



## For every right there shall be a remedy

O.C.G.A. § 9-2-3 — and one change for the 2027 session

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House Study Committee on Criminal Post-Conviction Litigation · August 21, 2026

**We ask this Committee to recommend one change: repeal the four-year limitation on habeas corpus — O.C.G.A. § 9-14-42(c) — and provide that the repeal applies to any petition filed on or after the effective date, whatever the date of conviction.**

**Why this belongs in your work on ineffective assistance.** Decoupling the ineffectiveness claim from the motion for new trial moves it into habeas corpus — that is the point of the change. Since 1967, habeas has been the exclusive proceeding for every post-appeal constitutional claim. **Whatever this Committee builds will be received by a proceeding governed by a four-year clock that nothing stops.** The reforms before you decide *where* a claim is heard. This change decides *whether* it can be heard at all.

**What the four-year limitation does today:**

- **A void conviction becomes permanent.** § 17-9-4 has said since 1863 that such a judgment "is a mere nullity." Habeas hears that claim on the merits, unwaived — *Tolbert v. Toole*, 296 Ga. 357, 361 n.8 (2014) — but only in a "timely" petition. The other routes are shut: a motion in arrest of judgment dies with the term of court, and an extraordinary motion for new trial cannot carry a constitutional claim at all. **An unlawful sentence is correctable forever; an unlawful conviction, for four years.**
- **A claim can be granted and undone by the calendar.** In *State v. Sosa*, 291 Ga. 734 (2012), the habeas court granted relief; the Supreme Court reversed because the petition was untimely.
- **Once the clock starts, nothing stops it.** No statutory tolling, no equitable tolling — *Stubbs v. Hall*, 308 Ga. 354 (2020). And when a sentencing court fails to give the warning § 9-14-42(d) requires, *Stubbs* holds the statute provides no remedy.
- **The person under the clock is unrepresented.** There is no right to counsel in Georgia habeas. 58% of decided cases involve an unrepresented litigant — and the respondent is the warden, represented by the Attorney General. Every counsel proposal before this body attaches after a petition is filed; **the limitation decides whether there is a petition to appoint counsel to.**

**Georgia is an outlier.** Eleven states impose no post-conviction limitations period at all. Only four run a deadline that cannot be excused for any reason — Georgia, South Dakota, Virginia, Washington. Georgia's habeas statute itself carried no filing deadline for the 141 years from the Code of 1863 until 2004.

**What repeal costs: nothing.** No office, no program, no appointment obligation. **What survives: every screen.** Procedural default, the successive-petition bar (§ 9-14-51), res judicata, the certificate of probable cause before any appeal (§ 9-14-52), and — for pre-2004 convictions — the State's prejudicial-delay defense (§ 9-14-48(e)). **Repeal opens the courthouse door. It does not open the cell.**

**The General Assembly has already written everything this ask rests on:**

"For every right there shall be a remedy..." — § 9-2-3, Code of 1863, never amended. "...is a mere nullity and may be so held in any court..." — § 17-9-4, the same Code, never amended. "In all cases habeas corpus relief shall be granted to avoid a miscarriage of justice." — § 9-14-48(d).

The Court cannot move the clock — *Stubbs* says so. Seven Justices wrote in March that repair "will require legislative action to fix it." **One sentence of amendment, and Georgia's own guarantees mean again what they say.**

*Georgia Prisoners' Speak is a Georgia 501(c)(3) that advocates for the rights of people incarcerated in Georgia. A full supporting paper and a verified fifty-state comparison accompany this handout. Emphasis within quotations is added. accountability@gps.press · gps.press*