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Another hurdle in executing inmates

No N.J. procedures for lethal injection

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By law, John Martini's days should be numbered.

Condemned in 1991 for kidnapping and murdering Fair Lawn businessman Irving Flax, Martini should be facing death on or shortly after March 3. That's when a temporary moratorium on executions in New Jersey expires.

But Martini, like the eight other men on New Jersey's death row, is not likely to see his sentence carried out anytime soon, if at all.

A special state commission recommended this week that the Legislature replace the death penalty with life imprisonment without pa role. But even if the death penalty remains on the books, the end of the moratorium -- 60 days after the commission's report -- won't mean executions can proceed.

That's because New Jersey has no regulations in place for carrying out a lethal injection.

"They can't execute a man without execution regulations," said Stephen Kirsch, the assistant deputy public defender representing Martini.

The state's old lethal injection regulations were ruled defective by a state appeals court in February 2004. New ones have yet to be adopted.

To Flax's widow, Marilyn, that is an outrage beyond expression.

"There's no word that describes the amount of anger and frustration I have at the system," Marilyn Flax said yesterday. "They've had no intention to execute anyone in New Jersey. They've had all kinds of tactics for stalling."

But Richard Dieter, executive director of the Death Penalty Information Center in Washington, D.C., said New Jersey is not alone in grappling with the problems posed by lethal injection, which has sud denly become a hot issue in the courts.

"Besides New Jersey, there are about eight other states that have holds on executions because of this very lethal-injection issue," Dieter said. "They're discovering that this is not an easy problem to solve."

The long-held view that death by lethal injection is painless and nearly instantaneous has been challenged by "new scientific knowledge," Dieter said. Although the condemned "appear to be still because they're paralyzed, they may be under severe pain."

Florida Gov. Jeb Bush temporarily halted lethal injections last month after murderer Angel Nieves Diaz took 34 minutes to die. Diaz appeared to be moving for most of that time, according to the Associated Press.

Federal courts in California, Missouri, North Carolina, Ohio, Delaware, Tennessee, Arkansas and Maryland have stayed executions because of concerns about the potential for botched executions. Last June, the U.S. Supreme Court opened a new avenue of appeals for death row inmates nationwide by allowing them to argue the drugs proposed for their executions will cause painful, and unconstitutionally cruel, deaths.

New Jersey's courts were ahead of the curve in spotting problems in the state's lethal injection proce dures. In April 2004, a three-judge appeals court ruled they shrouded executions in undue secrecy and made no provision for a last-minute pardon.

In February 2005, at a public hearing by the state Department of Corrections on proposed revisions, death penalty opponents packed the room and raised additional objections, including the risk of un duly painful executions. The proposal was eventually withdrawn.

"The entire process has to start from the beginning again," said Matt Schuman, a corrections department spokesman. "I would es timate that would take six to 12 months."

Martini also has one last-ditch appeal to the U.S. Supreme Court still pending. Kirsch said the odds of the court accepting the case are "slim."

"At that point, I believe Mr. Martini is out of court-related op tions," Kirsch said. But the lack of valid lethal injection regulations would continue to block any executions.

Celeste Fitzgerald, executive di rector of New Jerseyans for Alternatives to the Death Penalty, said there are so many questions about both lethal injections and the future of capital punishment that the state should hesitate before promulgating new regulations.

Schuman, the corrections department spokesman, said, "Right now, nothing's being done."

Anthony Coley, a spokesman for Gov. Jon Corzine, said, "Nothing has changed with regard to the governor's position on capital punishment. He remains opposed to it."

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