

CHAPTER 23

LETHAL INJECTION

Authority

N.J.S.A. 30:1B-6, 30:1B-10, 2C:11-3 and 2C:49-1 et seq.

Source and Effective Date

R.2001 d.315, effective August 9, 2001.
See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).

Chapter Expiration Date

Chapter 23, Lethal Injection, expires on August 9, 2006.

Chapter Historical Note

Chapter 23, Lethal Injection, was adopted as R.1992 d.283, effective July 6, 1992. See: 24 N.J.R. 1677(a), 24 N.J.R. 2452(a).

Subchapter 2, Lethal Injection, was originally adopted as part of R.1987 d.160, effective April 6, 1987, and codified at N.J.A.C. 10A:16-10. See: 18 N.J.R. 1662(a), 19 N.J.R. 535(a).

Pursuant to Executive Order No. 66(1978), Chapter 23, Lethal Injection, was readopted as R.1996 d.530, effective October 24, 1996. See: 28 N.J.R. 4157(a), 28 N.J.R. 4875(a).

Chapter 23, Lethal Injection, was readopted as R.2001 d.315, effective August 9, 2001. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

10A:23-1.1 Purpose

The purpose of this chapter is to establish guidelines in accordance with the provisions of N.J.S.A. 2C:49-1 et seq. for executing persons sentenced to death pursuant to N.J.S.A. 2C:11-3.

Amended by R.2001 d.315, effective September 4, 2001.
See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).

Inserted "in accordance with the provisions of N.J.S.A. 2C:49-1 et seq." following "to establish guidelines".

10A:23-1.2 Scope

This chapter shall be applicable to the New Jersey Department of Corrections.

10A:23-1.3 Definitions

The following terms, when used in this chapter, shall have the following meanings:

"Capital Sentence Unit (C.S.U.);" means the close custody unit to which persons sentenced to death pursuant to N.J.S.A. 2C:11-3 are assigned until such time that the person is placed into an isolated holding unit preceding the scheduled date of execution, or the sentence is commuted or changed to a lesser penalty.

"Immediate family" means:

1. Spouse;
2. Parent;
3. Stepparent;
4. Legal guardian;
5. Grandparent;
6. Child; or
7. Sibling.

Amended by R.1996 d.530, effective November 18, 1996.
See: 28 N.J.R. 4157(a), 28 N.J.R. 4875(a).

Amended by R.2001 d.315, effective September 4, 2001.
See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).

In "Capital Sentence Unit (C.S.U.);" inserted "person is placed into an isolated holding unit preceding the scheduled date of" preceding "execution" and deleted "is carried out" preceding "or the sentence is commuted"; rewrote "Immediate family".

10A:23-1.4 Statutory authority

Pursuant to N.J.S.A. 2C:49-8, the Commissioner of the Department of Corrections may appoint a deputy or designee who shall have full authority to execute the warrant of execution and to perform all other duties imposed upon the Commissioner by State law.

New Rule, R.2004 d.172, effective May 3, 2004.

See: 36 N.J.R. 9(a), 36 N.J.R. 2243(a).

SUBCHAPTER 2. LETHAL INJECTION

10A:23-2.1 Place for execution

(a) The Commissioner shall provide and maintain a suitable and efficient unit enclosed from public view, within the confines of a designated New Jersey State prison for the imposition of the punishment of death.

(b) The State prison shall contain the apparatus and equipment necessary for the carrying out of executions pursuant to N.J.S.A. 2C:11-3.

Amended by R.1996 d.530, effective November 18, 1996.

See: 28 N.J.R. 4157(a), 28 N.J.R. 4875(a).

Amended by R.2001 d.315, effective September 4, 2001.

See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).

In (a), substituted "a designated" for "the" preceding "New Jersey" and substituted "of" for "for" preceding "the punishment of death"; in (b), deleted "New Jersey".

Law Review and Journal Commentary

How we carry out the death penalty is as important as whether we do so. Kevin D. Walsh, 165 N.J.L.J. 523 (2001).

10A:23-2.2 Provisions of services preceding execution

(a) Within seven days preceding the scheduled date of execution, the person sentenced to death shall be placed in an isolated holding unit at a State prison to be designated by the Commissioner or designee. During this isolation period, only the following persons authorized pursuant to N.J.S.A. 2C:49-6 and approved in accordance with State prison internal management procedures regarding security shall have access to the person sentenced to death:

1. Custody staff members and correction officials;
2. Immediate family of the person sentenced to death as defined in N.J.A.C. 10A:23-1.3;
3. Counsel of the inmate;
4. Person(s) authorized by court order; and
5. Upon request from the person sentenced to death, a clergy or a member of the press.

(b) During the 72 hour period immediately preceding execution of the person sentenced to death, the services listed below shall be provided in accordance with the following procedures:

1. Clergical:

- i. The prison chaplain or the inmate's private clergy shall, upon request of the person sentenced to death, make contact visits to the person on a daily basis to provide pastoral services. The time and duration of clergy visits shall be at the discretion of the Administrator of the State prison;

- ii. Clergy from the community must present appropriate clerical credentials to the Administrator and pass a routine security check; and

- iii. The prison chaplain or private clergy may accompany the person sentenced to death to the execution chamber corridor if so requested by the person.

2. Food:

- i. At least 24 hours in advance of the scheduled execution, the person sentenced to death may request the food of his or her choice to be served at the last regularly scheduled dinner, not less than eight hours prior to the execution. Such request shall be granted subject to reasonable availability and cost of the food desired; and

- ii. Alcoholic beverages are prohibited.

3. Visits:

- i. Window visits by immediate family members, up to a maximum of six hours per day and two persons at a time shall be permitted;

- ii. Contact visits by the authorized attorney of record shall be permitted daily, subject to security requirements of the State prison, including prior notice to the Administrator.

- iii. All contact with family members and attorney(s) shall terminate three hours prior to the time scheduled for administration of the pre-execution sedative; and

- iv. During the last 72 hours there shall be no contact of any kind permitted between the person sentenced to death and any member of the news media.

4. Telephone calls:

- i. The person sentenced to death may place daily telephone calls to members of his or her family, subject to appropriate scheduling procedures and the State prison rules; and

- ii. The person sentenced to death may place collect telephone calls to his or her attorney-of-record when the telephone calls are necessary.

5. Recreation:

- i. During the 72 hours preceding execution, recreation shall be permitted daily on an individual, isolated basis, if feasible.

6. Personal property:

i. The person sentenced to death shall be required to fill out a form indicating disposition of his or her personal property and saving account(s), except for such funds as may be needed to provide for burial expenses.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1996 d.530, effective November 18, 1996.

See: 28 N.J.R. 4157(a), 28 N.J.R. 4875(a).

Amended by R.2001 d.315, effective September 4, 2001.

See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).

Rewrote the section.

10A:23-2.3 Time for execution

(a) Upon receipt of the warrant appointing an execution date, the Commissioner shall schedule the time for implementation of the warrant and begin arrangements to carry out the imposition of a sentence to death including, but not limited to:

1. Designation and/or hiring on a consultant basis of administrative, professional, operational, medical, and custody staff;
2. Selection of execution technicians;
3. Selection of witnesses; and
4. Purchase of necessary supplies.

Amended by R.2001 d.315, effective September 4, 2001.
See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).

In (a), deleted "final" preceding "arrangements" and inserted "to carry out the imposition of a sentence to death" preceding "including, but not limited to" in the introductory paragraph, and rewrote 1.

10A:23-2.4 Witnesses

(a) The Commissioner shall select six adult citizens and two alternates who have volunteered to witness the execution. The two alternates shall be selected to be present in the event any of the witnesses may be unavailable on the appointed execution date.

(b) The witnesses shall receive written notice of their selection by registered mail or personal service at least seven days prior to the scheduled execution.

(c) The witnesses shall assemble at least two hours prior to the time set for execution, at a place designated by the Commissioner. The Commissioner shall assign suitable custody, operational or administrative staff to provide security, escort and transportation to the designated State prison.

(d) The names of the adult citizen witnesses and alternates shall not be disclosed until after the execution.

(e) The Commissioner shall authorize and permit, upon written request of the person sentenced to death, two members of the clergy who are not related to the person, to be present at the execution. These persons shall be notified of their selection and shall assemble in the same manner as for the witnesses set forth in (c) above. An alternate member of the clergy may be designated in the event either of the two clergy is unavailable.

(f) The Commissioner may authorize and permit, upon written request of the person sentenced to death, no more than two adult members of the person's immediate family to be present at the execution.

(g) The Commissioner shall authorize and permit, upon written request, no more than four adult members of the victim's immediate family to be present at the execution. The names of the members of the victim's immediate family

authorized to be present at the execution shall not be disclosed.

(h) In accordance with N.J.S.A. 2C:49-7, the Commissioner shall permit representatives of the news media to be present at the execution for the purpose of giving their respective newspapers and associations accounts of the execution. Selection of news media representatives shall be via lottery if more than one representative from each of the news media services listed in (i) below request to be present at the execution.

(i) The news media persons shall be from the following services:

1. A major wire service;
2. A television news service;
3. A newspaper; and
4. A radio news service.

(j) The designated State prison shall develop written post orders and internal management procedures for providing:

1. Escort and security for all witnesses while in the State prison;
2. Accommodations for witnesses; and
3. A room designated to be used for a press conference after the execution.

(k) The Commissioner shall not authorize or permit any other person to be present, except those authorized by this subchapter.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).

Institutional name change.
Amended by R.1996 d.530, effective November 18, 1996.
See: 28 N.J.R. 4157(a), 28 N.J.R. 4875(a).
Amended by R.2001 d.315, effective September 4, 2001.
See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).
Rewrote the section.

10A:23-2.5 Filming/photographing/taping of execution

(a) No cameras, video equipment, tape recorders or audio equipment are permitted to be brought into the State prison designated for the imposition of the punishment of death.

(b) There shall be no filming of the execution.

Administrative correction, effective January 27, 1989.
See: 21 N.J.R. 558(a).
Institutional name change.
Amended by R.2001 d.315, effective September 4, 2001.
See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).
Rewrote (a).

10A:23-2.6 Stay of proceedings

(a) A Written Stay of Proceedings or any other official Order from a court of competent jurisdiction shall be

received by the Commissioner or designee at the State prison main command post. A copy of such document shall be delivered immediately to the State prison Administrator. Appropriate steps shall be taken to confirm the authenticity of such Order or Stay.

(b) The State prison Administrator shall designate a facsimile machine and arrange for the installation and maintenance of a special telephone line with a confidential telephone number, to be available for the sole purpose of receiving incoming calls to stay execution proceedings.

(c) In addition to the telephone bearing the main number, there shall be two additional telephones on the line, sequenced for the purpose of receiving incoming calls in the event the main line is already in use. The facsimile machine and telephones shall be located in areas of the State prison that are designated by the Commissioner or designee.

(d) Upon installation of the special telephone line, the facsimile number and confidential telephone number shall be hand delivered to the:

1. Governor;
2. Attorney General;
3. Commissioner; and
4. Prosecutor

(e) Twenty-four hours prior to the scheduled execution the Administrator shall arrange to hand deliver to the Governor, Attorney General, Commissioner and prosecutor a confidential code to be utilized in the event a communication is to be made via the special telephone line. This code shall be changed prior to each scheduled execution. No telephone call on this telephone line during the eight hours prior to the execution shall be deemed authentic unless accompanied by use of the designated code.

(f) During the eight hour period preceding the execution, the facsimile machine and special telephone line shall be continuously monitored by State prison staff assigned by the State prison Administrator for this sole purpose. All calls from the Governor, Chief Justice or other authorized person(s) shall be reported to the State prison Administrator and Commissioner immediately.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1996 d.530, effective November 18, 1996.

See: 28 N.J.R. 4157(a), 28 N.J.R. 4875(a).

Amended by R.2001 d.315, effective September 4, 2001.

See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).

Rewrote (a) and (b); in (c), rewrote the second sentence; in (d), inserted "facsimile number and" preceding "confidential telephone number"; in (f), inserted "facsimile machine and" preceding "special telephone line", deleted "person" preceding "assigned" and substituted "State prison" for "New Jersey State Prison" throughout.

10A:23-2.7 Suspension of execution due to pregnancy

(a) If there is reasonable ground to believe that a female inmate, sentenced to death, is pregnant, the State prison Administrator shall impanel a committee of three licensed physicians, at least one of whom shall be a specialist in obstetrics and gynecology, to conduct medical testing and ascertain the medical condition of the person sentenced to death.

(b) The physicians shall conduct such medical examination as is medically indicated to determine facts relative to pregnancy. The physicians shall provide a written report of their findings to the State prison Administrator, who shall sign the report and transmit it to the Commissioner.

(c) If the physicians find the person sentenced to death to be pregnant, the State prison Administrator shall suspend execution of the death warrant.

(d) Care and services for the pregnant inmate shall be provided in accordance with N.J.A.C. 10A:16-6, Pregnant Inmates.

(e) Pursuant to N.J.S.A. 2C:49-10, when the inmate is no longer pregnant, the Commissioner shall issue the warrant, appointing a date, time and place to carry out the death sentence.

Administrative correction, effective January 27, 1989.

See: 21 N.J.R. 558(a).

Institutional name change.

Amended by R.1996 d.530, effective November 18, 1996.

See: 28 N.J.R. 4157(a), 28 N.J.R. 4875(a).

Amended by R.2001 d.315, effective September 4, 2001.

See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).

In (a), substituted "the" for "her" following "ascertain" and inserted "of the person sentenced to death" following "medical condition"; in (c), substituted "person sentenced to death" for "inmate"; .rewrote (e); substituted "State prison" for "New Jersey State Prison" throughout.

10A:23-2.8 Operational and professional staff

(a) One physician shall be present at the execution and shall be notified in writing, at least five days prior to the scheduled execution, by the Assistant Commissioner, Division of Operations or designee.

1. The physician may be the Medical Director of the Department of Corrections.

2. In the event the Medical Director chooses not, or is unavailable, to be present at the execution, the Assistant Commissioner, Division of Operations or designee shall contract with a physician to perform this service.

(b) Two persons who are qualified to operate the equipment utilized to administer the lethal substance shall be selected by the Commissioner as execution technicians. Procedures shall be designed to ensure that the identity of these persons shall be confidential and that these persons shall not be aware of who actually administered the lethal substance.