

Judge: Ohio must change lethal injection drugs

By M.R. KROPKO, Associated Press Writer *Tue Jun 10, 9:36 PM ET*

Ohio's method of putting prisoners to death is unconstitutional because two of three drugs it uses for lethal injection can cause "an agonizing and painful death," a county judge ruled Tuesday.

Ohio must stop using its three-drug combination and instead use a single, anesthetic drug to execute its condemned prisoners, because the current lethal injection process doesn't provide the quick and painless death required by Ohio law, Lorain County Common Pleas Judge James Burge said.

Burge ruled in favor of Ruben Rivera and Ronald McCloud, who are awaiting trial in separate murders cases and could receive death sentences if convicted.

Jeffrey Gamso, an American Civil Liberties Union attorney who represented the two men, predicted death row inmates will "breathe a bit of a sigh of relief because they would rather, if they are going to be killed, they would rather not be tortured to death."

State officials were reviewing the decision and had not determined if they would appeal to the Ohio Supreme Court, said Jim Gravelle, a spokesman for the state attorney general.

In April, the U.S. Supreme Court turned back a constitutional challenge to the lethal injection procedure in Kentucky, which uses the same three drugs as Ohio. The high court ruled that Kentucky's procedure didn't constitute cruel and unusual punishment.

Ohio's lethal injection procedure is similar to Kentucky's, but not identical. Burge's ruling also specifically took into account Ohio law, which requires the death penalty to be painless.

In the Ohio case, two anesthesiologists testified that one drug — sodium thiopental — would be enough to kill and that the other two drugs increase the risk of suffering.

Gamso had argued the state could reduce that risk if it used only sodium thiopental and eliminated the other two drugs — pancuronium bromide, which causes paralysis, and potassium chloride, which stops the heart.

Burge wrote in his ruling that the two drugs create "an unnecessary and arbitrary risk that the condemned will experience an agonizing and painful death."

Gregory Trout, chief legal counsel for the Ohio Department of Rehabilitation and Correction, told the judge during a hearing last month that no other state uses just sodium thiopental and that such a change would invite more legal challenges.

Ohio has executed 26 inmates since it resumed putting prisoners to death in 1999.

In Arkansas, the state attorney general's office offered the revised lethal injection procedures as part of an effort to lift federal court stays of execution against inmates challenging the method.

Under the new protocol, executioners administering lethal injections will check for fluttering eyelids and shake condemned inmates to assure they are unconscious before delivering the two final drugs to carry out the death penalty.

Associated Press writers Julie Carr Smyth in Columbus and Joe Milicia and Thomas J. Sheeran in Cleveland contributed to this report.