

# STATE OF FLORIDA

## OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 06-260

WHEREAS, the laws of Florida provide that, under certain circumstances, murder in the first degree is punishable by death; and

WHEREAS, in 2000, the Florida Legislature determined that death by lethal injection is the preferred method for carrying out a sentence of death, leaving to persons under sentence of death the option of choosing to have the death sentence administered by electrocution; and

WHEREAS, in implementing the death penalty, Florida has adopted procedures and protocols for lethal injection intended to ensure that the lethal injection is administered appropriately and in a manner that does not cause unnecessary pain and suffering; and

WHEREAS, courts, including the Florida Supreme Court in the case of *Sims v. State*, 754 So.2d 657 (Fla. 2000), and subsequent cases citing *Sims*, have upheld Florida's method of lethal injection as consistent with the Eighth Amendment of the United States Constitution and its prohibition against cruel and unusual punishment; and

WHEREAS, the cases that have upheld Florida's lethal injection protocols have done so based on evidence that the Department of Corrections was adequately implementing and following such protocols; and

WHEREAS, the findings in the autopsy report prepared by William F. Hamilton, M.D., Medical Examiner for the 8th Circuit, regarding Angel Diaz, who was executed on December 13, 2006, indicate that the lethal injection protocols may need to be reviewed to determine if any

additional protocols should be added or whether any existing protocols should be modified in any way; and

WHEREAS, the significantly lengthier death process for Mr. Diaz compared to that of other inmates who previously have been executed by lethal injection in Florida, including, according to witness accounts, a longer period of time during which Mr. Diaz lay conscious, should be considered; and

WHEREAS, as a matter of humanity, constitutional imperative, and common sense, if the State is going to execute persons convicted of capital crimes, it must do so in a manner that comports to its own protocols and the United States and Florida Constitutions;

NOW, THEREFORE, I, JEB BUSH, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, and all other applicable laws, do hereby promulgate the following Executive Order, to take immediate effect:

Section 1. I hereby create the Governor’s Commission on Administration of Lethal Injection (the “Commission”).

Section 2. The purpose of the Commission shall be to review the method in which the lethal injection protocols are administered by the Department of Corrections and to make findings and recommendations as to how administration of the procedures and protocols can be revised so that Floridians, including those persons who are sentenced to death, can be assured that the State continues to take reasonable and appropriate measures to ensure that its administration of death by lethal injection comports to the United States and Florida Constitutions, as interpreted by current case law.

Section 3. The Commission shall be composed of 11 members, five of whom shall be appointed by the Governor, three of whom shall be appointed by the Attorney General, one of

whom shall be appointed by the Senate President, one of whom shall be appointed by the Speaker, and one of whom shall be appointed by the Chief Justice of the Florida Supreme Court. To the extent possible, the members of the Commission shall reflect a cross-section of the scientific, medical, law enforcement and legal communities. At least one such member of the Commission shall be an attorney with extensive capital collateral experience or a present or former capital collateral regional counsel or registry attorney. In order to provide the broadest experience available to the Commission, at least three members shall be persons who are not currently involved in the criminal justice system in Florida. The Chairman shall be appointed by the Governor from among the members of the Commission.

Section 4. Members of the Commission shall serve at the pleasure of the appointing authority and shall serve without compensation, except that they may be reimbursed for travel to Commission meetings at the rates permitted under Section 112.061, Florida Statutes (2006).

Section 5. The Commission shall meet as often as necessary, and in no event fewer than three times, and shall submit its preliminary report of findings and recommendations to the Governor no later than February 1, 2007, and its final report of findings and recommendations by March 1, 2007. Upon issuance of its final report, the Commission shall be dissolved. Moreover, all meetings of the Commission shall be open to the public as set forth in Article I, Section 24(b) of the Florida Constitution and Chapter 286, Florida Statutes (2006).

Section 6. The Commission's purpose and mission shall be limited to evaluating Florida's lethal injection procedures and protocols, including enforcement of those procedures and protocols, and shall not extend to re-evaluating the policy decisions of the Legislature in enacting a death penalty or the means chosen by the Legislature for implementing the state's death penalty.

Section 7. The Executive Office of the Governor shall provide administrative support to the Commission.

Section 8. Until the Commission has issued its findings and recommendations and the appropriate revisions to the Department of Corrections' procedures and protocols have been adopted, or until further executive order, no further death warrants shall be signed.

Section 9. All state agencies under the direction of the Governor are hereby ordered, and all other state agencies are hereby requested, to provide such assistance to the Commission as may be requested by the Commission in furtherance of this Executive Order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, the Capitol, this 15<sup>th</sup> day of December, 2006.

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GOVERNOR

ATTEST:

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SECRETARY OF STATE