



Executions drop as states debate lethal injection

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By Oren Dorell and Kevin Johnson, USA TODAY

The questions over lethal injection that have led executions to be halted in Florida and California are likely to curb the use of the death penalty across the USA, according to analysts who support capital punishment and others who oppose it.

However, it's unclear whether the increasing focus on whether lethal injection is unconstitutionally painful represents a significant and lasting turn against the death penalty or a temporary slowdown in executions that will end once procedures for injections are improved.

"I think we're headed towards fewer executions," says Deborah Denno, a professor at Fordham University Law School who was on the U.S. Sentencing Commission from 1994 to 1997. She says a range of problems in the nation's death penalty system — unqualified public defenders, the need for more DNA testing and questions about lethal injections, for example — have prevented capital punishment from being applied fairly.

Kent Scheidegger, legal director of the Criminal Justice Legal Foundation, which supports the death penalty, disagrees that the decline will last.

He calls the controversy over lethal injection — which is used in nearly all of the 38 states that have the death penalty — "a significant but temporary setback" for capital punishment that will lead to fewer executions only until problems with injections are resolved.

He notes that public opinion surveys consistently have shown that about two-thirds of Americans support the death penalty.

Scheidegger says the debate over injections is somewhat overblown. "Why are we that concerned about whether a convicted murderer feels some pain at death?" he asks. "It's supposed to be punishment."

For years, executions have declined and courts have been increasingly reluctant to issue death sentences as a range of issues have raised questions about how the death penalty is used. The wrangling over lethal injection is the latest battle front in that debate.

On Friday, Florida Gov. Jeb Bush suspended executions in that state and appointed a panel to examine whether lethal injections represent an unconstitutional "cruel and unusual punishment" under the Eighth Amendment. Bush's decision came after it took a state execution team two injections and 34 minutes — more than twice the usual time — to kill convicted murderer Angel Diaz.

A state medical examiner determined that needles used to administer a three-chemical mix in executions were not inserted directly into Diaz's veins.

Shortly after Bush's announcement, federal Judge Jeremy Fogel in San Jose ruled that California's lethal injection system violated the Eighth Amendment, although Fogel left open the possibility that the state could come up with a protocol for executions that would be acceptable.

The moves by Bush and Fogel came a few days after the Death Penalty Information Center, a group in Washington, D.C., that



opposes capital punishment, linked a decline in executions to legal disputes in Florida, California, Maryland, Missouri and several other states. The lawsuits challenge the expertise of the teams that implant the intravenous lines into condemned inmates and regulate the flow of the lethal drugs.

In agreeing that convicted killer Michael Morales' execution should be put on hold, Fogel cited a "pervasive lack of professionalism" in California's lethal injection protocols.

Among other things, Fogel said, prison execution teams were poorly screened and the chemicals used in executions sometimes have not been prepared properly.

State protocols for lethal chemicals vary, but most involve a barbiturate to make the inmate unconscious, a paralyzing agent and potassium chloride to stop the heart.

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