

# DECLARATION OF EMERGENCY

## Department of Public Safety and Corrections Corrections Services

### Death Penalty (LAC 22:I.103)

In accordance with the provisions of R.S. 49:953, the Department of Public Safety and Corrections, Corrections Services, hereby determines that adoption of an emergency rule for implementation of the amendment of Department Regulation Number C-03-001, Death Penalty, is necessary.

The department is amending this rule to comply with the provisions of R.S. 15:570.E and R.S. 15:570(F), which specifies the identities of person/s who participate in an execution of the death sentence who are subject to public disclosure.

R.S. 15:570(E) prohibits public disclosure of the person/s selected by the warden of the Louisiana State Penitentiary to administer the lethal injection. R.S. 15:570(F) prohibits public disclosure of any person other than the persons specified in R.S. 15:570(E) who participate in an execution of the death sentence, either directly or indirectly, and information about those persons which could lead to the determination of the identities of those persons shall not be subject to public disclosure in any manner whatsoever.

The reason for this Emergency Rule is due to an imminent execution of a Louisiana death row offender.

For the foregoing reasons, the Department of Public Safety and Corrections, Corrections Services, has determined that the adoption of an Emergency Rule for implementation of Department Regulation Number C-03-001, Death Penalty, is necessary and hereby provides notice of its Declaration of Emergency, effective on November 20, 2009, in accordance with R.S. 49:953. This Emergency Rule shall be in effect for 120 days or until adoption of the final Rule, whichever occurs first.

### Title 22

## CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

### Part I. Corrections

#### Chapter 1. Secretary's Office

#### §103. Death Penalty

A. Purpose. To set forth procedures to be followed for the lethal injection of those individuals sentenced to death.

B. Applicability. Deputy Secretary, Undersecretary, Chief of Operations and the Wardens of the Louisiana State Penitentiary and the Louisiana Correctional Institute for Women. The Secretary and the Wardens of the Louisiana State Penitentiary and the Louisiana Correctional Institute for Women are responsible for ensuring that appropriate unit written policy and procedures are in place to comply with the provisions of this regulation.

C. Policy. It is the secretary's policy that the department shall carry out the death penalty in accordance with the provisions of the Louisiana Revised Statutes. All execution processes shall be performed in a professional, humane, sensitive and dignified manner. Executions shall be conducted at the Louisiana State Penitentiary. The warden of that facility is responsible for carrying out the death sentence on the date established by the sentencing court.

D. Incarceration Prior to Execution. Male offenders sentenced to death shall be incarcerated at the Louisiana

State Penitentiary (LSP) at Angola, Louisiana. Female offenders sentenced to death shall be incarcerated at the Louisiana Correctional Institute for Women (LCIW) at St. Gabriel, Louisiana. Until the time for execution, the warden shall incarcerate the offender in a manner affording maximum protection to the general public, the employees of the department, and the security of the institution. Female offenders shall be transported to the Louisiana State Penitentiary for execution as directed by the secretary.

E. Mental Competency. Pursuant to the provisions of R.S. 15:567.1, a person who is not competent to proceed to execution may not be executed. A person is not competent to proceed to execution when he lacks the competence to understand that he is to be executed, and the reason he is to suffer that penalty. Any person sentenced to death may raise the issue of his mental incompetence to proceed to execution by filing an appropriate petition in the sentencing court. A person acting as petitioner's "next friend" or the Secretary of the Department of Public Safety and Corrections may also file the petition. The petition shall contain the information enumerated in R.S. 15:567.1(C). The sentencing court shall then determine the offender's mental competency in accordance with R.S. 15:567.1.

F. Death Warrant. Upon receipt of a death warrant, the secretary shall send written notification including a copy of the warrant to the following:

1. the warden at LSP;
2. the warden at LCIW (if appropriate);
3. the condemned offender, through the appropriate warden's office;
4. the governor, through the governor's executive counsel shall be mailed the certified copy of the warrant, return receipt requested, and the return receipt filed in the condemned offender's record; and
5. the clerk of each court of appeal.

G. Communications. The secretary shall establish a communication system between the governor's office and the LSP command center.

1. Primary communications shall be via a telephone line opened directly to the LSP command center from the execution chamber. This line shall be tested one hour prior to the scheduled execution. Other than testing, this line shall remain open.

2. Secondary communication shall be via cellular telephone.

3. In the event that both the primary and secondary communications are inoperable, the execution shall be delayed until communications are established.

#### H. Media Access

1. The media may contact the warden's office to request interviews. If the warden, condemned offender, and attorney (if represented by counsel) consent, the interview shall be scheduled for a time convenient to the institution.

2. Should the demand for interviews be great, the warden may set a day and time for all interviews and may specify whether the interviews shall be conducted individually or in "press conference" fashion.

#### I. Visits

1. Prior to the scheduled execution, the warden may approve special visits for the condemned offender.

2. The condemned offender shall not be required to visit with non-staff visitors that the condemned offender does not wish to see.

#### J. Pre-Execution Activities

1. The warden shall select an appropriate area to serve as a press room.

2. Approximately 30 calendar days prior to the scheduled execution date, the LSP execution team shall begin conducting training sessions no less than once per week until the scheduled date of the execution.

3. Approximately 14 calendar days prior to the scheduled execution date:

a. The secretary or designee shall give either written or verbal notice (followed by written notice placed in the United States mail within five days thereafter) of the date and time of the execution to the victim's parents, or guardian, spouse and any adult children who have indicated that they desire such notice. The named parties shall be given the option of attending the execution. Within three days of receipt of the notification, the named parties shall notify, either verbally or in writing, the secretary's office of their intention to attend as witness.

b. The warden at LSP shall have the condemned offender complete the requests for clergy witness, instructions for disposal of property and funeral arrangements. All such requests shall be signed in the presence of a notary.

4. Approximately 10 calendar days prior to the scheduled execution date:

a. The warden at LSP shall notify the following individuals/agencies of the date and time of the execution:

- i. Louisiana State Police;
- ii. West Feliciana Parish Sheriff;
- iii. West Feliciana Parish Coroner;
- iv. the condemned offender's clergy representative regarding the condemned offender's desire for the clergy representative to witness the execution.

b. The secretary shall select media representatives in accordance with Paragraph L.2. of this regulation and notify the warden of LSP in writing of the names of those selected.

5. Approximately seven calendar days prior to the scheduled execution date, the secretary shall notify the warden of LSP of the names of witnesses selected in accordance with R.S. 15:570-571.

6. Approximately seven calendar days prior to the scheduled execution date the warden at LSP shall order that the condemned offender be constantly monitored. A log entry must be made every 15 minutes that shall include, but not be limited to, movement, mood changes, meals served, showers, telephone calls, etc.

7. In the five calendar days prior to the execution, access to the execution room shall be restricted in accordance with institutional policy.

8. Approximately 12 to 24 hours prior to the scheduled execution:

a. The condemned offender shall be transferred from death row and housed in the execution building. The 15 minute log shall continue to be maintained.

b. The warden at LSP shall establish a line of communication with the secretary's office for notice of case status and/or other significant legal changes.

9. The following events shall take place upon the condemned offender's arrival at the execution building.

a. The execution building shall be restricted. Only the following shall be permitted access:

- i. secretary and/or designee(s);
- ii. warden;

iii. deputy wardens;

iv. chaplain;

v. physician;

vi. chief of security;

vii. maintenance superintendent;

viii. any other person deemed necessary by the warden.

b. The deputy warden/security and/or chief of security at LSP shall assign security personnel to staff entrances and checkpoints.

c. The deputy warden/security at LSP shall ensure that the condemned offender's property is inventoried in front of the condemned offender. Pursuant to Subparagraph J.3.b. of this regulation, the condemned offender shall have previously specified who is to receive their personal effects.

d. The condemned offender shall be allowed visits with family, friends and/or private clergy, as approved by the warden at LSP. Visits will normally terminate by 3 p.m. on the day of the execution, except visits with a priest, minister, religious advisor or attorney which will terminate at the discretion of the warden at LSP or his designee.

e. All communications equipment shall be tested, including primary and secondary communication with the secretary and governor's offices.

f. The warden at LSP shall receive updates from security personnel on crowd control, demonstrations, etc., as needed.

g. The deputy warden/security and/or chief of security at LSP shall brief the warden at LSP on the tension level within the prison population, as needed.

h. The warden at LSP shall advise the secretary of any unusual activity.

K. Time and Place. The execution shall take place at the Louisiana State Penitentiary between the hours of 6 p.m. and 9 p.m. [R.S. 15:570(C)]

L. Witnesses. All witnesses shall be over 18 years of age and all witnesses shall agree to sign the report of execution (R.S. 15:570-571).

1. The execution shall take place in the presence of the following witnesses:

a. the warden of the Louisiana State Penitentiary or designee;

b. the coroner of West Feliciana Parish or deputy;

c. a physician chosen by the warden;

d. a competent person/s selected by the warden to administer the lethal injection; and

e. a priest, minister, or religious advisor, if the offender so requests.

2. Not less than five nor more than seven other witnesses are required by law to be present. [R.S. 15:570(A)] These witnesses shall be selected as follows.

a.i. Three witnesses shall be members of the news media selected by the secretary from the following categories:

(a) a representative from the associated press;

(b) a representative selected from the media persons requesting to be present from the parish where the crime was committed; and

(c) a representative selected from all other media persons requesting to be present.

ii. These witnesses must agree to act as pool reporters for the remainder of the media present and meet with all media representatives immediately following the execution.

b. Up to two witnesses may be victim relationship witnesses [R.S. 15:570(D)]. If more than two victim relationship witnesses desire to attend the execution, the secretary is authorized to select from the interested parties the two victim relationship witnesses who shall be authorized to attend. In the case of multiple victims' families, the secretary shall determine the number of witnesses, subject to availability of appropriate physical space.

c. The remaining witnesses shall be selected by the secretary.

3. All persons selected as witnesses shall sign a copy of the agreement by witness to execution prior to being transported to the execution room.

#### M. Execution Procedures

1. The execution shall be conducted in accordance with established procedures.

2. No cameras or recording devices, either audio or video, shall be permitted in the execution room.

3. The identity of the person/s specified in Subparagraph L.1.d. who participates in an execution either directly or indirectly, shall remain strictly confidential and shall not be subject to public disclosure in any manner whatsoever (R.S. 15:570.E-F).

4. The witnesses shall enter the witness room where they will receive a copy of the condemned offender's written last statement, if a written statement is issued.

5. The condemned offender shall then be taken to the lethal injection room by the escorting officers. Once in the room, the condemned offender shall be afforded the opportunity to make a last verbal statement if he so desires. He shall then be assisted onto the lethal injection table and properly secured to the table by the officers. Once the officers exit the room, the warden shall close the curtain to the witness room and signal the I.V. technician(s) to enter. The I.V. technician(s) shall appropriately prepare the condemned offender for execution and exit the room. The warden shall re-open the witness room curtain.

6. The person/s designated by the warden and at the warden's direction, shall then administer, by intravenous injection, the appropriate substances in a lethal quantity into the body of the condemned offender until he is deceased.

7. No employee, including employee witnesses to the execution, except the secretary or the warden or their designees, shall communicate with the press regarding any aspect of the execution except as required by law.

#### N. Post Execution

1. At the conclusion of the execution, the coroner or his deputy shall pronounce the condemned offender dead.

2. The warden shall advise the secretary that the coroner has pronounced the condemned offender dead.

3. The secretary shall advise the governor or designee that the execution has been carried out.

4. The witnesses shall be escorted from the witness area.

5. The body of the condemned shall be removed from the execution chamber.

6. Disposition of the body shall be in accordance with arrangements made prior to the execution at the condemned offender's request.

7. The warden shall make a written report reciting the manner and date of the execution which he and all of the witnesses shall sign. The report shall be filed with the clerk of court in the parish where the sentence was originally imposed. (R.S. 15:571)

#### O. Debriefing

1. The warden at LSP shall ensure that critical incident debriefings are available for the execution team and staff participants.

2. The LSP religious services coordinator and/or LSP mental health staff shall be available for debriefing for the family of the condemned offender.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:953.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of the Secretary, LR 6:10 (January 1980), amended LR 7:177 (April 1981), amended by the Department of Public Safety and Corrections, Corrections Services, LR 17:202 (February 1991), LR 18:77 (January 1992), LR 24:342 (February 1998), LR 25:2410 (December 1999), LR 28:2552 (December 2002), LR 29:2847 (December 2003), LR 31:1600 (July 2005), LR 31:2032 (August 2005), LR 32:2270 (December 2006), LR 36:

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Secretary

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