

As Introduced

131st General Assembly

Regular Session

2015-2016

S. B. No. 67

**Senator Tavares
Cosponsors: Senator Brown**

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, to
permit a defendant to establish that the death
penalty was sought or imposed on the basis of
race in the defendant's case by showing that
race was a significant factor in decisions to
seek or impose a sentence of death in the state,
the county, or the prosecutor's office at the
time that a sentence of death was sought or
imposed in the defendant's case, to require a
court that finds that race was such a
significant factor in the defendant's case to
order that the death penalty not be sought or to
vacate the sentence of death and resentence the
defendant to life imprisonment without parole,
and to require a defendant to waive any
objection to a sentence to life imprisonment
without parole as a condition of filing the
motion for relief.

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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.

(C) A defendant may file a motion alleging that race was the basis of the decision to seek or impose a sentence of death in the defendant's case and asking the court to order that the death penalty not be sought in the defendant's case or to vacate a sentence of death imposed on the defendant and resentence the defendant to life imprisonment without the possibility of parole. The motion shall state with particularity how the defendant's claim is supported by evidence 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.

(D) The defendant shall raise a claim under this section at a pretrial conference or during postconviction proceedings. If the court finds that the defendant's motion fails to state a sufficient claim under this section, the court shall dismiss the claim without an evidentiary hearing. If the court finds that

the defendant's motion states a sufficient claim under this 52
section, the court shall schedule an evidentiary hearing on the 53
claim. 54

(E) (1) A finding that race was the basis of the decision 55
to seek or impose a sentence of death in the defendant's case 56
may be established if the court finds that race was a 57
significant factor in decisions to seek or impose a sentence of 58
death in the state, the county in which the defendant was 59
prosecuted, or the prosecutor's office that prosecuted the 60
defendant's case at the time that the sentence of death was 61
sought or imposed in the defendant's case. 62

(2) The defendant has the burden of proving that race was 63
a significant factor in decisions to seek or impose a sentence 64
of death in the state, the county in which the defendant was 65
prosecuted, or the prosecutor's office that prosecuted the 66
defendant's case at the time that the sentence of death was 67
sought or imposed in the defendant's case. 68

(F) (1) Evidence relevant to establish a finding that race 69
was a significant factor in decisions to seek or impose a 70
sentence of death in the state, the county in which the 71
defendant was prosecuted, or the prosecutor's office that 72
prosecuted the defendant's case at the time that the sentence of 73
death was sought or imposed in the defendant's case includes, 74
but is not limited to, statistical evidence derived from the 75
state, the county in which the defendant was prosecuted, or the 76
prosecutor's office that prosecuted the defendant's case that 77
the race of a defendant or victim was a significant factor in 78
decisions to seek or impose a sentence of death or in decisions 79
to exercise peremptory challenges during jury selection in 80
capital cases. Statistical evidence of this nature, by itself, 81

may be sufficient to show that race was the basis of a decision 82
to seek or impose a sentence of death in the defendant's case. 83
The defendant may present the sworn testimony of attorneys, 84
prosecutors, law enforcement officers, judicial officials, 85
jurors, or others involved in the criminal justice system at the 86
time that a sentence of death was sought or imposed in the 87
defendant's case in support of the defendant's claim, unless the 88
Revised Code prohibits the use of the testimony as evidence in a 89
criminal case. 90

(2) The prosecution may offer evidence, including 91
statistical evidence, in rebuttal of the defendant's claim or 92
evidence. 93

(3) The court may consider evidence of the impact upon the 94
defendant's trial of any program the purpose of which is to 95
eliminate race as a factor in seeking or imposing a sentence of 96
death. 97

(G) If the court finds that race was the basis of the 98
decision to seek or impose a sentence of death in the 99
defendant's case, the court shall order that a sentence of death 100
not be sought in the defendant's case or that the sentence of 101
death imposed in the defendant's case be vacated and the 102
defendant be resentenced to life imprisonment without the 103
possibility of parole. 104

(H) As a condition to the filing and consideration of a 105
motion under this section, the defendant shall knowingly and 106
voluntarily waive any objection to the imposition of a sentence 107
of life imprisonment without parole based upon common law, 108
statutory law, or the constitution of the United States or this 109
state that would otherwise require that the defendant be 110
eligible for parole. The waiver shall be in writing, signed by 111

the defendant, and included in the motion seeking relief under 112
this section. If the court determines pursuant to division (D) 113
of this section that a hearing is required, the court shall make 114
an oral inquiry of the defendant at the hearing to confirm the 115
defendant's waiver. The court shall make the oral inquiry and 116
the defendant's responses a part of the record. If the court 117
grants relief under this section, the judgment shall include a 118
finding that the defendant waived any objection to the 119
imposition of a sentence of life imprisonment without parole. 120