



STATE SENATOR
CHARLETA B. TAVARES

15TH DISTRICT

Sponsor Testimony
Presented by: Senator Charleta B. Tavares
Senate Bill 12
Judiciary Committee
Senator Kevin Bacon, Chair
Wednesday, February 8, 2017

Good morning Chairman Bacon, Ranking Member Thomas and members of the Senate Judiciary Committee. I would like to thank you for the opportunity to provide sponsor testimony on this important issue. Senate Bill 12, the Racial Justice Act, will allow individuals sentenced to death to appeal their sentences if they believe that their race was a reason capital punishment was sought or imposed. The defendant would be required to prove beyond a reasonable doubt that their sentencing was influenced by racial discrimination.

Kentucky was the first state to pass their Racial Justice Act in March of 1998. North Carolina was the second state to introduce such legislation in 2009. Since the North Carolina law was passed in 2009, four inmates had their sentences converted from death to life in prison after proving racial bias. However, despite the legislature's intent, the legislation was repealed in 2013 by the former governor, Pat McCrory.

There have been countless studies that show the ever present undertones of racial bias in determining which defendants receive the death penalty in murder cases. The Death Penalty Information Center conducted a careful analysis of the correlation between race and the death penalty in Philadelphia which revealed that the odds of receiving a death sentence are nearly four times (3.9) higher if the defendant is black.¹

Ohio is no stranger to the unfair burden placed on racial and ethnic minorities in the criminal justice system. The Ohio Commission on Racial Fairness² was established in 1993 to examine the racial bias that exists in Ohio's justice system. The Commission's report issued in 1999³ found that at the time, of the 174 men on death row, 87 were African American as opposed to 81 Caucasian. Despite the fact that African American males only made up 5% of Ohio's population at the time, they accounted for 50% of all defendants on death row. The Ohio Commission on Racial Fairness report also found that of the 175 victims of the defendants on death row, 124 were Caucasian and 42 were African American. The report states:

The numbers speak for themselves. A perpetrator is geometrically more likely to end up on death row if the homicide victim is white rather than black. The implication of race in this gross disparity is not simply explained away and demands thorough examination, analysis and study until a satisfactory explanation emerges which eliminates race as the cause for these widely divergent numbers

¹ The Death Penalty in Black and White: Who Lives, Who Dies, Who Decides (1998)

² The Report of The Ohio Commission on Racial Fairness (1999)
<http://www.sconet.state.oh.us/publications/fairness/fairness.pdf>

³ The Report of The Ohio Commission on Racial Fairness (1999)
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In Ohio, there are currently 140 inmates on death row. According to the Ohio Department of Rehabilitation and Corrections, over half are African American. Despite the fact that African Americans make up fewer than 12 percent of the US population, they account for more than 41 percent of the country's current death row inmates, and one in three of those executed since 1977. Perhaps most noteworthy is that when you examine all executions in the United States since 1976, there have been 284 African American defendants executed when their victim is Caucasian however, only 20 Caucasian defendants have been executed for killing African Americans.

In April 2011, Supreme Court Chief Justice Maureen O'Connor convened the Joint Task Force to Review the Administration of Ohio's Death Penalty. The Joint Task Force was created to work on the problems outlined in a 2007 assessment issued by the American Bar Association (ABA) which found that Ohio failed to meet 93% of their standards for an accurate death penalty system. The ABA assessment found that Ohio had failed to implement any changes recommended by the Ohio Commission on Racial Fairness or the Racial Fairness Implementation Task Force. The ABA assessment also looked at homicides from 1981 to 2000 and found that those who kill Caucasians were 3.8 times more likely to receive the death penalty than those who kill African Americans.

When the Joint Task Force to Review the Administration of Ohio's Death Penalty released its report in April of 2014, there were 56 recommendations made to improve the administration of the death penalty. Recommendation 35 specifically calls for the implementation through legislation of a Racial Justice Act to allow for claims of racial disparity to be made. As you are

probably aware, I have introduced legislation recommended by the Task Force in previous General Assemblies and was certainly happy to have their recommendations support my legislation.

In January 2016, Dr. Frank R. Baumgartner from the University of North Carolina took a comprehensive look at the way Ohio implements the death penalty. According to the findings of Dr. Baumgartner, he found that a person is much more likely to receive the death penalty if their victim is white and is far less likely to receive the death penalty if their victim is black. The disparities are actually more pronounced when gender is a factor; homicides involving white female victims are six times more likely to result in an execution than homicides involving black male victims⁴. Dr. Baumgartner goes on to say “These disparities are so great that they call in to question the equity of the application of the harshest penalty, adding to growing concerns that the death penalty is applied in an unfair, capricious, and arbitrary manner.”

I would like to make it clear that Senate Bill 12 does not in any way propose to end the death penalty in Ohio. Senate Bill 12 also does not make any comment as to whether the death penalty is right or wrong. The only goal of Senate Bill 12 is to eliminate the inequities in the administration of the death penalty when it comes to ethnic and racial minorities in the State of Ohio. Senate Bill 12 will not result in those convicted of crimes to be released from prison either; if a defendant is able to prove that race was a factor in their capital conviction they are resentenced to life without the possibility of parole.

⁴ The Impact of Race, Gender, and Geography on Ohio Executions (2016)

We have state and federal laws that prohibit racial discrimination and racial biases. For example, if an employee can show evidence of a work rule that has a disparate impact on a certain race/ethnicity they have a right to present that evidence. We are seeking to have fairness and equity in our criminal justice system. This legislation seeks to ensure that inmates on death row and capital defendants are able, if found, to present evidence that their race was a significant factor contributing to their death penalty sentence. Justice is supposed to be blind yet; evidence has clearly shown that racial and ethnic minority populations are unfairly discriminated against in many aspects of the criminal justice system including death penalty sentences. It is incumbent upon us as members of the Ohio Legislature not to turn a blind eye or a deaf ear to this miscarriage of justice.

Chairman Bacon and members of the Committee, I appreciate your attention to this issue and I respectfully request your favorable consideration and passage of Senate Bill 12. Thank you and I am happy to respond to questions from the committee.