

Senate Bill 175

By: Senators Fort of the 39th, Tate of the 38th, Butler of the 55th, Orrock of the 36th, Jones of the 10th and others

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 provide for a moratorium on the
3 administration of a death sentence; to provide a statement of legislative findings; to provide
4 for conflicts and construction; to provide for applicability; to provide for automatic repeal;
5 to provide for an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 The General Assembly finds that:

- 9 (1) Life is the most valuable possession of a human being and there has been increasing
10 public awareness of individuals wrongfully convicted of murder, in Georgia and
11 elsewhere in the nation;
- 12 (2) The execution of an innocent person by the State of Georgia would be a grave and
13 irreversible injustice;
- 14 (3) In January, 2006, the American Bar Association published *Ensuring Fairness and*
15 *Accuracy in State Death Penalty Systems: The Georgia Death Penalty Assessment*
16 *Report*, which analyzed 12 issues related to Georgia's laws, procedures, and practices
17 related to the death penalty in Georgia, and a majority of the members of the Georgia
18 Death Penalty Assessment Team have called for a moratorium on executions and capital
19 prosecutions;
- 20 (4) There is public concern that racial and socioeconomic factors influence decisions to
21 seek or impose the death penalty and there is a lack of any meaningful procedure to
22 ensure uniform application of the death penalty in each county throughout the state; and
- 23 (5) In order for the state to protect its moral and ethical integrity, the state must ensure
24 a justice system which is impartial, uncorrupted, equitable, and competent, and further
25 study is necessary to ensure that the state is fulfilling its obligation in this sense and,
26 therefore, a moratorium on administration of the death penalty is warranted.

27

SECTION 2.

28 Article 2 of Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to the
29 death penalty generally, is amended by revising Code Section 17-10-38, relating to death
30 sentences generally, as follows:

31 "17-10-38.

32 (a) Except as provided in subsection (e) of this Code section, all ~~At~~ persons who have
33 been convicted of a capital offense and have had imposed upon them a sentence of death
34 shall suffer such punishment by lethal injection. Lethal injection is the continuous
35 intravenous injection of a substance or substances sufficient to cause death into the body
36 of the person sentenced to death until such person is dead.

37 (b) In all cases in which the defendant is sentenced to death, it shall be the duty of the trial
38 judge in passing sentence to direct that the defendant be delivered to the Department of
39 Corrections for execution of the death sentence at a state correctional institution designated
40 by the department.

41 (c) Notwithstanding any other provision of law, prescription, preparation, compounding,
42 dispensing, or administration of a lethal injection authorized by a sentence of death by a
43 court of competent jurisdiction shall not constitute the practice of medicine or any other
44 profession relating to health care which is subject by law to regulation, licensure, or
45 certification.

46 (d) No state agency, department, or official may, through regulation or otherwise, require
47 or compel a physician to participate in the execution of a death sentence. 'To participate
48 in the execution of a death sentence' means any of the following actions: selecting injection
49 sites; starting an intravenous line or lines as a port for a lethal injection device; prescribing,
50 preparing, administering, or supervising injection drugs or their doses or types; inspecting,
51 testing, or maintaining lethal injection devices; or consulting with or supervising lethal
52 injection personnel.

53 (e) A moratorium shall be imposed upon carrying out a sentence of death and during this
54 moratorium no death sentence shall be carried out. This subsection shall apply to all
55 pending and future cases in which the defendant has been sentenced to death and shall
56 remain in effect from the date this Code section becomes effective until December 31,
57 2009. This Code section shall stand automatically repealed on January 1, 2010."

58

SECTION 3.

59 (a) This Act shall become effective upon its approval by the Governor or upon its becoming
60 law without such approval.

61 (b) Except as provided in this Act, this Act shall not be construed to affect the laws
62 governing capital cases and death sentences, including, but not limited to, the procedures and
63 time periods for notifications, determinations, and judicial review.

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SECTION 4.

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