

## 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. INTRODUCTION

## 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".

## 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.

(c) The Commissioner or designee may authorize professional staff, such as, but not limited to, a registered nurse and a certified intravenous therapist to be hired on a consultant basis to be on-duty throughout the execution proceedings. Professional staff shall provide proper identification documents to the State prison Administrator at least 72 hours prior to the scheduled execution.

(d) In order to ensure the safe, secure and orderly operation of the correctional facility, the Commissioner or designee may authorize operational staff to be on-duty throughout the execution proceedings.

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

Institutional name change.  
Amended by R.1992 d.283, effective July 6, 1992.  
See: 24 N.J.R. 1677(a), 24 N.J.R. 2452(a).

Revised (a)2, (b)-(c).  
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); deleted former (b) and (c); recodified former (d) as (b); added new (c) and (d).

#### 10A:23-2.9 Medical testing supplies, execution substances and equipment

(a) The Assistant Commissioner, Division of Operations or designee shall ensure that medical testing of the person sentenced to death is conducted as mandated by court order or law.

(b) The Director of the Department of Corrections Medical Services, Division of Operations shall prepare a list of medical supplies, execution substances and equipment to be utilized at each execution. These items shall be purchased at least five working days prior to the scheduled execution and shall be set up under the supervision of the Health Services Unit Supervisor.

(c) All execution substances and medications to be utilized in the execution shall be stored in a securely locked box or container, which shall be stored within a securely locked cabinet or closet. The locked box or container shall only be used for the storage of execution substances and medications to be used in the execution. There shall be only one set of keys to this storage area and this set shall be retained by the Commissioner or designee.

Amended by R.1992 d.283, effective July 6, 1992.  
See: 24 N.J.R. 1677(a), 24 N.J.R. 2452(a).

Revised text.  
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).

Added a new (a); recodified former (a) as (b), deleted "Office of Institutional Support Services (O.I.S.S.)" preceding "Director", inserted "Medical Services, Division of Operations" preceding "shall prepare" in the first sentence and substituted "Health Services Unit Supervisor" for "O.I.S.S. Director" in the second sentence; recodified former (b) as (c) and deleted "his or her" preceding "designee".

#### 10A:23-2.10 Preparation of the inmate

(a) The administration of a sedative to the person sentenced to death prior to the time set for the execution shall be provided in accordance with N.J.S.A. 2C:49-2.

(b) Preparation of the person sentenced to death for execution shall be initiated and completed in accordance with written internal management procedures developed by the Assistant Commissioner, Division of Operations or designee and the State prison Administrator or designee.

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

Institutional name change.  
Amended by R.1992 d.283, effective July 6, 1992.  
See: 24 N.J.R. 1677(a), 24 N.J.R. 2452(a).

Revised text.  
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:23-2.11 Training

The Assistant Commissioner, Division of Operations or designee and the State prison Administrator shall arrange for training in execution procedures for all personnel who are designated to provide a service during an execution.

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

Institutional name change.  
Amended by R.1992 d.283, effective July 6, 1992.  
See: 24 N.J.R. 1677(a), 24 N.J.R. 2452(a).

Revised (a).  
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:23-2.12 (Reserved)

Amended by R.1992 d.283, effective July 6, 1992.  
See: 24 N.J.R. 1677(a), 24 N.J.R. 2452(a).

Revised (c).  
Amended by R.1996 d.530, effective November 18, 1996.  
See: 28 N.J.R. 4157(a), 28 N.J.R. 4875(a).  
Repealed by R.2001 d.315, effective September 4, 2001.  
See: 33 N.J.R. 2012(a), 33 N.J.R. 2991(a).

Section was "Execution chamber and executioners' room".

#### 10A:23-2.13 Preparation of the execution substances and medications

At least one hour prior to the time set for the execution, the Commissioner or designee shall remove the execution substances and medications to be used in the execution from the place of storage and give the substances and medications to the person(s) designated by the Assistant Commissioner, Division of Operations or designee. Upon receipt of the execution substances and medications, the designated person(s) shall be escorted to the executioners' room to prepare the execution materials.

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).

Deleted "his or her" preceding "designee" and substituted "Assistant Commissioner, Division of Operations or designee" for "O.I.S.S. director".

#### 10A:23-2.14 Execution

(a) Upon arrival of the person sentenced to death at the execution chamber, assigned personnel shall position the stretcher, connect necessary operating systems and take their positions in accordance with State prison internal management procedures.

(b) The Commissioner or designee shall, in the presence of the assembled witnesses and news media representatives, read the official death sentence Warrant.

(c) Upon order of the Commissioner or designee, the execution technicians shall perform the duties and responsibilities conferred on them by law.

(d) Upon completion of the execution procedures, the physician shall enter the execution chamber, examine the body of the person sentenced to death and confirm the occurrence of death. The witnesses shall then be escorted from the witness room. Pursuant to written State prison internal management procedures, the deceased shall be removed from the execution chamber and transported to a waiting vehicle.

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 "person sentenced to death" for "condemned", inserted "and take their positions" preceding "in accordance with" and deleted the last sentence; in (c), substituted "execution technicians" for "executioners"; in (d), substituted "body of the person sentenced to death" for "deceased" and inserted "the occurrence of"; substituted "State prison internal management" for "Capital Sentence Unit" preceding "procedures" and deleted "his or her" preceding "designee" throughout.

#### 10A:23-2.15 Stay of execution

If, at any time during the execution proceedings, a Stay of Proceedings is ordered, execution procedures shall be halted and the witnesses shall be removed. Where medically indicated, the inmate may be transferred to the health care facility designated by the Commissioner or designee for treatment.

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 first sentence; deleted the second sentence; deleted "his or her" preceding "designee" and "further" preceding "treatment" in the third sentence.

#### 10A:23-2.16 Certificates

(a) Immediately after the execution, the physician shall examine the deceased and shall prepare a written report stating the nature of the examination and occurrence of death.

(b) The Commissioner shall prepare and sign a separate certificate setting forth the time and place of the execution and stating that the execution was conducted in conformity to the sentence of the Court in accordance with N.J.S.A. 2C:11-3 and 2C:49-1 et seq.

(c) The Commissioner's certificate shall be filed within 10 days in the Superior Court in the county in which the person executed was convicted.

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 (b), substituted "in accordance with" for "and provisions of" and added second N.J.S.A. reference.

#### 10A:23-2.17 Disposition of the deceased

Immediately after the execution, the deceased shall be transported to the county morgue. The disposition of the body shall be in accordance with N.J.S.A. 2C:49-9 and N.J.A.C. 10A:16-7, Critical Illness or Death of Inmates.

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

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

#### 10A:23-2.18 Memorial or religious service for the deceased

Except as provided under N.J.S.A. 2C:49-9b, no memorial, religious or other services shall be held at the State prison over the body of the deceased.

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).

Substituted "the" for "New Jersey" preceding "State".

#### 10A:23-2.19 Execution substance materials and apparatus handling

(a) Upon removal of the deceased, personnel designated by the State prison Administrator shall gather all used and unused execution substances, medications and syringes. These items shall be maintained in a secure receptacle in an area designated by the Administrator. The Administrator shall request that a Special Investigations Division Investigator monitor these activities and provide security.

(b) All stored materials shall be retained in a secure location for a period of 10 working days. Thereafter, the Administrator shall order them to be destroyed and/or disposed of in accordance with internal management procedures and accepted practices.

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).  
Administrative change.  
See: 32 N.J.R. 303(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), deleted "New Jersey" preceding "State".

#### 10A:23-2.20 Report of execution procedures

(a) The State prison Administrator shall assign a staff member to monitor the entire execution process and to keep a detailed written record of the proceedings.

(b) The written record shall be given to the Administrator in its original form, within 24 hours after completion of the execution.

(c) The report shall not be considered a public record for any purpose other than as specified by the State prison Administrator or Commissioner.

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 reference to a staff member for a reference to a member of his or her staff; in (a) and (c), deleted "New Jersey" preceding "State".

#### 10A:23-2.21 Procedures and post orders

(a) The State prison Administrator or designee shall develop detailed written internal management procedures and post orders consistent with this subchapter. Each functional unit or team involved in the execution proceedings shall formulate and prepare detailed written internal management procedures governing their role, which shall be consistent with the imposition of a sentence to death in accordance with N.J.S.A. 2C:49-1 et seq. and this subchapter.

(b) The written internal management procedures and post orders of the designated State prison shall be submitted to the Chairperson of the Capital Sentence Committee for review.

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.