

House Bill 578 (COMMITTEE SUBSTITUTE)

By: Representatives Ralston of the 7th, Fleming of the 117th, Bearden of the 68th, and Lunsford of the 110th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated,
2 relating to habeas corpus procedure for persons under sentence of state court of record, so
3 as change certain provisions relating to petitions challenging for the first time state court
4 proceedings resulting in a death sentence; to provide for procedural time frames for petitions
5 challenging for the first time state court proceedings resulting in a death sentence; to provide
6 for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to
10 habeas corpus procedure for persons under sentence of state court of record, is amended by
11 revising Code Section 9-14-47.1, relating to petitions challenging for the first time state court
12 proceedings resulting in a death sentence, as follows:

13 "9-14-47.1.

14 (a) In petitions filed under this article challenging for the first time state court proceedings
15 resulting in a death sentence, the provisions of this article shall apply except as specifically
16 provided otherwise in this Code section.

17 (b) Within ten days of the filing of a petition challenging for the first time state court
18 proceedings resulting in a death sentence, the superior court clerk of the county where the
19 petition is filed shall give written notice to The Council of Superior Court Judges of
20 Georgia of the filing of the petition which shall serve as a request for judicial assistance
21 under paragraph (3) of subsection (b) of Code Section 15-1-9.1. Within 30 days of receipt
22 of such notice, the president of the council shall, under guidelines promulgated by the
23 executive committee of the council, assign the case to a judge of a circuit other than the
24 circuit in which the conviction and sentence were imposed.

25 (c) After the close of evidence and the filing of the transcript of any evidentiary hearings,
26 the petitioner shall have 90 days in which to file any brief and, if directed by the court,

1 shall file proposed findings of fact and conclusions of law. The respondent shall file any
 2 responsive brief and, if directed by the court, proposed findings of fact and conclusions of
 3 law, within 60 days of the filing of the petitioner's brief. The petitioner shall have ten days
 4 from the filing of the respondent's brief to file any reply brief. Upon a showing of good
 5 cause, the court may grant either party an extension of time, not to exceed 60 days, for
 6 filing briefs or orders.

7 (d) The judge of the superior court hearing the case shall make written findings of fact and
 8 conclusions of law and such findings shall be filed within 180 days of the filing of either
 9 the respondent's brief or proposed order or the filing of the petitioner's reply brief,
 10 whichever is later. If the findings of fact and conclusions of law of the judge are not filed
 11 within such time frame, the judge shall file a report in the superior court of the county
 12 where the case is pending setting forth with specificity the reasons for the delay and shall
 13 submit a copy of such report to the clerk of the Supreme Court of Georgia and the parties.
 14 Every 30 days thereafter until the order is filed, the judge shall provide an updated status
 15 report to the superior court clerk, the clerk of the Supreme Court of Georgia, and the parties
 16 setting forth the reasons for the delay.

17 ~~(c)~~(e) The Council of Superior Court Judges of Georgia shall establish, by uniform court
 18 rules, appropriate time periods and schedules applicable to petitions filed ~~on or after~~
 19 ~~January 1, 1996,~~ challenging for the first time state court proceedings resulting in a
 20 sentence of death. ~~Such rules shall be adopted by the Supreme Court of Georgia on or~~
 21 ~~before December 31, 1995. Such new~~ Except as otherwise provided in this Code section,
 22 such time periods and schedules shall include, but specifically not be limited to, the
 23 following:

- 24 (1) Respondent's filing of an answer or motion to dismiss the petition;
- 25 (2) Petitioner's filing of any amendments to the petition;
- 26 (3) Filing by either party of motions and responses to motions; and
- 27 (4) Scheduling and conducting of evidentiary hearings; ~~and~~
- 28 (5) ~~Date of final order.~~

29 ~~(d)~~(f) In petitions filed under this article challenging for a second or subsequent time a
 30 state court proceeding resulting in a death sentence, the petitioner shall not be entitled to
 31 invoke any of the provisions set forth in this Code section to delay the proceedings. To the
 32 extent the court deems it necessary to have an evidentiary hearing on any such petition, the
 33 court shall expedite the proceedings and the time limits shall not exceed those set for initial
 34 petitions."

35 SECTION 2.

36 All laws and parts of laws in conflict with this Act are repealed.