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Ohio faces snags in execution system

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COLUMBUS — The Ohio Supreme Court on Thursday set two new execution dates, but big questions remain about how those executions will be carried out.

The state has acknowledged it will run short of its execution drug next year. It also faces criticism of its execution methods from a federal judge whose ruling has temporarily halted capital punishment in the state.

The prison system also has raised the possibility that the state's untested backup method — intramuscular injections that could cause vomiting or convulsions — could be used regularly as early as next spring.

Meanwhile, as supplies dry up of the execution drug currently used by Ohio and several other states, a possible alternative is facing its own shortage.

The dates set Thursday were the furthest into the future the court has ever scheduled death penalty procedures.

The first, March 6, 2013, was scheduled for Frederick Treesh, sentenced to die for killing a security guard at an adult bookstore in Cleveland in 1994.

The second, May 1, 2013, was set for Steven Smith, sentenced to death for raping and killing his girlfriend's 6-month-old daughter in 1998.

There are now 12 executions scheduled from September through May 2013.

Ohio is scheduled to execute Billy Slagle next month for stabbing a Cleveland woman to death in 1986. U.S. District Court Judge Gregory Frost, who ripped the state's lack of consistency in carrying out executions, is weighing a request by Slagle's lawyers to delay that execution.

Setting dates as far out as 2013 reflects the prisons department's desire to have at least a month between executions, along with a preference not to schedule executions in December or January, Carlo LoParo, spokesman for the Ohio Department of Rehabilitation and Correction, said Thursday.

Ohio uses a single dose of the anesthetic pentobarbital to execute inmates, but only has enough on hand to last through February, according to the DRC.

The state switched to the drug in 2009 after supplies ran out of the previous anesthetic used by all states dating back to the 1980s.

Earlier this year, the Danish manufacturer of pentobarbital, under pressure from anti-death penalty groups, announced it was putting systems in place to keep the drug from being used in U.S. executions. Even before that decision, Lundbeck Inc. had urged states not to use the drug to put inmates to death.

The exact amount of pentobarbital purchased by states is unclear, but it has an expiration date of about two years, meaning most states will run out no later than 2013.

Ohio officials "recognize that the feasibility of using pentobarbital, as the drug administered in defendants' primary method of execution by lethal injection, could become an issue, which could require further modifications in defendants' procedures," the state said in a court filing earlier this month.

One possible alternative, the sedative propofol, is also facing its own shortages, according to a bulletin from the American Society of Health-System Pharmacists, which tracks drug supplies.

One manufacturer cited increased demand for the product, while another pulled several lots of the drug in 2009 because of possible microbial contamination, then stopped production altogether in 2010, according to the ASHSP.

Propofol is one of the drugs implicated in the 2009 death of singer Michael Jackson.

The drug was mentioned as a possible death penalty drug in documents and testimony in the Kentucky court case that led to the U.S. Supreme Court's 2008 ruling upholding the constitutionality of lethal injection.

Ohio also has a backup method that involves injecting two drugs directly into an inmate's muscles, bypassing the veins. Under that method, the sedative midazolam would be followed by the painkiller hydromorphone.

The method has never been used, however, and it comes with potential problems: state officials previously warned reporters that the drugs could cause convulsions or vomiting in inmates.

Under the state's old rules, the backup method was available only if executioners had trouble injecting pentobarbital into an inmate's veins.

The new rules released last week allow the state to use the backup method, "if pentobarbital could not be obtained for use in the execution."

LoParo said there are no plans to use the backup method soon, but said, "this provides us with more flexibility in event our primary drug is not available."

That concerns Tim Young, the State Public Defender, who says Ohio would be using a completely new way to execute inmates.

"Untested, anywhere, ever," he said.

The ASHSP also has tracked shortages of both midazolam and hydromorphone in the past couple of months.

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