Senate Bill 337

By:Senators Hamrick of the 30th and Williams of the 19th

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to habeas corpus procedure for persons under sentence of a state court of record, so as to provide for a statute of limitations for bringing such actions; to designate where a petition must be filed when the petitioner is being held by federal or other authorities; to provide for service; to provide for the dismissal of a petition under certain circumstances in which the delay in filing such petition prejudiced the respondent´s ability to respond to such petition; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated, relating to habeas corpus procedure for persons under sentence of a state court of record, is amended by adding a new subsection (c) to Code Section 9-14-42, relating to grounds for a writ and waiver of objection to jury composition, to read as follows:

"(c) Any action brought pursuant to this article shall be filed within one year in the case of a misdemeanor, except as otherwise provided in Code Section 40-13-33, or within four years in the case of a felony, other than one challenging a conviction for which a death sentence has been imposed or challenging a sentence of death, from:

(1) The judgment of conviction becoming final by the conclusion of direct review or the expiration of the time for seeking such review; provided, however, that any person whose conviction has become final as of the effective date of this Code section, regardless of the date of conviction, shall have from the effective date of this Code section one year in the case of a misdemeanor or four years in the case of a felony to bring an action pursuant to this Code section;

(2) The date on which an impediment to filing a petition which was created by state action in violation of the Constitution or laws of the United States or of this state is removed, if the petitioner was prevented from filing such state action;

(3) The date on which the right asserted was initially recognized by the Supreme Court of the United States or the Supreme Court of Georgia, if that right was newly recognized by said courts and made retroactively applicable to cases on collateral review; or

(4) The date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence.

(d) At the time of sentencing, the court shall inform the defendant of the periods of limitation set forth in subsection (c) of this Code section."

SECTION 2.

Said article is further amended by striking Code Section 9-14-43, relating to jurisdiction of habeas corpus proceedings, and inserting in lieu thereof the following:

"9-14-43.

A petition brought under this article must be filed in the superior court of the county in which the petitioner is being detained. The superior courts of such counties shall have exclusive jurisdiction of habeas corpus actions arising under this article. If the petitioner is not in custody or is being detained under the authority of the United States, any of the several states other than Georgia, or any foreign state, the petition must be filed in the superior court of the county in which the conviction and sentence which is being challenged was imposed."

SECTION 3.

Said article is further amended by adding a new subsection (e) to Code Section 9-14-48, relating to hearings, to read as follows:

"(e) A petition, other than one challenging a conviction for which a death sentence has been imposed or challenging a sentence of death, may be dismissed if there is a particularized showing that the respondent has been prejudiced in its ability to respond to the petition by delay in its filing unless the petitioner shows by a preponderance of the evidence that it is based on grounds of which he or she could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the respondent occurred. This subsection shall apply only to convictions had before July 1, 2004."

SECTION 4.

This Act shall become effective on July 1, 2004.

SECTION 5.

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