



Report recommends one-drug executions, ban on death penalty for unintentional felony murder

By: Debra Cassens Weiss

May 7, 2014

A new report by a bipartisan panel recommends using a large dose of a single drug in executions, the same method used in assisted suicides.

The report (PDF) by the panel convened by the Constitution Project said states should act with transparency in the development of lethal injection protocols and should use trained medical personnel in administering the drug. The New York Times, CNN and the Associated Press have stories.

The problem, the Times points out, is that manufacturers are refusing to supply barbiturates often used at executions, and American Medical Association policy prohibits nurses and doctors from participating in executions.

The report singles out several states as needing reform. Texas, California and Alabama are most active in sentencing defendants to death, and all require significant reforms, the report says. Pennsylvania, Alabama and Texas compensate capital defense lawyers at such low levels “as to make effective representation nearly impossible,” the report says. Alabama, Delaware and Florida permit judges to override a jury’s sentence of life imprisonment and impose the death penalty. In Florida, jurors may impose the death penalty by a mere majority vote, while jurors in Alabama may impose the death penalty by a 10-2 vote. Virginia and Kentucky permit destruction of evidence after conviction. And in most jurisdictions, prosecutors are not required to notify inmates or their attorneys when they become aware of credible evidence of innocence.

The report recommends:

- A person who shows reckless indifference but does not intend to kill should not be subject to the death penalty.
- Custodial interrogations should be videotaped in their entirety.
- Defense lawyers should be “adequately and reasonably compensated, with due regard for taxpayers.”
- Capital punishment verdicts should be unanimous, and judges should not be allowed to override a jury’s lesser sentence and impose the death penalty.
- Jurisdictions should require post-conviction review of credible claims of innocence, and should release defendants if it is more likely than not that no reasonable jury would convict in light of new evidence. Defendants should get a new trial if it is more likely than not that the jury would not have convicted in

light of the new evidence. Exculpatory evidence supporting a claim of innocence should be allowed during post-conviction review, notwithstanding procedural bars.

- A state or federal court should entertain a post-conviction claim that a petitioner facing execution was wrongfully convicted or sentenced and should examine any evidence offered to support such a claim.
- The ban on executions of those with mental disabilities should be improved. Defendants with intellectual disabilities should be able to prove them by a preponderance-of-the-evidence standard and there should be a rebuttable presumption that a defendant with an IQ below 75 is intellectually disabled.
- Prosecutors should provide “open file discovery” to capital defense lawyers. Prosecutors who become aware of “new, credible, material evidence that it is reasonably likely that an innocent person has been convicted” should be required to notify the court and the defendant, disclose the evidence, and agree to set aside the conviction if it is reasonably likely that an innocent person has been convicted.
- The government should preserve all forensic evidence until at least 60 days after execution. Laws should require testing of forensic evidence if the testing may be relevant to claims of innocence or wrongful conviction.
- Congress should establish federal procedures for accrediting forensic laboratories. Currently, only Missouri, New York, Oklahoma and Texas require accreditation of crime labs.

The report notes that the American Bar Association has reviewed capital punishment procedures in 12 states where most executions are carried out.

The Criminal Justice Legal Foundation offered its critique of the Constitution Project report to the Times. The group said the report was one-sided and failed to note the major problem with capital punishment: the appeals process is too long.

Web link can be found [here](#).