

**As Introduced**

**132nd General Assembly  
Regular Session  
2017-2018**

**S. B. No. 12**

**Senator Tavares  
Cosponsors: Senators Thomas, Yuko**

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**A BILL**

To enact section 2929.07 of the Revised Code to  
provide that a defendant cannot be executed if  
the defendant's race was the basis of the  
decision to seek or impose the death penalty, to  
permit a defendant to file a motion alleging  
that the defendant's race was the basis of the  
decision to seek or impose the death penalty,  
and to specify the procedure for determining if  
the defendant's race was the basis of that  
decision.

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2929.07 of the Revised Code be  
enacted to read as follows:

**Sec. 2929.07.** (A) As used in this section, "time that the  
sentence of death was sought or imposed" means a period from ten  
years prior to the commission of a capital offense to two years  
after the court's imposition of a sentence of death.

(B) No person shall be subject to or given a sentence of  
death or executed pursuant to any sentence of death that was

sought or obtained on the basis of race. 19

(C) A defendant may file a motion alleging that race was 20  
the basis of the decision to seek or impose a sentence of death 21  
in the defendant's case and asking the court to order that the 22  
death penalty not be sought in the defendant's case or to vacate 23  
a sentence of death imposed on the defendant and resentence the 24  
defendant to life imprisonment without the possibility of 25  
parole. The motion shall state with particularity how the 26  
defendant's claim is supported by evidence that race was a 27  
significant factor in decisions to seek or impose a sentence of 28  
death in the state, the county in which the defendant was 29  
prosecuted, or the prosecutor's office that prosecuted the 30  
defendant's case at the time that the sentence of death was 31  
sought or imposed in the defendant's case. 32

(D) The defendant shall raise a claim under this section 33  
at a pretrial conference or during postconviction proceedings. 34  
If the court finds that the defendant's motion fails to state a 35  
sufficient claim under this section, the court shall dismiss the 36  
claim without an evidentiary hearing. If the court finds that 37  
the defendant's motion states a sufficient claim under this 38  
section, the court shall schedule an evidentiary hearing on the 39  
claim. 40

(E) (1) A finding that race was the basis of the decision 41  
to seek or impose a sentence of death in the defendant's case 42  
may be established if the court finds that race was a 43  
significant factor in decisions to seek or impose a sentence of 44  
death in the state, the county in which the defendant was 45  
prosecuted, or the prosecutor's office that prosecuted the 46  
defendant's case at the time that the sentence of death was 47  
sought or imposed in the defendant's case. 48

(2) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose a sentence of death in the state, the county in which the defendant was prosecuted, or the prosecutor's office that prosecuted the defendant's case at the time that the sentence of death was sought or imposed in the defendant's case. 49  
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(F)(1) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose a sentence of death in the state, the county in which the defendant was prosecuted, or the prosecutor's office that prosecuted the defendant's case at the time that the sentence of death was sought or imposed in the defendant's case includes, but is not limited to, statistical evidence derived from the state, the county in which the defendant was prosecuted, or the prosecutor's office that prosecuted the defendant's case that the race of a defendant or victim was a significant factor in decisions to seek or impose a sentence of death or in decisions to exercise peremptory challenges during jury selection in capital cases. Statistical evidence of this nature, by itself, may be sufficient to show that race was the basis of a decision to seek or impose a sentence of death in the defendant's case. The defendant may present the sworn testimony of attorneys, prosecutors, law enforcement officers, judicial officers, jurors, or others involved in the criminal justice system at the time that a sentence of death was sought or imposed in the defendant's case in support of the defendant's claim, unless the Revised Code prohibits the use of the testimony as evidence in a criminal case. 55  
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(2) The prosecution may offer evidence, including statistical evidence, in rebuttal of the defendant's claim or evidence. 77  
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(3) The court may consider evidence of the impact on the 80  
defendant's trial of any program the purpose of which is to 81  
eliminate race as a factor in seeking or imposing a sentence of 82  
death. 83

(G) If the court finds that race was the basis of the 84  
decision to seek or impose a sentence of death in the 85  
defendant's case, the court shall order that a sentence of death 86  
not be sought in the defendant's case or that the sentence of 87  
death imposed in the defendant's case be vacated and the 88  
defendant be resentenced to life imprisonment without the 89  
possibility of parole. 90

(H) As a condition to the filing and consideration of a 91  
motion under this section, the defendant shall knowingly and 92  
voluntarily waive any objection to the imposition of a sentence 93  
of life imprisonment without parole based on common law, 94  
statutory law, or the constitution of the United States or this 95  
state that would otherwise require that the defendant be 96  
eligible for parole. The waiver shall be in writing, signed by 97  
the defendant, and included in the motion seeking relief under 98  
this section. If the court determines pursuant to division (D) 99  
of this section that a hearing is required, the court shall make 100  
an oral inquiry of the defendant at the hearing to confirm the 101  
defendant's waiver. The court shall make the oral inquiry and 102  
the defendant's responses a part of the record. If the court 103  
grants relief under this section, the judgment shall include a 104  
finding that the defendant waived any objection to the 105  
imposition of a sentence of life imprisonment without parole. 106