

Opponents say prolonged execution offers more evidence for challenge to lethal injection



Family members of the victims, Jeanne Brown, left, who had a sister and father murdered, speaks during a news conference as her husband Richard Brown listens, after the nearly two hour long execution of Joseph Rudolph Wood at the state prison on Wednesday, July 23, 2014, in Florence, Ariz. (AP Photo)The Associated Press

ST. LOUIS – The nation's third botched execution in six months offers more evidence for the courts that lethal injection carries too many risks and amounts to cruel and unusual punishment, death-row lawyers and other opponents said Thursday.

Death-penalty opponents say the execution of an Arizona inmate who took two hours to die shows that state experiments with different drugs and dosages are a callous trial-and-error process. The result: Every few months, an inmate gasps, chokes and takes an unusually long time to die.

"These executions are experiments on human subjects," said Cheryl Pilate, an attorney for several Missouri death-row inmates. "The potential for things to go wrong is almost unlimited."

Lethal injection has been challenged in the courts many times, mostly without success. The biggest recent challenge for death-penalty states has been obtaining lethal chemicals after major drugmakers stopped selling drugs for use in executions. That forced states to find alternative injection drugs.

Adding to the concern from opponents is the fact that the drugs are mostly purchased from loosely regulated compounding pharmacies. Arizona, Texas, Florida and Missouri refuse to name the supplier and offer no details about how the drugs are tested or how executioners are trained.

The Supreme Court will probably face increasing pressure to examine how American executions play out, said Deborah Denno, a Fordham University School of Law death penalty expert.

"Every time this happens, it makes it far more difficult for a state corrections department to justify using a drug such as midazolam that's so consistently problematic, and to justify the secrecy," Denno said.

Some death-penalty opponents are zeroing in on midazolam, a sedative commonly used to treat people with seizures. It was first used in an execution in October in Florida.

This year, three of the 10 U.S. executions using the drug this year have gone wrong. The latest was Wednesday, when Arizona inmate Joseph Rudolph Wood gasped for more than an hour and a half while being executed for killing his former girlfriend and her father. He was pronounced dead one hour and 57 minutes after the execution began.

After the execution, Arizona Gov. Jan Brewer ordered a review of the state's execution protocol. Wood's lawyer demanded an independent investigation.

Governors in Ohio and Oklahoma ordered similar reviews after the bungled executions in those states earlier this year.

In January, Ohio inmate Dennis McGuire snorted and gasped for 26 minutes before dying. State corrections officials have said they do not believe McGuire suffered, but they increased the drug dosage "to allay any remaining concerns."

In April, Oklahoma inmate Clayton Lockett died of an apparent heart attack 43 minutes after his execution began, after the state's prison's chief directed the executioner to stop administering the drugs.

Both Arizona and Ohio used a two-drug protocol of midazolam and the painkiller hydromorphone. Oklahoma used a three-drug combination of midazolam, the muscle relaxant vecuronium bromide and potassium chloride, which stops the heart.

State protocols on how to use midazolam vary greatly. Some inject it as part of a two-drug method, others three. The amount of the drug given also varies. Ohio used 10 milligrams of midazolam in the McGuire execution. Oklahoma's protocol calls for 100 milligrams. Florida uses 500 milligrams.

"They don't know," Denno said. "We don't have experts on how to inject someone to death."

Texas and Missouri, two of the most active death penalty states, use the single drug pentobarbital. Still, death row lawyers say the same potential exists for problems to occur.

Pilate and James Rytting, a Houston lawyer who represents several condemned inmates in Texas, both say they will cite the botched Arizona execution in appeals for inmates with executions pending.

"These agonizing and horrifying situations are going to happen," Rytting said.

Texas plans no changes based on what happened in Arizona, corrections spokesman Jason Clark said, noting that Texas uses a different drug, pentobarbital.

"The agency has used this protocol since 2012 and has carried out 33 executions without complication," Clark said.

Ohio corrections department spokeswoman JoEllen Smith said the state is "always evaluating our policies to ensure executions in Ohio are carried out in a humane and lawful manner.

Officials with several other states either declined to comment or did not return messages seeking comment.