

House Bill 372

By: Representatives Ralston of the 7th, Golick of the 34th, Levitas of the 82nd, Collins of the 27th, and Bearden of the 68th

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 to provide time frames for filing briefs and orders in petitions challenging for the first time
4 state court proceedings resulting in a death sentence; to change certain provisions relating
5 to petitions challenging for the first time state court proceedings resulting in a death sentence;
6 to provide 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 60 days in which to file any brief and, if directed by the court,

27 shall file proposed findings of fact and conclusions of law. The respondent shall file any
 28 responsive brief and, if directed by the court, proposed findings of fact and conclusions of
 29 law within 30 days after the filing of the petitioner's brief. The petitioner shall have 15
 30 days from the filing of the respondent's brief to file any reply brief. Upon a showing of
 31 good cause, the court may grant either party an extension of time for filing briefs or orders
 32 but in any event such extension shall not exceed 60 days.

33 (d) The judge hearing the case shall make written findings of fact and conclusions of law,
 34 and such findings shall be filed within 90 days of the filing of either the respondent's brief
 35 or proposed order or the filing of the petitioner's reply brief, whichever is later. If the
 36 findings of fact and conclusion of law are not filed in such time frame, the court shall file
 37 a report in the superior court of the county where the case is pending setting forth with
 38 specificity the reasons for the delay and shall submit a copy of such report to the clerk of
 39 the Supreme Court of Georgia and the parties. Every 30 days thereafter until the order is
 40 filed, the court shall provide an updated status report to the superior court clerk, the clerk
 41 of the Supreme Court of Georgia, and the parties setting forth the reasons for the delay.

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

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

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

60 SECTION 2.

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