

# DEPARTMENT OF CORRECTIONS POLICY

## POLICY NUMBER 760.001

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### CAPITAL PUNISHMENT

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**EFFECTIVE DATE:** December 4, 1992

**AUTHORITY:** General authority of the Secretary of Corrections to manage and direct the Department, RCW 71.09.050.

**APPLICABILITY:** This policy applies to all Department of Corrections staff responsible for carrying out Capital Punishment.

**PURPOSE:** To establish policy and procedure governing capital punishment pursuant to the requirements set forth in RCW 10.95.160—190.

**DEFINITIONS:** ISDP - Inmate Subject to the Death Penalty

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## POLICY

The Secretary, Department of Corrections, designates the Director, Division of Prisons, to coordinate the responsibilities of the Superintendent, Washington State Penitentiary, in accordance with RCW 10.95.160—190.

The Director, Division of Prisons, shall:

A. Develop procedures through the Superintendent of the Washington State Penitentiary and the Washington Corrections Center for Women to meet the requirements of RCW 10.95.160—190.

The procedures governing executions shall include the following:

- Conditions of confinement for an ISDP.
- A process for inmate election of means of execution in accordance with RCW 10.95.180.
- Mail procedures for ISDP.
- Visiting procedures for ISDP including:
  - a. Family
  - b. Clergy
  - c. Attorney
- Telephone procedures.
- Preparation of execution chamber.
- Witnesses to execution.
- Media relations.
- Crowd control.
- Provisions for females subject to the death penalty.
- Preparation of inmate for execution.

- Staff assignments.
- Conduct of execution.
- Communication procedures with Office of the Governor.
- Communication procedures with Office of the Attorney General.
- Communication procedures with Secretary of Corrections.

B. Develop public information procedures through the Department of Corrections Chief of Public Information.

C. Coordinate with the Office of the Attorney General for the review of the procedures and all operational decisions in the carrying out of the execution as well as the legal status of the Death Warrant.

All procedures relating to this policy will be approved by the Secretary, Department of Corrections, prior to implementation.

REFERENCE: Chapter 10.95 RCW

SUPERSESION: DOC 760.001, dated July 15, 1985

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**CHAPTER 10.95 RCW****CAPITAL PUNISHMENT-AGGRAVATED FIRST DEGREE MURDER**

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10.95.110 Verbatim report of trial proceedings--Preparation-- Transmittal to supreme court--Clerk's papers-- Receipt.

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10.95.150 Time limit for appellate review of death sentence and filing opinion.

10.95.160 Death warrant--Issuance--Form--Time for execution of judgment and sentence.

10.95.170 Imprisonment of defendant.

10.95.180 Death penalty--How executed.

10.95.185 Witnesses.

10.95.190 Death warrant--Record--Return to trial court.

10.95.200 Proceedings for failure to execute on day named.

10.95.900 Severability--1981 c 138.

### RCW 10.95.010 Court rules.

No rule promulgated by the supreme court of Washington pursuant to RCW 2.04.190 and 2.04.200, now or in the future, shall be construed to supersede or alter any of the provisions of this chapter. [1981 c 138 § 1.]

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### RCW 10.95.020 Definition.

A person is guilty of aggravated first degree murder if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;



penitentiary and shall be inflicted by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until the defendant is dead, or, at the election of the defendant, by hanging by the neck until the defendant is dead. In any case, death shall be pronounced by a licensed physician.

(2) All executions, for both men and women, shall be carried out within the walls of the state penitentiary. [1996 c 251 § 1; 1986 c 194 § 1; 1981 c 138 § 18.]

**NOTES:**

*Severability--1996 c 251: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 251 § 2.]*

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## RCW 10.95.185 Witnesses.

(1) Not less than twenty days prior to a scheduled execution, judicial officers, media representatives, representatives from the families of the victims, and representatives from the family of the defendant who wish to attend and witness the execution, must submit an application to the superintendent. Such application must designate the relationship and reason for wishing to attend.

(2) Not less than fifteen days prior to the scheduled execution, the superintendent shall designate the total number of individuals who will be allowed to attend and witness the planned execution. The superintendent shall determine the number of witnesses that will be allowed in each of the following categories:

(a) Media representatives.

(b) Judicial officers.

(c) Representatives from the families of victims.

(d) Representatives from the family of the defendant. After the list is composed, the superintendent shall serve this list on all parties who have submitted an application pursuant to this section. The superintendent shall develop and implement procedures to determine the persons within each of the categories listed in this subsection who will be allowed to attend and witness the execution.

(3) Not less than ten days prior to the scheduled execution, the superintendent shall file the witness list with the superior court from which the conviction and death warrant was issued with a petition asking that the court enter an order certifying this list as a final order identifying the witnesses to attend the execution. The final order of the court certifying the witness list shall not be entered less than five days after the filing of the petition.

(4) Unless a show cause petition is filed with the superior court from which the conviction and death warrant was issued within five days of the filing of the superintendent's petition, the superintendent's list, by order of the superior court, becomes final, and no other party has standing to challenge its appropriateness.

(5) In no case may the superintendent or the superior court order or allow more than seventeen individuals other than required staff to witness a planned execution.

(6) All witnesses must adhere to the search and security provisions of the department of corrections' policy regarding the witnessing of an execution.

(7) The superior court from which the conviction and death warrant was issued is the exclusive court for seeking judicial process for the privilege of attending and witnessing an execution.

(8) For purposes of this section:

(a) "Judicial officer" means: (i) The superior court judge who signed the death warrant issued pursuant to RCW 10.95.160 for the execution of the individual, (ii) the current prosecuting attorney of the county from which the final judgment and sentence and death warrant were issued, and (iii) the most recent attorney of record representing the individual sentenced to death.

(b) "Media representatives" means representative members of all forms of media.

(c) "Representative from the family of the victim" means a representative from the immediate family of a victim of the individual sentenced to death.

(d) "Representative from the family of the defendant" means a representative from the immediate family of the individual sentenced to death.

(e) "Superintendent" means the superintendent of the Washington state penitentiary. [1993 c 463 § 2.]

**NOTES:**

*Policy--1993 c 463: "The legislature declares that, to the extent that the attendance of*

witnesses can be accommodated without compromising the security or the orderly operation of the Washington state penitentiary, it is the policy of the state of Washington to provide authorized individuals the opportunity to attend and witness the execution of an individual sentenced to death pursuant to chapter 10.95 RCW. Further, it is the policy of the state of Washington to provide for access to the execution to credentialed members of the media." [1993 c 463 § 1.]

*Severability--1993 c 463: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."* [1993 c 463 § 3.]

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#### RCW 10.95.190 Death warrant - Record - Return to trial court.

(1) The superintendent of the state penitentiary shall keep in his or her office as part of the public records a book in which shall be kept a copy of each death warrant together with a complete statement of the superintendent's acts pursuant to such warrants.

(2) Within twenty days after each execution of a sentence of death, the superintendent of the state penitentiary shall return the death warrant to the clerk of the trial court from which it was issued with the superintendent's return thereon showing all acts and proceedings done by him or her thereunder. [1981 c 138 § 19.]

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#### RCW 10.95.200 Proceedings for failure to execute on day named.

Whenever the day appointed for the execution of a defendant shall have passed, from any cause, other than the issuance of a stay by a court of competent jurisdiction, without the execution of such defendant having occurred, the trial court which issued the original death warrant shall issue a new death warrant in accordance with RCW 10.95.160. The defendant's presence before the court is not required. However, nothing in this section shall be construed as restricting the defendant's right to be represented by counsel in connection with issuance of a new death warrant. [1990 c 263 § 2; 1987 c 286 § 1; 1981 c 138 § 20.]

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