

Senate Bill 206

By: Senators Hecht of the 34th, Meyer von Bremen of the 12th, Lee of the 29th and Hill of the 4th

A BILL TO BE ENTITLED
AN ACT

To amend Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to habeas corpus procedure for persons under sentence of a state court of record, so as to provide for a statute of limitations for bringing such actions; to designate where a petition must be filed when the petitioner is being held by federal or other authorities; to provide for service; to limit the authority of Georgia courts to order interstate transfers of prisoners; to provide that a court may consider whether delay by the petitioner in filing the petition prejudiced the state's ability to respond; to provide for other matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to habeas corpus procedure for persons under sentence of a state court of record, is amended by inserting after subsection (b) of Code Section 9-14-42, relating to grounds for a writ and waiver of objection to jury composition, a new subsection (c) to read as follows:

"(c) Any action brought pursuant to this article shall be filed within one year in the case of a misdemeanor, except as otherwise provided in Code Section 40-13-33, or within four years in the case of a felony, other than one in which a sentence of death, life without parole, or life was imposed, from:

(1) The judgment of conviction becoming final by the conclusion of direct review or the expiration of the time for seeking such review;

(2) The date on which an impediment to filing a petition which was created by state action in violation of the Constitution or laws of the United States or of this state is removed, if the petitioner was prevented from filing such state action;

(3) The date on which the right asserted was initially recognized by the Supreme Court of the United States or the Supreme Court of Georgia, if that right was newly recognized by said courts and made retroactively applicable to cases on collateral review; or

(4) The date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence."

SECTION 2.

Said article is further amended by striking Code Section 9-14-43, relating to jurisdiction of habeas corpus proceedings, and inserting in lieu thereof the following:

"9-14-43.

A petition brought under this article must be filed in the superior court of the county in which the petitioner is being detained. The superior courts of such counties shall have exclusive jurisdiction of habeas corpus actions arising under this article. If the petitioner is not in custody or is being detained under the authority of the United States, any of the several states other than Georgia, or any foreign state, the petition must be filed in the superior court of the county in which the conviction and sentence which is being challenged was imposed."

SECTION 3.

Said article is further amended by striking Code Section 9-14-46, relating to custody of the petitioner, and inserting in lieu thereof the following:

"9-14-46.

Custody and control of the petitioner shall be retained by the Department of Corrections or other authority having custody of the petitioner. It shall be the duty of the department or authority to produce the petitioner at such times and places as the court may direct, provided that the petitioner is within the jurisdiction of this state."

SECTION 4.

Said article is further amended by inserting after subsection (d) of Code Section 9-14-48, relating to conduct of hearings, a new subsection (e) to read as follows:

"(e) A petition may be dismissed if it appears that the respondent has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows that it is based on grounds of which he or she could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred."

SECTION 5.

This Act shall be effective upon its approval by the Governor or its becoming law without such approval.

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- SECTION 6.
- All laws and parts of laws in conflict with this Act are repealed.