



# GEORGIA PRISONERS' SPEAK

The GDC Accountability Project, Inc. · a Georgia 501(c)(3)

---

## FULL BRIEF

# For every right there shall be a remedy

*Four years, thirty minutes: Georgia's habeas deadline, and the means the State provides to meet it*

Submitted to the  
**House Study Committee on Criminal Post-Conviction Litigation**  
August 2026

# For every right there shall be a remedy

*Supporting paper — Four years, thirty minutes: Georgia's habeas deadline, and the means the State provides to meet it*

**This paper carries the authorities behind the consolidated summary of the same title.** Every authority cited here has been retrieved and read in full. *Emphasis within quotations is added unless otherwise noted.*

---

## Our position

**We ask this Committee to recommend repeal of the four-year limitation in O.C.G.A. § 9-14-42(c).**

That subsection provides that a habeas action "shall be filed... **within four years in the case of a felony**... from" one of **four** alternative dates, the first being "[t]he judgment of conviction becoming final **by the conclusion of direct review or the expiration of the time for seeking such review.**" It was enacted in 2004. Ga. L. 2004, p. 917. **Georgia's habeas statute carried no filing deadline for the 141 years from the Code of 1863 until then.**

**The statute names three other starting dates.** The period may instead run from the removal of a state-created impediment; from the recognition of a new retroactive right; or from "[t]he date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence." § 9-14-42(c)(2)–(4). **The statute does not lack a discovery rule. What it lacks is any record of that rule doing work** — Part V sets out that record: ten decisions citing it in twenty-two years.

Four years sounds generous. **The calendar and the opportunity are different things**, and this paper is about the distance between them.

Every limitation period rests on a premise: that the person subject to it had a fair chance to act before it closed. Georgia has removed the only device by which that premise can be tested — and it has done so for a population it holds in prison, denies counsel, and permits thirty minutes a week at a law-library terminal.

---

## I. What a limitation period assumes

**We take the case for the deadline at its strongest.** The four-year period is not arbitrary. It serves finality — the principle that at some point a criminal judgment should be settled, so that victims are not indefinitely unsettled, prosecutors are not indefinitely on call, and the State's resources go to present cases rather than old ones. That is a real interest and we do not dispute it.

**But finality rests on something.** A limitation period does not merely close a door at a fixed time. **It presumes that the person subject to it had a fair opportunity to act before it closed.** That premise is what distinguishes a statute of limitations from an arbitrary cutoff, and it is why nearly every limitation period in American law carries some device for testing whether the premise held — tolling for disability, for concealment, for extraordinary circumstance.

**Georgia has removed the device.**

In *Stubbs v. Hall*, 308 Ga. 354 (2020), the Supreme Court of Georgia held the four-year period not subject to statutory or equitable tolling, because granting relief would require the Court to "create — **for the first time in Georgia law** — an equitable remedy that allows habeas petitioners to circumvent the statute of limitations provision enacted by the General Assembly." It found a "**complete dearth of authority**" for doing so. That holding, in Division 5, was unanimous.

**So the premise is never examined.** The period runs whether or not the person had any opportunity at all. Not for a lockdown, not for a closed law library, not for counsel's error, not for a person who could not have known. **The question a limitation period exists to ask — did this person have a fair chance? — is one no Georgia court is permitted to reach.**

**That is the defect. The rest of this paper is about whether the premise actually holds.**

---

## **I-A. The conditions under which the premise is tested**

**No lawyer. There is no right to counsel in a Georgia habeas proceeding.** That is settled law and needs no witness: the Sixth Amendment right does not extend to state collateral review (*Pennsylvania v. Finley*, 481 U.S. 551 (1987)), and Georgia has created no statutory right in its place. It is the reason the Georgia Appellate Practice and Educational Resource Center was established in 1988.

**Thirty minutes a week.** Under GDC Standard Operating Procedure 227.03, "Access to Courts," effective 30 June 2020:

"Each requesting offender shall receive **at least 30 minutes** of access to the electronic law library."

"The Librarian will determine the amount of time that each offender receives **based on the number of computers and the number of offenders requesting access.**"

"**No offender will be allowed to utilize the printed legal collection while using the electronic law library.**"

**The actual allotment is expressly a function of scarcity the Department itself sets** — computers installed, divided by people asking. Access requires a written request to the Librarian and placement on a call-out.

**Note what the rule does not say.** It fixes a **duration** for the electronic law library and states **no frequency**. The Department therefore sets both variables — the length of the session expressly, and the interval between sessions by saying nothing at all. In reported practice the allotment is thirty minutes per week.

## **What else the same SOP provides, and why it does not answer the point**

**The same SOP says more than that, and the rest of it reads more favorably.** It also provides that "[o]ffenders may request **two (2) hours of reference library time per week**"; that a person "subject to a court-determined or statutory deadline may request **four (4) hours of additional library time per week** up to

thirty days prior to the deadline"; and that prison reference libraries shall be open "a minimum of **20 hours per week**." Read together and at face value, those figures describe someone with several hours a week in which to work.

**Three things separate the figures from the opportunity.**

**They are not the same library.** The thirty minutes is the **electronic** law library — the searchable collection in which case law is actually found. The two hours is the **reference library**, a print collection. The SOP forbids using them in one visit: "[n]o offender will be allowed to utilize the printed legal collection while using the electronic law library." A person trying to identify a constitutional defect in his own trial needs the terminal, and **the terminal is the thirty minutes**.

**The deadline supplement arrives too late to reach this problem.** The four additional hours require both a "court-determined or statutory deadline" and a request falling "up to thirty days prior to" it. Whatever else that provision reaches, it does nothing for a person spending four years trying to discover whether he has a claim at all: the extra time becomes available, if ever, in the final month — and only to someone who already knows the deadline is there.

**The twenty hours belongs to the library, not to the person.** It is an opening-hours requirement on the facility. It says nothing about what any individual receives.

**And "may request" is not "receives."** Access depends on a movement call-out requiring staff to escort. **Chronic understaffing and facility lockdowns routinely cancel it.** A person may go weeks without reaching a terminal, through no act or omission of his own, while the clock runs without interruption.

The Department of Justice's findings report of **1 October 2024** does not address law libraries, and we do not cite it for that. **We cite it for the condition that makes the policy unperformable.** DOJ found correctional-officer vacancy rates of roughly **50% systemwide**, exceeding **70% at ten of the State's largest facilities**. A library visit in a Georgia prison requires an officer to run the call-out and escort the movement. **A policy that entitles a man to library time does not deliver it when there is no one to take him there** — and GDC's own rule subordinates library access to the facility's schedule: access "shall not conflict with mandatory facility schedules such as work, meals, and sick calls."

---

## **I-B. What the State is asking a person to accomplish under those conditions**

To bring a habeas petition a person must recognize that something in his own trial was constitutionally defective. That requires understanding criminal procedure, the rules of evidence, the standards governing effective assistance of counsel, and the procedural rules determining where and how such a claim may be brought at all.

**Georgia licenses no one to do that work with less than seven years of full-time study** — four years of undergraduate education and three of law school — followed by a bar examination, and then by the years of practice that make an issue recognizable on sight. **That is what the State requires of anyone it licenses to do this work.**

**And the four years is not for learning the law.** It runs concurrently with everything else. Inside the same period he must obtain his own trial transcript, identify what went wrong in it, discover facts that by definition were not apparent at trial, locate and correspond with witnesses he cannot visit, draft a petition that satisfies the pleading requirements, and file it in the right court.

**What the same task takes elsewhere.** Persons exonerated in the United States in 2024 lost an average of **13.5 years** to wrongful imprisonment. (*National Registry of Exonerations, 2024 Annual Report, 2 April 2025.*) Those cases typically involved lawyers, investigators, innocence organizations, journalists, and laboratory testing unavailable to anyone acting alone.

**With every professional advantage, correcting a wrongful conviction in this country has taken an average of more than thirteen years. Georgia allows four, to a person doing it alone, thirty minutes at a time — and permits no court to ask whether that was enough.**

---

## **II. Neither of the obvious substitutes reaches this problem**

**Two cheaper answers than repeal deserve consideration first, and neither reaches the problem.** We set them out before making our case, because if either did work we would be asking for the wrong thing.

### **"Add a tolling provision and keep the deadline"**

**A tolling provision excuses delay for a reason a court can name** — the petitioner was prevented, misled, disabled, or the State concealed something. It is built for the person who knew he had a claim and could not act on it.

**It does nothing for the person who did not know.** He has no impediment to plead and no concealment to prove. He was simply a layman in a cell who had not yet learned that what happened at his trial had a name. **There is nothing to toll.** Tolling reaches the man who was stopped at the door; the problem here is the man who never learned the door was there.

### **"Move ineffectiveness to habeas and provide counsel"**

This is the Chief Justice's proposal and we support it. **But it answers a smaller question than the one before this Committee**, for two reasons.

**Habeas corpus is larger than ineffective assistance.** It is the only proceeding that carries any constitutional claim after appeal — *Mitchum v. State*, 306 Ga. 878 (2019), holds that post-appeal constitutional claims "could be pursued only through habeas corpus." Suppressed evidence, a coerced confession, a juror who concealed a relationship, counsel laboring under an undisclosed conflict: **a right to counsel for ineffectiveness claims reaches none of them.** Those claims keep the four-year deadline and keep no lawyer.

**And a person cannot ask for a lawyer until he knows what to ask about.** Any right to counsel this Committee creates will attach to a claim already identified — someone must first recognize that something in his own trial was unconstitutional, and name it well enough to seek help. **That step happens alone**, in the

conditions §I-A describes, and it is the step the deadline consumes.

**The claims that matter most surface last.** Suppressed evidence emerges when a file is finally produced, a laboratory scandal when an audit is published, a juror's concealed relationship when someone talks. **None of these arrive on a four-year schedule**, and none of them can be hurried by appointing counsel to a claim nobody has identified yet.

### **What that leaves**

**Repeal is the only one of the three that costs the State nothing.** A right to counsel requires an appropriation and an administering body. A tolling provision requires courts to litigate whether each petitioner's excuse qualifies — a new question in every case. **Removing a limitation period requires neither.** It creates no proceeding, appoints no one, and funds nothing.

**A deadline that admits no exception is not a deadline about diligence. It is a deadline about the calendar.** And it is worth being precise about what *Stubbs* decided: not that the petitioner before it had been dilatory, but that **no Georgia court has authority to consider the question at all.**

## **II-A. Georgia's courts route these claims to habeas because habeas was untimed**

**There is a second population the deadline closes out, and the reason it closes them out is a premise Georgia's case law still relies on.**

O.C.G.A. § 17-9-4, from the Code of 1863 and never amended, provides that a judgment "void for any other cause[] is **a mere nullity and may be so held in any court** when it becomes material to the interest of the parties to consider it." **The right is not in doubt.** What has been litigated for more than a century is where to assert it.

**The answer Georgia's courts give traces to a single 1906 decision, and it is a routing instruction.** *McDonald v. State*, 126 Ga. 536 (1906), in its entirety on this point:

"A motion to set aside the judgment is not the appropriate remedy in a criminal case **if the indictment is void.** The judgment may be arrested upon motion made during the term at which the verdict is rendered, **or the prisoner may be discharged upon a writ of habeas corpus at any time thereafter**, if no question as to the validity of the indictment was adjudicated at the trial."

**The reason matters as much as the rule.** *McDonald* does not hold that a void conviction goes unremedied. It holds that a set-aside motion is **not the appropriate remedy** — because two other doors are open, and one of them, habeas corpus, is open "**at any time thereafter.**"

**In 2004 the General Assembly closed that door after four years.** Ga. L. 2004, p. 917.

**In 2009 the Supreme Court of Georgia reinstated the 1906 rule.** *Harper v. State*, 286 Ga. 216, described the contrary approach as "an improvident departure from more than a century of precedent" and confirmed that the remedies for a void conviction are the three statutory procedures — an extraordinary motion for new trial, a motion in arrest of judgment, or habeas corpus.

**The rule survived. The premise that justified it did not.** The other two doors close faster than habeas: a motion in arrest of judgment "must be made during the term at which the judgment was obtained" (§ 17-9-61(b)) — months, sometimes days — and an extraordinary motion for new trial cannot carry a constitutional claim, because the 1967 Act narrowed it "to exclude such claims." **Habeas was the door that stayed open without limit. It is the reason the other two could be closed.**

*Stated fairly:* Harper resolved a real conflict, and we do not suggest it was wrongly decided. Nor do we suggest the Court overlooked the limitation. **The point is narrower and it is one only this body can act on:** the precedent Georgia relies on to route void-conviction claims to habeas was built on an assumption the General Assembly had already withdrawn five years earlier — and a court cannot restore it.

**This is why repeal reaches further than ineffective assistance.** A void conviction is not a trial error. It is a judgment the Code calls a nullity. Georgia's courts send that claim to habeas on the strength of a case that assumed habeas had no deadline.

---

## **II-B. What the writ reached before 1967, and what the 1967 Act traded**

*McDonald's* routing assumed an untimed writ. What the writ could **hear** was another matter — and the modern shape of Georgia habeas comes from a single trade the General Assembly made in 1967.

**Before 1967, the writ was narrow.** In *Mitchum v. State*, 306 Ga. 878 (2019), the Supreme Court of Georgia adopted Professor Donald E. Wilkes, Jr.'s account of that era: post-conviction habeas relief — first granted in Georgia in 1893 — "had been available in Georgia **only on grounds of lack of jurisdiction**. Unless the judgment of conviction or the sentence was **void** for want of subject matter or personal jurisdiction, the writ would be denied. While denial of counsel could render a conviction void, a strict doctrine of waiver of constitutional rights prevented the deprivation of any other right from constituting grounds for relief."

**The Habeas Corpus Act of 1967 did two things in one motion.** It **widened** the writ to constitutional claims — § 9-14-42(a) reaches "a substantial denial of his rights under the Constitution of the United States or of this state." And it **closed the alternatives:** the extraordinary motion for new trial, which courts had construed to allow constitutional claims, "became narrower, by enactment of the Habeas Corpus Act of 1967, **to exclude such claims**" (*Mitchum*), and § 9-14-41 made Article 2 "the **exclusive** procedure for seeking a writ of habeas corpus for persons whose liberty is being restrained by virtue of a sentence imposed against them by a state court of record."

**The General Assembly wrote down why.** Section 9-14-40 still carries the 1967 findings: Georgia convictions were being attacked in federal court on issues Georgia courts had never considered; this "tends to weaken state courts"; and the answer was that "**the scope of state habeas corpus be expanded**" and the waiver doctrine modified.

**Note what the trade produced.** After 1967, every post-appeal constitutional claim has one door. After 2004, that door has a clock. **And the class of claim the writ had always reached — the void judgment, the want of jurisdiction — is the class the clock now extinguishes.** The oldest and narrowest core of the writ is the

part with nowhere left to go.

---

### III. Who the deadline falls on

From the State's own caseload reporting — Judicial Council of Georgia / Administrative Office of the Courts, superior court case type Habeas Corpus, calendar years 2021–2025. *(The figures below were extracted from the Council's public superior-court dashboard and were confirmed in writing by the Council's Office of Research and Data Analysis on 7 August 2026. The Office advised that updates to this data are expected shortly; if they change these statistics appreciably, we will provide the Committee an updated table on receipt.)*

- Georgia superior courts received **4,425 habeas petitions** and disposed of **3,955** — roughly nine hundred a year.
- In **2,309 of those 3,955 cases — 58.4% — the petitioner had no lawyer.** The statewide self-represented rate across all case types is 27.7%. **Habeas runs at 2.11 times that rate.**
- The respondent is the warden; under O.C.G.A. § 9-14-45 every petition from a person in Department of Corrections custody is served on the **Attorney General.**

**The ordinary Georgia habeas case is a person in prison, without a lawyer, without an investigator, without the ability to interview a witness or obtain a transcript on his own, holding a claim that requires proving what his trial lawyer failed to do — against the State of Georgia, represented by the Attorney General, with the resources of the State behind it, inside a period that never yields.**

**That is not an adversarial proceeding in any ordinary sense.** One party has the machinery of state government. The other has thirty minutes at a terminal, if he asks in writing and his name is placed on a call-out.

**And no lawyer stands opposite.** §I-A sets out the absence of any right to counsel. The gap is old enough to have produced an institution: the Georgia Appellate Practice and Educational Resource Center was established in 1988 to provide free representation to people under a sentence of death — because capital habeas could not be left to the unrepresented. **The principle — counsel where a claim cannot honestly be litigated alone — has been accepted before, for the cases thought least tolerable to get wrong.**

#### **The deadline is already before this Committee**

At the 10 July hearing, **a member of this Committee raised the four-year period on his own initiative.** Rep. Tyler Paul Smith observed that Georgia's four-year period runs alongside a one-year federal limitation: "it seems to me there may be an issue on the horizon here that we're incentivizing state [habeas filings], but **a lot of defendants, especially indigent, they'll never be able to take advantage of the federal habeas because they have passed the statute.**" He asked the witness then before the Committee — Kristin Verrill, Executive Director of the Georgia Innocence Project — "do you think that's the interplay here as part of the discussion we should have?"

She answered: "I think it's something we should try to address, yeah."

**What Rep. Smith had in mind, the exchange does not say.** He identified the interaction of the two limitation periods as an issue and asked whether it belonged in the Committee's discussion; the witness agreed it did. **He did not say the four-year period should be repealed, and we do not claim this exchange as support for our ask.** We state the federal point only as he stated it, and make no claim of our own about how the two clocks interact.

**We cite the exchange for one fact: the four-year period reached this Committee on 10 July, raised by one of its own members without prompting from us.** And the defendant he described — indigent, past the federal statute while Georgia's was still running — is a person running out of courts. Repeal does not touch the federal period. **What it does is keep Georgia's own courthouse open.**

---

#### IV. What the last decade of published outcomes shows

Georgia published habeas outcomes once and stopped. The Judicial Council's *Annual Report: Georgia Courts* carried the Supreme Court's dispositions of habeas certificate-of-probable-cause applications **through the FY2013 volume, reporting data through calendar 2012.** The table appears in no later volume we have been able to read — we examined FY2014 through FY2019; the FY2017 volume exists only as a page-image file and is the one we could not verify.

**And the decade it did publish was a decade of decline.** From the Council's own tables, the grant rate ran at **10.0% in 2007** and **2.0% in 2012** — and in that final published year the Court granted **9 of 449** applications while dismissals more than doubled, from 68 to 171.

*(The commonly cited aggregate for FY2003–2012 — 263 granted of 3,942, a 6.7% grant rate — comes from the petitioner's brief in Wilson v. Sellers. The figure is not printed in the Council's own volumes; our reconstruction from the primary reports cross-verifies six of the ten years at 6.4%. We cite the per-year figures above, which we have taken directly from the reports.)*

Nor can outcomes be recovered from published decisions. Appeal from a habeas denial requires a certificate of probable cause from the Supreme Court (O.C.G.A. § 9-14-52), and in the ordinary case it is refused by unpublished order. In *Redmon v. Johnson*, 302 Ga. 763 (2018), the Court described its own practice: it "denies summarily the applications of another 20 habeas petitioners today, **as we have denied thousands of such applications in the past (while granting a few each year, including two today).**"

**It is tempting to call this a discretionary gate.** *Redmon* says it is not: the label "means only that a full appeal is not provided as of right in every habeas case. **If the Court determines ... that a habeas case has arguable merit, then the Court has no discretion: the application must be granted.**" Our point is not that the Court refuses meritorious appeals. It is that the refusals are unpublished, so the disposition of the ordinary habeas case leaves no public record — which is why the outcome data cannot be rebuilt from decisions.

**And the requirement runs one way.** § 9-14-52 provides that "[i]f the trial court finds in favor of the

petitioner, **no certificate of probable cause need be obtained by the respondent** as a condition precedent to appeal." The State may appeal a grant as of right. The petitioner must ask permission to appeal a denial.

**And the absence is not a publication gap. The data is not gathered.** Asked directly, the Judicial Council's Office of Research and Data Analysis confirmed in writing on 7 August 2026: "We do collect data regarding Manner of Disposition, but it is not reported by all courts for all years. **We do not collect any data regarding case outcomes.**" **Whatever this Committee recommends, it will recommend into a system whose results no one measures** — not withheld, not aggregated differently: not collected.

---

## V. The statutory safety valve opens — and what it takes to open it

Georgia's habeas statute contains a provision that softens the deadline. **It is real, it works, and we want to show you precisely what working looks like**, because that is the argument.

**The late-discovery trigger.** § 9-14-42(c)(4) starts the clock from "the date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence."

**It has saved petitions, including very late ones.** In *Watkins v. Ballinger*, 308 Ga. 387 (2020), a conviction became final in 2003 and the petition at issue was filed in **2017 — fourteen years later** — alleging that a juror had conducted her own out-of-court investigation and that the State had concealed exculpatory evidence. A unanimous Court — Justice Peterson among those joining — held the allegations "**sufficient to satisfy the requirements of OCGA §§ 9-14-42 (c) (4) and 9-14-51,**" and reversed the dismissal. **In 2022 the Court affirmed the grant of habeas relief on the juror-misconduct claim.** *Ballinger v. Watkins*, 315 Ga. 369 (2022). And in *Shelton v. Lee*, 299 Ga. 350 (2016), the habeas court held a petition filed **eight years** after finality timely under (c)(4) — a finding the State did not challenge on appeal — where appellate counsel had abandoned the case.

**So the answer to "the safety valve covers hard cases" is not that it never opens. It is what opening costs.** Twenty-two years of decisions contain **ten** citing that subsection — nine distinct pieces of litigation. (A narrower search restricted to the subsection number returns eight; we give the larger figure. *CourtListener*, courts ga and gactapp, four query forms, run 2026-08-05; parameters supplied on request.) Mr. Watkins needed a lawyer, an innocence organization, two trips to the Supreme Court of Georgia, and **twenty-one years** between his conviction and the affirmance of his relief. **That is the machinery a man with thirty minutes at a library terminal is being told is available to him.**

**The strongest answer to this section:** in *Mitchum v. State*, 306 Ga. 878 (2019), the Court pointed to (c)(4) as evidence that the four-year limitation "does not make habeas corpus any less of an adequate remedy." **That is a fair point, and Watkins supports it.** Our response is not that the provision is dead. It is that a provision cited in nine distinct pieces of litigation across twenty-two years, by the best-resourced petitioners in the system, is not a general answer for the population the deadline actually closes out — and Part V-B identifies who that is.

**One distinction matters for drafting.** In *Stubbs*, the Court cautioned that "[w]e have not always been precise

in the way we have described **the four events** discussed in OCGA § 9-14-42 (c) that could cause a petitioner's one- or four-year statute-of-limitations clock to start running." **(c)(4) is a trigger date, not a tolling rule.** It governs when the clock starts; it does not reopen a case once four years have run against a claim the petitioner knew about all along.

**The miscarriage-of-justice provision — and why it is not a safety valve for this deadline.** § 9-14-48(d) provides in mandatory terms: "In all cases habeas corpus relief **shall** be granted to avoid a miscarriage of justice."

**It does open.** In *Turpin v. Hill*, 269 Ga. 302 (1998), the Court allowed a belated claim through it over a partial dissent that objected in exactly those terms.

**But it is not addressed to lateness.** That sentence sits within § 9-14-48(d) — the **procedural-default** subsection. It excuses a petitioner who failed to raise a claim *at trial or on appeal*; it says nothing about one who filed his petition after the limitation period ran. **No Georgia court has held that it reaches a petition dismissed as late — the question is never reached, because the case ends at the limitation.**

And where it does apply, the standard is severe. *Valenzuela v. Newsome*, 253 Ga. 793 (1985), holds the term "is **by no means to be deemed synonymous with procedural irregularity, or even with reversible error** "; it "demands a much greater substance, **approaching perhaps the imprisonment of one who, not only is not guilty of the specific offense for which he is convicted, but, further, is not even culpable in the circumstances under inquiry.**

---

## **V-A. Georgia has already decided that finality must sometimes yield**

**The four-year bar contains an exception, and the General Assembly wrote it.** § 9-14-42(c) applies

"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...**"

**Capital cases are exempt from the deadline entirely.** A person under sentence of death may bring a habeas petition however many years have passed.

**So the principle is not in dispute.** Georgia already accepts that in some class of case the interest in correcting a wrongful conviction outweighs the interest in repose, and that no period of years is short enough to justify enforcing a judgment that should not stand. The Committee is not being asked to accept a new proposition. **It is being asked where the line falls.**

**And the line is currently drawn at execution.** A man serving forty years for a crime he did not commit has four years. A man sentenced to die has no limit. Whatever is said in defense of that distinction should at least be stated expressly.

---

## **V-B. What the deadline forecloses — and what it does not**

**We begin with the strongest answer to this section, because it is a real one.**

Georgia does provide a route for claims resting on scientific change: the **extraordinary motion for new trial**, O.C.G.A. § 5-5-41, which has no limitation period for newly discovered evidence. In *Smith v. State*, No. S25A0548 (Ga. 15 Oct. 2025), the Supreme Court of Georgia addressed a father convicted in 2003 of his infant son's death on a Shaken Baby Syndrome diagnosis, who argued in 2021 that the medical consensus had "dramatically evolved." **On remand, on 21 July 2026, Judge Kimberly A. Gallant of the Superior Court of Gwinnett County ordered a new trial.** (Elizabeth Weill-Greenberg, "After More Than 20 Years in Prison, Georgia Man Wins New Trial in 'Shaken Baby' Case," *The Appeal*, 4 August 2026; see also *Atlanta Journal-Constitution*, July 2026.) **The four-year bar did not foreclose him, and that is worth stating plainly.**

**But look at what that route cost, and what it does not cover.**

|                          |                                                                                                                                                                |
|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                          |                                                                                                                                                                |
| <b>2003</b>              | Convicted of felony murder                                                                                                                                     |
| <b>2008</b>              | Direct appeal affirmed                                                                                                                                         |
| <b>2012</b><br>(approx.) | Four-year habeas period expires                                                                                                                                |
| <b>2021</b>              | Extraordinary motion for new trial filed — <b>eighteen years after conviction</b>                                                                              |
| <b>2022</b>              | Trial court denies it without a hearing; Supreme Court vacates, holding the facts "if proven, may warrant relief"                                              |
| <b>2024</b>              | Evidentiary hearing on remand — <b>eight expert witnesses over six days</b> . Denied again                                                                     |
| <b>Oct 2025</b>          | Supreme Court vacates a second time — wrong legal framework — and remands                                                                                      |
| <b>21 Jul 2026</b>       | <b>New trial ordered on remand</b> — Judge Kimberly A. Gallant, Superior Court of Gwinnett County. He remains in custody; a bond hearing was set for September |

**Twenty-three years.** The Supreme Court of Georgia observed that one expert's opinion "could not have been offered at the time of trial, let alone in the 1990s" — which is to say the evidence that won him a new trial did not exist when his four years were running. **He has not been acquitted and he has not been released; he has been given back the trial he should have had.**

**Two things about how he got there.**

**He could not use habeas.** By 2021 that door had been closed to him for roughly nine years. His only available vehicle was the extraordinary motion — a remedy Georgia courts describe as disfavored and hedge with six separate requirements.

**And he was represented.** Eight expert witnesses, six days of testimony, two appeals to the Supreme Court of Georgia and two remands is not a case a person assembles alone. **The comparison this Committee should hold in mind is between what that took and what § I describes: no lawyer, thirty minutes a week, four years.**

**That is the point, and it cuts our way.** Georgia already recognizes that some claims cannot fairly be time-limited, and has provided an untimed vehicle for them. **The question for this Committee is why that recognition stops where it does.**

### **What the extraordinary motion cannot carry**

**Constitutional claims.** In *Mitchum v. State*, 306 Ga. 878 (2019), a unanimous Court held that post-appeal constitutional claims "could be pursued only through habeas corpus." So the untimed route is available for **newly discovered evidence** and closed to **constitutional violation** — and habeas, which carries constitutional claims, closes after four years.

**A person who discovers, in year six, that the State suppressed exculpatory evidence, or that a juror was tainted, or that counsel labored under an undisclosed conflict, holds a claim the extraordinary motion will not take — and a habeas door that depends entirely on the discovery triggers.**

**We note the provisions that may answer part of this.** § 9-14-42(c)(2) starts the clock from the removal of "an impediment to filing... created by state action in violation of the Constitution or laws of the United States or of this state" — which may reach some suppression claims, and is the one category with a genuine statutory answer. **Whether it permits a petition filed years after the four-year period is not settled**, and we do not assert otherwise. § 9-14-42(c)(4) starts it from when facts "could have been discovered through the exercise of due diligence" — but the Supreme Court cautioned in *Stubbs* that this is a trigger date and not a tolling rule, and in twenty-two years it has been cited or applied in **ten decisions**.

### **The gap, stated precisely**

**The bar is not aimed at claims that arrive late. It is aimed at people who cannot act in time.**

Section 9-14-42(c)(4) asks a single question: **could these facts have been discovered through diligence?** If they could not, the petitioner gets a later start — that is *Watkins*. But the statute asks nothing at all about whether he could have **done** anything with facts he already had.

**That is the gap, and it is the whole of it.** A man who knew from the day of sentencing that his lawyer never investigated his alibi has no discovery problem. His facts were available to him immediately. What he lacked was a transcript, a law library, a lawyer, and the ability to draft a petition that states a constitutional claim — and none of that starts his clock later, because none of it is discovery. **He is not late because the evidence was hidden. He is late because the State gave him four years and no means of using them**, and the exception the State points to is not written to see him.

---

## **V-C. The deadline is redundant**

Georgia protects the finality of criminal judgments by several means, all of which survive repeal:

- **Procedural default** — § 9-14-48(d): absent cause and actual prejudice, relief "shall not be granted" for claims not properly raised at trial and on appeal.

- **Res judicata and the bar on successive petitions** — § 9-14-51.
- **The certificate of probable cause** — § 9-14-52: no appeal from a denial without the Supreme Court's permission, which *Redmon* describes as refused in "thousands" of cases.
- **The petitioner's burden of proof**, unchanged.

**Georgia had all of these and no deadline for the whole of its history before 2004.** Repeal would not open a door; it would remove one lock from a door with four others on it.

**We looked for the reason the 2004 limitation was enacted and could not find one.** No bill caption, purpose statement or committee note we could retrieve explains what problem it was meant to solve. We do not assert what the General Assembly intended, and we would welcome being shown it. **But the burden of showing what the deadline accomplishes should not fall on the people it excludes.**

---

## **VI. Habeas reform is already before this Committee — the Chief Justice put it there**

On 3 March 2026, Chief Justice Peterson wrote separately in *Sanders v. State*, **joined by six other Justices**, "to point out the harm that rule has caused our criminal justice system, and to encourage the General Assembly to change it." The rule is Georgia's requirement that ineffectiveness be raised at the earliest opportunity — which forces substitution of counsel and, under *In re Formal Advisory Opinion 10-1*, 293 Ga. 397 (2013), counsel from outside the circuit public defender's office.

**But the concurrence does not stop at ineffective assistance.** It identifies what the Court cannot fix and the General Assembly must, and **two of the three items are habeas**:

"...sending ineffectiveness claims to habeas is an improvement only if it is paired with creating a **limited statutory right to counsel in habeas for certain claims**. Taking the **thousands of ineffectiveness claims litigated each year** in motions for new trial across all 51 judicial circuits and sending them all to habeas proceedings overseen by **the relatively small handful of circuits that house Georgia prisons** would be a serious problem for judicial workloads. And a shift of this sort would likely require budget shifts.

**All of those things — creating a limited right to counsel for some habeas proceedings, adjusting habeas venue, and budget adjustments — are the sort of thing that far exceeds the judicial power."**

**So the habeas system is already on this Committee's agenda, placed there by the Chief Justice**, with three legislative items named: **counsel, venue, and budget**.

**Repeal of the four-year limitation is not among his three items.** We do not claim his support for it, and nothing in this section should be read that way. **What his concurrence establishes is that the habeas article is properly before you and that the Court cannot repair it** — the four-year period is our ask, made on the evidence in Parts I through V, and it should be judged on that evidence.

## **On venue — the Chief Justice named the problem and the solution**

He warned that sending "thousands of ineffectiveness claims litigated each year... across all 51 judicial circuits" into "the relatively small handful of circuits that house Georgia prisons" would be "a serious problem for judicial workloads." **Georgia superior courts currently receive about nine hundred habeas petitions a year in total**, so decoupling would multiply that several times over.

**Our analysis of the State's own caseload data measures the concentration he described: 91.7% of habeas filings are in counties holding a GDC facility, and five rural counties receive roughly a quarter of every petition arising anywhere in Georgia.**

**The solution is his own.** On 10 July he told this Committee there "would be some benefit to adjusting habeas venue so that that first habeas petition in which ineffectiveness is litigated happens in **the court of conviction rather than in just the superior court for whatever circuit the prison is in.**"

**His reason was the record, and the workload was his second point, not his first.** Moving venue, he said, would put the case "closer to where the lawyers and the witnesses and everybody else other than the incarcerated defendant are" — and **"in addition to"** that, **"it also spreads the work across the state as opposed to concentrating all of those now much more involved habeas petitions in the handful of circuits that have prisons."** He also suggested the change could let the district attorney defend the petition, by making the DA a defendant in his official capacity.

Thousands of claims divided among five circuits is a crisis. The same claims across fifty-one is ordinary business. **The workload objection to opening habeas is therefore an argument about where these cases are heard — and the answer to it is already before this Committee, in the Chief Justice's own venue recommendation. We support that change. We do not ask you for it, and repeal does not depend on it.**

## **What other states do**

From the GPS fifty-state survey. **Each of the routing and counsel cells below was read individually and carries a verified quotation from the governing statute, rule or decision;** the deadline findings come from a separate pass built for that question, described beneath.

- **Twenty-nine states route ineffectiveness claims to collateral review — nineteen** send them there exclusively, and **ten** more treat collateral review as the preferred forum. Georgia's proposed destination is the mainstream on either count.
- **Of those twenty-nine, ten make counsel mandatory and ten more make it conditionally mandatory. The conditional ten need a caveat:** several condition appointment on the court first ordering a hearing. **That is appointment after the threshold has been crossed, which is not the same as counsel to help cross it —** and it is the narrower reading of what the Chief Justice said decoupling requires.
- **Eleven states impose no post-conviction limitations period at all.**
- **Only four states run a deadline that cannot be excused for any reason: Georgia, South Dakota, Virginia and Washington.**

**A note on how the deadline figures were produced, because the comparison is easy to get wrong.** A single number cannot be compared across states without naming the instrument it belongs to: Georgia's four years limits the **writ of habeas corpus** itself, while most states' figures limit a post-conviction **act**. We ran the deadline question as a separate pass for that reason, naming the operative instrument before the number and comparing only like with like. **An earlier keyword count put the no-limitations states at sixteen; reading each statute individually reduced it to eleven, and eleven is the figure we stand behind.**

---

## VII. What repeal would do, and would not do

**Would do.** Remove a limitation period enacted in 2004, returning Georgia to the position it occupied for its entire prior history and aligning the state remedy with a federal clock that is already running.

**Would not do:**

- **Create a proceeding.** Habeas corpus exists. Repeal changes when it may be invoked, nothing else.
  - **Remove any other requirement.** The cause-and-prejudice bar of § 9-14-48(d) remains. The certificate-of-probable-cause requirement of § 9-14-52 remains. Res judicata and successive-petition rules remain. **Repeal removes a clock, not a screen.**
  - **Free anyone.** Habeas relief where granted ordinarily returns the case for further proceedings.
  - **Cost anything.** No office, no program, no appointment obligation. *(A right to counsel for a first habeas petition — the Chief Justice's stated necessity — is a separate question that does carry cost. We support it and can supply costed options on request.)*
- 

## VIII. Questions we expect

**"Four years is already longer than the federal one year."** It is, and that is the problem. The federal year is **tolled** while a properly filed state petition is pending, and may be equitably tolled for extraordinary circumstances (*Holland*). Georgia's four years is tolled for nothing (*Stubbs*). And because the federal clock runs while the state clock is merely available, **using Georgia's period is what destroys the federal one** — the interplay a member of this Committee identified on 10 July.

**"This destroys finality."** Georgia's habeas statute carried no filing deadline from the Code of 1863 until 2004, and no one suggests those 141 years produced disorder. Every other limit on the writ survives repeal — procedural default, the successive-petition bar, and the merits themselves.

**"Floodgates." Repeal enlarges the group that may file. That is its purpose,** and a paper claiming otherwise would be arguing against its own case. What we can say is the scale. Superior courts receive roughly **nine hundred** habeas petitions a year now. **Georgia already runs the experiment:** capital petitions are exempt from this deadline entirely, and no one describes that docket as a flood. Every new petition still has to clear procedural default, § 9-14-51, and the merits — repeal opens the courthouse door, not the cell.

**"The safety valves already cover hard cases." They open. We set out above exactly how often.** The late-discovery trigger appears in ten decisions in twenty-two years, and it saved *Watkins* after fourteen — with a lawyer, an innocence organization, and two appearances before the Supreme Court. The miscarriage-of-justice provision has granted relief (*Turpin v. Hill*, 269 Ga. 302 (1998)), but it sits in § 9-14-48(d) and answers procedural default, not lateness. And in *Stubbs* the Court found **"only one case in which this Court even discusses"** equitable tolling, and none applying it **in the habeas context. The valves are real and they are narrow. Our argument is about who is left outside them.**

**"If counsel were provided, would this still be a problem?"** It would be a smaller one, and we support providing counsel. **But no proposal before this Committee would give counsel automatically to every person filing a habeas petition** — every version on the table is limited to first petitions, indigent petitioners, and cases surviving to a hearing. **For everyone outside whatever program is created, the deadline and the thirty minutes remain exactly as they are.**

**"Why not just fix ineffective assistance?"** Because decoupling routes those claims into this deadline. Decoupling determines **where** the claim is heard. Repeal determines whether it can be heard **at all**.

---