

House Bill 430

By: Representatives Austin of the 10th, Hatfield of the 177th, Jerguson of the 22nd, Dutton of the 166th, Benton of the 31st, and others

A BILL TO BE ENTITLED
AN ACT

1 To establish the "Fair and Orderly Administration of Capital Punishment Act"; to amend
2 Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to
3 habeas corpus procedure for persons under sentence of state court of record, so as to provide
4 time frames for filing briefs and orders in petitions challenging for the first time state court
5 proceedings resulting in a death sentence; to change certain provisions relating to petitions
6 challenging for the first time state court proceedings resulting in a death sentence; to provide
7 for related matters; to provide for an effective date; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 This Act shall be known and may be cited as the "Fair and Orderly Administration of Capital
12 Punishment Act."

13 **SECTION 2.**

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

18 "9-14-47.1.

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

22 (b) Within ten days of the filing of a petition challenging for the first time state court
23 proceedings resulting in a death sentence, the superior court clerk of the county where the
24 petition is filed shall give written notice to The Council of Superior Court Judges of
25 Georgia of the filing of the petition which shall serve as a request for judicial assistance

26 under paragraph (3) of subsection (b) of Code Section 15-1-9.1. Within 30 days of receipt
 27 of such notice, the president of the council shall, under guidelines promulgated by the
 28 executive committee of the council, assign the case to a judge of a circuit other than the
 29 circuit in which the conviction and sentence were imposed.

30 (c) After the close of evidence and the filing of the transcript of any evidentiary hearings,
 31 the petitioner shall have 30 days in which to file any brief and, if directed by the court,
 32 shall file proposed findings of fact and conclusions of law. The respondent shall file any
 33 responsive brief and, if directed by the court, proposed findings of fact and conclusions of
 34 law within 30 days after the filing of the petitioner's brief. The petitioner shall have 15
 35 days from the filing of the respondent's brief to file any reply brief. Upon a showing of
 36 good cause, the court may grant either party an extension of time for filing briefs or orders
 37 but in any event such extension shall not exceed 30 days.

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

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

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

59 ~~(d)~~(f) In petitions filed under this article challenging for a second or subsequent time a
 60 state court proceeding resulting in a death sentence, the petitioner shall not be entitled to
 61 invoke any of the provisions set forth in this Code section to delay the proceedings. To the
 62 extent the court deems it necessary to have an evidentiary hearing on any such petition, the

63 court shall expedite the proceedings and the time limits shall not exceed those set for initial
64 petitions."

65 **SECTION 3.**

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

68 **SECTION 4.**

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