



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Dennis M. Papp

### **S.B. 12**

132nd General Assembly  
(As Introduced)

**Sens.** Tavares, Thomas, Yuko

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### **BILL SUMMARY**

- Provides that a defendant cannot 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.
  - Permits 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, provided the defendant waives any objection to a sentence to life imprisonment without parole.
  - Specifies that a defendant establishes that the death penalty was sought or imposed on the basis of race 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.
  - Requires a court that finds that race was a significant factor in the defendant's case to order that the death penalty not be sought or to vacate the sentence of death imposed and resentence the defendant to life imprisonment without parole.
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### **CONTENT AND OPERATION**

#### **General bar against race as the basis of death sentence or execution**

The bill specifies that no person may be subject to or given a death sentence or executed pursuant to any death sentence that was sought or obtained on the basis of race.<sup>1</sup> Under preexisting law unchanged by the bill, a court imposing a sentence upon

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<sup>1</sup> R.C. 2929.07(B).

an offender for any felony may not base the sentence upon the race, ethnic background, gender, or religion of the offender.<sup>2</sup>

## **Determination if race was the basis of a decision to seek or impose a death sentence**

### **Procedure for judicial determination**

Under the bill, a defendant may file a motion alleging that race was the basis of the decision to seek or impose a death sentence in the defendant's case and asking the court to order that a death sentence not be sought in the case or to vacate a death sentence and resentence the defendant to life imprisonment without parole. The defendant must raise the claim at a pretrial conference or during postconviction proceedings. The motion must 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 death sentence 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 death sentence was sought or imposed in the case. As used in the bill, "time that the death sentence 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 death sentence.

If the court finds that the defendant's motion fails to state a sufficient claim under the bill's provisions, it must dismiss the claim without an evidentiary hearing. If the court finds that the defendant's motion states a sufficient claim under those provisions, it must schedule an evidentiary hearing on the claim.<sup>3</sup>

As a condition to the filing and consideration of the motion, the defendant must knowingly and voluntarily waive any objection to the imposition of a sentence of life imprisonment without parole based upon common law, statutory law, or the Ohio Constitution or U.S. Constitution that otherwise would require that the defendant be eligible for parole. The waiver must be in writing, signed by the defendant, and included in the motion. If the court determines as described above that a hearing is required, it must orally inquire of the defendant at the hearing to confirm the waiver, and make the inquiry and the defendant's responses a part of the record. If the court grants relief under the bill's provisions, the judgment must include a finding that the

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<sup>2</sup> R.C. 2929.11(C), not in the bill.

<sup>3</sup> R.C. 2929.07(A), (C), and (D).



defendant waived any objection to the imposition of a sentence of life imprisonment without parole.<sup>4</sup>

### **Establishing that race was the basis of the decision**

A finding that race was the basis of the decision to seek or impose a death sentence in the defendant's case may be established if the court finds that race was a significant factor in decisions to seek or impose a death sentence in the state, the county of prosecution, or the involved prosecutor's office at the time that the death sentence was sought or imposed in the defendant's case. The defendant has the burden of proving that race was a significant factor in any such decisions. The defendant may present sworn testimony of attorneys, prosecutors, law enforcement officers, judicial officials, jurors, or others involved in the criminal justice system at the time that a death sentence 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. The prosecution may offer evidence, including statistical evidence, in rebuttal of the defendant's claim or evidence.

Evidence relevant to establish a finding that race was a significant factor in any such decisions includes, but is not limited to, statistical evidence derived from the state, the county of prosecution, or the involved prosecutor's office that a defendant's or victim's race was a significant factor in decisions to seek or impose a death sentence or in decisions to exercise peremptory challenges during jury selection in capital cases. This statistical evidence, by itself, may be sufficient to show that race was the basis of a decision to seek or impose a death sentence in the defendant's case. The court may consider evidence of the impact upon the defendant's trial of any program the purpose of which is to eliminate race as a factor in seeking or imposing a death sentence.<sup>5</sup>

### **Court finding that race was the basis of the decision and effect of finding**

If the court finds that race was the basis of the decision to seek or impose a death sentence in the defendant's case, it must order that a death sentence not be sought in the case or that the death sentence imposed in the case be vacated and the defendant be resentenced to life imprisonment without parole.<sup>6</sup>

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<sup>4</sup> R.C. 2929.07(H).

<sup>5</sup> R.C. 2929.07(E) and (F).

<sup>6</sup> R.C. 2929.07(G).

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## HISTORY

ACTION

DATE

Introduced

01-31-17

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