

No. \_\_\_\_\_

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IN THE  
Supreme Court of the United States

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Richard Stephen Fairchild,  
*Applicant,*

v.

Jim Farris, Warden,  
Oklahoma State  
Penitentiary, *Respondent*

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**EMERGENCY APPLICATION FOR STAY OF EXECUTION PENDING  
FILING AND DISPOSITION OF PETITION FOR WRIT OF CERTIORARI**

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**THIS IS A CAPITAL CASE WITH IMMINENT EXECUTION SCHEDULED  
FOR  
NOVEMBER 20, 2022 AT 10:00 A.M.**

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**APPENDIX**

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November 16, 2022

EMMA ROLLS\*, OBA # 18820  
First Assistant Federal Public Defender  
Western District of Oklahoma  
215 Dean A. McGee, Suite 707  
Oklahoma City, Oklahoma 73102  
(405) 609-5975 (Telephone)  
Emma\_Rolls@fd.org  
*\*Counsel of Record*

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### APPENDIX B

*Fairchild v. State of Oklahoma*, Case No. D-1996-121

Motion Alleging Incompetency to be Executed Under Okla. Stat. tit. 22,

§ 1005.1 ..... 00005



FILED  
COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

NOV 16 2022

JOHN D. HADDEN  
CLERK

**Case No. D-1996-121**

### Execution Date set

**November 17, 2022 at 10:00 a.m.**

Appellant, Richard Fairchild, through undersigned counsel, requests the Court a stay of execution under Okla. Stat. tit. 22, § 1001.1(C) and Okla. Stat. tit. 22, § 1005.1(G).<sup>1</sup> Mr. Fairchild has also filed a Motion Alleging Incompetence To Be Heard Under Okla. Stat. tit. 22, § 1005.1 simultaneously with this emergency application. In support of his application for stay of execution, Mr. Fairchild respectfully shows the Court as follows:

1. Mr. Fairchild is scheduled to be executed by the State of Oklahoma on

<sup>1</sup> Okla. Stat. tit. 22, § 1005.1(G) provides that this Court “may issue stays of execution as necessary to permit inquiry into the person’s mental capacity to be executed.” In abundance of caution, Mr. Fairchild also moves this Court under the general stay statute.

Thursday, November 17, 2022 at 10:00 a.m.

2. In his simultaneously filed Motion Alleging Incompetence To Be Executed Under Okla. Stat. tit. 22, § 1005.1, Mr. Fairchild has presented evidence and legal argument to substantiate the claim he is currently incompetent to be executed. Mr. Fairchild adopts and incorporates here all of the factual allegations and legal argument substantiating his incompetence-to-be executed claim.

3. Mr. Fairchild has now expeditiously presented this matter to the Court.

4. As reflected in his Motion Alleging Incompetence To Be Executed Under Okla. Stat. tit. 22, § 1005.1, Mr. Fairchild presents, at a minimum, a significant possibility he cannot be constitutionally executed due to present incompetence. *See generally Ford v. Wainwright*, 477 U.S. 399, 406-09 (1986) and *Panetti v. Quarterman*, 551 U.S. 930, 959 (2007).

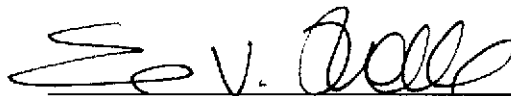
5. Mr. Fairchild will suffer irreparable harm without a stay of execution. Denying a stay risks “foreclose[ing] . . . review,” which constitutes “irreparable harm.” *Garrison v. Hudson*, 468 U.S. 1301, 1302 (1984). A stay would act, here, to prevent such risk of harm while maintaining the status quo. The additional time needed to ensure an incompetent person is not illegally executed far outweighs any interest the State of Oklahoma may have in proceeding with the presently scheduled execution. Halting Mr. Fairchild’s execution for a period to allow for the proper

adjudication of the claim of a mentally ill and incompetent man would not impose harm on the State. Any argument claiming otherwise, i.e., that a date certain is essential for the interests of justice, is outweighed by the overarching need to assure an incompetent person is not executed in violation of state and federal law.

6. As established in his simultaneously filed Motion Alleging Incompetence To Be Executed Under Okla. Stat. tit. 22, § 1005.1, Mr. Fairchild's incompetence-to-be executed claim is potentially meritorious and substantial. A stay is necessary to pursue proceedings under § 1005.1.

There being good reason to issue a stay, Mr. Fairchild requests this Court grant his emergency application.

Respectfully submitted,



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EMMA V. ROLLS, OBA# 18820  
First Assistant Federal Public Defender  
Office of the Federal Public Defender  
Western District of Oklahoma  
215 Dean A. McGee, Suite 707  
Oklahoma City, Oklahoma 73102  
(405) 609-5975 (Telephone)  
(405) 609-5976 (Facsimile)  
[Emma\\_rolls@fd.org](mailto:Emma_rolls@fd.org)  
Counsel for Richard Fairchild

**CERTIFICATE OF SERVICE**

I certify that on the date of filing a copy of the foregoing was served on the Attorney General of the State of Oklahoma by depositing a copy of the same with the Clerk of the Court of the Court of Criminal Appeals of the State of Oklahoma November 16, 2022. The foregoing was also emailed to the Attorney General of the State of Oklahoma.

A handwritten signature in black ink, appearing to read "Emma V. Rolls", written over a horizontal line.

EMMA V. ROLLS



IN THE OKLAHOMA COURT OF CRIMINAL APPEALS

FILED  
COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

RICHARD STEPHEN FAIRCHILD,

NOV 16 2022

*Petitioner,*

Case No. D-1996-121

JOHN D. HADDEN  
CLERK

-VS-

THE STATE OF OKLAHOMA,

EXECUTION DATE set for  
NOVEMBER 17, 2022 at 10:00 a.m.

*Respondent.*

**MOTION ALLEGING INCOMPETENCY TO BE EXECUTED UNDER 22**  
**O.S. 2022, § 1005.1**

**A. Relevant Prior Proceedings.**

Richard Stephen Fairchild was convicted of child abuse murder and sentenced to death in 1996 in Oklahoma County District Court, CF-93-7103, before Judge Major Wilson. His competency to stand trial was raised on November 23, 1994. The trial court found there was a doubt as to competency. O.R. 300-02. After a court-ordered evaluation, psychologist Dr. Kelly Shannon found Mr. Fairchild competent to stand trial. O.R. 452.

**B. Facts Supporting Assertion of Present Mental Incompetence to Be Executed.**

Members of Mr. Fairchild's legal team have witnessed Mr. Fairchild's rapid deterioration into incompetency to be executed in the days nearing his execution.

Mark Jacobs, who has served as Mr. Fairchild's investigator since 2009, swears to the following:

3. The first time I met Richie was in 2009. I have interviewed Richie approximately 30 times at Oklahoma State Penitentiary.
4. During my visits with Richie, he talks non-stop for much of the time about things that are not reality based. For example, Richie believes that his mother and sister are "Gemini twins" and have a death connection, he talks a great deal about his "billions of acres of land in Duncan, Oklahoma" and that his brother is controlling him from outside the prison. Richie tells me that he hears voices non-stop and that he believes his family moved his execution date to his birthday.
5. On November 9, 2022, Kari Hawkins from DOC (left voice mail) contacted me because the prison personnel at OSP were having trouble communicating with Richie about the funeral home that would pick up his body after the execution. According to Ms. Hawkins, Richie had a "visceral reaction" upon learning that the funeral home he had chosen was no longer in business. Ms. Hawkins requested our help in getting Richie to sign the proper paperwork regarding his funeral arrangements. When we met with Richie on November 14<sup>th</sup>, Richie told us that he believes that his brother Max orchestrated the closure of the funeral home and in conjunction with DOC are trying to keep him from being buried in Texas.
6. On November 14, 2022, Tricia Russell and I visited with Richie for approximately two hours. During that visit Richie was completely out of touch with reality. He expressed that he had met with Warden Farris prior to our visit and told him that his brother Max had moved his execution date up which robbed him of two years of his life. Richie believes that his brother Max wants him to be executed so that he can get millions of dollars that Richie has in a bank. Max was selling drugs inside the prison and that he is torturing Richie with a "video voice recorder" that is located within his cell.
7. During this last visit on the 14<sup>th</sup>, Richie gave us a signed and notarized form appointing Michael Parks, his spiritual advisor, as his power of attorney. Richie believes that Max is trying to obtain Richie's property which includes more than 50 million

dollars. Richie told us that Max has been trying to kill him for years for him to obtain this money. Richie wants his property to go to Michael Parks.

8. During our last few visits Richie, it has become almost impossible to carry on any rational conversation. Richie's grasp of reality is slipping. In the past we were able to discuss legal proceedings and case decisions in a limited fashion. On our last visit, we were unable to discuss anything about his upcoming execution. Richie's delusions now encompass his entire thinking process. Richie asked us if Max would be in the execution chamber, told us that Max is running a drug cartel inside the prison. Richie also appeared to have new memory problems that were not present before – e.g., he wondered why he did not have a clemency hearing. Richie told us that he is hearing voices almost constantly.
9. At the request of Dr. Crown who has examined Richie on several occasions, I have been monitoring Richie's behavior and mental status for signs of incompetence. Dr. Crown has explained in meetings with the team that competency is fluid, and he has indicated that due to Richie's brain damage and mental illness, incompetency is likely to occur in the future. Dr. Crown has diagnosed Richie with progressive and severe brain damage and mental illness. Richie has decompensated to such a degree that I believe he does not understand why he is being executed.
10. Although Richie believes he is in prison because of the death of Adam, he firmly believes that the reason he is being executed on 11/17/22, is because his brother Max accelerated his execution date and has been trying to kill him for years.

Att. 1 (Jacobs Dec.).

After Mr. Jacobs and Ms. Russell visited Mr. Fairchild on November 14, 2022, Ms. Russell contacted Dr. Crown and discussed the team's recent interactions with Mr. Fairchild and the team's concern about his present competency to be executed. Dr. Crown offered the following in a signed declaration:

2. On the morning of November 15, 2022, Tricia Russell, habeas counsel for Richie Fairchild, contacted me and informed me that during her visit on November 14, 2022, Mr. Fairchild had mentally decompensated since my last evaluation in August of this year and was floridly psychotic. That is not surprising, as these mental states—to include mental competency—can be very fluid. That is why I informed his legal team they should constantly monitor his present competency.
3. According to Ms. Russell, Mr. Fairchild now believes his brother is constantly tormenting him and that his brother is responsible for requesting his execution date. This marks an escalation of Mr. Fairchild's long-standing delusions and paranoia.
4. In simple terms, Mr. Fairchild has schizophrenia, is psychotic, and suffers from delusional ideation. He does not appear to be competent to be executed because he no longer has any rational understanding of the reason for his execution, but rather, believes it is at the request of his brother. In short, my previous opinion that Mr. Fairchild did not meet the *Ford* and *Panetti* execution incompetency standards has changed.

Att. 2 (Crown Dec. & CV).

### **C. Statutory Eligibility.**

#### **1. Mr. Fairchild Was Unable to Seek Relief Under Oklahoma's Prior Statutory Scheme.**

Mr. Fairchild was evaluated by neuropsychologist Dr. Barry Crown, Ph.D., on August 9, 2022, to determine if Dr. Crown's prior diagnoses of neuropsychological impairment, severe mental illness, and psychosis, *see* Att. 3 (prior Dr. Crown reports), had caused Mr. Fairchild to become ineligible for execution under *Ford v. Wainwright*, 477 U.S. 399 (1986) and *Panetti v. Quarterman*, 551 U.S. 930 (2007). Psychiatrist Dr. Bhushan S. Agharkar, M.D., F.A.P.A., also evaluated Mr. Fairchild in 2014 and concurred in diagnosing Mr.

Fairchild with psychosis and schizophrenia spectrum disorder resulting in paranoia and persecutory delusions. *See* Att. 4 (Prior Dr. Agharkar Report). Dr. Crown and Dr. Agharkar's findings were echoed by those of Oklahoma State Penitentiary's (OSP) mental health staff, who have for years diagnosed Mr. Fairchild with psychotic disorder, reaffirming this diagnosis as recently as this year. *See* Att. 5 (OSP Mental Health Record Excerpts).

Despite these diagnoses, Dr. Crown opined in August that Mr. Fairchild had not reached the narrow forensic standard of incompetency to be executed. Mr. Fairchild thus did not request that Warden Jim Farris, OSP, initiate incompetency to be executed proceedings under the version of Okla. Stat. tit. 22, § 1005.1 that was in effect until November 1, 2022.

However, as Dr. Crown has also made clear, competency is a fluid determination and, especially when accounting for likely decompensation as Mr. Fairchild's execution date drew closer, this could be subject to change. *See* Att. 1 (Declaration of Mark Jacobs) at ¶ 9. *See also Panetti v. Quarterman*, 551 U.S. 930, 943 (2007) (*Ford* claim by nature late-ripening because, among other reasons, "[a]ll prisoners are at risk of deteriorations in their mental state"); *Indiana v. Edwards*, 554 U.S. 164, 175 (2008) (mental illness "is not a unitary concept. It varies in degree. It can vary over time. It interferes with an individual's functioning at different times in different ways."); *cf. Drope v. Missouri*, 420 U.S. 162, 182 (1975) ("Even when

a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial.”). In requesting an execution date in a different case with ongoing execution competency proceedings, the State similarly acknowledged the fluid nature of competency. *See* Notice Pursuant to Okla. Stat. tit. 22, § 1001.1(E) Regarding Execution Date at 5, No. D-2005-1081, *Wade Greely Lay v. State of Oklahoma* (June 10, 2022).

Given the statute’s exceedingly recent transformation and concern about the time limit imposed by the new statute,<sup>1</sup> Mr. Fairchild nonetheless attempted to initiate competency proceedings under the prior statutory regime. Through General Counsel, the warden refused, citing the statute’s repeal. *See* Att. 6 (Letter from Kari Hawkins). This Court should not find that this attempt renders Mr. Fairchild dilatory, as it delayed the current filing by only a single day.

**2. Mr. Fairchild Should Be Able to Overcome Any Time Bar Under the New Statute.**

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<sup>1</sup> In another pending execution competency proceeding, this same concern was cited as one reason for seeking initiation under the prior statute. *See* Brief in Support of Petition for Writ of Mandamus at 12 n.2, *In re James Chandler Ryder*, No. CV-22-196 (Oct. 26, 2022). Respondent stated that he “appreciates Petitioner’s concerns regarding the time requirements in the statute which will replace § 1005 on November 1, 2022.” Motion to Hold in Abeyance at 6, *In re James Chandler Ryder*, No. CV-22-196 (Nov. 1, 2022).

As Mr. Fairchild was denied an opportunity to seek recourse under the prior statute, if he is denied the same under the current statute, he will have no opportunity for the constitutionally necessary inquiry into his competency to be executed under the Eighth Amendment. Given Mr. Fairchild's history of severe mental illness and psychosis, and current decompensation leading to the attached evidence of suspected incompetency, there is ample reason to believe an incompetent person will be executed tomorrow in violation of the Eighth and Fourteenth Amendments.<sup>2</sup>

Further, Mr. Fairchild should not be deemed barred by the seven-day time limit following the setting of an execution date set by § 1005.1(N).<sup>3</sup> Mr. Fairchild's execution date was set on July 1, 2022, well before when the new statute went into effect and when Mr. Fairchild's symptoms of mental illness were believed to deteriorate to reach incompetency. He was thus unable to seek relief under the prior statute, and given the weighty legal questions at issue, Mr. Fairchild cannot be deemed to fall into a legal no-man's land.

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<sup>2</sup> The Oklahoma execution protocol does not protect Mr. Fairchild, as Section VII(B)(5) simply dictates that mental health staff communicate "any concerns" to the agency director, who then must notify the warden, who in turn must notify the "appropriate district attorney and the attorney general." *See* Att. 7 (2015 Oklahoma Execution Protocol) at 15. No further action is mandated or described.

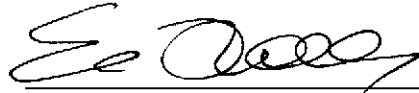
<sup>3</sup> Nothing in this pleading should be construed as a concession as to the overall constitutionality of the new statute or waiver of any future litigation regarding same, on Mr. Fairchild's behalf or that of any other Oklahoma death row inmates.

Should this Court not find Mr. Fairchild exempt from the seven-day-limit due to the simple timing calculus set forth above, Mr. Fairchild should be found to meet the “intervening change” of § 1005.1(O). While neither this Court nor the legislature has yet clarified what might qualify for that provision, Mr. Fairchild’s case should meet any carve-out, however narrow. First, the timing of the statute change itself should qualify, as Mr. Fairchild was of course unable to meet a deadline that did not yet exist seven days after the setting of his execution date. Additionally, given the fluid nature of competency, Mr. Fairchild’s decompensation has only now rendered this filing colorable. Not all death-sentenced inmates with severe mental illness are eligible for *Ford* protection; undersigned counsel thus has filed the present motion only when facts arose supporting and necessitating it, rather than pursue “frivolous” litigation without base. *See Panetti*, 551 U.S. at 946.

### **CONCLUSION**

For the reasons set forth, Mr. Fairchild respectfully requests that this Court remand his case to Oklahoma County District Court for competency proceedings, under Okla. Stat. tit. 22, § 1005.1(F) and under § 1005.1(O), or issue a stay under § 1005.1(G) to allow for further consideration.

Respectfully submitted,



EMMA ROLLS, OBA # 18820  
First Assistant Federal Public Defender  
Western District of Oklahoma  
Capital Habeas Unit  
215 Dean A. McGee, Suite 707  
Oklahoma City, OK 73102  
(405) 609-5975 (phone)  
(405) 609-5976 (fax)  
[Emma\\_Rolls@fd.org](mailto:Emma_Rolls@fd.org)

COUNSEL FOR APPELLANT,  
RICHARD FAIRCHILD

**CERTIFICATE OF SERVICE**

I hereby certify that on the 16<sup>th</sup> day of November, 2022, a true and correct copy of the same was delivered to the Clerk of the Court of Criminal Appeals with instructions to deliver said copy to the Office of the Attorney General of the State of Oklahoma. The foregoing was also emailed to the Attorney General of the State of Oklahoma.



EMMA ROLLS  
Assistant Federal Public Defender

## **DECLARATION OF MARK JACOBS**

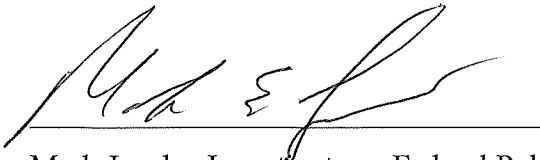
I, MARK JACOBS, do swear under penalty of perjury under the laws of the United States of America, and under the laws of the State of Oklahoma, that the following is true and correct:

1. I am employed as an investigator with the Office of the Federal Public Defender in the Western District of Oklahoma.
2. As part of my job responsibilities, I was assigned to assist in Richard Fairchild's case. I will refer to Richard Fairchild as Richie in this Declaration.
3. The first time I met Richie was in 2009. I have interviewed Richie approximately 30 times at Oklahoma State Penitentiary.
4. During my visits with Richie, he talks non-stop for much of the time about things that are not reality based. For example, Richie believes that his mother and sister are "Gemini twins" and have a death connection, he talks a great deal about his "billions of acres of land in Duncan, Oklahoma" and that his brother is controlling him from outside the prison. Richie tells me that he hears voices non-stop and that he believes his family moved his execution date to his birthday.
5. On November 9, 2022, Kari Hawkins from DOC (left voice mail) contacted me because the prison personnel at OSP were having trouble communicating with Richie about the funeral home that would pick up his body after the execution. According to Ms. Hawkins, Richie had a "visceral reaction" upon learning that the funeral home he had chosen was no longer in business. Ms. Hawkins requested our help in getting Richie to sign the proper paperwork regarding his funeral arrangements. When we met with Richie on November 14<sup>th</sup>, Richie told us that he believes that his brother Max orchestrated the closure of the funeral home and in conjunction with DOC are trying to keep him from being buried in Texas.
6. On November 14, 2022, Tricia Russell and I visited with Richie for approximately two hours. During that visit Richie was completely out of touch with reality. He expressed that he had met with Warden Farris prior to our visit and told him that his brother Max had moved his execution date up which robbed him of two years of his life. Richie believes that his brother Max wants him to be executed so that he can get millions of

dollars that Richie has in a bank. Max was selling drugs inside the prison and that he is torturing Richie with a “video voice recorder” that is located within his cell.

7. During this last visit on the 14<sup>th</sup>, Richie gave us a signed and notarized form appointing Michael Parks, his spiritual advisor, as his power of attorney. Richie believes that Max is trying to obtain Richie’s property which includes more than 50 million dollars. Richie told us that Max has been trying to kill him for years for him to obtain this money. Richie wants his property to go to Michael Parks.
8. During our last few visits Richie, it has become almost impossible to carry on any rational conversation. Richie’s grasp of reality is slipping. In the past we were able to discuss legal proceedings and case decisions in a limited fashion. On our last visit, we were unable to discuss anything about his upcoming execution. Richie’s delusions now encompass his entire thinking process. Richie asked us if Max would be in the execution chamber, told us that Max is running a drug cartel inside the prison. Richie also appeared to have new memory problems that were not present before – e.g., he wondered why he did not have a clemency hearing. Richie told us that he is hearing voices almost constantly.
9. At the request of Dr. Crown who has examined Richie on several occasions, I have been monitoring Richie’s behavior and mental status for signs of incompetence. Dr. Crown has explained in meetings with the team that competency is fluid, and he has indicated that due to Richie’s brain damage and mental illness, incompetency is likely to occur in the future. Dr. Crown has diagnosed Richie with progressive and severe brain damage and mental illness. Richie has decompensated to such a degree that I believe he does not understand why he is being executed.
10. Although Richie believes he is in prison because of the death of Adam, he firmly believes that the reason he is being executed on 11/17/22, is because his brother Max accelerated his execution date and has been trying to kill him for years.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Mark Jacobs', written over a horizontal line.

Mark Jacobs, Investigator – Federal Public Defender

November 16, 2022

Date

**DECLARATION OF DR. BARRY CROWN, PH.D.**

I, DR. BARRY CROWN, do swear under penalty of perjury under the laws of the United States of America, and under the laws of the State of Oklahoma, that the following is true and correct:

1. I am a board-certified neuropsychologist licensed in Florida. My CV is attached.
2. On the morning of November 15, 2022, Tricia Russell, habeas counsel for Richie Fairchild, contacted me and informed me that during her visit on November 14, 2022, Mr. Fairchild had mentally decompensated since my last evaluation in August of this year and was floridly psychotic. That is not surprising, as these mental states—to include mental competency—can be very fluid. That is why I informed his legal team they should constantly monitor his present competency.
3. According to Ms. Russell, Mr. Fairchild now believes his brother is constantly tormenting him and that his brother is responsible for requesting his execution date. This marks an escalation of Mr. Fairchild's long-standing delusions and paranoia.
4. In simple terms, Mr. Fairchild has schizophrenia, is psychotic, and suffers from delusional ideation. He does not appear to be competent to be executed because he no longer has any rational understanding of the reason for his execution, but rather, believes it is at the request of his brother. In short, my previous opinion that Mr. Fairchild did not meet the *Ford* and *Panetti* execution incompetency standards has changed.

I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

 11/16/22

---

Dr. Barry Crown, Neuropsychologist

November 16, 2022

## **BARRY M. CROWN, Ph.D.**

9990 S.W. 77<sup>th</sup> Avenue – Suite 301  
Miami, Florida 33156  
Telephone: (305) 665-0771 Fax: 1 (877) 483-4856  
bmcrown@barrycrown.com

### **Pensacola:**

105 E. Gregory Square – Suite 2A  
Pensacola, Florida 32502  
(850) 439-5550

## **EDUCATION**

Ph.D. Florida State University  
Post-Doctoral Fellow in Psychiatry (Clinical Psychology), Harvard Medical School,  
Massachusetts General Hospital

## **CERTIFICATIONS**

Licensed Psychologist (PY002131), Board of Psychological Examiners, State of Florida  
Chartered Psychologist – CPsychol (019490), United Kingdom  
Diplomate, American Board of Professional Neuropsychology  
Added Qualifications in Child and Adolescent Neuropsychology, Neurodevelopmental  
Disabilities, Geriatric Neuropsychology, Forensic Neuropsychology, Rehabilitation  
Neuropsychology, Addiction Neuropsychology, and Neuroimaging in  
Neuropsychology  
[Chair, National Examinations Committee, 1994-1998; President, 1999-2001; Board  
of Directors, 2001-2010]  
Diplomate (Certified Pain Practitioner), American Academy of Pain Management  
Certified Addictions Specialist, American Academy of Health Care Providers in the  
Addictive Disorders (drugs, alcohol, food, gambling)

## **ADDITIONAL TRAINING**

Forensic Psychology, American Academy of Forensic Psychology  
Family Therapy, Institute for Juvenile Research, Chicago  
SPECT Brain Imaging, Medical College of Wisconsin (Clinical Fellowship)  
Transcranial Doppler and Cerebral Blood Flow Monitoring, UCLA, Geffen School of  
Medicine (Fellowship)

## **PREVIOUS ACADEMIC APPOINTMENTS**

Boston University (Psychology), University of Illinois School of Medicine (Psychiatry),  
University of Miami School of Medicine (Psychiatry and Pediatrics), Florida International  
University (Psychology), Florida State University College of Medicine (clinical services)

## **Barry M. Crown, Ph.D. – Page 2**

### **OTHER EXPERIENCES (SELECTED)**

Research Coordinator, Governor's Office, State of Florida  
Clinical Director, NIMH National Drug Abuse Training Center  
Associate Director, National Council on Drug Abuse  
Co-Director, Child Abuse Project, University of Miami School of Medicine, Jackson Memorial Hospital  
Scientific Advisor to the Director, National Institutes of Health (Addictions)  
Head, Neuropsychology Group, Miami Children's Hospital

### **PRESENT PROFESSIONAL ACTIVITIES**

Independent Practice, Miami, Florida and Pensacola, Florida (Barry M. Crown, Ph.D. and Associates, P.A., The Neuropsychology Laboratory of Barry M. Crown, Ph.D., The Sports Concussion Center of South Florida) – Neuropsychology, Behavioral Medicine (pain management), Clinical Psychology, Addictionology

Medical staff privileges: Baptist Hospital-Miami, South Miami Hospital, Homestead Hospital, Nicklaus (Miami) Children's Hospital

Dean, Continuing Medical Education (Psychology), Clinical Education Coordinator and Chair, Medical Education Executive Committee and Director, Continuing Psychological Education, Baptist Health, Miami, FL

Active Member, Miami Neuroscience Institute, Baptist Health South Florida

Associate Professor of Translational Medicine (Neuroscience), Wertheim College of Medicine, Florida International University

Editorial Board Membership – Applied Neuropsychology: Adult; Applied Neuropsychology: Child

### **PROFESSIONAL MEMBERSHIPS**

American Psychological Association; Florida Psychological Association; National Academy of Neuropsychology; American College of Professional Neuropsychology (Fellow); Society of Clinical Neuropsychology (Division 40 of APA); American Academy of Neurology (Affiliate); Society of Nuclear Medicine and Molecular Imaging; American Academy of Pain Medicine (clinical practice affiliate); American Society of Addiction Medicine (associate); British Psychological Society (Foreign Affiliate - CPsychol); American Association for Marital and Family Therapy (Clinical Fellow); Royal Society of Medicine (Overseas Fellow); Association for Psychological Science

**AFFIDAVIT OF DR. BARRY CROWN**

STATE OF FLORIDA                                 )  
                                                              )  
COUNTY OF MIAMI- DADE                    )       ss.

I, Dr. Barry Crown, being first duly sworn upon oath, depose and state as follows:

1. I am a psychologist trained and licensed to perform psychological and neuropsychological evaluations.

2. I conducted such an examination of Richard Fairchild on April 3, 2002, at H-Unit, Oklahoma State Penitentiary, McAlester, Oklahoma. The examination consisted of a number of tests, directed principally to determining Mr. Fairchild's neuropsychological functioning, combined with a clinical interview.

3. Prior to the testing, I reviewed background materials on Mr. Fairchild. These materials reflected several markers or signs indicating the possibility of organic brain damage. Organic or neurological damage is actual physical damage to or malformation of the brain. The damage can consist of cysts, tumors, or voids. More commonly, it involves tearing or poor interconnectivity of neural tissues as well as metabolic irregularities. The latter types of injury are best diagnosed by functional tests of the type I administered to Mr. Fairchild.

4. Major neurological markers noted for Mr. Fairchild include his participation in organized boxing from ages 14 through 17 and, subsequently, in regular bar fights instigated by his boxing manager/trainer.

5. Aside from these organized and semi-organized bouts, all of which were bare knuckled with no head gear, Mr. Fairchild has an extensive history of head injuries with periods of

unconsciousness. While in the Marines, Mr. Fairchild was struck in the nose by a 267 pound Marine and fell into a concrete post, striking his head. Medical records of his subsequent treatment reflect he suffered 15 to 30 seconds of unconsciousness and jerking movements. On March 17, 1989, while attempting to stop a man from stealing tools, Mr. Fairchild was struck on the head twice with a two by four swung by an accomplice of the thief. He was treated at Wichita General Hospital. On June 13, 1992, Mr. Fairchild was pushed to the ground on a black top, causing him to be unable to walk and leaving him numb from the waist down for a period of time. Radiological tests of this injury indicated a possible fracture to the left zygomatic arch. On September 12, 1992, Mr. Fairchild was the victim of an assault when he was hit in the back of the head. As a result, he had a nasal fracture and dental injuries. These types of injuries can have long term effects because jarring to the brain can tear or otherwise damage brain cells and disrupt neural interconnectivity.

6. Repeated head injuries are very likely to produce cumulative long term effects and are a strong marker for neuropsychological testing of the type I conducted. Even independently of other head injuries, a history of boxing and bar fights is a strong marker for neuropsychological testing.

7. Mr. Fairchild's history indicates other strong markers for neuropsychological testing including: 1) a long history of alcoholism with the binge drinking one would anticipate from that disease, and 2) a history of abuse of a number of other substances. These toxic substances damage brain cells.

8. Perhaps the strongest marker for neuropsychological study is Dr. Smith's finding of chronic organic brain damage based on his psychiatric interview. While a review of Dr. Smith's testimony indicates this finding was not developed by defense counsel, both his report and testimony

reflect it was there.

9. As one might expect, brain damage, whether from head injury or substance abuse, cumulates. Mr. Fairchild's historical profile reflects an extremely high likelihood of significant brain injury.

10. The functional testing I administered reflects significant neuropsychological impairment. There are multiple functional deficits reflecting damage primarily associated with the fronto-temporal portions of the brain.

11. Reasoning, judgment, and problem solving are significantly impaired with reduced capacities in these areas. Mr. Fairchild's ability to control impulses would also likely be impaired by these frontal lobe deficits.

12. The impairments in brain functioning would be markedly potentiated or increased by alcohol intoxication. While Mr. Fairchild may be able to function normally or near normally in some areas, for example with near normal impulse control while sober, functional impairments in these areas are likely to be quite obvious when Mr. Fairchild is intoxicated.

13. Mr. Fairchild exhibits also an auditory attention deficit of organic origin. Mr. Fairchild may not perceive stimuli in the same way fully functioning individuals would and may completely misinterpret what he sees and hears. Again, the effect is potentiated by alcohol intoxication.

14. Mr. Fairchild has extremely poor delayed memory. This result was demonstrated when I administered The Repeatable Battery for the Assessment of Neuropsychological Status. Mr. Fairchild scored in only the 13th percentile on this test, indicating that 87% of the population performs better than him. Delayed memory indicates a person's ability to remember over the

relatively short span of a few hours.

15. Mr. Fairchild would have a strong tendency to fill in memories for times he had no memories either because of his deficient delayed memory, alcohol use, or both. This process is called confabulation. It is completely involuntary. Not only is the process not under the control of Mr. Fairchild, he would not know it was occurring and it would be virtually impossible for him to discern real memories from confabulated ones.

16. Mr. Fairchild was impaired on other tests within the Repeatable Battery but did comparatively much better on some tests. This pattern, as well as my observations of Mr. Fairchild during the testing and other indicators, reflected valid neuropsychological profiles were obtained. Accordingly, it is my opinion that, with a reasonable degree of scientific certainty, Mr. Fairchild is neuropsychologically impaired with the resulting functional effects as indicated.

17. The impairments I found are certainly consistent with Mr. Fairchild's history. In fact, they would be expected. However, my evaluation relies on neuropsychological testing rather than history. The fact the history is so congruent with the test findings is a further indicator the results are valid.

18. While it is impossible to pinpoint the precise cause of Mr. Fairchild's organic deficits, the history suggests they have a multiple causative basis including head trauma from the assaults and from organized boxing and fighting as well as early and continuing substance abuse.

19. Moving from the realm of organic brain damage to psychological factors, it should be noted that studies demonstrate abused children are likely to become abusers themselves. Mr. Fairchild intermittently admits and denies he was personally abused. His denials are not necessarily inconsistent with an abused profile and serious abuse of Mr. Fairchild is reported by his other


siblings. In any event, it is quite clear by history that Mr. Fairchild was raised in a highly abusive home environment and was, at minimum, a witness to the abuse of his siblings. These experiences put Mr. Fairchild at a much higher risk of becoming an abuser.

20. It is perhaps important to note as well that alcoholism is a progressive disease and that the drinking behavior of an alcoholic is not readily controlled by the alcoholic. Alcoholics have a very difficult time not drinking and perhaps an even more difficult time stopping once they start. There is effective treatment for alcoholism but it requires the alcoholic to first recognize he or she has a problem that is out of control. Such a recognition frequently does not come until the disease is well progressed. It may be the product of an extremely traumatic life event. It certainly appears Mr. Fairchild is very cognizant of his alcohol addiction at this point.

21. Mr. Fairchild is likely to do quite well in a structured environment such as prison. He is not a threat to others in such a structured environment. Indeed, he is not a threat in any environment where his organic deficits are not potentiated by alcohol.

22. The particular neurological damage and personality traits discussed in this affidavit should have been discerned had a similar standard neuropsychological battery of tests been conducted at or around the time of trial. Dr. Smith's report reflects an organic problem was detected on psychiatric interview.

23. If called as a witness, I would testify to the information provided in this affidavit and would further expand on and explain my conclusions.

  
Dr. Barry Crown

Subscribed and sworn to before me this 24 day of April, 2002.



Evelyn Marquez  
My Commission CC836643  
Expires May 13, 2003

Evelyn Marquez  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**Barry M. Crown, Ph.D. and Associates, P.A.**

**105 E. Gregory Square – Suite 2A**

**Pensacola, Florida 32502**

**Telephone: (850) 439-5550 Fax: 1 (877) 483-4856**

bmcrown@barrycrown.com

**NEUROPSYCHOLOGICAL CONSULTATIONS REVIEW**

FAIRCHILD, Richard

DOB: 11-17-59 CA: 58

Dates Seen: 04-03-02

08-11-14

07-25-18

Mr. Richard Fairchild is a 58 year old Caucasian male who I have now seen on three occasions spanning 16 years. He was convicted of murder and received the death penalty. He is being held on the H unit of the Oklahoma State Penitentiary in McAlester, Oklahoma and was seen there on each of my visits.

My initial evaluation of Mr. Fairchild is summarized in my affidavit dated April 24, 2002. From a review of documents, there were clear signs that he has organic brain damage stemming from boxing without head gear, fights, and head trauma from accidents and encounters. In addition, there is a long history of alcohol and substance use and abuse.

Formal neuropsychological testing conducted in 2002 indicated problems with concentration, attention, and memory. He demonstrated a strong tendency to confabulate information (fill in memories for times when he had no memories either because of delayed memory problems and/or alcohol use.) This is an involuntary function.

His pattern of performance on neuropsychological testing was consistent with a brain impairment. There were no signs of malingering or “faking”. These impairments were consistent with his history.

He was found to have brain damage consistent with a frontal lobe impairment and a late onset schizoaffective disorder with loose reality contact.

When seen in 2014, Mr. Fairchild was floridly psychotic. He was being given medication, but didn’t always take it and his response was clearly not adequate. He had destroyed most, if not all, of his belongings, including a television and his clothes. He was insisted that a recently deceased brother had left him 19 million dollars. If he was able to obtain the money, he was going to gift a significant portion of it to the Oklahoma Department of Corrections to improve prison facilities. He was agitated and hyper-responsive.

He was next seen in July 2018. He spoke of his mother whom he referred to as “Emma from Zurich” and of her death because of a drunk driver. He noted that they closed the schools on the day of her funeral. He talked of joining the Marines at age 17 when he weighed 106 pounds. He said he was beaten up by someone who weighed 2 ½ times his weight.

He said he was taking Vistaril in the morning and two other pills at night. One of the pills was “something to relax me at night.”

Mr. Fairchild was psychotic when seen. He insisted that he was being controlled and shocked by guards and other personnel using laptop computers and smartphones. They were administering electrical shocks to him. He said that he stayed in his cell for protection and had not been out in the yard for 1 ½ to 2 years.

His present psychotic disorder is consistent with a schizoaffective disorder, a major mental illness. There are related cognitive processing problems. Reality contact is poor. Additionally, he does have an organic brain disorder – frontal lobe syndrome – leading to problems with concentration, attention, reasoning, judgment, memory, and information processing.

My findings have been consistent over a 16-year period. Neuropsychological and psychological prognoses are poor.

*Barry M. Crown, Ph.D.*

Barry M. Crown, Ph.D.  
Diplomate, American Board of  
Professional Neuropsychology

Added Qualifications in  
Forensic Neuropsychology



October 30, 2014

Randy Bauman, Esq.  
215 Dean A. McGee, Suite 707  
Oklahoma City, OK 73102

Re: Richard Fairchild  
DOB:

Dear Mr. Bauman,

I am writing this brief letter to convey my impressions of Mr. Fairchild. I evaluated him on September 18, 2014, and have conferred with Barry Crown, Ph.D., about his examination as well. It is clear, based on my discussions with you and Dr. Crown, as well as information gathered in my clinical interview, that Mr. Fairchild suffers from a serious psychotic mental illness best described in the schizophrenia spectrum disorders. He is paranoid, extremely delusional, and experiences auditory hallucinations. Mr. Fairchild has several prominent grandiose and persecutory delusions which cause him great distress and impair his ability to relate to others rationally. He also appears to have affective symptoms including depression and manic symptoms such as irritability, poor sleep, and racing thoughts. It is likely he suffers from schizoaffective disorder and requires treatment for such. My recommendation is that he be treated with a combination of antipsychotic and mood-stabilizing agents. It might be prudent to start with an atypical antipsychotic such as Seroquel, Zyprexa, or Abilify to see if this quells his psychotic symptoms first. These medications are often used for affective illnesses as well and it is possible his mood symptoms will improve on an antipsychotic alone, thus obviating the need for an additional mood-stabilizing agent like Lamictal or Depakote.

Sincerely,

Bhushan S. Agharkar, M.D., F.A.P.A.  
Diplomate, American Board of Psychiatry  
and Neurology, with Added Qualifications in  
Forensic Psychiatry

**Oklahoma Department of Corrections**

Oklahoma Department of Corrections Private and DOC: ODOC Formulary Group Number:

**FAIRCHILD, RICHARD**  
OK DoC Offender ID **241527**  
(62) M Caucasian  
Oklahoma State Penitentiary

**HCV END OF TREATMENT NOTE - 03/30/22 09:01 AM**

**TREATMENT SUMMARY:**

**Allergies:**

Allergen	Severity	Reactions	First Incidence	Certainty	Documented
No Known Drug Allergies					05/04/2010
No Known Environmental Allergies					05/04/2010
No Known Food Allergies					05/04/2010

**Problems:**

Problem	Code	Source	Status	Begin	Resolved	Notes
HPT C W/O HEPAT COMA NOS	070.70	ICD-9	Confirmed	02/23/2021		HCV Treatment consult complete 1/19/22; recommend Mavyret X 8 weeks; assess for SVR12 and SVR24
CHRONIC LIVER DIS NOS	571.9	ICD-9	Suspected	02/23/2021		1/3/22 liver U/s Mildly heterogeneous hepatic echotexture.
Psychotic Disorder NOS	298.9	DSM IV	Suspected	10/22/2014		
Depressive disorder, not elsewhere classified	311	ICD-9	Suspected	08/25/2010		
Depressive disorder, not elsewhere classified	311	ICD-9	Suspected	05/12/2010		

**Medications:**

Medication	Start Date	End Date
Liquifilm Tearspreserved solution ophthalmic	08/13/2021	08/05/2022
2 drops Three times daily for 358 Days		

*APRI, FIB-4 and Metavir score:*

*Annual Child-Pugh Score::* Mild 5-6 points;

*Additional Information (PHI):* No complications; dose missed 2-18-22.

*Treatment Regimen:* Mavyret [glecaprevir-pibrentasvir]

*Treatment Duration:* 1/30/2022 - 3/26/2022

*Was Hepatitis C Treatment Completed?* Yes;

*Was the inmate transferred from a different facility for HCV treatment?* NO;

*Has the inmate engaged in any high risk behavior during or after HCV treatment?* No;

*HCV PCR RNA*

**Labs:**

Lab Result Name	Value Entered	Units	Abnormal Flag	Range	Date/Time Taken
<b>AFP, TUMOR MARKER</b>					
AFP, TUMOR MARKER	1.9	NG/ML	SEE BELOW -		04/01/21 07:16 AM

UNLESS OTHERWISE INDICATED, ALL TESTING PERFORMED AT:  
CLINICAL PATHOLOGY LABORATORIES, INC. 9200 WALL ST, AUSTIN, TX 78754  
CLIA NUMBER 45D0505003 CAP ACCREDITATION NO. 21525-01

\*\*\*\*\* INTERPRETIVE DATA \*\*\*\*\*

Adult male . . . . .	NG/ML	<=9.0
Non-pregnant adult female . . . . .	NG/ML	<=9.0

Methodology is Chemiluminescent Immunoassay on Beckman-Coulter DXI.

**CBC W/AUTO DIFF WITH PLATELETS**

WBC	7.2	K/UL	3.5 - 11.0	12/21/21 07:48 AM
RBC	4.89	M/UL	4.50 - 6.10	12/21/21 07:48 AM
HEMOGLOBIN	15.8	G/DL	13.5 - 17.0	12/21/21 07:48 AM
HEMATOCRIT	45.1	%	40.0 - 51.0	12/21/21 07:48 AM
MCV	92.2	fL	80.0 - 99.0	12/21/21 07:48 AM
MCH	32.3	PG	25.0 - 33.0	12/21/21 07:48 AM
MCHC	35.0	G/DL	31.0 - 36.0	12/21/21 07:48 AM

The contents of this document are confidential and restricted to authorized personnel of the Oklahoma Department of Corrections.

**Oklahoma Department of Corrections**

Oklahoma Department of Corrections Private and DOC: ODOC Formulary Group Number:

**FAIRCHILD, RICHARD**  
OK DoC Offender ID **241527**  
(56) M Caucasian  
Oklahoma State Penitentiary**TELEPSYCHIATRY / PSYCHIATRY NOTE - 12/03/15 08:41 PM****ASSESSMENT:****Problems:**

Problem	Code	Source	Status	Begin	Resolved	Notes
Psychotic Disorder NOS	298.9	DSM IV	Suspected	10/22/2014		
Depressive disorder, not elsewhere classified	311	ICD-9	Suspected	08/25/2010		
Depressive disorder, not elsewhere classified	311	ICD-9	Suspected	05/12/2010		

**Medications:**

Medication	Start Date	End Date
Vistarilpamoate 25 mg capsule oral 1 capsule(s) Twice daily for 90 Days Notes: renew	12/19/2015	03/17/2016
Nortriptyline Hydrochloride 75 mg capsule oral 1 capsule(s) Before bed for 90 Days Notes: total dose= 125mg qhs	12/18/2015	03/16/2016
Nortriptyline Hydrochloride 50 mg capsule oral 1 capsule(s) Before bed for 90 Days Notes: total dose= 125mg qhs	12/18/2015	03/16/2016
Vistarilpamoate 25 mg capsule oral 1 capsule(s) Twice daily for 90 Days Notes: renew	09/20/2015	12/18/2015
Nortriptyline Hydrochloride 75 mg capsule oral 1 capsule(s) Before bed for 90 Days Notes: total dose= 125mg qhs	09/19/2015	12/17/2015
Nortriptyline Hydrochloride 50 mg capsule oral 1 capsule(s) Before bed for 90 Days Notes: total dose= 125mg qhs	09/19/2015	12/17/2015

**Chief Complaint:**

History of depression  
History of psychosis with hearing voices

**Patient denies:**

Psychosis  
Depression

**Suicidal thoughts or behavior:**

No

**Homicidal thoughts or behavior:**

No

**Self injury thoughts or behavior:**

No

**Describe current signs and symptoms and/or response to treatment**

pt states that he has no problem med se's and desires to continue his med(s).

**Assessment:**

Appearance: Appropriate  
Behavior: Cooperative  
Mood: Normal  
Affect: Within normal limits  
Speech: Normal  
Perception: No abnormalities  
Thought process: Organized

*The contents of this document are confidential and restricted to authorized personnel of the Oklahoma Department of Corrections.*



November 16, 2022

Tricia A. Russell  
Assistant Federal Public Defender  
Capital Habeas Unit  
Federal Public Defender-Western District of Oklahoma  
215 Dean A. McGee, Suite 707  
Oklahoma City, OK 73102

Re: 22 O.S. § 1005 Notification – Richard Fairchild (241527)

Dear Ms. Russell,

Inmate Richard Fairchild is currently incarcerated with the Oklahoma Department of Corrections and housed at the Oklahoma State Penitentiary on a sentence of death. On July 1, 2022, the Oklahoma Court of Criminal Appeals ordered the execution of Mr. Fairchild to be carried out on November 17, 2022.

I have received your November 15, 2022 letter requesting that Warden Jim Farris, pursuant to 22 O.S. § 1005, inform the Pittsburg County District Attorney that Mr. Fairchild has become insane. However, the referenced statute was repealed on November 1, 2022. Furthermore, the applicable statute – 22 O.S. § 1005.1 – does not require or contemplate in any way that the Warden make a determination that an inmate has become incompetent to be executed. Your request is accordingly denied as it is inconsistent with applicable law.

Respectfully,

Kari Y. Hawkins  
General Counsel

cc: Jennifer Crabb

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<b>Execution Procedures</b>	<b>ACA Standards: 2-CO-1A-27-1</b>		
Robert Patton, Director Oklahoma Department of Corrections		Signature on File	

## Execution of Offenders Sentenced to Death

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The Oklahoma Department of Corrections (ODOC) establishes procedures for planning and carrying out the execution of a person convicted of a capital offense and sentenced to death. These procedures shall be followed as written unless deviation or adjustment is required, as determined by the director of Corrections or their designee (in the event of an absence). This procedure outlines the internal procedures and does not create any legally enforceable rights or obligations.

## I. Definitions

### A. Stay or Stop An Execution

#### 1. Stay

An order by the governor or court of competent jurisdiction to reprieve or suspend the execution of the judgment of death.

#### 2. Stop

Upon order by the director, all acts congruent to an execution shall immediately cease until the director orders the execution to continue or a stay is ordered by the governor or court of competent jurisdiction.

## II. Responsibility

The ODOC ensures the execution of a person sentenced to death under state law by a court of competent authority and jurisdiction is carried out in keeping with statute, case law and professional practices.

### A. The ODOC shall make every effort in the planning and preparation of an execution to ensure the execution process:

1. Faithfully adheres to constitutional mandates against cruel and unusual punishment, in accordance with Article II, Section 9 of the Oklahoma Constitution and the Eighth Amendment to the United States Constitution;
2. Is handled in a manner that minimizes its impact on the safety, security and operational integrity of the facility and the community in which it occurs;
3. Accommodates the public's right to obtain certain information concerning the execution;
4. Reasonably addresses the privacy interests as provided by law;

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5. Provides contingency planning to identify and address unforeseen problems;
  6. Allows for stays of execution, commutations and other exigencies;
  7. Provides opportunity for citizens to exercise their First Amendment Rights to demonstrate for or against capital punishment in a lawful manner; and
  8. Ensures there is an appropriate response to unlawful civil disobedience, trespass and other violations of the law by any person attempting to impact the execution or the operation of the facility.
- B. The ODOC shall detain, seek the arrest and encourage prosecution of persons who:
1. Violate prohibitions against filming, taping, broadcasting or otherwise electronically documenting the execution of the offender;
  2. Trespass and otherwise enter upon ODOC property without authorization;
  3. Participate in unlawful demonstrations or unlawfully attempt to disrupt, prevent and otherwise interfere with the execution; and
  4. Unlawfully threaten, intimidate and otherwise attempt to influence authorized persons involved in the execution process.

These prohibitions apply to the offender population, ODOC personnel and members of the general public engaging or attempting to engage in disruptive and other prohibited behaviors.

### III. Conduct and Selection of Staff for Execution Teams

#### A. Conduct of Staff

1. Participating staff shall adhere to [OP-110215](#) entitled "Rules Concerning the Individual Conduct of Employees" and guided principles evidenced by:
  - a. Appropriate levels of professionalism, restraint and courtesy when interacting with witnesses, demonstrators, attorneys, news media, state and local law enforcement and any other member of the public directly or indirectly involved with the imposition of the sentence of death;

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- b. All assigned duties are performed proficiently and professionally;
  - c. Their ability to exercise the option to withdraw from the process by the prescribed means at any time;
  - d. Conduct that appropriately reflects the solemnity of the activities in which they elect to engage and the duties they choose to perform;
  - e. Reserving public comment on any and all facets of the execution; and
  - f. Maintaining confidentiality of identifying information regarding any person who participates in or performs any function of an execution. As defined in Oklahoma State Statute Title 22, Section 1015, "The identity of all persons who participate in or administer the execution process and persons who supply the drugs, medical supplies or medical equipment for the execution shall be confidential and shall not be subject to discovery in any civil or criminal proceedings. The purchase of drugs, medical supplies or medical equipment necessary to carry out the execution shall not be subject to the provision of the Oklahoma Central Purchasing Act."
- 2. All team members serve on a strictly voluntary basis. At any point before, during, or after an execution any team member may decline to participate or participate further without additional notice and explanation or repercussion.
  - 3. The associate director of Field Operations shall ensure all team members understand and comply with the provisions contained herein.

**B. Selection of Staff for Execution Teams**

- 1. The associate director of Field Operations coordinates the activities of the division managers of East and West Institutions and the wardens of Oklahoma State Penitentiary (OSP) and Mabel Bassett Correctional Center (MBCC) in activating the Execution Teams.

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2. The OSP and MBCC wardens shall review the current teams' rosters and recommend retention and replacement of staff and alternates to the division manager of West Institutions.
3. The division manager of West Institutions shall evaluate the teams' composition and the wardens' recommendations to the director.
4. In the selection and retention of any staff for the teams, the division manager for West Institutions shall consider:
  - a. Employees suspended or demoted in the past 12 months or currently under investigation shall not be selected;
  - b. Special consideration may be given to staff with pertinent specialized training and qualifications;
  - c. Staff shall only be assigned to one team in the overall execution process;
  - d. Staff serving on any team shall not be related to the offender by blood or marriage or have any other legal relationship with the offender, the offender's family or the crime victims(s); and
  - e. Staff participation in the execution process is strictly voluntary. ODOC staff is not required to attend or participate in an execution.
5. Any staff volunteers may withdraw from performing their assigned duties specific to the execution at any time by advising their team leader, advising a team member or advising their immediate chain of command.

#### IV. Execution Teams

##### A. Command Team

1. Provides overall coordination of execution procedures.
2. Consists of a minimum of three team members:
  - a. Commander (division manager of East Institutions);
  - b. Recorder;
  - c. Telephone operator; and

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d. Others as necessary.

3. The commander is selected by the director.

4. All other team members are selected by the division manager of East Institutions with the documented approval of the director.

B. H Unit Section Teams

1. The H Unit Section chief shall coordinate the activities of the H Unit Section Teams to ensure compliance with conditions of confinement and application of approved procedures.

2. The director shall select the H Unit Section chief.

3. The H Unit Section Teams shall be comprised of the Restraint Team and the Special Operations Team.

a. Restraint Team

(1) Provides continuous observation of the offender on the day of the execution and applies appropriate restraint procedures and offender management prior to, during, and after the execution.

(2) Consists of one team leader and six team members divided into two teams.

(3) The division manager of West Institutions shall select the team leader with the documented approval of the director.

(4) Team members are selected by the warden of OSP with the documented approval of the director.

b. Special Operations Team

(1) Implements the protocols associated with the administration of the chemicals for the execution ([Attachment D](#), attached).

(2) Consists of a minimum of five team members:

(a) Team leader;

(b) Recorder; and

(c) Three additional team members.

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- (3) The team members and team leader are selected by the division manager of West Institutions with the documented approval of the director.
- (4) The team leader shall designate functions of the team members.

C. Intravenous (IV) Team

1. The IV Team shall consist of a team leader and member(s) of any one or more of the following:
  - a. Physician(s).
  - b. Physician assistant(s).
  - c. Nurse(s).
  - d. Emergency medical technician(s) (EMT).
  - e. Paramedic(s).
  - f. Military corpsman or other certified or licensed personnel including those trained in the United States military.
2. The team leader and member(s) shall be currently certified or licensed within the United States.
3. The team leader and member(s) shall be selected by the director.
  - a. Selection of any team member shall include a review of the proposed team member's qualifications, training, experience, and/or any professional license(s) and certification(s) they may hold.
  - b. Licensing and criminal history reviews shall be conducted by the inspector general's office prior to assigning or retaining any team member and upon the issuance of an Order Setting Execution Date.
4. The division manager of West Institutions shall ensure the team leader and member(s) thoroughly understand all provisions contained herein as written and by practice.
5. Documentation of team members' qualifications, including training of the team members, shall be maintained by the director or his designee.

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6. All information pertaining to the selection and review of the IV Team members shall remain confidential in accordance with O.S. 22 Section 1015 of Oklahoma State Statute.

D. Maintenance Response Team

1. Tests all H Unit equipment utilized to impose the sentence of death and ensures electrical, plumbing, heating and air conditioning units are in working order.
2. Consists of one team leader and three team members.
3. The team leader and members are selected by the warden of OSP.
4. Reports to the Command Team.

E. Critical Incident Management Team (CIMT)

1. Educates affected staff at all levels in the ODOC prior to, during, and after the execution regarding possible psychological responses and effective coping mechanisms as well as provides ongoing follow-up contact to staff.
2. Consists of one team leader and three team members.
  - a. The team leader is the Employee Assistance Program coordinator or designee.
  - b. Team members are CIMT responders and are selected by the Employee Assistance Program coordinator.
3. Reports to the Command Team.

F. Traffic Control Team

1. Supervises the movement of people and vehicles into and out of the facility before, during, and after the execution.
2. Consists of one team leader and eight team members.
3. Team members and the team leader are selected by the warden of OSP.
4. Reports to the Command Team.

G. Witness Escort Teams

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1. Coordinates the movement of all pre-approved witnesses on and off facility grounds and within its perimeter.
  - a. One (1) Witness Escort Team is assigned to escort and assist each group of pre-approved officials, victims, news media and offender family witnesses.
  - b. Witness Escort Team members shall always remain with witnesses within established areas.
2. Consists of one team leader and eight team members divided into four teams.
3. Team members and the team leader are selected by the warden of OSP.
4. Reports to the Command Team.

H. Victim Services Team

1. Ensures victims of the crime that resulted in the imposition of death are informed of the execution date and their opportunity to witness the execution.
  - a. The team explains the execution process.
  - b. If the victim is interested in attending, the team submits the victim's name(s) for consideration to the director.
2. Consists of one team leader and one team member.
3. The team leader is the victim services coordinator.
4. The team member is selected by the victim services coordinator.
5. Reports to the Witness Escort Team leader.

V. Training

The agency will establish protocols and training to enable staff to function in a safe, effective and professional manner before, during and after an execution.

- A. The division manager of West Institutions shall establish a training schedule and identify dates for periodic on-site practice by the H Unit Section Teams, to include ten training scenarios within the 12 months preceding the scheduled execution. Multiple training scenarios can be

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accomplished on the same date, including but not limited to contingency plans for:

1. Issues with execution equipment or supplies;
  2. Issues with offender IV access, including obtaining alternate IV access site(s);
  3. Issues if offender is not rendered unconscious after administration of execution chemicals;
  4. Unanticipated medical or other issues concerning the offender or an execution team member; and
  5. Issues regarding order, security or facilities at OSP.
- B. The H Unit Section Team shall initiate training sessions no less than once per week until the scheduled date of execution beginning 35 days prior to the execution date.
- C. The H Unit Section Team shall conduct a minimum of two training sessions with multiple scenarios within two days prior to the scheduled execution.
- D. The IV Team members shall participate in at least one training session with multiple scenarios, within seven days prior to the scheduled execution.
- E. The Command Team leader shall conduct training of the following team members approximately seven days prior to the execution date.
1. Witness Escort Team
  2. Maintenance Response Team
  3. Critical Incident Management Team
  4. Traffic Control Team
  5. Victim Services Team

#### VI. Selection of Execution Witnesses

##### A. ODOC Staff Witnesses

The following staff shall be present at the execution:

1. Director or designee.

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2. H Unit Section chief.
3. Other necessary correctional officials.

B. Law Enforcement Witnesses

The following persons may be present at the execution:

1. State Attorney General or designee.
2. Cabinet Secretary of Public Safety or designee.
3. Judge who presided during the trial.
4. Chief of police of the municipality in which the crime occurred.
5. District attorney or designee of the county of conviction.
6. Sheriff of the county of conviction.
7. Lead law enforcement officials from agencies that investigated the crime or testified in court or clemency proceedings related to the crime.
8. In the event the defendant has been sentenced to death in one or more criminal proceedings in this state, or has been sentenced to death in this state and by one or more courts of competent jurisdiction in another state (or pursuant to federal authority), or any combination thereof, and this state has priority to execute the defendant, the general counsel must invite the district attorney, the judge and the chief law enforcement official from each jurisdiction where any death sentence has been issued. The above mentioned officials shall be allowed to witness the execution or view the execution by closed circuit television as determined by the director.
9. The law enforcement witnesses authorized to be present at the execution shall receive a two-week prior written notice of the scheduled execution per [Attachment A](#) entitled "Notification Letter to Dignitaries/Law Enforcement (sample)" (attached).

C. Victim and Offender Witnesses

1. Victim and Offender witnesses may be subject to a criminal records check which will be conducted using the "Oklahoma Department of Corrections Request for Record" ([DOC 090211B](#)).

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2. The division manager of West Institutions shall prioritize persons to view the execution, including: surviving victims; offender's immediate family members; individuals who served a close supporting role or professional role to the offender including, but not limited to, a minister or licensed counselor. The warden of OSP may set a limit on the number of viewers within occupancy limits.
3. The victim and offender witnesses authorized to be present at the execution shall receive a two-week prior written notice of the scheduled execution per [Attachment B](#) entitled "Notification Letter to Offender Witnesses (sample)" (attached).
  - a. Victim Witnesses
    - (1) Any surviving victim of the offender who is 18 years of age or older may view the execution if approved by the general counsel and the warden of OSP.
    - (2) As used in this section, 'surviving victim' means any immediate family member of the deceased victim who, as a direct result of the crime, suffered serious harm or injury due to the criminal acts of the offender of which the offender has been convicted in a court of competent jurisdiction.
    - (3) Immediate family is defined as the spouse, child by birth or adoption, stepchild, parent by birth or adoption, stepparent, grandparent, grandchild, sibling or stepsibling of each deceased victim or the spouse of any immediate family member specified in this section.
    - (4) Any surviving victim approved to view the execution of the offender may request to have an accompanying support person who serves a close supporting role or professional role to the deceased victim or an immediate family member, including, but not limited to, a minister or licensed counselor. The warden of OSP and the director shall approve or disapprove such requests.
    - (5) A representative from the Attorney General's Victim Services Unit and the ODOC Victim Services team

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coordinator or designee shall be allowed to attend the execution.

b. Offender Witnesses

- (1) Witnesses may include five persons, relatives or friends, and two qualified ministers who are 18 years of age or older, as selected by the offender and approved by the general counsel and the warden of OSP. If the offender is female, approval shall be received by the warden of MBCC in conjunction with the warden of OSP.
4. All witnesses shall be provided a summary detailing the execution process which shall include what to expect and rules of conduct throughout the execution.

D. News Media Witnesses

1. News media witness selection is contingent upon adherence to the provisions stipulated in the "News Media Statement After an Execution" ([Attachment E](#), attached).
2. No more than five members of the news media may be selected to witness the execution. First preference will be given to a local media representative in the market where the crime was committed and to the associated press.
3. News media witnesses shall be held to the same standards for conduct as are all other official witnesses.
4. All witnesses shall be provided a written summary detailing the execution process which shall include what to expect and rules of conduct throughout the execution.
5. The Command Team may exclude any news media witness at any time if the media witness fails to abide by the provisions of this procedure.
  - a. News media witnesses are not permitted to bring unauthorized items into H Unit. Examples of unauthorized items include:
    - (1) Any electronic or mechanical recording device;
    - (2) Still, moving picture, or video tape camera;

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(3) Tape recorders or similar devices; and

(4) Radio/television broadcasting devices.

b. Each news media witness shall be provided a tablet of paper and a pencil for taking notes once they have completed security screening.

c. News media not selected to witness the execution shall remain in the designated Media Room during the execution.

E. Persons Excluded from the Execution Process

1. The correctional officers, case manager and medical staff who attended to the offender while in isolation shall not participate in the execution process.
2. Minors shall not be permitted to witness an execution.
3. The director shall retain full discretion as to the selection of, and any change in, the witnesses selected for each scheduled execution.

VII. Timeline of Events for Executions

A. Receipt of Order Setting Execution Date

Upon receipt of the Order Setting Execution Date, the following staff shall initiate the protocols below.

1. General Counsel's Office
  - a. Notify the director and associate director of Field Operations.
  - b. Notify the division manager of West Institutions, the warden of OSP and, if a female offender, the warden of MBCC.
  - c. Forward the original Order Setting Execution Date to the warden of OSP or MBCC.
  - d. Notify the coordinator of the Victim Services Team who shall contact the victim(s) and inform them of the court's issuance of the Order Setting Execution Date.
  - e. Notify the appropriate government officials and law enforcement officials.

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2. Director of Corrections

- a. Select the time of the execution and provide notice to the Oklahoma Court of Criminal Appeals.
- b. Under exigent circumstances, the director shall have the authority to change the timeframes established in this procedure.

3. Warden of OSP or MBCC

- a. Coordinate the monitoring and evaluation of offender activity at their facilities for any activity related to the execution or its impact on the facility operation.
- b. Direct the offender to complete the "35-Day Notification Packet" (Attachments F-1 thru F-5, attached (links in the reference section) and return it to the warden no later than 30 days prior to the scheduled execution date.
- c. Notify the offender that minors are prohibited from witnessing the execution pursuant to Oklahoma State Statute Title 22, Section 1015.
- d. Notify the offender's family members as indicated by the offender.
- e. Notify the offender that requests for ODOC or contract staff to attend the execution shall be denied.
- f. Notify the offender that requests for other offenders to attend the execution shall be denied.
- g. Notify the offender to review and update as necessary [DOC 030120B](#) entitled "Designation for Disposition of Property." The warden shall direct the offender to provide any changes no later than 14 days prior to the execution. If the offender does not provide instruction, the property and accounts shall be disposed of in accordance with [OP-030120](#) entitled "Offender Property."
- h. Advise the offender that his/her body shall not be used for organ donation.
- i. Summarize the options available with the offender for release and disposition of his/her body.

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1. The warden shall direct the offender to review the previously completed "Release of Remains and Burial Arrangements" form ([Attachment C](#), attached) and update as necessary no later than 14 days prior to the execution.
  2. If the offender provides no instruction or the information is insufficient or incorrect, the deceased shall be disposed of in accordance with [OP-140111](#) entitled "Offender Death, Injury and Illness Notification and Procedures."
- j. Summarize the options available to the offender for the release of medical information in accordance with HIPAA regulations.
- k. Advise the offender he/she may request a last meal by completing the "Last Meal Request" ([Attachment F-5](#), attached). Reasonable effort shall be made to accommodate the request which shall not exceed \$25.00.

B. Thirty-Five (35) Days Prior to the Day of Execution

1. Facility

- a. The warden or designee shall confirm in writing to the associate director of Field Operations that the following steps have been completed:
  - (1) Warrant has been read to the offender.
  - (2) An outline was provided to the offender how conditions of confinement shall be modified over the next 35 days with a brief description of the relevant aspects of the execution process. (Attachments F-1 thru F-5)
  - (3) The offender's medical condition shall be assessed in order to identify any necessary accommodations or contingencies that may arise from the offender's medical condition or history.
    - (a) Any medical condition or history that may affect the performance of the execution shall be communicated as soon as possible through the

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chain of command to the director, who shall confer with others as necessary to plan such accommodations or contingencies.

- (b) The facts of the assessment and any conclusions shall be documented in the offender's healthcare record.
- (4) Any concerns for establishing or maintaining IV lines and any concerns or plans for medical accommodations or contingencies shall be communicated to the Special Operations Team in order that they may be discussed and addressed in execution trainings or rehearsals.
- (5) An appropriate member of the mental health staff shall evaluate the offender approximately thirty-five (35) days prior to the execution to evaluate his or her stability and mental health in light of the scheduled execution.
  - (a) Any concerns or contingencies affecting the execution process shall be communicated through the chain of command to the director as soon as possible and documented in the offender's healthcare record.
  - (b) The director shall order the warden to notify the appropriate district attorney and the attorney general of any concerns or contingencies.
- (6) Transfer the offender to the appropriate cell on Death Row at OSP (or MBCC when the offender is female). Before transferring the offender into the cell, the offender shall be strip searched, x-rayed, screened on the calibrated BOSS Chair and then issued a new set of clothes and shoes to wear.
- (7) The assigned cell shall be thoroughly searched prior to placing the offender in the cell.
- (8) Place the offender on 24-hour continuous observation and post staff to the offender's cell to maintain visual contact with the offender.

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- (9) Establish an observation log to chronicle staff's observations of the offender's activities and behavior until the sentence of death is imposed or a stay of execution is issued.
- (10) The shift commander shall be responsible for ensuring the information recorded in the observation logs includes, but is not limited to:
  - (a) All statements or behaviors that could be detrimental to completing an execution;
  - (b) All meals provided to the offender and what portions of the meals the offender consumed or refused;
  - (c) All medications provided to the offender and the observations made by staff as to whether the offender ingested the medication as prescribed; and
  - (d) All liquids consumed by the offender.
- (11) The warden shall be responsible for reviewing observation logs once every twenty-four hour period, excluding weekends and holidays.
- (12) The warden will communicate any significant changes in the offender's medical and/or mental health to the health services administrator.
- (13) In the instance where the offender is female, the 35 day protocols shall be implemented with the offender housed at MBCC.
- b. Conditions of Confinement
  - (1) The warden shall:
    - (a) Ensure none of the offender's personal property is transferred with the offender, except as provided in this section;
    - (b) Have the offender's personal property inventoried in his/her presence before the

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transfer of cells occurs and then have it boxed, sealed and removed from the cell;

- (c) Store the offender's property pending receipt of written instruction by the offender regarding disposition of property, or otherwise dispose of the property as outlined in [OP-030120](#) entitled "Offender Property;"
- (d) Allow the offender to keep in the cell one (1) cubic foot each of legal and religious materials, a safety ink pen, paper, a book or periodical, family photographs and correspondence from family members;
- (e) Issue the offender a new mattress, pillow and bedding;
- (f) Provide the offender limited hygiene supplies, including a towel and washcloth and exchange these items on a daily basis;
- (g) Ten calendar days after being placed on continuous observation, the warden may approve weekly canteen purchases of no more than \$20.00 based on the offender's behavior;
- (h) Ensure all offender medications are unit-dosed and issued in liquid form, when available. None of the offender's medication, including over-the-counter medications, shall be dispensed or maintained by the offender as keep-on-person (KOP);
- (i) Ensure the offender has access to a ODOC television set that is secured inside the cell and does not have access to any other appliances; and
- (j) Continue to provide outdoor exercise and showers, non-contact visits and phone calls per the current schedule for other death row offenders.

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- (1) The warden of OSP shall ensure state and local law enforcement is periodically briefed and adequately prepared for the execution.

d. Site Checks

- (1) All of the equipment necessary to the administration of the execution shall be available on site and in good working order including:
  - (a) Transportation vehicles;
  - (b) Communication devices with inter-operability capability and restricted frequencies;
  - (c) Climate control;
  - (d) Tool control;
  - (e) Safety equipment;
  - (f) Audio/Visual equipment;
  - (g) Utility infrastructure;
  - (h) Key control/locking devices; and
  - (i) Medical emergency response capability

2. Division Manager of West Institutions

- a. Identifies and assigns team leaders and members, with documented approval by the director, and upon approval shall activate the teams.
- b. Ensures preventative maintenance in H Unit occurs and that an equipment inventory is completed. If deficiencies are noted, ensures appropriate and timely action is taken to correct the deficiency.
- c. Directs the initiation of the continuous observation log commencing 35 days prior to the day of the execution. The log shall be maintained until the execution occurs or a stay of execution is issued.

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- d. Activates the training schedule ensuring staff participating in the execution receives adequate training, written instruction and practice, all of which is documented.

3. Division Manager of Correctional Health Services

- a. Directs Health Services staff to conduct a medical records file review to identify any prescribed medication(s) and dosages the offender is currently or was recently taking. Health Services staff provider shall modify prescribed medication as may be necessary.
- b. Directs Health Services staff to dispense all offender medications in unit doses and in liquid form, when available. No medication, including over-the-counter medication, shall be provided or maintained by the offender as KOP.
- c. Ensures Health Services staff monitors the offender two times per day for significant changes in his/her medical and/or mental health. Reports findings immediately to the division manager of East Institutions and the general counsel.

4. Victim Services Office

- a. Identifies and advises victims of the crime for which the offender has been sentenced to death of the issuance of the Order Setting Execution Date and the scheduled date and time of the execution.

C. Fourteen Days (14) Prior to the Day of Execution

1. Inspector General or Designee

- a. Finalizes arrangements with the State Medical Examiner for the disposition of the body, security for the medical examiner's vehicle and the custodial transfer of the body.
- b. Obtains a body bag and tag from the Medical Examiner's office.

2. General Counsel

- a. Finalizes a list and documented approval of all witnesses for the director's review including official offender and victim

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witnesses through coordination with the offices of Victim Services.

- b. Upon documented approval, the director or designee shall prepare a written invitation to each chosen witness.
- c. Sends the completed list of approved witnesses to the warden of OSP.

D. Two Days (2) Prior to the Day of Execution

- 1. Division Manager of West Institutions
  - a. Schedules and conducts on-site scenario training sessions, modifying practices as warranted.
  - b. Confirms adequate staffing and vehicles are in place for regular operations and the execution.
- 2. Warden of OSP
  - a. Confirms staff assigned to the Maintenance Response Team (MRT) are scheduled and shall be on-site eight (8) hours prior to the time scheduled for imposition of sentence.
  - b. Restricts access to H Unit to those with expressly assigned duties.
  - c. Verifies execution inventory and equipment checks are completed and open issues resolved in accordance with established protocols.

E. Twenty-Four (24) Hours Prior to the Day of Execution

- 1. Final preparation of the execution area is completed. Each room receives final evaluation specific to its functions including security, climate control, lighting, sound, sanitation, and ensures that separation screens and appropriate restraints are ready.
- 2. Detailed staff briefings detailing operational changes, security and intelligence information as well as protocol and checklist requirements are provided to facility staff through shift briefings, staff meetings, etc.
- 3. The offender's telephone privileges shall be terminated at 2100 hours the day prior to the execution, excluding calls from the

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offender's attorney of record and others as approved by the division manager of West Institutions.

4. The offender's visitation privileges shall be terminated at 2100 hours the day prior to the execution. The offender shall be permitted two hours of in-person visitation with no more than two attorneys of record, concluding two hours prior to the scheduled execution or earlier if necessary to begin preparing the offender for the execution.
5. The warden of OSP shall ensure the offender receives the last meal as requested in accordance with procedures. Every reasonable effort to accommodate the last meal request shall be made. All eating utensils and remaining food and beverage shall be removed upon completion of the meal.
6. The Traffic Control Team shall confer with state and local law enforcement agencies, establish check points and parameters for traffic control, and formulate inter-agency emergency response strategies. The team shall also coordinate the ingress/egress for ODOC and contract staff and other persons whose attendance is necessary. This process shall continue through the conclusion of the execution process.

F. Twelve Hours (12) Prior To and Through the Execution

1. Restricting Access to Institution Property
  - a. During the final 12 hours prior to the execution, access to the Oklahoma State Penitentiary is limited to:
    1. On-duty personnel;
    2. On-duty contract workers;
    3. Volunteers deemed necessary by the warden;
    4. Law enforcement personnel on business-related matters; and
    5. Approved witnesses.
  - b. Restriction to the facility shall remain in effect until normal operations are resumed after the execution or stay of execution is issued.

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- c. Any non-execution related visitation sessions or special visits shall be cancelled.
- d. Approved witnesses are gathered and separated into pre-determined staging areas.
  - (1) One Witness Escort Team is assigned to escort and assist pre-approved officials, victims, news media witnesses and offender's witnesses.
  - (2) Witness Escort Teams shall remain with the assigned witnesses within established areas.
  - (3) The Victim Services Team coordinator shall meet with the victim(s) in the staging area and shall remain available to them throughout the process. The team shall provide support and advocacy as appropriate.

## 2. News Media Access

- a. Reasonable efforts shall be made to accommodate the representatives of the news media before, during, and after a scheduled execution; however, the ODOC reserves the right to regulate media access to ensure the orderly and safe operations of its facility.
- b. The Communications Office shall coordinate the release of information to news media outlets. All ODOC and contract staff is expressly prohibited from providing information not readily available in the public domain.
- c. News media witnesses to the execution shall be limited to five representatives.
  - (1) One seat will be given to a local media representative in the market where the crime was committed.
  - (2) One seat will be given to the associated press.
  - (3) Three seats will be chosen from the remaining media representatives with preference given to Oklahoma-based media.
- d. If more than one media representative meets criteria for the available seats, a lottery or lotteries shall be held.

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- e. The public information officer shall provide general information regarding the execution and the offender.
  - f. News media witnesses shall return to the Media Room after the execution to answer questions of all other media representatives concerning their observations during the execution, prior to filing or reporting their story.
3. Offender Preparation and Observation Log
- a. The offender shall be escorted to medical to receive a full body x-ray.
  - b. All property in the assigned cell shall be removed and the cell thoroughly searched prior to the return of the offender from medical.
  - c. The offender shall be strip-searched and screened on the calibrated BOSS Chair before placement in the cell.
  - d. The offender shall be issued one pair each of pants, shirt, underwear and socks on the morning of the execution.
  - e. The cell shall be furnished with a mattress, pillow and pillowcase, one each top and bottom sheet, blanket, wash cloth, towel, and toilet paper.
  - f. The offender may have a safety ink pen and paper, religious items, a book or periodical and indigent-sized hygiene supplies (liquid soap, toothpaste) and a toothbrush and comb. These items may be made available only for the duration of the use and shall be removed immediately thereafter. Any other requested property shall require approval by the warden and shall be documented.
  - g. The Restraint Team shall take custody of the offender and the observation log. The Restraint Team members shall assume maintenance of the log until the execution is completed or a stay of execution is issued.
  - h. The offender shall remain on continuous watch. The Restraint Team members shall record observations and make entries every 15 minutes, or as incidents occur, in the observation log during the final four hours.

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- i. The warden will ensure the assigned cell is preserved and secured immediately after the offender is moved to the execution chamber. Entry will be limited to preservation of mission only and will be released by the inspector general once the execution is completed or a stay of execution is issued.
  - j. The offender may be offered a mild sedative.
  - k. No later than four hours prior to the execution the offender may be offered an additional mild sedative.
  - l. These time frames may be adjusted as necessary in the event of a stay of execution or other exigencies.
- 4. Notification to Proceed With Execution
  - a. Prior to moving the offender from the holding cell to the execution table, the director shall confer with the attorney general or designee and the governor or designee to confirm there is no legal impediment to proceeding with the lawful execution.
  - b. The H Unit Section chief shall direct the Restraint Team to prepare and escort the offender into the execution chamber.
  - c. The Restraint Team shall secure the offender on the execution table.
- 5. IV Site(s) Preparation and Establishment
  - a. The IV Team shall enter the Execution Room to prepare and insert a primary IV catheter and a backup IV catheter. The arm veins near the joint between the upper and lower arm shall be utilized as the preferred site for the IV injection.
  - b. The director, acting upon the advice of the IV Team leader, shall determine the catheter sites.
  - c. In the event that the IV Team is unable to establish an IV at a preferred site, the member(s) may establish an IV at an alternative site(s), including a central line, for use by the Special Operations Team when administering execution drugs.

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- d. The IV Team may utilize a non-invasive device to assist in locating a vein.
  - e. The IV Team shall be allowed as much time as is necessary to establish a viable IV site(s).
  - f. If the IV Team is unable to establish viable IV sites(s) the member(s) shall consult with the director.
  - g. The director shall consult with others as necessary for the purpose of determining whether or how long to continue efforts to establish viable IV sites(s).
  - h. After one hour of unsuccessful IV attempts, the director shall contact the governor or designee to advise of the status and potentially request a postponement of the execution.
  - i. A central line shall not be used unless the person placing the line is qualified to place a central line.
6. Confirming and Recording Establishment of IV Sites(s)
- a. An IV Team member shall test the viability of the IV site with a low-pressure saline drip through IV tubing. If necessary, a heparin lock may be attached to the IV needle as an alternative to the saline drip.
  - b. The H Unit Section chief and IV Team leader shall both confirm the visibility of the IV sites.
  - c. The H Unit Section Team Recorder shall document in the Correctional Service Log the number of attempts to establish an IV site.
7. Using Alternative IV Sites
- a. The H Unit Section Team chief shall observe the offender during the injection process to look for signs of swelling or infiltration at the IV site, blood in the catheter, and leakage from the lines and other unusual signs or symptoms.
  - b. The H Unit Section Team chief shall determine whether it is necessary to use an alternate IV site.
  - c. Whenever it is necessary to use alternate IV sites, the Special Operation Team shall administer a full dosage of the

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execution drugs through the alternate site, using additional syringes as necessary, prepared in accordance with the terms of this procedure.

- d. In the event the H Unit Section Team chief changes to another IV site, the Special Operation Team recorder shall capture that information on the Correctional Service Log.

#### 8. Proceeding with the Execution

- a. When the offender is secured on the execution table by the Restraint Team and readied by the IV Team, the H Unit Section Team chief shall advise the director and order the witnesses to their respective seating.
- b. The director shall reconfirm with the attorney general or designee and the governor or designee that there is no legal impediment to proceeding. Upon oral confirmation that there are no legal impediments to proceeding with the execution, the director shall order the H Unit Section chief to proceed with the execution.
  - (1) If there is a legal impediment the director shall instruct the H Unit Section chief to stop the execution and to notify the offender witnesses that the execution has been stayed or delayed. The H Unit Section chief shall also notify the Command Team to notify the agency's public information officer in the Media Room.
- c. The H Unit Section chief shall read aloud a summary of the Warrant of Execution.
- d. The H Unit Section chief shall ask the offender if he wishes to make a last statement that is reasonable in length and does not contain vulgar language or intentionally offensive statements directed at the witnesses. The microphone shall remain on during the last statement, after which time it shall be turned off. The microphone may be turned off earlier in the event the offender uses vulgarity or makes intentionally offensive statements.

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- e. The director shall instruct the disbursement of chemicals to begin in accordance with [Attachment D](#) entitled "Preparation and Administration of Chemicals."

G. Pronouncement and Documentation of Death

1. The director or designee shall announce death has occurred.
2. The H Unit Section chief shall complete and sign the return of the Death Warrant. The H Unit Section chief is also responsible for coordinating with the general counsel's office for the filing of the document with the sentencing court and the Oklahoma Court of Criminal Appeals within five business days.
3. The State Medical Examiner's Office shall be given custody of the body in order to issue a Certificate of Death.

H. Stay of Execution

1. Upon receipt of notification that the court and/or governor has issued a Stay of Execution, the director shall advise the Command Team.
2. Upon receipt of the notification, the H Unit Section chief shall:
  - a. Instruct the Special Operations Team to stand down.
  - b. Direct the Restraint Team to remove the offender from the chamber and return to the assigned cell if the stay of execution is less than 35 days.
    - (1) Prior to moving the offender back to the assigned cell, the inspector general shall release the cell.
    - (2) The assigned cell shall be thoroughly searched prior to placing the offender in the cell.
  - c. Advise the witnesses a Stay of Execution has been issued.
  - d. The Command Team shall inform the following teams of the Stay of Execution:
    - (1) Traffic Control Team Leader.
    - (2) Critical Incident Management Team Leader.
    - (3) Communications Director.

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(4) Victim Services Coordinator.

(5) Escort Team Leader.

e. The Traffic Control Team leader shall notify any protestors of the issuance of the Stay of Execution.

I. Post Execution/Stay of Execution

1. The Witness Escort Teams shall commence escorting witness groups from H Unit in the prescribed order from the facility.
2. Each group of witnesses shall continue to be kept separated from the other groups at all times.
3. News media witnesses shall return to the Media Room to participate in the media briefing.
4. Victim witnesses speaking with the media shall be escorted to the Media Room.
5. Media may remain on site in a designated location outside the secure perimeter for a limited time to complete live broadcasts.
6. The Victim Services team leader ensures the victim(s) receives follow up phone calls and support.

J. Site Clean Up and Recording of Execution Drugs

1. In accordance with [OP-040109](#) entitled "Control of Contraband and Physical Evidence," the Special Operations Team leader shall properly dispose of any execution drugs that have not been utilized. The drugs will be inventoried on the form entitled "Oklahoma State Bureau of Investigation Inventory of Drugs Submitted for Destruction" ([www.ok.gov/osbi/documents/LABdestructForm.pdf](http://www.ok.gov/osbi/documents/LABdestructForm.pdf)) and forwarded to the Oklahoma State Bureau of Investigation.
2. The warden of OSP shall witness the disposal of the unused execution drugs and document the disposal in accordance with procedure.
3. The Special Operations Team leader shall document the name, description, expiration date, and lot number of all execution drugs used.

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4. The Special Operations Team Leader shall save any packaging of the used execution drugs or take photographs of such packaging of items.
5. Under supervision of a person designated by the warden, the execution room shall be cleaned and secured. Institutional staff trained in infectious diseases preventive practices shall utilize appropriate precautions.

K. Normal Operations

1. The Command Team shall determine when the prison shall resume normal operations.
2. ODOC staff shall be deactivated at the direction of the Command Team.

L. Execution Documentation

1. The division manager of West Institutions shall gather all documents pertaining to the executions and forward to the general counsel for archiving.
2. The division manager of West Institutions shall attach a copy of the death warrant and forward it to the general counsel, who shall then forward it to the court from which it was rendered, indicating the time and mode and manner of which it was accomplished. Copies of the report and log shall be sent to closed records department for filing. MBCC shall receive a copy for females that are executed.

M. After-Action Review

1. Immediately following an execution, all of the Execution Teams and the on-site administrators directly involved in the execution process shall meet to review the process of the execution.
2. Any unique or unusual events shall be discussed, as well as opportunities for improvement and successful procedures.
3. Actions and documentation of the events shall be reviewed to identify any discrepancies.
4. The review should serve as an opportunity for all involved personnel to voice their opinions, concerns, and/or recommendations.

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5. The review shall be formally documented and retained for future reference.

N. Critical Incident Debriefing

1. The Command Team shall ensure that critical incident debriefings are available for the Execution Teams and staff participants immediately following the execution.
2. The Critical Incident Management Team shall conduct interviews in accordance with Critical Incident Program guidelines.

VIII. Quality Assurance Review

The director shall designate the division manager for Field Support to evaluate the performance of the execution process and report findings to the director.

- a. The division manager shall review documentation and training to ensure compliance with the written procedure directive.
- b. The division manager may utilize assistance as necessary to compile or assess the information, and may consult with others consistent with the confidentiality of the process.
- c. Whenever appropriate, the division manager shall consult with a properly trained medical person when reviewing the medical aspects of the execution procedures.
- d. The division manager shall provide consultation and advice concerning modifications in the written directive.
- e. The division manager shall prepare a report to the director following each execution, with appropriate suggestions or recommendations as needed.

IX. References

Policy Statement No. P-040100 entitled "Security Standards for the Oklahoma Department of Corrections"

OP-030120 entitled "Offender Property"

OP-040109 entitled "Control of Contraband and Physical Evidence"

OP-110215 entitled "Rules Concerning the Individual Conduct of Employees"

OP-140111 entitled "Offender Deaths, Injury and Illness Notification and Procedures"

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Robinson v. Maynard, 857 P.2d 817 (Okla. App. 1992)

21 O.S. § 142A-14

22 O.S. §1014 and 1015

X. Action

The wardens of Oklahoma State Penitentiary and Mabel Bassett Correctional Center are responsible for compliance with this procedure.

The associate director of Field Operations is responsible for the annual review and revisions.

Any exception to this procedure will require prior written approval from the director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-040301 entitled "Procedures of the Execution of Offenders Sentenced to Death" dated September 30, 2014

Distribution: Policy and Operations Manual  
Agency Website

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<u>Attachments</u>	<u>Title</u>	<u>Location</u>
<a href="#">Attachment A</a>	"Notification Letter to Dignitaries/Law Enforcement (sample)"	Attached
<a href="#">Attachment B</a>	"Notification Letter to Offender Witnesses (sample)"	Attached
<a href="#">Attachment C</a>	"Release of Remains and Burial Arrangements"	Attached
<a href="#">Attachment D</a>	"Preparation and Administration of Chemicals"	Attached
<a href="#">Attachment E</a>	"News Media Statement After an Execution"	Attached
<a href="#">Attachment F-1</a>	"35 Day Information Packet"	Attached
<a href="#">Attachment F-2</a>	"Summary of Rules and Procedures"	Attached
<a href="#">Attachment F-3</a>	"Witnesses"	Attached
<a href="#">Attachment F-4</a>	"Visitors"	Attached
<a href="#">Attachment F-5</a>	"Last Meal"	Attached
<u>Referenced Forms</u>	<u>Title</u>	<u>Location</u>
<a href="#">DOC 030120B</a>	"Designation for Disposition of Property"	<a href="#">OP-030120</a>
<a href="#">DOC 090211B</a>	"Oklahoma Department of Corrections Request for Record"	<a href="#">OP-090211</a>
OSBI Form	"OSBI Inventory of Drugs Submitted for Destruction and/or Other Items in OSBI Custody for Destruction" <a href="http://www.ok.gov/osbi/documents/LABdestructForm.pdf">http://www.ok.gov/osbi/documents/LABdestructForm.pdf</a>	Website Link