

As Introduced

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

S. B. No. 12

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

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