



FOR INFORMATIONAL PURPOSES
November 2015

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Timeline of Lethal Injection Protocol Regulations

February 21, 2006: Condemned inmate Michael Angelo Morales' execution is stayed because of his challenge to California's administration of its lethal injection protocol. Morales challenged the constitutionality of his execution, contending that San Quentin State Prison's operational procedure — the protocol for lethal injection — and the manner in which the California Department of Corrections and Rehabilitation (CDCR) implemented it, would subject him to unnecessary risk of excessive pain, thus violating the Eighth Amendment's prohibition of cruel and unusual punishment.

December 15, 2006: The U.S. District Court held that "California's lethal-injection protocol — as actually administered in practice — create[d] an undue and unnecessary risk that an inmate will suffer pain so extreme that it offends the Eighth Amendment." The court also stated that "Defendants' implementation of lethal injection is broken, but it can be fixed."

January 16, 2007: The Governor's Office submitted a response to the court's Dec. 15, 2006, Memorandum of Intended Decision. The Governor immediately directed CDCR to undertake a thorough review of all aspects of its lethal injection protocols. CDCR informed the court it would undertake a thorough review and submit to the court by May 15, 2007, a revised process.

May 15, 2007: CDCR files a revised protocol with the court.

November 29, 2007: The Marin County Superior Court held that the Administrative Procedure Act (APA) required CDCR to promulgate the protocol as a regulation. A lethal injection protocol had been in effect since 1993. No court had required it to be promulgated as a regulation.

November 21, 2008: CDCR's appeal of the Superior Court order was denied.

April 17, 2009: CDCR submitted draft lethal injection regulations to the Office of Administrative Law (OAL).

May 1, 2009: CDCR posted the notice of proposed regulations in the OAL Register and provided public notice on its website. Posted documents included the full regulation text, an initial statement of reasons, forms, a notice of proposed change to regulations identifying the public comment period, public hearing date, location and time, and contact information for submitting comments to CDCR. CDCR's unique notice requirements also include posting notices of proposed regulations in all state prisons in conspicuous places accessible to inmates. This requirement is met using CDCR's



special notice called a Notice of Change to Regulations that was also posted on CDCR's website.

May 1, 2009: The public comment period began.

June 30, 2009: CDCR held a public hearing regarding the proposed regulations. There were 102 speakers at the public hearing. The public hearing was not a forum to debate the proposed regulations.

July 1, 2009: CDCR elected to accept comments until 5 p.m. because of the large volume of last minute comments received.

January 4, 2010: CDCR issued a notice of modifications to the text of the proposed lethal injection regulations. The changes in the re-notice were in response to comments received regarding the originally proposed regulation text. The APA requires that such re-notice comment periods be no less than 15 calendar days.

January 20, 2010: End of the 15-day public comment period. CDCR decides to accept public comments through Jan. 26, 2010, because of the high volume of last-minute comments received electronically by email.

April 29, 2010: CDCR submits its final rulemaking package for the lethal injection regulations to OAL.

June 8, 2010: The OAL notified CDCR that it was disapproving the regulations submitted on April 29. The disapproval contained specific deficiencies that caused the disapproval, but which could be addressed through changes announced in a public re-notice or by further information provided by CDCR.

June 11, 2010: CDCR publishes a second re-notice to the public addressing the issues raised by OAL. The re-notice public comment period ran for 15 days – from June 11 to June 25 – as required by the Government Code. CDCR accepted and responded to public comments arriving up to June 28.

July 6, 2010: CDCR re-submitted its regulations concerning the lethal injection process. OAL had up to 30 working days to review the regulation filing.

July 30, 2010: The OAL notified CDCR that it had approved and certified for adoption the regulations for lethal injection. The rulemaking record was filed with the Secretary of State the same day to take effect with the force of law in 30 calendar days.

August 29, 2010: The permanent effective date of the regulations.

February 21, 2012: The Marin County Superior Court in *Mitchell Sims v. CDCR, et al.* issued a judgment and held that CDCR failed to comply with the APA when it promulgated its lethal injection regulations. The court enjoined CDCR from executing anyone until such time as new lethal injection regulations were promulgated in compliance with the APA.



April 19, 2012: A Petition for Writ of Mandate was filed with the Third District Court of Appeal in *Winchell v. Cate* on behalf of Bradley Winchell. It asserted excessive delay in carrying out the judgment of death and asked the court to order CDCR to promulgate a single-drug lethal injection protocol for the execution of inmate Michael Morales, on death row for the kidnap, rape and murder of Terri Winchell. Bradley Winchell is the victim's brother.

April 26, 2012: CDCR appealed the ruling and injunction in the *Sims* case to the First District Court of Appeal. In its notice of appeal, CDCR said it “recognize[s] that the availability of the three drugs comprising the current protocol is uncertain.” And the notice said that “under the Governor’s direction,” CDCR “will also begin the process of considering alternative regulatory protocols, including a one-drug protocol, for carrying out the death penalty.”

June 14, 2012: The Third District Court of Appeal denied the petition in the matter of *Winchell v. Cate*.

May 30, 2013: The First District Court of Appeal affirmed the trial court’s judgment in the *Sims* case and held that CDCR’s lethal injection protocol was invalid for substantial failure to comply with the requirements of the APA. The court permanently enjoined CDCR from carrying out the execution of any condemned inmate by lethal injection unless and until new regulations are promulgated in compliance with the APA.

November 7, 2014: Bradley Winchell and Kermit Alexander, whose relatives were murdered by condemned inmates Michael Morales and Tiequon Cox respectively, filed a Petition for Writ of Mandate in Sacramento County Superior Court. *Winchell and Alexander v. Beard* asserted that CDCR had abused its discretion, failed its duty and violated their rights because of unnecessary delays. They asked the court to order CDCR to promulgate lethal injection regulations and provide specific reasons for CDCR’s denial of the original petition.

December 23, 2014: CDCR filed its response to the *Winchell and Alexander* legal petition.

January 29, 2015: The Sacramento County Superior Court denied in a tentative ruling CDCR’s arguments against the petition. CDCR had argued that Winchell and Alexander lacked legal standing and that the Legislature had given CDCR discretion over how and when to develop lethal injection regulations. The judge allowed a hearing on Jan. 30, 2015, and later affirmed her tentative ruling on Feb. 6, 2015.

June 1, 2015: The state filed a stipulated settlement agreement in the *Winchell and Alexander v. Beard* case. The agreement stated that CDCR will promulgate a single-drug lethal injection regulation within 120 days after the U.S. Supreme Court issues its opinion or other disposition in *Glossip v. Gross*, a case involving Oklahoma’s lethal injection protocol.



June 4, 2015: The Sacramento County Superior Court signed the judgment and the *Winchell and Alexander v. Beard* case is settled.

June 29, 2015: The U.S. Supreme Court ruled in a 5-4 vote that the sedative midazolam may be a part of a lethal injection protocol. The justices heard the *Glossip v. Gross* case on April 29, 2015. Pursuant to the stipulated settlement in the *Winchell and Alexander v. Beard* case, CDCR agreed to file with the OAL draft regulations of its lethal injection protocol for review pursuant to the APA within 120 days.

October 27, 2015: CDCR submitted to OAL its notice of proposed adoption of lethal injection regulations for publication in the California Regulatory Notice Register.

November 6, 2015: CDCR's notice of proposed adoption of lethal injection regulations is published in the California Notice Regulatory Notice Register (Register 2015, No. 45-Z, November 6, 2015.)

For capital punishment information, see:
http://www.cdcr.ca.gov/Capital_Punishment/index.html

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