any statute of limitations. Setting or resetting the date of execution shall be made on motion of the state that all state and federal remedies have been exhausted, or that the defendant has failed to file for further state or federal review within the time allowed by law.

**MISS. CODE ANN. § 99-19-57 (2020)**

(1) If the Commissioner of Corrections at any time is satisfied that any female offender in his custody under sentence of death is pregnant, he shall summon a physician to inquire into the pregnancy. The commissioner shall summons and swear all necessary witnesses and the commissioner after full examination shall certify under his hand what the truth may be in relation to the alleged pregnancy, and in case the offender is found to be pregnant, the commissioner shall immediately transmit his findings to the Governor, and the Governor shall suspend the execution of the sentence until he is satisfied that the offender is not or is no longer pregnant. The Governor shall then order, by his warrant to the commissioner, the execution of the offender on a day to be appointed by the Governor according to the sentence and judgment of the court.

(2)(a) If it is believed that an offender under sentence of death has become mentally ill since the judgment of the court, the following shall be the exclusive procedural and substantive procedure. The offender, or a person acting as his next friend, or the Commissioner of Corrections may file an appropriate application seeking post-conviction relief with the Mississippi Supreme Court. If it is found that the offender is a person with mental illness, as defined in this subsection, the court shall suspend the execution of the sentence. The offender shall then be committed to the forensic unit of the Mississippi State Hospital at Whitfield. The order of commitment shall require that the offender be examined and a written report be furnished to the court at that time and every month thereafter, stating whether there is a substantial probability that the offender will become sane under this subsection within the foreseeable future and whether progress is being made toward that goal. If at any time during the commitment, the appropriate official at the state hospital considers the offender to be sane under this subsection, the official shall promptly notify the court to that effect in writing and place the offender in the custody of the Commissioner of Corrections. The court then shall conduct a hearing on the sanity of the offender. The finding of the circuit court is a final order appealable under the terms and conditions of the Mississippi Uniform Post-Conviction Collateral Relief Act.

…

# MISSOURI

## *Laws Regarding Initial Date Setting and Issuance of Execution Warrants*

### MO. REV. STAT. § 546.680 (2020)

When judgment of death is rendered by any court of competent jurisdiction, a warrant signed by the judge and attested by the clerk under the seal of the court must be drawn and delivered to the sheriff. It must state the conviction and judgment and appoint a day on which the judgment must be executed, which must not be less than thirty nor more than sixty days from the date of judgment, and must direct the sheriff to deliver the defendant, at a time specified in said order, not more than ten days from the date of judgment, to the chief administrative officer of a correctional facility of the department of corrections, for execution.

## *Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired*

### MO. REV. STAT. § 546.700 (2020)

Whenever, for any reason, any convict sentenced to the punishment of death shall not have been executed pursuant to such sentence, and the cause shall stand in full force, the supreme court, or the court of the county in which the conviction was had, on the application of the prosecuting attorney, shall issue a writ of habeas corpus to bring such convict before the court; or if he be at large, a warrant for his apprehension may be issued by such court, or any judge thereof.

### MO. REV. STAT. § 546.710 (2020)

Upon such convicted offender being brought before the court, they shall proceed to inquire into the facts, and if no legal reasons exist against the execution of sentence, such court shall issue a warrant to the director of the department of corrections, for the execution of the prisoner at the time therein specified, which execution shall be obeyed by the director accordingly.

# MONTANA

## *Laws Regarding Initial Date Setting, Issuance of Execution Warrants, and the Re-Setting of Execution Dates After Prior Dates Have Expired*

### MONT. CODE ANN. § 46-19-103 (West 2020)

(1) In pronouncing the sentence of death, the court shall set the date of execution, which may not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.
…

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the director of the department of corrections. The warrant must be directed to the director and recite the conviction, judgment, appointed date of execution, and duration of the warrant.
…

### MONT. CODE ANN. § 46-19-202 (West 2020)
…

(2) If it is found that the defendant lacks fitness, the execution of judgment must be suspended and the court shall commit the defendant to the custody of the superintendent of the Montana state hospital to be placed in an appropriate facility of the department of public health and human services for as long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of the Montana state hospital, the county prosecuting officer, or the defendant or the defendant's legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to

proceed with execution of the sentence, the court may suspend the execution of the sentence and may order the defendant to be discharged.

**MONT. CODE ANN. § 46-19-204 (West 2020)**

If it is found . . . that [a] woman is not pregnant, the warden of the Montana state prison shall execute the judgment. If it is found that the woman is pregnant, the warden shall suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, the governor may issue a death warrant appointing a day for the execution of the judgment. The warrant must recite the conviction, the judgment, the method of execution, that execution of judgment was suspended due to pregnancy, that the governor is satisfied that the woman is no longer pregnant, the appointed date for the execution, and the duration of the warrant.

## NEBRASKA

### *Laws Regarding Initial Date Setting*

**NEB. REV. STAT. ANN. § 29-2528 (West 2020)**

In all cases when the death penalty has been imposed by the district court, the Supreme Court shall, after consideration of the appeal, order the prisoner to be discharged, a new trial to be had, or appoint a day certain for the execution of the sentence.

### *Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired*

**NEB. REV. STAT. ANN. § 29-2543 (West 2020)**

(1) Whenever any person has been tried and convicted before any district court in this state, has been sentenced to death, and has had his or her sentence of death affirmed by the Supreme Court on mandatory direct review, it shall be the duty of the Supreme Court to issue a warrant, under the seal of the court, reciting therein the conviction and sentence and establishing a date for the enforcement of the sentence directed to the Director of Correctional Services, commanding him or her to proceed at the time named in the warrant. The date of execution shall be set no later than sixty days following the issuance of the warrant.

(2) Thereafter, if the initial execution date has been stayed and the original execution date has expired, the Supreme Court shall establish a new date for enforcement of the sentence upon receipt of notice from the Attorney General that the stay of execution is no longer in effect and issue its warrant to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

**NEB. REV. STAT. ANN. § 29-2538 (West 2020)**

If a court has suspended the execution of the convicted person pending an investigation as to his or her competency, the date for the enforcement of the convicted person's sentence has passed, and the convicted person is found to be competent, the court shall certify that finding to the Supreme Court which shall appoint a day for the enforcement of the convicted person's sentence.

**NEB. REV. STAT. ANN. § 29-2542 (West 2020)**

If any person who has been convicted of a crime punishable by death, and sentenced to death, shall escape, and shall not be retaken before the time fixed for his or her execution, it shall be lawful for the Director of Correctional Services, or any sheriff or other officer or person, to rearrest such person and return him or her to the custody of the director, who shall thereupon notify the Supreme Court that such person has been returned to custody. Upon receipt of that notice, the Supreme Court shall then issue a warrant, fixing a date for the enforcement of the sentence which shall be delivered to the director. The date of execution shall be set no later than sixty days following the issuance of the warrant.

**NEB. REV. STAT. ANN. § 29-2541 (West 2020)**

If the commission appointed pursuant to section 29-2537 [procedures for determining pregnancy] finds that the female convicted person is pregnant, the court shall suspend the execution of her sentence. At such time as it shall be determined that such woman is no longer pregnant, the judge shall appoint a date for her execu1tion and issue a warrant directing the enforcement of the sentence of death which shall be delivered to the Director of Correctional Services. The costs and expenses thereof shall be the same as those provided for in the case of an incompetent convicted person and shall be paid in the same manner.

**NEB. REV. STAT. ANN. § 29-2537 (West 2020)**

(1) If any convicted person under sentence of death shall appear to be incompetent, the Director of Correctional Services shall forthwith give notice thereof to a judge of the district court of the judicial district in which the convicted person was tried and sentenced and such judge shall at once make such investigation as shall satisfy him or her as to whether a commission ought to be named to examine such convicted person.

(2) If the court determines that there is not sufficient reason for the appointment of a commission, the court shall so find and refuse to suspend the execution of the convicted person. If the court determines that a commission ought to be appointed to examine such convicted person, the court shall make a finding to that effect and cause it to be entered upon the records of the district court in the county in which such convicted person was sentenced, and, if necessary, the court shall suspend the execution and appoint three licensed mental health professionals employed by the state as a commission to examine such convicted person. The commission shall examine the convicted person to determine whether he or she is competent or incompetent and shall report its findings in writing to the court within ten days after its appointment. If two members of the commission find the convicted person incompetent, the court shall suspend the convicted person's execution until further order. Thereafter, the court shall appoint a commission annually to review the convicted person's competency. The results of such review shall be provided to the court. If the convicted person is subsequently found to be competent by two members of the commission, the court shall certify that finding to the Supreme Court which shall then establish a date for the enforcement of the convicted person's sentence.

## NEVADA

***Laws Regarding Initial Date Setting and Issuance of Execution Warrants***

**NEV. REV. STAT. ANN. § 176.345 (West 2020)**

(1) When a judgment of death has been pronounced, a certified copy of the judgment of conviction must be forthwith executed and attested in triplicate by the clerk under the seal of the court. There must be attached to the triplicate copies a warrant signed by the judge, attested by the clerk, under the seal of the court, which:

(a) Recites the fact of the conviction and judgment;

(b) Appoints a week, the first day being Monday and the last day being Sunday, within which the judgment is to be executed, which must not be less than 60 days nor more than 90 days from the time of judgment; and
(c) Directs the sheriff to deliver the prisoner to such authorized person as the Director of the Department of Corrections designates to receive the prisoner, for execution. The prison must be designated in the warrant.

(2) The original of the triplicate copies of the judgment of conviction and warrant must be filed in the office of the county clerk, and two of the triplicate copies must be immediately delivered by the clerk to the sheriff of the county. One of the triplicate copies must be delivered by the sheriff, with the prisoner, to such authorized person as the Director of the Department of Corrections designates, and is the warrant and authority of the Director for the imprisonment and execution of the prisoner, as therein provided and commanded. The Director shall return the certified copy of the judgment of conviction to the county clerk of the county in which it was issued. The other triplicate copy is the warrant and authority of the sheriff to deliver the prisoner to the authorized person designated by the Director. The final triplicate copy must be returned to the county clerk by the sheriff with the sheriff's proceedings endorsed thereon.

**NEV. REV. STAT. ANN. § 176.355 (West 2020)**

…

(2) The Director of the Department of Corrections shall:
(a) Execute a sentence of death within the week, the first day being Monday and the last day being Sunday, that the judgment is to be executed, as designated by the district court. The Director may execute the judgment at any time during that week if a stay of execution is not entered by a court of appropriate jurisdiction.

…

***Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**NEV. REV. STAT. ANN. § 176.495 (West 2020)**

(1) If for any reason a judgment of death has not been executed, and it remains in force, the court in which the conviction was had must, upon the application of the Attorney General or the district attorney of the county in which the conviction was had, cause another warrant to be drawn, signed by the judge and attested by the clerk

under the seal of the court, and delivered to the Director of the Department of Corrections.

(2) The warrant must state the conviction and judgment and appoint a week, the first day being Monday and the last day being Sunday, within which the judgment is to be executed. The first day of that week must be not less than 15 days nor more than 30 days after the date of the warrant. The Director shall execute a sentence of death within the week the judgment is to be executed, as designated by the district court. The Director may execute the judgment at any time during that week if a stay of execution is not entered by a court of appropriate jurisdiction.

**NEV. REV. STAT. ANN. § 176.505 (West 2020)**

(1) When a remittitur showing the affirmation of a judgment of death has been filed with the clerk of the court from which the appeal has been taken, the court in which the conviction was obtained shall inquire into the facts, and, if no legal reasons exist prohibiting the execution of the judgment, shall make and enter an order requiring the Director of the Department of Corrections to execute the judgment at a specified time. The presence of the defendant in the court at the time the order of execution is made and entered, or the warrant is issued, is not required.

(2) When an opinion, order dismissing appeal or other order upholding a sentence of death is issued by the appellate court of competent jurisdiction pursuant to chapter 34 or 177 of NRS, the court in which the sentence of death was obtained shall inquire into the facts and, if no legal reason exists prohibiting the execution of the judgment, shall make and enter an order requiring the Director of the Department of Corrections to execute the judgment during a specified week. The presence of the defendant in the court when the order of execution is made and entered, or the warrant is issued, is not required.

(3) Notwithstanding the entry of a stay of issuance of a remittitur in the appellate court of competent jurisdiction following denial of appellate relief in a proceeding brought pursuant to chapter 34 or 177 of NRS, the court in which the conviction was obtained shall, upon application of the Attorney General or the district attorney of the county in which the conviction was obtained, cause another warrant to be drawn, signed by the judge and attested by the clerk under the seal of the court, and delivered to the Director of the Department of Corrections.

**NEV. REV. STAT. ANN. § 176.455 (West 2020)**

(1) If it is found by the court that the convicted person is insane, the judge shall make and enter an order staying the execution of the judgment of death until the convicted person becomes sane, and shall therein order the Director of the Department of Corrections to confine such person in a safe place of confinement until the convicted person's reason is restored.
…

(3) If the convicted person thereafter becomes sane, notice of this fact shall be given by the Director to a judge of the court staying the execution of the judgment, and the judge, upon being satisfied that such person is then sane, shall enter an order vacating the order staying the execution of the judgment.

(4) The clerk of the court shall immediately serve or cause to be served three certified copies of such vacating order as follows: One on the Director, one on the Governor, for the use of the State Board of Pardons Commissioners, and one on the clerk of the district court of the county in which the conviction was had, who shall give notice thereof to the district attorney of such county, whereupon proceedings shall be instituted in the last mentioned district court for the issuance of a new warrant of execution of the judgment of death in the manner provided in NRS 176.495.

**NEV. REV. STAT. ANN. § 176.475 (West 2020)**

2. If [a] female is found to be pregnant, the judge shall enter an order staying the execution of the judgment of death, and shall therein order the Director to confine such female in a safe place of confinement commensurate with her condition until further order of the court.

3. When such female is no longer pregnant, notice of this fact shall be given by the Director to a judge of the court staying the execution of the judgment. Thereupon the judge, upon being satisfied that the pregnancy no longer exists, shall enter an order vacating the order staying the execution of the judgment and shall direct the clerk of such court to serve or cause to be served three certified copies of such order, one on the Director, one on the Governor, for the use of the State Board of Pardons Commissioners, and one on the clerk of the district court of the county in which the conviction was had, who shall give notice thereof to the district attorney of such county, whereupon proceedings shall be instituted in the last mentioned district court for the issuance of a new warrant of execution of the judgment in the manner provided in NRS 176.495.

# NORTH CAROLINA

## *Laws Regarding Initial Date Setting and the Re-Setting of Execution Dates After Prior Dates Have Expired*

### N.C. GEN. STAT ANN. § 15-194 (West 2020)

(a) In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b), the sentencing judge need not specify the date and time the execution is to be carried out by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety. The Attorney General of North Carolina shall provide written notification to the Secretary of the Department of Public Safety of the occurrence of any of the following not more than 90 days from that occurrence:

> (1) The United States Supreme Court has filed an opinion upholding the sentence of death following completion of the initial State and federal postconviction proceedings, if any;
>
> (2) The mandate issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) affirming the capital defendant's death sentence and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;
>
> (3) The capital defendant, if indigent, failed to timely seek the appointment of counsel pursuant to G.S. 7A-451(c), or failed to file a timely motion for appropriate relief as required by G.S. 15A-1415(a);
>
> (4) The superior court denied the capital defendant's motion for appropriate relief, but the capital defendant failed to file a timely petition for writ of certiorari to the Supreme Court of North Carolina pursuant to N.C.R. App. P. 21(f);
>
> (5) The Supreme Court of North Carolina denied the capital defendant's petition for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if certiorari was granted, upheld the capital defendant's death sentence, but the capital defendant failed to file a timely petition for writ of certiorari to the United States Supreme Court; or
>
> (6) Following State postconviction proceedings, if any, the capital defendant failed to file a timely petition for writ of habeas corpus in the appropriate federal district court, or failed to timely appeal or petition an adverse habeas corpus decision to the United States Court of Appeals for the Fourth Circuit or the United States Supreme Court.

The Secretary of the Department of Public Safety shall immediately schedule a date for the execution of the original death sentence not less than 15 days or more than

120 days from the date of receiving written notification from the Attorney General under this section.
…

## OHIO

### *Laws Regarding Initial Date Setting*

**OHIO REV. CODE ANN. § 2949.22 (West 2020)**
…

(B) A death sentence shall be executed . . . on the day designated by the judge passing sentence or otherwise designated by a court in the course of any appellate or postconviction proceedings.
…

### *Laws Regarding the Re-Setting of Execution Dates After Prior Dates Have Expired*

**OHIO REV. CODE ANN. § 2949.28 (West 2020)**
…

(B)(4) Execution of the sentence shall be suspended pending completion of [an insanity] inquiry only upon an order of the supreme court. If the supreme court issues an order granting a stay of execution, the supreme court in that order also may authorize the court of common pleas to continue the stay of execution or to set a new date for execution as provided in this section or section 2949.29 of the Revised Code.
…

**OHIO REV. CODE ANN. § 2949.29 (West 2020)**
…

(B) If it is found that the convict is insane and if authorized by the supreme court, the judge shall continue any stay of execution of the sentence previously issued, order the convict to be confined in the area at which other convicts sentenced to death are confined or in a maximum security medical or psychiatric facility operated by the department of rehabilitation and correction, and order treatment of the convict. Thereafter, the court at any time may conduct and, on motion of the prosecuting attorney, shall conduct a hearing pursuant to division (A) of this section to continue the inquiry into the convict's insanity and, as provided in section 2949.28

of the Revised Code, may appoint one or more psychiatrists or psychologists to make a further examination of the convict and to submit a report to the court. If the court finds at the hearing that the convict is not insane and if the time previously appointed for execution of the sentence has not passed, the sentence shall be executed at the previously appointed time. If the court finds at the hearing that the convict is not insane and if the time previously appointed for execution of the sentence has passed, the judge who conducts the hearing, if authorized by the supreme court, shall appoint a new time for execution of the sentence to be effective fifteen days from the date of the entry of the judge's findings in the hearing.
…

**OHIO REV. CODE ANN. § 2949.27 (West 2020)**

If a convicted felon escapes after sentence of death, and is not retaken before the time fixed for his execution, any sheriff may rearrest and commit him to the county jail, and make return thereof to the court in which the sentence was passed. Such court shall again fix the time for execution, which shall be carried into effect as provided in sections 2949.21 to 2949.26 [execution procedures], inclusive, of the Revised Code.

**OHIO REV. CODE ANN. § 2949.31 (West 2020)**
…

If it is found at the inquiry that the convict is pregnant, the judge shall suspend execution of the sentence and order the convict to be confined in the area at which other convicts sentenced to death are confined or in an appropriate medical facility. When the court finds that the convict no longer is pregnant, if the time previously appointed for execution of the sentence has not passed, the sentence shall be executed at the previously appointed time. When the court finds that the convict no longer is pregnant, if the time previously appointed for execution of the sentence has passed, the judge who conducts the inquiry, if authorized by the supreme court, shall appoint a new time for execution of the sentence to be effective fifteen days from the date of the entry of the judge's ruling in the inquiry.

# OKLAHOMA

## *Laws Regarding Initial Date Setting and Issuance of Execution Warrants*

### OKLA. STAT. ANN. tit. 22 § 1001 (West 2020)

When judgment of death is rendered, the judge must sign and deliver to the sheriff of the county a warrant duly attested by the clerk, under the seal of the court, stating the conviction and judgment and appointing a day on which the judgment is to be executed, which must be not less than sixty (60) nor more than ninety (90) days from the time of the judgment and must direct the sheriff to deliver the defendant within ten (10) days from the time of judgment to the warden of the state prison at McAlester, in this state, for execution.

## *Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired*

### OKLA. STAT. ANN. tit. 22 § 1001.1 (West 2020)

(A) The execution of the judgment in cases where sentence of death is imposed shall be ordered by the Court of Criminal Appeals to be carried out thirty (30) days after the defendant fails to meet any of the following time conditions:

1. If a defendant does not file a petition for writ of certiorari in the United States Supreme Court within ninety (90) days from the issuance of the mandate in the original state direct appeal unless a first application for post-conviction relief is pending;
2. If a defendant does not file an original application for post-conviction relief in the Court of Criminal Appeals within ninety (90) days from the filing of the appellee's brief on direct appeal or, if a reply brief is filed, ninety (90) days from the filing of that reply brief, or a petition in error to the Court of Criminal Appeals after remand within thirty (30) days from entry of judgment by the district court disposing of the application for post-conviction relief;
3. If a defendant does not file a writ of certiorari to the United States Supreme Court within ninety (90) days from a denial of state post-conviction relief by the Oklahoma Court of Criminal Appeals;
4. If a defendant does not file the first petition for a federal writ of habeas corpus within sixty (60) days from a denial of the certiorari petition or from a decision by the United States Supreme Court from post-conviction relief;

5. If a defendant does not file an appeal in the United States Court of Appeals for the Tenth Circuit from a denial of a federal writ of habeas corpus within seventy (70) days; or

6. If a defendant does not file a petition for writ of certiorari with the United States Supreme Court from a denial of the appeal of the federal writ of habeas corpus within ninety (90) days.

…

(D) Should a stay of execution be issued by any state or federal court, a new execution date shall be set by operation of law sixty (60) days after the dissolution of the stay of execution. The new execution date shall be set by the Court of Criminal Appeals without necessity of application by the state, but the Attorney General, on behalf of the state, shall bring to the attention of the Court of Criminal Appeals the fact of the dissolution of a stay of execution and suggest the appropriateness of the setting of a new execution date.

(E) After an execution date has been set pursuant to the provisions of this section, should a stay of execution be issued by any state or federal court, a new execution date shall be set by operation of law thirty (30) days after the dissolution of the stay of execution. The new execution date shall be set by the Court of Criminal Appeals without necessity of application by the state, but the Attorney General, on behalf of the state, shall bring to the attention of the Court of Criminal Appeals the fact of the dissolution of a stay of execution and suggest the appropriateness of setting a new execution date.

(F) After an execution date has been set pursuant to the provisions of this section, should a stay of execution be issued by any state or federal court and then vacated by such court, the sentence of death shall be carried out as ordered prior to the issuance of such vacated stay of execution. If the prior execution date has expired prior to the vacation of the stay of execution, a new execution date shall be set by operation of law thirty (30) days after the vacation of the stay of execution. The new execution date shall be set by the Court of Criminal Appeals without necessity of application by the state, but the Attorney General, on behalf of the state, shall bring to the attention of the Court of Criminal Appeals the fact of a vacation of the stay of execution and suggest the appropriateness of the setting of a new execution date.

(G) After an execution date has been set pursuant to the provisions of this section, should the Governor of the State of Oklahoma issue a stay of execution pursuant to the powers articulated in Section 10 of Article VI of the Oklahoma Constitution, the Governor shall, simultaneous to the granting of the stay, set a new execution date.

The sentence of death shall be carried out not more than thirty (30) days after the dissolution of the stay of execution; however, nothing shall prevent the Governor from ordering the new execution date to be on the first day immediately following dissolution of the stay.

**OKLA. STAT. ANN. tit. 22 § 1008 (West 2020)**

If it is found that the defendant is sane the warden must proceed to execute the judgment as certified in the warrant; if it is found that the defendant is insane, the warden must suspend the execution and transmit a certified copy of the order mentioned in the last section to the Governor and deliver the defendant, together with a certified copy of such order to the medical superintendent of the hospital named in such order. When the defendant recovers his reason the superintendent of such hospital must certify that fact to the Governor, who must thereupon issue to the warden his warrant, appointing a day for the execution of the judgment.

**OKLA. STAT. ANN. tit. 22 § 1011 (West 2020)**

If it is found that a female is not pregnant the warden must execute the judgment. If it is found that she is pregnant, the warden must suspend the execution of the judgment and transmit a certified copy of the findings and certificate to the Governor. When the Governor receives from the warden a certificate that the defendant is no longer pregnant, he must issue to the warden his warrant appointing a day for the execution of the judgment.

# OREGON

***Laws Regarding Initial Date Setting, Issuance of Execution Warrants, and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**OR. REV. STAT. ANN. § 137.463 (West 2020)**

(1) When a sentence of death is pronounced, the clerk of the court shall deliver a copy of the judgment of conviction and sentence of death to the sheriff of the county. The sheriff shall deliver the defendant within 20 days from the date the judgment is entered to the correctional institution designated by the Director of the Department of Corrections pending the determination of the automatic and direct review by the Supreme Court under ORS 138.052.

(2) If the Supreme Court affirms the sentence of death, a death warrant hearing shall take place in the court in which the judgment was rendered within 30 days after the effective date of the appellate judgment or, upon motion of the state, on a later date. The following apply to a death warrant hearing under this subsection:

(a) The defendant must be present; and

(b) The defendant may be represented by counsel. If the defendant was represented by appointed counsel on automatic and direct review, that counsel's appointment continues for purposes of the death warrant hearing and any related matters. If that counsel is unavailable, the court shall appoint counsel pursuant to the procedure in ORS 135.050 and 135.055.

(3)(a) If the defendant indicates the wish to waive the right to counsel for the purpose of the death warrant hearing, the court shall inquire of the defendant on the record to ensure that the waiver is competent, knowing and voluntary.

(b) If the court finds that the waiver is competent, knowing and voluntary, the court shall discharge counsel.

(c) If the court finds on the record that the waiver of the right to counsel granted by this section is not competent, knowing or voluntary, the court shall continue the appointment of counsel.

(d) Notwithstanding the fact that the court finds on the record that the defendant competently, knowingly and voluntarily waives the right to counsel, the court may continue the appointment of counsel as advisor only for the purposes of the death warrant hearing.

(4) At the death warrant hearing, the court:

(a) After appropriate inquiry, shall make findings on the record whether the defendant suffers from a mental condition that prevents the defendant from comprehending the reasons for the death sentence or its implication. The defendant has the burden of proving by a preponderance of the evidence that the defendant suffers from a mental condition that prevents the defendant from comprehending the reasons for the death sentence or its implication.

(b) Shall advise the defendant that the defendant is entitled to counsel in any post-conviction proceeding and that counsel will be appointed if the defendant is financially eligible for appointed counsel at state expense.

(c) Shall determine whether the defendant intends to pursue any challenges to the sentence or conviction. If the defendant states on the record that the defendant does not intend to challenge the sentence or conviction, the court after advising the defendant of the consequences shall make a finding on the record whether the defendant competently, knowingly and voluntarily waives the right to pursue:

(A) A petition for certiorari to the United States Supreme Court;
(B) Post-conviction relief under ORS 138.510 to 138.680; and
(C) Federal habeas corpus review under 28 U.S.C. 2254.

(5) Following the death warrant hearing, a death warrant, signed by the trial judge of the court in which the judgment was rendered and attested by the clerk of that court, shall be drawn and delivered to the superintendent of the correctional institution designated by the Director of the Department of Corrections. The death warrant shall specify a day on which the sentence of death is to be executed and shall authorize and command the superintendent to execute the judgment of the court. The trial court shall specify the date of execution of the sentence, taking into consideration the needs of the Department of Corrections. The trial court shall specify a date not less than 90 days nor more than 120 days following the effective date of the appellate judgment.

(6)(a) Notwithstanding any other provision in this section, if the court finds that the defendant suffers from a mental condition that prevents the defendant from comprehending the reasons for the sentence of death or its implications, the court may not issue a death warrant until such time as the court, after appropriate inquiries, finds that the defendant is able to comprehend the reasons for the sentence of death and its implications.

(b)(A) If the court does not issue a death warrant because it finds that the defendant suffers from a mental condition that prevents the defendant from comprehending the reasons for the sentence of death or its implications, the court shall conduct subsequent hearings on the issue on motion of the district attorney or the defendant's counsel or on the court's own motion, upon a showing that there is substantial reason to believe that the defendant's condition has changed.

(B) The court may hold a hearing under this paragraph no more frequently than once every six months.

(C) The state and the defendant may obtain an independent medical, psychiatric or psychological examination of the defendant in connection with a hearing under this paragraph.

(D) In a hearing under this paragraph, the defendant has the burden of proving by a preponderance of the evidence that the defendant continues to suffer from a mental condition that prevents the defendant from comprehending the reasons for the sentence of death or its implications.

(7) If for any reason a sentence of death is not executed on the date appointed in the death warrant, and the sentence of death remains in force and is not stayed under ORS 138.686 [automatic stay of death sentence] or otherwise by a court of competent jurisdiction, the court that issued the initial death warrant, on motion of the state and without further hearing, shall issue a new death warrant specifying a new date on which the sentence is to be executed. The court shall specify a date for execution of the sentence, taking into consideration the needs of the Department of Corrections. The court shall specify a date not more than 20 days after the date on which the state's motion was filed.

…

## PENNSYLVANIA

***Laws Regarding Initial Date Setting, Issuance of Execution Warrants, and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**61 PA. STAT. AND CONS. STAT. ANN. § 4302 (West 2020)**

(a) Time.--

(1) After the receipt of the record pursuant to 42 Pa.C.S. § 9711(i) (relating to sentencing procedure for murder of the first degree), unless a pardon or commutation has been issued, the Governor shall, within 90 days, issue a warrant specifying a day for execution which shall be no later than 60 days after the date the warrant is signed.

(2) If, because of a reprieve or a judicial stay of the execution, the date of execution passes without imposition of the death penalty, unless a pardon or commutation has been issued, the Governor shall, within 30 days after receiving notice of the termination of the reprieve or the judicial stay, reissue a warrant specifying a day for execution which shall be no later than 60 days after the date of reissuance of the warrant.

…

(c) Failure to timely comply.--If the Governor fails to timely comply with the provisions of this section and a pardon or commutation has not been issued, the secretary shall, within 30 days following the Governor's failure to comply, schedule and carry out the execution no later than 60 days from the date by which the Governor was required to sign the warrant under subsection (a).

# SOUTH CAROLINA

***Laws Regarding Initial Date Setting***

**S.C. CODE ANN. § 17-25-370 (2020)**

In all criminal cases in which the sentence of death is imposed and which are appealed to the Supreme Court or in which notice of intention to appeal is given, when the judgment below has been affirmed or the appeal dismissed or abandoned, the clerk of the Supreme Court, when the remittitur is sent down or the appeal is dismissed or abandoned, shall notify the Commissioner of the prison system or his duly appointed officer in charge of the State Penitentiary of the final disposition of such appeal and, on the fourth Friday after the receipt of such notice the sentence appealed from shall be duly carried out as provided by law in such cases, unless stayed by order of the Supreme Court or respite or commutation of the Governor.

# SOUTH DAKOTA

***Laws Regarding Initial Date Setting and Issuance of Execution Warrants***

**S.D. CODIFIED LAWS § 23A-27A-15 (2020)**

Whenever judgment of death is rendered, the judge shall also sign and provide to the Governor, the secretary of corrections, the sheriff of the county where the crime was committed, and the warden a warrant of death sentence and execution, along with a brief statement of the facts and circumstances of the case, duly attested by the clerk under the seal of the court. The warrant of death sentence and execution shall describe the conviction and sentence and appoint the week within which the sentence shall be executed. The warrant of death sentence and execution shall be directed to the warden of the state penitentiary at Sioux Falls, commanding the warden to execute the sentence on some day within the week appointed.

***Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**S.D. CODIFIED LAWS § 23A-27A-31 (2020)**

If the time period for the execution of any defendant in a capital case has passed by reason of a stay of proceedings incident to appellate review or by reason of the

issuance of a writ of habeas corpus, certiorari, or other original remedial writ of the Supreme Court, or for any other reason, the sentencing court shall issue a warrant of death sentence and execution in accordance with § 23A-27A-15 appointing a new week for the execution of the original sentence without requiring the defendant to be brought before the sentencing court. Upon its issuance, the clerk of the court in which the sentence was pronounced shall immediately send a certified copy of the warrant of death sentence and execution to all attorneys of record, to the warden having custody of the defendant, to the secretary of corrections, and to the Governor. The warden shall execute the warrant of death sentence and execution accordingly. This procedure applies to any case in which the time period for carrying out the original warrant of death sentence and execution has elapsed without regard to whether the original warrant was issued prior or subsequent to July 1, 1998.

**S.D. CODIFIED LAWS § 23A-27A-29 (2020)**

If the execution of a sentence is suspended pursuant to § 23A-27A-28 [execution suspended if person is pregnant], as soon as the sentencing court is satisfied the defendant is no longer pregnant, the sentencing court shall forthwith issue a warrant of death sentence and execution appointing a week for her execution, pursuant to her sentence. The week for the execution shall be within a period of not less than thirty nor more than ninety days from the date of the warrant of death sentence and execution. In no case may the appointed week of execution be sooner than the week appointed by the sentencing court pursuant to § 23A-27A-15.

**S.D. CODIFIED LAWS § 23A-27A-26 (2020)**

If the sentencing court determines the defendant is mentally competent to be executed, the sentencing court shall certify the fact to the Governor, the secretary of corrections, and the warden having custody of the defendant. The sentencing court, upon determination the defendant is mentally competent to be executed, shall issue a warrant of death sentence and execution appointing a week beginning within a period of not less than thirty nor more than ninety days from the date of the warrant, for the execution of the defendant pursuant to the defendant's sentence unless the sentence has been commuted or the defendant pardoned. In no case may the appointed week of execution be sooner than the week appointed by the sentencing court pursuant to § 23A-27A-15.

# TENNESSEE

***Laws Regarding Initial Date Setting***

**TENN. CODE ANN. § 40-23-119 (West 2020)**

Upon the convict being brought before the court, it shall inquire into the circumstances, and, if no legal reason exists against the execution of the sentence, shall order the warden of the state penitentiary in which the death chamber is located to execute the defendant on a day to be fixed by the court.

***Laws Regarding the Re-Setting of Execution Dates After Prior Dates Have Expired***

**TENN. CODE ANN. § 40-23-117 (West 2020)**

When, from any cause, an inmate sentenced to death has not been executed pursuant to the sentence, the sentence stands in full force, and shall be carried into execution by the court in which the inmate was tried.

# TEXAS

***Laws Regarding Initial Date Setting and Issuance of Execution Warrants***

**TEX. CODE CRIM. PROC. ANN. art. 43.141 (West 2020)**

(a) If an initial application under Article 11.071 is timely filed, the convicting court may not set an execution date before:

(1) the court of criminal appeals denies relief; or

(2) if the case is filed and set for submission, the court of criminal appeals issues a mandate.

(b) If an original application is not timely filed under Article 11.071 or good cause is not shown for an untimely application under Article 11.071, the convicting court may set an execution date.

…

(c) An execution date may not be earlier than the 91st day after the date the convicting court enters the order setting the execution date.

…

(e) If the convicting court withdraws the order of the court setting the execution date, the court shall recall the warrant of execution. If the court modifies the order of the court setting the execution date, the court shall recall the previous warrant of execution, and the clerk of the court shall issue a new warrant.

**TEX. CODE CRIM. PROC. ANN. art. 43.15(a) (West 2020)**

Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced shall, not later than the 10th day after the court enters its order setting the date for execution, issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court, and the time fixed for the execution, and which shall be directed to the director of the correctional institutions division of the Texas Department of Criminal Justice at Huntsville, Texas, commanding the director to proceed, at the time and place named in the order of execution, to carry the same into execution, as provided in Article 43.14 [regarding execution procedure], and shall deliver such warrant to the sheriff of the county in which such judgment of conviction was had, to be delivered by the sheriff to the director, together with the condemned person if the person has not previously been so delivered.

## UTAH

***Laws Regarding Initial Date Setting and Issuance of Execution Warrants***

**UTAH CODE ANN. § 77-19-6 (West 2020)**

(1)(a) When judgment of death is rendered, a warrant, signed by the judge and attested by the clerk under the seal of the court, shall be drawn and delivered to the sheriff of the county where the conviction is had.

> (b) The sheriff shall deliver the warrant and a certified copy of the judgment to the executive director of the Department of Corrections or the executive director's designee at the time of delivering the defendant to the custody of the Department of Corrections.

(2) The warrant shall state the conviction, the judgment, the method of execution, and the appointed day the judgment is to be executed, which may not be fewer than

30 days nor more than 60 days from the date of issuance of the warrant, and may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301.

(3) The Department of Corrections shall determine the hour, within the appointed day, at which the judgment is to be executed.

***Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**UTAH CODE ANN. § 77-19-9 (West 2020)**

(1) If for any reason a judgment of death has not been executed and remains in force, the court where the conviction was had, on application of the prosecuting attorney, shall order the defendant to be brought before it or, if the defendant is at large, issue a warrant for the defendant's apprehension.

(2) When the defendant is brought before the court, it shall inquire into the facts and, if no legal reason exists against the execution of judgment, the court shall make an order requiring the executive director of the Department of Corrections or the executive director's designee to ensure that the judgment is executed on a specified day, which may not be fewer than 30 nor more than 60 days after the court's order, and may not be a Sunday, Monday, or a legal holiday, as defined in Section 63G-1-301. The court shall also draw and have delivered another warrant under Section 77-19-6.

(3) The Department of Corrections shall determine the hour, within the appointed day, at which the judgment is to be executed.

# VIRGINIA

***Laws Regarding Initial Date Setting, Issuance of Execution Warrants, and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**VA. CODE ANN. § 53.1-232.1 (West 2020)**

(A) Sentence of death shall not be executed sooner than thirty days after the sentence is pronounced. The court shall, in imposing such sentence, fix a day when the execution shall occur.

(B) Whenever the day fixed for the execution of a sentence of death shall have passed without the execution of the sentence and it becomes necessary to fix a new date therefor, the circuit court which pronounced the sentence shall fix another day for the execution. The person to be executed need not be present but shall be represented by an attorney when such other day is fixed. A copy of the order fixing the new date of execution shall be promptly furnished by the clerk of the court making the order to the Director. The Director shall cause a copy of the order to be delivered to the person to be executed, and, if he is unable to read it, cause it to be explained to him at least ten days before the date fixed for such execution, and make return thereof to the clerk of the court which issued such order.

(C) When the day fixed for the execution of a sentence of death has passed without the execution of the sentence by reason of a reprieve granted by the Governor, it shall not be necessary for the court to resentence the prisoner. The sentence of death shall be executed on the day to which the prisoner has been reprieved.
…

# WYOMING

### *Laws Regarding Initial Date Setting and Issuance of Execution Warrants*

**WYO. STAT. ANN. § 7-13-905 (West 2020)**

(a) A sentence of death shall be executed within the confines of a state penal institution designated by the director of the department of corrections, before the hour of sunrise on the day specified in the warrant which shall not be less than thirty (30) days after the date of the judgment.
…

**WYO. STAT. ANN. § 7-13-906 (West 2020)**

Whenever a person is sentenced to death, the judge passing sentence shall issue a warrant, signed by the judge and attested by the clerk under the seal of the court, reciting the conviction and sentence and fixing a date of execution. The warrant shall be directed to the director of the department of corrections and shall be delivered by the sheriff at the time the prisoner is delivered to the state penal institution designated by the director.

***Laws Regarding Issuance of Execution Warrants and the Re-Setting of Execution Dates After Prior Dates Have Expired***

**WYO. STAT. ANN. § 7-13-909 (West 2020)**

If for any reason a sentence of death has not been executed and remains in force, the court in which sentence was pronounced, on application of the district attorney, shall, if no legal reason exists for not proceeding with the execution of the sentence, enter an order setting a new date for the execution of the sentence, which shall not be less than thirty (30) days from the date of the order. The court may order the prisoner to be brought before it or, if the prisoner is at large, issue a warrant for the prisoner's arrest. The court shall also issue a new warrant directed to the director of the department of corrections to carry out the execution of the sentence as provided by W.S. 7-13-906.

**WYO. STAT. ANN. § 7-13-913 (West 2020)**

…

(b) If the court determines [a] female is pregnant, the court shall order the execution of the sentence suspended until it is determined that the female is no longer pregnant at which time the court shall issue a warrant appointing a new date for the execution of the sentence.

**WYO. STAT. ANN. § 7-13-910 (West 2020)**

(a) If execution of sentence is suspended until a specified day or if a temporary reprieve is granted until a specified day, the fact of the suspension or reprieve shall be noted on the warrant. On the arrival of the specified day the director of the department of corrections shall proceed with the execution without the necessity for the issuance of a new warrant.

…

**WYO. STAT. ANN. § 7-13-902 (West 2020)**

…

(k) If the court finds that the convict has the requisite mental capacity, the court shall issue an order detailing its findings and conclusions and appointing a time for the convict's execution.

**WYO. STAT. ANN. § 7-13-903 (West 2020)**

(a) If the court finds that the convict does not have the requisite mental capacity, the judge shall suspend the execution of the convict. Thereafter a designated examiner shall reexamine the convict at least every twelve (12) months at the direction of the court. After two (2) annual examinations the court may suspend reexamination of the convict.

(b) When the designated examiner determines after examination required by this section that the conditions justifying the suspension of the execution of the death sentence no longer exist, he shall immediately report his determination to the court. The court shall commence a new hearing according to W.S. 7-13-902.