

Gerald Kogan

Florida's justice system fails on many fronts

By Gerald Kogan, Special to the Times
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In April, the U.S. Supreme Court found that the method of lethal injection utilized by Florida, among other states, does not violate the Constitution's prohibition against cruel and unusual punishment.

That should not be the end of the conversation.

Reasonable men and women of all political affiliations, faiths, and professional backgrounds have disagreed for decades about the morality of executing those who commit heinous crimes. As a former prosecutor, defense attorney, trial judge and chief justice of the Florida Supreme Court, I have been involved in 1,200 capital cases and can personally attest to the complexity and uncertainty of that debate. Remarkably, the same individuals who agree on little else are beginning to find one piece of common ground: the belief that Florida's system of capital punishment is broken.

Today, Florida is scheduled to conduct its first execution since former Gov. Jeb Bush implemented a moratorium in 2006. Indefinitely stopping all executions was the only responsible decision after an execution was botched so badly that it took twice the normal dosage of the lethal chemical cocktail and more than half an hour to kill Angel Diaz.

Sadly, the mismanagement of the actual act of executing somebody is only one among many problems with Florida's capital punishment system. Our state's failure to provide the due process protections needed to ensure that we are convicting and punishing the right people benefits no one: not family members of murder victims, not capital defendants, and not the public at large. Too many of these cases are overturned for serious errors, cases take too long to resolve, and Florida has become the holder of a dubious distinction: more individuals convicted of murder — 22 — have been exonerated from our death row than any other in the country.

One of those individuals was Frank Lee Smith, who was convicted in 1985 of rape and murder. He succumbed to cancer and died in prison after serving more than 14 years on Florida's death row. After his death, he was cleared of all charges by DNA evidence that identified a different man as the perpetrator.

Mistakes in identification and prosecution of defendants are compounded by Florida's woefully inadequate system of providing those accused of capital crimes with representation at trial. The bar for inclusion in Florida's Capital Collateral Registry — a list of attorneys available to try capital cases — is set embarrassingly low, and requires very little of participating attorneys. The inadequate standards fall far short of the bare minimum qualifications established by the

American Bar Association. Current Florida Supreme Court Justice Raoul G. Cantero III recently testified before the Florida Commission on Capital Cases that the representation provided by these attorneys is "some of the worst lawyering" he has ever seen.

It is tempting to think of providing good lawyers to the accused and DNA testing to the convicted as the maneuverings of those who sympathize with our state's worst criminals, or as the actions of those who are "soft on crime." Quite the contrary, the safety of our communities depends on arresting, convicting and punishing the actual perpetrator of a crime, feats which require a competent justice system from beginning to end. When we fail to discharge those basic responsibilities, the actual rapist or murderer is left free to commit further acts of senseless violence.

The Constitution Project's bipartisan Death Penalty Committee — a coalition of judges, prosecutors, defense attorneys and victim advocates, including supporters and opponents of the death penalty alike — has produced more than 20 recommendations for the reform of the capital punishment system, including access to DNA testing and competent counsel. There is much that can be done to improve Florida's system of capital punishment, and adopting those recommendations should be the first step.

In the meantime, Gov. Crist should order a stay of all executions pending a statewide review of his state's death penalty. His constituents should demand no less.

Gerald Kogan served as a justice of the Florida Supreme Court from 1987 to 1998. He is currently a co-chair of the Constitution Project's bipartisan Death Penalty Committee.