

The Senate Judiciary Committee offered the following substitute to HB 323:

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated,
2 relating to the death penalty generally, so as to change provisions relating to the Supreme
3 Court's review of cases involving a death sentence; to eliminate the requirement that the court
4 determine if a sentence of death is excessive or disproportionate to the penalty imposed in
5 similar cases; to change provisions requiring the Supreme Court to include in its decision
6 references to similar cases which it took into consideration; to extend the period of review
7 for the Supreme Court's consideration of applications for pretrial proceedings in cases in
8 which the death penalty is sought; to clarify provisions relating to the assistant to the
9 Supreme Court; to provide for related matters; to provide for an effective date and
10 applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the death penalty generally, is amended by revising subsections (c) and (e) of Code Section 17-10-35, relating to the Supreme Court's review of death sentences, as follows:

"(c) With regard to the sentence, the court shall determine:

(1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor; and

(2) Whether, in cases other than treason or aircraft hijacking, the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in subsection (b) of Code Section 17-10-30; and

~~(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant."~~

"(e) The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

(1) Affirm the sentence of death; or

(2) Set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court in its decision and the extracts prepared as provided for in subsection (a) of Code Section 17-10-37 shall be provided to the resentencing judge for his consideration."

SECTION 2.

Said article is further amended by revising subsection (d) of Code Section 17-10-35.1, relating to review of pretrial proceedings in cases in which the death penalty is sought, as follows:

"(d) The Supreme Court shall issue an order granting review of the pretrial proceedings, or portions thereof, or denying review within 20 45 days of the date on which the case was received. The order of the Supreme Court shall identify the matters which shall be subject to review, and such matters may include, but need not be limited to, any matters called to the court's attention in any of the reports or in any application for appeal. No notice of appeal shall be required to be filed if review of the pretrial proceedings is granted. An order granting review of pretrial proceedings shall specify the period of time within which each party shall file briefs and reply briefs with respect to the matters identified in the Supreme Court's order granting review. The Supreme Court may order oral argument or may render a decision on the record and the briefs."

SECTION 3.

Said article is further amended by revising Code Section 17-10-37, relating to the review of death sentences and the assistant to the Supreme Court, as follows:

"17-10-37.

(a) There shall be an assistant to the Supreme Court who shall be an attorney appointed by the Chief Justice and who shall serve at the pleasure of the court. The court shall accumulate the records of all capital felony cases in which sentence was imposed after January 1, 1970, or such earlier date as the court may deem appropriate. The assistant shall provide the court with whatever extracted information it desires with respect thereto, including, but not limited to, a synopsis or brief of the facts in the record concerning the crime and the defendant. The assistant shall assist the Supreme Court in the review of all death sentences.

(b) The court shall be authorized to employ an appropriate staff and such methods to compile such data as are deemed by the Chief Justice to be appropriate and relevant to the

statutory questions concerning the validity of the sentence reviewed in accordance with Code Section 17-10-35.

(c) The office of the assistant shall be attached for administrative purposes to the office of the clerk of the Supreme Court of Georgia."

SECTION 4.

This Act shall become effective on July 1, 2010, and shall apply to any case docketed on or after such date.

SECTION 5.

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