



GEORGIA PRISONERS' SPEAK

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

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The evidence comes last

Why Georgia's four-year habeas deadline should go, and why a lawyer alone would not fix it. With the supporting paper, the model bill, and a note on other issues the Committee may want.

Prepared for the
House Blue-Ribbon Study Committee on Criminal Post-Conviction Litigation
Meeting of September 18, 2026, Milledgeville

The evidence comes last

Why Georgia's four-year habeas deadline should go, and why a lawyer alone would not fix it

Prepared for the House Blue-Ribbon Study Committee on Criminal Post-Conviction Litigation, and for our readers. The supporting paper, "Four years, thirty minutes," and the model bill follow this paper and carry the full authority for everything in it. A short note on other issues we found, none of them our ask, closes the package. The fifty-state survey the papers draw on is supplied separately.

What we're asking

Much of this Committee's work has been on ineffective assistance of counsel: where that claim should be raised, whether the motion for new trial is the right place for it, and whether the person raising it should have a lawyer. Those are the right questions. The changes under discussion would help, and we support them.

We're writing about something next to them. Since 1967, every constitutional claim that survives a direct appeal has had one door in Georgia, and that door is habeas corpus. If the Committee moves ineffective-assistance claims out of the motion for new trial and into habeas, which is where the rest of those claims already go, then whatever it builds will be received by a proceeding that runs on a four-year clock nothing stops. The reforms before you decide where a claim is heard. The deadline decides whether it can be heard at all. That's the adjacent issue this paper is about.

The Supreme Court of Georgia has already asked the General Assembly for this kind of help, and said these rules are the legislature's to change.¹

So we're asking for one change alongside the Committee's own. Repeal the four-year deadline on habeas corpus petitions, O.C.G.A. § 9-14-42(c), and make merit the test for whether a claim gets heard. That is a single ask with two halves, and the rest of this paper explains why each half is needed and why the alternatives don't reach the problem.

What a deadline assumes

Every filing deadline rests on the same assumption: that on the day the clock starts, the person could find out what happened to them if they tried.

For most legal claims, that's fair. For this one it isn't, because of what these claims are made of. A constitutional violation in a criminal trial is usually something the State did and nobody told the defendant about. Evidence that would have helped him, sitting in a file he never saw. A jailhouse witness paid in a way the jury never heard. A rape kit that a police officer kept and never turned over to the prosecutor, so that the man convicted learns it exists only after years of records requests, each one answered months later, each answer pointing to the next. A forensic technique that sounded certain at trial and fell apart a decade later when somebody audited the lab.

None of that is knowable at sentencing. It surfaces when a file is finally produced, when a scandal breaks, when a witness decides to talk. That schedule belongs to the State and to chance. It has nothing to do with

four years.

The record bears this out. People exonerated in the United States in 2024 had lost an average of thirteen and a half years to wrongful imprisonment, and those cases typically had lawyers, investigators, innocence organizations and laboratory testing behind them.² Georgia's own cases show what the schedule looks like from the inside. Clarence Harrison was told in the early 1990s that the evidence in his case had been destroyed; a slide from the rape kit turned up years later, and DNA excluded him seventeen years in.¹⁵ Devonian Inman's mask carried another man's DNA when it was finally tested a decade after his conviction, and it took most of another decade, and a habeas court's finding that police records about that man had been withheld, before he walked out.¹⁶ Dennis Perry's jury never heard that the witness against him had been paid twelve thousand dollars; DNA freed him after twenty years.¹⁷ Joey Watkins's conviction became final in 2003. What overturned it was a juror's private experiment during deliberations that nobody outside the jury room knew about. His petition was filed in 2017, and the Supreme Court of Georgia affirmed his relief in 2022, twenty-one years after conviction, after a lawyer, an innocence organization and two trips to that Court.⁴ Sonny Bharadia served nearly twenty-three years before DNA testing excluded him from the gloves the perpetrator wore, and the Court held the delay against him anyway.³

In each of these the State held the fact that mattered, and the person it mattered to had no way to reach it.

Read quickly, those five names could suggest the system works, only slowly. They're the exceptions, and they share a shape. Each case had DNA, or a fact as hard as DNA, and each man found people willing to believe him and to press a claim of actual innocence for years. That's what Georgia's remaining routes are built for. An extraordinary motion for new trial needs newly discovered evidence the defendant couldn't have found with due diligence, evidence "so material it would probably produce a different verdict," and evidence that does more than impeach a witness.¹⁸ The habeas statute's own exception for a "miscarriage of justice" has "always been interpreted as a very narrow exception tied to evidence of actual innocence," reaching the person who, in the Court's words, "is not even culpable in the circumstances under inquiry."¹⁹ Those are tests for proving a man didn't do it. Most people have no laboratory result to bring to them, and never will.

A constitutional claim is a different thing, and it shouldn't have to carry that weight. The Constitution guarantees the process, and a conviction won by hiding evidence from the defense, or decided by a juror on something never put in evidence, is unconstitutional whether or not the man did it. Georgia's habeas statute was written for exactly that claim. It opens the writ to anyone who asserts "a substantial denial of his rights under the Constitution of the United States or of this state," and it says nothing about innocence.²¹ Yet when the four-year clock runs out on a claim like that, there's no extraordinary motion to fall back on, because the claim isn't new evidence of innocence, and no miscarriage-of-justice exception to reach, because it isn't about innocence at all. For every name above there are people with a real constitutional claim and no test result to attach to it. For them the deadline is the end of it.

What it takes to find out

Suppose a man does start to suspect something. Here is what the State gives him to work with.

Today he has no lawyer. Georgia appoints no counsel in habeas, and the Supreme Court of Georgia has said that changing that "rightfully belongs to the General Assembly."⁵ The Committee is weighing exactly that for ineffective-assistance claims, and we hope it does. It wouldn't change what follows. A lawyer appointed on an ineffective-assistance claim works that claim and is gone when it's decided. The claim we're describing surfaces later, and it surfaces to a man on his own. However counsel is provided, the first job stays where it has always been: recognizing that something in his own trial was unconstitutional, naming it correctly, and showing a court there's merit to it. That is his to do.

He does that work in the prison law library, and the Department's own rule guarantees him "at least 30 minutes" at a computer, in an amount the librarian sets "based on the number of computers and the number of offenders requesting access."⁶ Thirty minutes a week is what people inside report. The rule fixes a length and says nothing about frequency.

Consider what has to happen inside those thirty minutes. The research runs through a legal search program. Before he can use it he may have to learn to use a computer. Then he has to learn the program, which is its own problem, before he starts on the law. There are no books to fall back on. Most Georgia prisons emptied their print law collections long ago.

Everything else moves by mail. A trial transcript, a police file, a lab record: each is a written request and a wait measured in months. And the waits don't run alongside each other. They run one after another, because from a cell you often can't find out who holds a record until somebody answers and tells you. Each answer buys the next question. Someone on the outside makes five calls in an afternoon. Someone inside spends a year on the same five questions, and only if every one of them gets a reply.

If the prison goes on lockdown, the library closes and the mail slows. The four-year clock doesn't stop for any of it.

So the State sets a deadline for a discovery it also controls the means of making. That is the heart of it.

Why "just give him a lawyer" doesn't solve it

The Committee's answer, and the natural one, is to appoint counsel. We support that. It still doesn't reach this problem, for three reasons.

A lawyer arrives too early to find late evidence. Counsel appointed in year two can read the trial record carefully. He can't find a document the State hasn't produced yet, or a lab audit nobody has run. Watkins's claim didn't exist in any findable form in 2003. No appointment in 2003 would have found it.

A fixed fee doesn't buy an investigation. Finding a concealed violation means records requests, tracking down witnesses years later, sometimes paying an expert to re-examine evidence. That's an investigative budget. An appointment paid to review a record buys record review. The lawyer working inside that budget often won't have the means to go looking, and won't always recognize what he's looking at, because the science that convicted his client may have moved since the trial.

And a person can't ask for a lawyer until he knows what to ask about. Any right to counsel attaches to a

claim someone has already identified. Recognizing the claim comes first, alone, under the conditions above. That is the step the deadline consumes.

Counsel is a companion to repeal. It isn't a substitute for it. A committee that recommends counsel and stops has given a lawyer to a person whose door has already closed.

Why merit should decide, and why the statute has to say so

There's a second half to the ask, and it's the half that keeps the first from being undone.

Georgia already bars second habeas petitions. Under § 9-14-51, any ground not raised in the first petition is waived unless a judge finds it "could not reasonably have been raised" the first time. That exception is the whole protection, and it turns on a judge's view of what was reasonable for this petitioner. The Supreme Court of Georgia has said the timeliness test and the successive-petition test involve "the same basic analysis: whether a petitioner has acted in a reasonable and diligent manner to uncover the legal or factual grounds."⁷

Now watch what appointing a lawyer does to that analysis. Today a man who filed alone can argue he couldn't reasonably have found what he had no means to look for. Give him a lawyer on his ineffective assistance claim, let him lose, and the State's answer to his next petition writes itself: you had counsel, and counsel should have found it.

The deeper problem isn't which way a court would rule on that. It's that we'd be relying on a court to rule the right way at all, and Georgia's post-conviction statutes are full of exceptions that sound like doors but don't open.

Equitable tolling is the clearest case. In 2020 the Supreme Court of Georgia looked for any Georgia precedent applying it and reported it found none. It then declined to create one, saying that would mean inventing "for the first time in Georgia law" an equitable remedy against a limitation "enacted by the General Assembly."⁸

The statutory exceptions have done little better. Across every Georgia appellate decision from 2006 to 2026 that engages § 9-14-42, petitioners invoked the statutory doors in six cases in twenty years. The door opened at the timeliness stage twice. Relief came through it once, in *Watkins*.⁹ One exception was closed by construction rather than disuse: in 2012 the Court read § 9-14-42(c)(3) to be structurally impossible, reasoning that a right can't be both newly recognized and already retroactive, and reversed a habeas grant on that basis. All the Justices concurred.¹⁰

That's the pattern. An exception that depends on a court's discretion isn't a remedy a person can plan around, and it hasn't behaved like one here.

So the answer isn't to write another discretionary exception and hope it's read generously. It's to make merit the test. If a petitioner can show his claim has merit, there should be a hearing to evaluate it.

Georgia already uses that test. It just doesn't reach the door. When a petitioner loses in the habeas court and asks the Supreme Court for permission to appeal, the Court has said the standard isn't discretionary: "If the Court determines ... that a habeas case has arguable merit, then the Court has no discretion: the application must be granted."¹¹ The State already accepts that arguable merit compels review at that stage.

We're asking that the same be true at the stage that decides whether anyone looks at the claim at all.

It's the same principle in both places. A procedural rule shouldn't extinguish a claim nobody has examined.

This is also why the fix has to come from the General Assembly. The Court declined to create a right to counsel in habeas and left that to the legislature. It declined to create equitable tolling and left that to the legislature. And in *Sanders* the Chief Justice was explicit that a limited right to counsel, habeas venue and the budget to support them are "the sort of thing that far exceeds the judicial power."¹

Twice the Court has held it can't do this. Once, with seven Justices joining, it has asked you to.

The principle isn't new here

The General Assembly has already decided that finality sometimes has to yield. The four-year bar doesn't apply to a person under sentence of death. A capital petitioner may file however many years have passed.¹²

So nobody is being asked to accept a new proposition. Georgia has already agreed that in some class of case, getting the conviction right matters more than closing the file, and that no number of years is short enough to justify enforcing a judgment that shouldn't stand. The only question is where the line falls. Right now it falls at execution. A man serving forty years for something he didn't do gets four years to prove it. A man sentenced to die gets no limit at all.

Nor is Georgia's position ordinary. It is one of four states with no entitlement to counsel at a first collateral review, with Virginia, Wyoming and Arkansas, which appoints only in capital cases. Eight states make appointment mandatory and twenty-one more require it once a stated condition is met.¹³ And on the deadline itself, forty-six states either set no limitations period or let a court excuse a late filing. Georgia is one of four that do neither, and one of two of those that also provide no lawyer.²⁰

Georgia's own habeas statute carried no filing deadline at all for the 141 years from the Code of 1863 until 2004.

What it costs

Repeal costs the State nothing. A right to counsel needs an appropriation and someone to administer it. A tolling provision needs courts to litigate, case by case, whether each petitioner's excuse qualifies. Removing a limitation period creates no proceeding, appoints nobody and funds nothing.

What it leaves is a hearing on the merits, which is the thing the deadline was built to avoid. The petitioner still carries the burden of proof. The State still answers, and the State still holds the trial record, the transcript and its own files, which is more than the petitioner ever had. If the claim has merit, the conviction was unconstitutional, and the prejudice from the delay fell on the man who served the years while the fact stayed hidden, not on the State that hid it. Georgia decided every habeas petition that way, with no deadline, for the 141 years before 2004.¹⁴

The ask, restated

Repeal the four-year deadline at § 9-14-42(c), and make merit the test for whether a claim is heard.

1. **Repeal the deadline.** A claim shouldn't die because of when the evidence surfaced.
2. **Hear a second petition where the petitioner shows merit.** Not where a judge can be persuaded the claim was unreasonable to have found earlier, which is discretion again, but where there's a showing worth evaluating. If counsel is provided for ineffective assistance claims, this matters more, not less. A counseled loss on those claims shouldn't waive a constitutional claim that surfaced afterward.

The first half opens the door. The second keeps it from being closed by a rule about how someone arrived at it.

The full supporting paper follows, revised from the version submitted to the Committee in August. Afterwards we present a model bill as the solution, and then the note on other issues.

Notes

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1. *Sanders v. State*, No. S26A0222 (Ga. Mar. 3, 2026) (Peterson, C.J., concurring, joined by Warren, P.J., and Bethel, McMillian, LaGruta, Colvin and Pinson, JJ.). A concurrence, not an opinion of the Court, and joined by seven of nine Justices. Treated at length in the supporting paper, § VI. ↩↩
 2. National Registry of Exonerations, 2024 Annual Report (April 2025): average years lost to wrongful imprisonment by persons exonerated in 2024. ↩
 3. *Bharadia v. State*, 297 Ga. 567 (2015). The opinion records that "none of the DNA recovered from the gloves matched appellant's DNA," which "revealed the DNA of an unknown male and an unknown female," and holds that the Court of Appeals did not abuse its discretion in finding he had not shown due diligence in obtaining the testing. ↩
 4. *Watkins v. Ballinger*, 308 Ga. 387 (2020) (petition not time-barred under § 9-14-42(c)(4); dismissal reversed and hearing ordered); relief affirmed, *Ballinger v. Watkins*, 315 Ga. 369 (2022). Joseph Samuel Watkins was convicted in Floyd County in 2001. His 2017 petition raised juror misconduct: during deliberations a holdout juror conducted her own timed drive to test the State's cell-phone timeline, against the court's instructions, and changed her vote to guilty. Counsel learned of it years later. The State abandoned the retrial in September 2023. ↩
 5. *Gibson v. Turpin*, 270 Ga. 855, 857 (1999), a 4 to 3 decision: "It is well settled that there is no federal or state constitutional right to appointed counsel in Georgia habeas corpus proceedings." On the statutory question, "A law requiring appointed counsel for capital habeas petitioners is not constitutionally compelled, and therefore, the decision to create such a law rightfully belongs to the General Assembly." ↩
 6. Georgia Department of Corrections Standard Operating Procedure 227.03, "Access to Courts," effective June 30, 2020. The rule sets a minimum length and is silent on frequency; thirty minutes a week is reported practice, not the text. The same rule forbids using the printed legal collection while using the electronic law library. Full treatment in the supporting paper, § I-A. ↩
 7. *Watkins v. Ballinger*, 308 Ga. 387 (2020), construing the diligence standard across § 9-14-42(c)(4) and § 9-14-51 together. ↩

8. *Stubbs v. Hall*, 308 Ga. 354 (2020). The petitioner "does not point to any Georgia precedent in which this Court has endorsed or applied a doctrine of equitable tolling"; the Court found "only one case in which this Court even discusses" it, a class action in which the doctrine was not applied; creating the remedy would mean acting "for the first time in Georgia law" against a limitation "enacted by the General Assembly," and the Court declined. ↵
9. GPS study of § 9-14-42 in the Georgia appellate record, 2006 to 2026: 76 decisions read in full, every classification checked against the stored opinion. These are rates in the visible record. Unpublished denials of a certificate of probable cause are not part of it, so the figures describe the decisions the public record shows, not everything petitioners tried. ↵
10. *State v. Sosa*, 291 Ga. 734 (2012), construing § 9-14-42(c)(3). The habeas court had granted relief; the Court reversed, all Justices concurring. ↵
11. *Redmon v. Johnson*, 302 Ga. 763 (2018), describing the certificate-of-probable-cause standard under § 9-14-52. Cited for what the standard is, not for how often it opens: in the same opinion the Court noted it has "denied thousands of such applications in the past (while granting a few each year, including two today)," and those denials are unpublished. ↵
12. O.C.G.A. § 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." ↵
13. GPS fifty-state survey, counsel at first collateral review, every cell verified against a primary source and coded under a stated rule: eight mandatory, twenty-one conditional, seventeen discretionary, four none (Arkansas capital-only, Georgia, Virginia, Wyoming). Coding artifact: [research/counsel-coding-2026-09-01.md](#). ↵
14. Supporting paper, § VII. Repeal touches only § 9-14-42(c). The petitioner's burden of proof, the certificate of probable cause at § 9-14-52 and the successive-petition rule at § 9-14-51, as amended by the model bill that follows, all remain. The State's prejudicial-delay defense at § 9-14-48(e) applies by its own terms only to convictions had before July 1, 2004; the 2004 Act replaced it with the deadline for everyone convicted after, and this paper does not propose reviving it. Procedural default at § 9-14-48(d) is not addressed here. ↵
15. Clarence Harrison, DeKalb County. Convicted March 18, 1987, of rape, robbery and kidnapping; sentenced to life plus twenty years. In the early 1990s he was told that all the evidence in his case had been destroyed. A later search by the Georgia Innocence Project found that at least one slide from the victim's rape kit still existed; DNA testing in 2004 concluded the DNA "could not possibly belong to the same man." Released August 31, 2004. Innocence Project, case profile, innocenceproject.org/cases/clarence-harrison; Georgia Innocence Project, georgiainnocenceproject.org/freed-client/clarence-harrison-2. ↵
16. Devonia Inman, Cook County. Convicted in 2001 of the 1998 Taco Bell murder in Adel and sentenced to life without parole. About a decade later the Georgia Innocence Project found the killer's makeshift mask in the clerk's office; the GBI crime lab found one person's DNA on it, Hercules Brown's. A motion for new trial was denied, and in 2014 the Supreme Court of Georgia declined to hear the appeal. On the habeas petition filed in 2018, Judge Kristina Cook Graham found in November 2021 that prosecutors had failed to disclose Brown's September 2000 arrest, at which police found a homemade mask like the one from the murder; the trial prosecutor had told the jury there was "not one scintilla of evidence" tying Brown to the crime. Charges dismissed and Inman released December 20, 2021, after twenty-three years. Atlanta Journal-Constitution, "Devonia Inman freed after 23 years in prison for wrongful conviction," Dec. 20, 2021; Georgia Innocence Project, georgiainnocenceproject.org/freed-client/devonia-inman; Death Penalty Information Center, "Georgia Man Exonerated 23 Years After Wrongful Capital Murder Conviction." ↵
17. Dennis Perry, Camden County. Convicted of the 1985 murders of Harold and Thelma Swain at Rising Daughter Baptist Church, largely on the testimony of a witness who, the defense was never told, had been paid \$12,000. DNA testing of hairs found in the hinge of a pair of glasses left beside the victims matched a different man, Erik Sparre. Conviction

vacated July 17, 2020; charges dismissed July 19, 2021. Georgia Innocence Project, "Dennis Perry Exonerated After 20 Years of Wrongful Imprisonment"; Death Penalty Information Center, "DNA Exonerates Georgia Man Who Had Waived His Appeals to Avoid Wrongful Execution." ↵

18. O.C.G.A. § 5-5-41; *Timberlake v. State*, 246 Ga. 488, 491 (1980), as restated in *Smith v. State*, No. S25A0548 (Ga. Oct. 15, 2025): the movant must show "(1) the new evidence was unknown to him at the time of trial; (2) the evidence could not have been acquired sooner through the exercise of due diligence; (3) the evidence is so material it would probably produce a different verdict; (4) the evidence is not merely cumulative; (5) the witness's affidavit has been obtained or its absence accounted for; and (6) the evidence serves a purpose beyond impeaching the credibility of a witness." *Bharadia*, note 3, was decided on the diligence requirement of that route: the DNA excluded him, and the motion failed anyway. ↵
19. *Perkins v. Hall*, 288 Ga. 810, 824 (2011), construing the "miscarriage of justice" exception to procedural default at § 9-14-48(d) and quoting *Valenzuela v. Newsome*, 253 Ga. 793, 796 (1985): the term "is by no means to be deemed synonymous with procedural irregularity, or even with reversible error. To the contrary, 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." ↵
20. GPS fifty-state survey, the time limit by instrument, every cell verified against a primary source: eleven states set no limitations period on the route a conviction challenge travels; thirty-five set a period a court may excuse on good cause, a rebuttable presumption, a showing of innocence or equitable tolling; four set a period that cannot be excused (Georgia, South Dakota, Virginia, Washington). Of those four, Georgia and Virginia also provide no counsel. The full record is at gps.press/post-conviction-fifty-states-data/. ↵
21. O.C.G.A. § 9-14-42(a). The section that carries the four-year deadline in subsection (c) opens, in subsection (a), with the ground for the writ: a person "who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of this state may institute a proceeding under this article." Innocence is not an element. ↵

P A R T T W O

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. September 2026 revision of the paper submitted on August 11, 2026; the changes are listed on its first page.

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

Prepared for the House Blue-Ribbon Study Committee on Criminal Post-Conviction Litigation Georgia Prisoners' Speak · The GDC Accountability Project, Inc. · September 2026 revision of the paper submitted in August 2026

What changed since August: the counsel figures and the deadline figures now come from the completed fifty-state survey (counsel coded under a written rule; the deadline pass finished); the count of decisions citing § 9-14-42(c)(4) is stated at eight, the reproducible subsection-citation figure; one passage on counsel for persons under sentence of death is added at Part III; and the prose has been tidied. No authority or quotation has changed.

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: eight decisions citing it in twenty-two years.

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, whether this person had 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.** It has been accepted in money and not in law. Georgia appropriates \$900,000 a year to the Center, and it is the only state of fifty

with no mechanism for appointing counsel to a person under sentence of death: no right, no appointing authority, no compensation provision. Twenty-four states require the appointment, three permit it, and twenty-one have no death penalty. (*GPS fifty-state survey, counsel in capital post-conviction, September 2026; the appropriation is Judicial Branch § 6.7 of the FY2027 General Appropriations Act, HB 974.*)

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, and 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 **eight** citing that subsection, two of them the same litigation at two

stages. (*CourtListener*, *courts ga and gactapp*, run 2026-08-05; a broader search on the provision's operative phrase adds two more; 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 eight decisions 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.

2003	Convicted of felony murder
2008	Direct appeal affirmed
2012 (approx.)	Four-year habeas period expires
2021	Extraordinary motion for new trial filed, eighteen years after conviction
2022	Trial court denies it without a hearing; Supreme Court vacates, holding the facts "if proven, may warrant relief"
2024	Evidentiary hearing on remand, eight expert witnesses over six days . Denied again
Oct 2025	Supreme Court vacates a second time, wrong legal framework, and remands
21 Jul 2026	New trial ordered on remand , 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 in **eight 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, eight make counsel mandatory and twelve more require it once a stated condition is met. The conditional twelve 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, and thirty-five more set a period a court may excuse.**
- **Only four states run a deadline that cannot be excused for any reason: Georgia, South Dakota, Virginia and Washington. Of those four, Georgia and Virginia also provide no counsel.**

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." The two clocks are not the same kind of clock. 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 eight 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**.

P A R T T H R E E

The Habeas Corpus Restoration Act

Model bill, September 2026 revision. The published August text with a new Section 6: a ground omitted from a first petition is heard on a showing of arguable merit.

The Habeas Corpus Restoration Act

Model bill: September 2026 revision

This text is the published bill (v4, gps.press, August 2026) with one addition: a new Section 6 amending Code Section 9-14-51 so that a ground omitted from a first petition is heard on a showing of arguable merit. Legislative Finding (13) is new for the same reason. The title clause, the cross-references, the summary table and the section numbering are conformed. Nothing else in the published text is changed.

Subtitle for the page: *Correcting Ourselves: Removing the 2004 Deadline from Georgia's Habeas Corpus Statute, and Letting Merit Decide*

NOTE: This is model legislation prepared for legislative sponsors. When filed, the Georgia Office of Legislative Counsel will assign an LC number and format the bill according to its internal conventions. Legislative findings (Section 2) will appear in the session law but are not codified in the O.C.G.A.

[Session Year] LC [Assigned by Legislative Counsel]

House Bill ____

By: Representatives [Sponsors to be identified]

A BILL TO BE ENTITLED

AN ACT

To provide for a short title; to provide for legislative findings and determinations; to amend Code Section 9-14-42 of the Official Code of Georgia Annotated, relating to grounds for writ of habeas corpus, waiver of objection to jury composition, time limitations, and notice, so as to repeal the limitation periods for the filing of petitions set forth in subsection (c) of said Code section and the notice requirement of subsection (d) of said Code section; to provide for applicability to petitions without regard to the date of conviction; to provide for the refiling of petitions previously dismissed as untimely; to amend Code Section 9-14-51 of the Official Code of Georgia Annotated, relating to the effect of failure to raise grounds for relief in an original or amended petition, so as to provide that a ground not so raised shall be heard in a subsequent petition upon a showing of arguable merit; to provide for construction and coordination with other laws; to provide for severability; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1. SHORT TITLE

This Act shall be known and may be cited as the "Habeas Corpus Restoration Act."

SECTION 2. LEGISLATIVE FINDINGS AND DETERMINATIONS

The General Assembly finds and determines that:

(1) Georgia's habeas corpus statute descends from the Code of 1863. Section 3909 of that Code provided that "[a]ny person restrained of his liberty, under any pretext whatever" might "sue out a writ of habeas corpus, to inquire into the legality of such restraint." **For the 141 years from that Code until 2004, the statute carried no filing deadline.** Every time limit in the 1863 habeas title ran against the custodian, whose return was due within twenty days, and none ran against the prisoner.

(2) The lineage Georgia's Code cites for the writ reaches the Habeas Corpus Act of 1679, printed in Cobb's 1851 Digest at the very pages the history line of Code Section 9-14-1 still cites. That Act answered even a prisoner's willful delay of two full court terms only by denying him a hearing in vacation time; **it never took the writ away.** The 2004 deadline does what Parliament in 1679 declined to do.

(3) The Habeas Corpus Act of 1967 made the writ the exclusive remedy for constitutional claims surviving direct appeal. It expanded the writ to any "substantial denial" of state or federal constitutional rights; declared, in the findings still carried at Code Section 9-14-40, that "the scope of state habeas corpus be expanded"; and narrowed the extraordinary motion for new trial to exclude constitutional claims, as the Supreme Court of Georgia confirmed in *Mitchum v. State*, 306 Ga. 878 (2019). **Since 1967, every post-appeal constitutional claim has had one door, and that door is habeas corpus.**

(4) In 2004, the General Assembly imposed the first filing deadline ever placed on the writ under Georgia's general habeas corpus statute: four years in the case of a felony and one year in the case of a misdemeanor. Ga. L. 2004, p. 917. (The only earlier limitation touching habeas corpus in Georgia is the 180-day provision of Code Section 40-13-33, enacted in 1986 and confined to challenges to misdemeanor convictions of the traffic laws; this Act does not disturb it.)

(5) The four-year period yields to nothing. In *Stubbs v. Hall*, 308 Ga. 354 (2020), the Supreme Court of Georgia held the period subject to neither statutory nor equitable tolling, and held that the statute provides no remedy when a sentencing court fails to give the warning subsection (d) of Code Section 9-14-42 requires. In *State v. Sosa*, 291 Ga. 734 (2012), a habeas court granted relief, and the grant was reversed solely because the petition was untimely. **A limitation period presumes that the person subject to it had a fair opportunity to act before it closed. Under current law, no Georgia court is permitted to ask whether that premise held.**

(6) The persons subject to the period are, in the ordinary case, imprisoned, unrepresented, and opposed by the State. There is no right to counsel in a Georgia habeas proceeding. In 58.4 percent of the habeas cases disposed of by the superior courts in calendar years 2021 through 2025, the petitioner had no lawyer, against a statewide self-represented rate of 27.7 percent across all case types; the respondent warden is represented by the Attorney General, on whom every petition from a person in Department of Corrections custody is served under Code Section 9-14-45. Department of Corrections Standard Operating Procedure 227.03 allots a requesting person "at least 30 minutes" of electronic law library access, in an amount determined by "the number of computers and the number of offenders requesting access." And the United States Department of

Justice's findings report of October 1, 2024, found correctional officer vacancy rates of roughly 50 percent systemwide, exceeding 70 percent at ten of the State's largest facilities: the staffing on which every library call-out and escorted movement depends.

(7) The deadline extinguishes the oldest class of claim the writ reached. Code Section 17-9-4, enacted in the Code of 1863 and never amended, declares a judgment void for want of jurisdiction "a mere nullity"; Georgia's courts route that claim to habeas corpus on precedent, *McDonald v. State*, 126 Ga. 536 (1906), reaffirmed in *Harper v. State*, 286 Ga. 216 (2009), holding the writ available "at any time thereafter." Habeas hears the claim unwaived, *Tolbert v. Toole*, 296 Ga. 357, 361 n.8 (2014), but only in a timely petition, and the companion routes close faster: a motion in arrest of judgment must be made within the term of court (Code Section 17-9-61), and an extraordinary motion for new trial cannot carry a constitutional claim. **The result since 2004 is that an unlawful sentence is correctable forever, while an unlawful conviction is correctable for four years.**

(8) The General Assembly has already determined that correcting a wrongful conviction may outweigh the interest in repose. Subsection (c) of Code Section 9-14-42 exempts from its periods any petition "challenging a conviction for which a death sentence has been imposed or challenging a sentence of death." **The principle is therefore established in the very subsection this Act repeals; the only question is where the line falls.** It presently falls at execution: a person serving a term of years has four years in which to act, while a person sentenced to die is subject to no deadline at all, and no one describes the capital habeas docket as disordered by the absence of one.

(9) The statutory accrual triggers of subsection (c) are narrow in operation. The late-discovery trigger of paragraph (c)(4) has been cited in eight decisions in the twenty-two years since its enactment, two of them the same litigation at two stages; it is a trigger and not a tolling rule, as the Supreme Court of Georgia cautioned in *Stubbs*; and the petitioner it saved in *Watkins v. Ballinger*, 308 Ga. 387 (2020), required counsel, an innocence organization, and two appearances before the Supreme Court of Georgia across twenty-one years. The miscarriage-of-justice sentence of subsection (d) of Code Section 9-14-48 addresses procedural default, and no Georgia court has held that it reaches a petition dismissed as untimely. 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), ordinarily with professional assistance no unrepresented prisoner possesses.

(10) Georgia is a national outlier. Eleven states impose no post-conviction limitations period at all, and thirty-five more set a period that a court may excuse. Only four states run a deadline that cannot be excused for any reason: **Georgia, South Dakota, Virginia, and Washington.** Of those four, only Georgia and Virginia also provide no counsel at a first collateral review. The federal system's one-year period is tolled while a properly filed state petition is pending, is subject to equitable tolling under *Holland v. Florida*, 560 U.S. 631 (2010), and yields to an actual innocence gateway under *McQuiggin v. Perkins*, 569 U.S. 383 (2013). Georgia's four-year period has none of the three.

(11) The State does not measure the outcomes of these proceedings. The Judicial Council's *Annual Report: Georgia Courts* carried the Supreme Court's dispositions of habeas certificate-of-probable-cause applications

through its FY2013 volume, reporting data through calendar year 2012; in that final published year the grant rate was 2.0 percent, down from 10.0 percent in 2007. The Administrative Office of the Courts confirmed in writing in August 2026 that it does not collect data regarding case outcomes. Denials of further review issue by unpublished order in "thousands" of cases (*Redmon v. Johnson*, 302 Ga. 763 (2018)), so no public record supplies what the State does not collect.

(12) Repeal removes a clock, not a screen. Procedural default under subsection (d) of Code Section 9-14-48; the certificate-of-probable-cause requirement of Code Section 9-14-52; the petitioner's burden of proof; and, for convictions final before July 1, 2004, the State's prejudicial-delay defense under subsection (e) of Code Section 9-14-48 all survive this Act untouched. The successive-petition rule of Code Section 9-14-51 survives as amended by Section 6 of this Act. **Georgia had every one of these protections, and no deadline, for the whole of its history before 2004.**

(13) The successive-petition rule of Code Section 9-14-51 waives every ground not raised in an original or amended petition unless a judge finds the ground "could not reasonably have been raised" earlier. That exception is discretionary, and the Supreme Court of Georgia has held that it involves "the same basic analysis" as the timeliness inquiry this Act repeals: "whether a petitioner has acted in a reasonable and diligent manner to uncover the legal or factual grounds." *Watkins v. Ballinger*, 308 Ga. 387 (2020). A repeal of the deadline that left that discretionary test in place would reopen one door and leave the next one closed by a rule about how the petitioner arrived at it. The General Assembly further finds that Georgia law already supplies a non-discretionary standard for whether a habeas claim deserves to be examined: on an application for a certificate of probable cause, "If the Court determines ... that a habeas case has arguable merit, then the Court has no discretion: the application must be granted." *Redmon v. Johnson*, 302 Ga. 763 (2018). **This Act applies that same standard to the question whether a ground omitted from a first petition is heard at all.** A ground shown to have arguable merit that has never been adjudicated on its merits should be heard, and should not be extinguished by a rule about when it was raised.

(14) The General Assembly has twice in recent memory corrected post-conviction error by statute, unanimously. House Bill 176 (2025), restoring the out-of-time appeal that *Cook v. State*, 313 Ga. 471 (2022), had eliminated, passed the House 168-0 and the Senate 51-0 and was signed on May 14, 2025. The Wrongful Conviction and Incarceration Compensation Act, signed the same day, set compensation for wrongful incarceration at \$75,000 per year. **Self-correction is possible, bipartisan, and recent.**

(15) Habeas corpus reform is already before the General Assembly at the request of the Supreme Court of Georgia. In *Sanders v. State*, No. S26A0222 (Ga. Mar. 3, 2026), a concurrence joined by seven of the nine Justices encouraged the General Assembly to revisit the rules governing post-conviction review, observing that "virtually all of the rules our decisions set up are simply creatures of decisional law," and that a limited right to counsel in habeas, habeas venue, and the resources to support them are "the sort of thing that far exceeds the judicial power."

(16) This Act creates no proceeding, appoints no one, and funds nothing. And the rule of decision is one the General Assembly gave long ago, at Code Section 9-2-3, unchanged since the Code of 1863: **"For every right there shall be a remedy; every court having jurisdiction of the one may, if necessary, frame the**

other."

SECTION 3. REPEAL

Code Section 9-14-42 of the Official Code of Georgia Annotated, relating to grounds for writ of habeas corpus, waiver of objection to jury composition, time limitations, and notice, is amended by repealing subsections (c) and (d) in their entirety, so that the Code section shall read as follows:

"9-14-42.

(a) Any person imprisoned by virtue of a sentence imposed by a state court of record who asserts that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of this state may institute a proceeding under this article.

(b) The right to object to the composition of the grand or trial jury will be deemed waived under this Code section unless the person challenging the sentence shows in the petition and satisfies the court that cause exists for his being allowed to pursue the objection after the conviction and sentence have otherwise become final."

SECTION 4. APPLICABILITY

(a) This Act shall apply to any petition for a writ of habeas corpus filed on or after its effective date, and to any petition pending on that date, whatever the date of the conviction or sentence challenged. No petition shall be dismissed, and no ground barred, for failure to file within the periods formerly set forth in subsection (c) of Code Section 9-14-42, whether or not those periods expired before the effective date of this Act.

(b) Except as provided in Sections 3, 5 and 6 of this Act, nothing in this Act shall limit any defense, bar, or requirement provided by law, including the provisions of Code Sections 9-14-48 and 9-14-52.

SECTION 5. REFILING OF PETITIONS PREVIOUSLY DISMISSED AS UNTIMELY; NEW CODE SECTION

Article 2 of Chapter 14 of Title 9 of the Official Code of Georgia Annotated is amended by adding a new Code section to read as follows:

"9-14-42.1.

(a) A petition under this article dismissed before the effective date of this Code section solely on the basis of the limitation periods formerly set forth in subsection (c) of Code Section 9-14-42 may be refiled as to any ground that was not adjudicated on the merits. The refiled petition shall be filed as a new petition in the court having venue under Code Section 9-14-43 and shall be treated in all respects as an original petition, except as provided in subsection (b) of this Code section.

(b) A petition refiled under subsection (a) of this Code section shall not, by reason of the prior dismissal

alone, be barred by Code Section 9-14-51 or by res judicata; and the petition so dismissed shall not be deemed the petitioner's original or amended petition for purposes of Code Section 9-14-51.

(c) A petitioner described in subsection (a) of this Code section whose application for a certificate of probable cause, or whose appeal, from the dismissal is pending on the effective date of this Code section may elect to dismiss the application or appeal and refile under subsection (a) of this Code section; and a refiling under subsection (a) of this Code section while such an application or appeal is pending shall operate as a dismissal of the application or appeal. A denial of a certificate of probable cause to appeal a dismissal described in subsection (a) of this Code section is not an adjudication on the merits for purposes of this Code section."

SECTION 6. SUBSEQUENT PETITIONS; GROUNDS NOT PREVIOUSLY RAISED HEARD ON A SHOWING OF ARGUABLE MERIT

Code Section 9-14-51 of the Official Code of Georgia Annotated, relating to the effect of failure to raise grounds for relief in an original or amended petition, is amended by striking the Code section in its entirety and inserting in lieu thereof a new Code section 9-14-51 to read as follows:

"9-14-51.

(a) All grounds for relief claimed by a petitioner for a writ of habeas corpus shall be raised by a petitioner in his original or amended petition.

(b) A ground not so raised shall be heard in a subsequent petition, and shall not be deemed waived, if:

(1) The Constitution of the United States or of this state otherwise requires; or

(2) The petitioner shows that the ground has arguable merit and has not been adjudicated on the merits in any prior proceeding.

(c) In determining under paragraph (2) of subsection (b) of this Code section whether a ground has arguable merit, the court shall apply the standard applied by the Supreme Court of Georgia in determining whether an application for a certificate of probable cause presents a case of arguable merit under Code Section 9-14-52, and shall make that determination on the petition, the record of the prior proceedings, and any showing the petitioner offers in support of the ground. A ground found to have arguable merit shall be heard on the merits, and the court shall not dismiss the subsequent petition, or deny the ground, by reason only that the ground could have been raised in the original or amended petition or that the petitioner was represented by counsel in a prior proceeding.

(d) In all cases a ground asserted in a subsequent petition shall be heard where necessary to avoid a miscarriage of justice.

(e) Nothing in this Code section shall be construed to limit the defenses available to the respondent under Code Section 9-14-48 with respect to a ground heard under this Code section, except that the omission of the ground from the original or amended petition shall not, of itself, constitute a failure to comply with Georgia procedural rules within the meaning of subsection (d) of Code Section 9-14-48.

(f) A ground that was adjudicated on the merits in a prior proceeding under this article shall not be relitigated in a subsequent petition except as the Constitution of the United States or of this state otherwise requires."

SECTION 7. CONSTRUCTION

(a) Nothing in this Act shall be construed to limit or modify the rights established by Code Section 5-6-39.1, the miscarriage of justice provision of subsection (d) of Code Section 9-14-48, or the void judgment provisions of Code Section 17-9-4.

(b) Nothing in this Act shall be construed to affect the limitation provided by Code Section 40-13-33 on challenges to misdemeanor convictions of the traffic laws.

SECTION 8. SEVERABILITY

If any provision of this Act or its application to any person or circumstance is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application. To this end, the provisions of this Act are declared severable.

SECTION 9. EFFECTIVE DATE

This Act shall become effective on July 1 immediately following its enactment.

SECTION 10. REPEALER

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

THE HABEAS CORPUS RESTORATION ACT: SUMMARY

What it does	Where
Repeals the four-year (felony) and one-year (misdemeanor) filing deadlines on habeas corpus, and the sentencing-court warning that existed only to announce them	§ 9-14-42(c) and (d), repealed
Applies to every petition filed or pending on the effective date, whatever the date of conviction, and forbids dismissal for a period that expired before the Act	Section 4(a)
A petition dismissed solely as untimely, never decided on the merits, may be refiled as a new original petition in the court with venue; the prior dismissal is not a bar and does not count as the "original" petition	New § 9-14-42.1(a) and (b)

What it does	Where
A pending certificate application or appeal from such a dismissal: the petitioner elects to see it through or to dismiss it and refile	§ 9-14-42.1(c)
A ground omitted from the first petition is heard in a second petition on a showing of arguable merit, the same standard the Supreme Court already applies to certificate applications; it cannot be denied only because it could have been raised earlier or because the petitioner had a lawyer before	New § 9-14-51(b) through (e)
A ground already decided on the merits stays decided	§ 9-14-51(f)
Every other screen survives: procedural default, the certificate of probable cause, the burden of proof, and the State's prejudicial-delay defense for pre-2004 convictions	Section 4(b); Finding (12)
Costs nothing: no proceeding created, no one appointed, nothing funded	Finding (16)

The two halves of the ask are in Sections 3 and 6. Section 3 removes the clock. Section 6 keeps the door from being closed by a rule about how the petitioner arrived at it. Georgia already uses the arguable-merit standard at the appellate stage (*Redmon v. Johnson*); Section 6 applies it at the stage that decides whether anyone looks at the claim at all.

PART FOUR

Other issues worth the Committee's attention

Fifteen things found while working on the habeas deadline. None of them is our ask.

Other issues worth the Committee's attention

Things we found while working on the habeas deadline. None of them is our ask.

Georgia Prisoners' Speak · The GDC Accountability Project, Inc. · September 2026

Prepared for the House Blue-Ribbon Study Committee on Criminal Post-Conviction Litigation.

Our ask is one thing: repeal the four-year deadline on habeas petitions and let merit decide whether a claim is heard. The paper that makes that case is separate from this one.

While doing that work we kept running into other rules that produce the same result by a different route. A claim that was never weighed. A claim charged to the client because the lawyer missed it. A claim nobody can review because nobody wrote it down. We set them out here because the Committee may want them, and because each is small. We've kept the reasons short. We can supply more on any of them.

1. Let someone weigh the verdict, and say so

Georgia already empowers the trial judge to sit as a thirteenth juror:

§ 5-5-20: "In any case when the verdict of a jury is found contrary to evidence and the principles of justice and equity, the judge presiding may grant a new trial before another jury."

§ 5-5-21: "The presiding judge may exercise a sound discretion in granting or refusing new trials in cases where the verdict may be decidedly and strongly against the weight of the evidence even though there may appear to be some slight evidence in favor of the finding."¹

The power exists. It's discretionary, and a refusal to exercise it is, in practice, unreviewable. On appeal the evidence is read in the light most favorable to the verdict, so every credibility question is presumed to have been resolved for the State, and the court asks whether a jury could have convicted, never whether it should have.

Recommend: that a trial court ruling on a motion for new trial in a criminal case be required, in every case and whether or not the defendant asks, to state on the record that it has considered the verdict against the weight of the evidence under §§ 5-5-20 and 5-5-21, and its reasons; and that an order silent on the point not be presumed to have done so. Nothing more. No new right of appeal, no new standard of review. Only that the one place in the system where a human being is empowered to weigh the evidence must show, every time, that it did.

2. When the lawyer who was supposed to raise the claim didn't, that is cause. Say so in both places the statute bars it.

Georgia bars a defaulted claim in habeas "absent a showing of cause for noncompliance with such requirement, and of actual prejudice."² Nothing in the statute says a lawyer's failure is cause, and the rule that does most of the barring isn't in the statute at all. In 1987 the Supreme Court of Georgia announced, in a

single sentence, that "any ineffective counsel challenge will be deemed waived if the new attorney files an amended motion for new trial and does not raise the issue before the trial court."³ The Court has since held that a defendant "cannot resuscitate a specific claim of ineffective assistance of trial counsel that was not raised at the motion for new trial stage" by pointing on appeal to the new lawyer's failure to raise it.⁴ So the claim dies once at the motion for new trial because the new lawyer missed it, and again in habeas because it was never raised, and the person serving the sentence carries both.

This is a recursion, not a rule. To fix a lawyer's error you need a claim that the lawyer was ineffective. To raise that in time you need a second lawyer to spot it. If the second lawyer fails, the claim is gone, and there's no third.

Recommend: amend § 9-14-48(d) so that ineffective assistance of the counsel who was required to raise a claim constitutes cause for the noncompliance, under both parts of the subsection: the general requirement to comply with procedural rules at trial and on appeal, and the specific requirement that new counsel raise trial counsel's ineffectiveness. A fix to the second part alone would change nothing for the many claims that die under the first. And abrogate the 1987 waiver rule by statute, so that leaving a ground out of an amended motion for new trial does not, by itself, waive it. One condition comes with this. The Court has held that a defendant at that stage is entitled to "counsel free from conflicts of interest,"⁵ a guarantee it tied to the waiver rule, so the rule shouldn't be removed without providing counsel in its place.

Federal law already treats a lawyer's failure this way. The Supreme Court of the United States has said that "if the attorney appointed by the State to pursue the direct appeal is ineffective, the prisoner has been denied fair process and the opportunity to comply with the State's procedures."⁶ Georgia's statute simply doesn't say so. We'd expect, and would accept, a condition that the underlying claim be substantial.

3. Take down the whole trial

In a felony trial the judge "shall have the testimony taken down."⁷ What the statute doesn't reach is everything around the testimony: jury selection, the opening statements, the conversations at the bench. In a non-capital felony trial those routinely go unrecorded unless someone asks in advance, and a defendant who later learns that something went wrong in one of them has a claim no court can review, because no record of it exists.

Thirty-one states record jury selection in a non-capital felony trial as a matter of course. Nine of them record it in every case and transcribe it only if a party asks on appeal, which is where the cost sits: the reporter is already in the room, and the transcript is made only when someone needs it.²⁴ Georgia already requires all of it taken down when the death penalty is sought, which settles whether it can be done.

Recommend: require voir dire, opening statements and bench colloquies to be taken down in every felony jury trial. This may need no statute at all, only a change to the court-reporting rules. It is prospective, and it protects the State as much as the defendant: in a case we studied, the Supreme Court of Georgia could not review the strongest claim from the trial because no record of it existed, and an unreviewable claim is also one the State can never conclusively defeat.

4. Put a clock on the motion for new trial

The motion for new trial is the gate to the direct appeal, and the statute says it "may be heard at any time."⁸ The judge's duty to decide within 90 days runs from the day the motion is argued, not the day it is filed.⁹ So nothing in Georgia law requires the motion to be heard at all, and a case can sit for years without any rule being broken. While it sits, the appeal can't start, and the person is serving the sentence.

Recommend: a deadline to hear and decide the motion for new trial, with a backstop: a motion not decided within the period is deemed denied, so that the appeal can begin.

5. Restore the hearing on other-acts evidence

Until 2015, a prosecutor who wanted to put a defendant's other acts before a Georgia jury had to give written notice naming each act, and "the judge shall hold a hearing," with "the burden of proving that the evidence of similar transactions or occurrences should be admitted" on the prosecution, and the State could present "only those similar transactions or occurrences specifically approved by the judge."²³ That rule was deleted effective June 4, 2015, on the view that the new Evidence Code covered the ground. What the Code requires is "reasonable notice" of "the general nature" of the evidence, and no notice at all when the State offers the act to prove "the circumstances immediately surrounding the charged crime, motive, or prior difficulties between the accused and the alleged victim."²⁵ A defendant tried in 2002 got a hearing and a finding on the record. A defendant tried today may get a sentence of notice, and if the State calls the evidence motive, nothing. This is the one place we found where Georgia moved backwards.

Recommend: restore, by rule or statute, the pre-trial hearing and the on-record findings requirement for other-acts evidence in criminal cases, and require notice that states the purpose for which each act is offered and the reasoning, as Georgia already requires under §§ 24-4-413 and 24-4-414.

6. A duty to flag known exculpatory material

A prosecutor who hands over a large file has complied with the discovery statute even if the one page that matters is buried inside it and nobody says so. Disclosure by volume is not disclosure.

Recommend: a duty, where the State knows that material in a production is exculpatory, to identify it as such. The duty should be built on the existing exception to open-file practice, not as a new discovery statute.

7. Count the outcomes

Nobody in Georgia knows how often post-conviction review works. The Administrative Office of the Courts counts filings: by its own reading, superior courts took in 4,425 habeas petitions from 2021 through 2025 and disposed of 3,955. Asked what happened in them, the office answered in writing that it does "not collect any data regarding case outcomes," and that it collects nothing from the Supreme Court or the Court of Appeals.¹⁰ So the State can't say how many petitions were heard, how many were dismissed as untimely or successive, how many were denied on a procedural bar, or how many succeeded. Whatever the Committee recommends will be judged against a baseline that doesn't exist.

Recommend: require the Administrative Office of the Courts, and the Clerk of the Supreme Court for the certificate-of-probable-cause docket, to collect and publish each year the disposition of every habeas petition

and post-conviction motion: dismissed as untimely, dismissed as successive, denied on procedural default, denied on the merits, granted. It's a column on a form the courts already file.

8. Discovery in habeas on a showing of good cause

A habeas court "may receive proof by depositions, oral testimony, sworn affidavits, or other evidence," and the statute adds: "No other forms of discovery shall be allowed except upon leave of court and a showing of exceptional circumstances."¹¹ The petitioner is asked to prove what went wrong at his trial while the trial lawyer's file, the crime lab's notes and the prosecutor's correspondence stay where they are unless a court finds his circumstances exceptional. Most of what would prove a concealed violation is, by definition, in someone else's hands.

Recommend: replace "exceptional circumstances" with "good cause," the standard federal habeas courts have applied for decades, so that a petitioner who can point to a specific reason to believe a document exists and matters can obtain it.

9. Hear the case where the conviction happened

A habeas petition "must be filed in the superior court of the county in which the petitioner is being detained."¹² That county is chosen by the Department of Corrections, and it is usually far from the courthouse that holds the record, the lawyers who tried the case and the witnesses who could testify. A small number of circuits that host prisons carry the State's habeas docket: more than nine of every ten petitions filed in the last five years were filed in a county with an active prison.¹³ The Chief Justice named "adjusting habeas venue" among the changes that are "the sort of thing that far exceeds the judicial power" and belong to the General Assembly.¹⁴

Recommend: venue in the county of conviction, or transfer there on motion of either party, with the warden remaining the respondent.

10. Make the court write its own reasons

Last October the Supreme Court of Georgia vacated two orders in a single case, "both of which uncritically adopted drafts prepared by the State," on a motion that had been "pending for nearly five years."¹⁵ Georgia law lets a trial court adopt a party's proposed order, and often that is ordinary docket management. It stops being ordinary when the order decides whether a conviction stands and the reasoning in it was written by the party that won. A family reading such an order can't tell whether a judge weighed anything.

Recommend: an order denying a motion for new trial, an extraordinary motion, or habeas relief must state the court's own findings and reasons on each ground raised. A party may still submit a proposed order. The court may not adopt one without stating that it has independently reviewed the record and adopts the findings as its own.

11. Evidence sitting in a lawyer's file is not the defendant's knowledge

An extraordinary motion for new trial requires evidence that "must have been unknown to the movant or his

counsel at the time when an ordinary motion for a new trial could have been filed."¹⁶ Read literally, a document the defense lawyer received and never used can never support the motion, because counsel knew of it. The fact that makes the claim good, that the lawyer had the proof and did nothing with it, is the fact that bars the remedy. The defendant, who never saw the document, is charged with his lawyer's knowledge.

Recommend: amend § 5-5-41 so that evidence in the possession of former counsel, not disclosed to the defendant and not used at trial or on the ordinary motion, is treated as unknown to the movant.

12. A second extraordinary motion, in two situations

Georgia allows one extraordinary motion for new trial, ever: "only one such extraordinary motion shall be made or allowed."¹⁷ A person who files one without a lawyer, on the wrong ground, has spent it. A person whose first motion was denied in 2010 has no vehicle if the science behind his conviction is repudiated in 2020. The Supreme Court has recognized that "expert opinion testimony that offers a new analysis of existing physical evidence premised on post-trial scientific developments" can qualify as newly discovered evidence,¹⁸ but the door opens once.

Recommend: permit a second extraordinary motion where the first was filed without counsel, or where the motion rests on scientific evidence that has changed since the first.

13. The reliability hearing the 2022 act gave to civil parties

In 2022 the General Assembly extended the reliability standard for expert testimony to criminal cases. It left the machinery civil-only. On a party's motion the court "may hold a pretrial hearing," but only "in all civil proceedings" must "a hearing and any ruling" be completed before trial.¹⁹ A criminal defendant can ask; the court can decline, and nothing requires findings. The cases where an expert's reasoning decides guilt, fire causation, shaken-baby diagnoses, bite marks, are criminal cases.

Recommend: on a criminal defendant's motion, a reliability hearing and written findings before trial, as civil parties already have.

14. Symmetry on appeal

When a trial court grants a new trial, the State may appeal as of right.²⁰ When it denies one, the defendant's appeal reviews only whether the court exercised its discretion, not how. When a habeas court grants relief, the State appeals without a certificate; when it denies relief, the petitioner needs a certificate of probable cause from the Supreme Court, which grants a few each year.²¹ Each rule runs one way, and both run toward the State.

Recommend: either an appeal of right from the denial of habeas relief, or the same certificate requirement for both sides.

15. When a judge doubts the lawyer, put the answer on the record

In a case GPS is examining, a trial judge cleared the courtroom four days before trial and, according to the defendant's sworn motion to recuse and the appellate brief that followed, told him that his lawyer was trying

his first criminal jury trial, had made several procedural errors, and might have a conflict of interest through their mothers' friendship, then asked whether he wished to proceed with that lawyer.²² The session was transcribed, but no transcript has been produced to us; the record we hold shows no recorded answer, no waiver, and no ruling on the conflict, and the question was never raised on appeal as a conflict. Nothing in Georgia law required more.

Recommend: when a court raises on its own motion a question about counsel's competence or a conflict of interest, it must obtain and record the defendant's informed response, and the exchange must be transcribed.

Notes

1. O.C.G.A. §§ 5-5-20 and 5-5-21, quoted in full. ↩
2. O.C.G.A. § 9-14-48(d): "The court shall review the trial record and transcript of proceedings and consider whether the petitioner made timely motion or objection or otherwise complied with Georgia procedural rules at trial and on appeal and whether, in the event the petitioner had new counsel subsequent to trial, the petitioner raised any claim of ineffective assistance of trial counsel on appeal; and absent a showing of cause for noncompliance with such requirement, and of actual prejudice, habeas corpus relief shall not be granted. In all cases habeas corpus relief shall be granted to avoid a miscarriage of justice." ↩
3. *Thompson v. State*, 257 Ga. 386, 388 (1987): "from the date this opinion is published in the Official Advance Sheets this court will no longer remand such cases. Any ineffective counsel challenge will be deemed waived if the new attorney files an amended motion for new trial and does not raise the issue before the trial court so that the challenge can be heard at the earliest practicable moment, i.e., during the hearing on the amended motion." ↩
4. *Robinson v. State*, 306 Ga. 614 (2019): "we have consistently held that a defendant cannot resuscitate a specific claim of ineffective assistance of trial counsel that was not raised at the motion for new trial stage by recasting the claim on appeal as one of ineffective assistance of motion-for-new-trial counsel for failing to raise the specific claim of trial counsel's ineffectiveness." ↩
5. *Garland v. State*, 283 Ga. 201, 202 (2008): "Effective counsel is counsel free from conflicts of interest," and "appellant was required to raise any issue of ineffective assistance of trial counsel at the earliest practicable moment to avoid it being deemed waived." The conflict-free-counsel guarantee at the motion-for-new-trial stage is the Court's answer to the waiver rule; remove the rule and the reason for the guarantee goes with it, unless counsel is provided by statute. ↩
6. *Martinez v. Ryan*, 566 U.S. 1, 11 (2012), describing the rule of *Coleman v. Thompson*, 501 U.S. 722 (1991). *Martinez* requires that the underlying claim be "substantial." ↩
7. O.C.G.A. § 17-8-5(a): "On the trial of all felonies the presiding judge shall have the testimony taken down and, when directed by the judge, the court reporter shall exactly and truly record or take stenographic notes of the testimony and proceedings in the case, except the argument of counsel." ↩
8. O.C.G.A. § 5-5-40(e): "The motion may be heard at any time; but, where it is not heard at the time specified in the order, it shall stand for hearing at such time as the court by order at any time may prescribe, unless sooner disposed of." ↩

9. O.C.G.A. § 15-6-21(b): in counties of more than 100,000, the judge is "to decide promptly, within 90 days after the same have been argued before him or submitted to him without argument, all motions for new trials"; subsection (a) sets 30 days elsewhere. Both run from argument or submission. ↵
10. Judicial Council of Georgia / Administrative Office of the Courts, written reply to GPS, Aug. 7, 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." Same reply: "Our office does not collect data from the Georgia Supreme Court or the Court of Appeals." Filing and disposition counts (4,425 filed, 3,955 disposed, CY2021 to 2025) are the office's confirmed reading of its own data as of that date; the office noted pending amendments. ↵
11. O.C.G.A. § 9-14-48(a). ↵
12. O.C.G.A. § 9-14-43. ↵
13. GPS analysis of the AOC filing data, CY2021 to 2025: 4,059 of 4,425 petitions (91.7 percent) were filed in counties holding an active Department of Corrections facility. ↵
14. *Sanders v. State*, No. S26A0222 (Ga. Mar. 3, 2026) (Peterson, C.J., concurring): "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. But the good news is that the General Assembly has the power to make at least many of these changes." ↵
15. *Smith v. State*, No. S25A0548 (Ga. Oct. 15, 2025): "given that we have now vacated both orders entered by the trial court in this case, both of which uncritically adopted drafts prepared by the State, we encourage the trial court to proceed with care before pursuing the same approach on remand. And given that Smith's motion has now been pending for nearly five years, we encourage the trial court and the parties to proceed with dispatch." ↵
16. *Patterson v. State*, 228 Ga. 389, 390 to 391 (1971), as quoted in *Smith v. State*, No. S25A0548 (Ga. Oct. 15, 2025); see *Timberlake v. State*, 246 Ga. 488, 491 (1980). ↵
17. O.C.G.A. § 5-5-41(b). ↵
18. *Smith v. State*, No. S25A0548 (Ga. Oct. 15, 2025), describing its 2022 decision in the same case (315 Ga. 287). ↵
19. O.C.G.A. § 24-7-702(d): "Upon motion of a party, the court may hold a pretrial hearing to determine whether the witness qualifies as an expert and whether the expert's testimony satisfies the requirements of subsections (a) and (b) of this Code section. In all civil proceedings, a hearing and any ruling shall be completed no later than the final pretrial conference contemplated under Code Section 9-11-16." ↵
20. O.C.G.A. § 5-7-1(a)(8): the State may appeal "from an order, decision, or judgment of a court granting a motion for new trial or an extraordinary motion for new trial." ↵
21. O.C.G.A. § 9-14-52(a) and (c): no appeal from an order adverse to the petitioner "unless the Supreme Court of this state issues a certificate of probable cause for the appeal"; "If 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." On how often certificates are granted, *Redmon v. Johnson*, 302 Ga. 763 (2018) (the Court has "denied thousands of such applications in the past (while granting a few each year, including two today)"). ↵
22. *State v. Batchelor*, Upson County Superior Court No. 2019R-0225: Defendant's Third Motion to Recuse and supporting affidavit (filed Jan. 26, 2020), p. 4 and p. 7 ¶¶ 5 to 6; Brief of Appellant, Ga. Ct. App. No. A23A0635, pp. 9 to 10. The Jan. 24, 2020 session is described in both as transcribed; GPS has requested the transcript from the clerk under Uniform Superior Court Rule 21 (Sept. 2, 2026) and will substitute the transcript's words when it arrives. ↵

23. Uniform Superior Court Rule 31.3 (as in force until 2015): "(B) The notice shall be in writing, served upon the defendant's counsel, and shall state the transaction, date, county, and the name(s) of the victim(s) for each similar transaction or occurrence sought to be introduced. ... The judge shall hold a hearing at such time as may be appropriate, and may receive evidence on any issue of fact necessary to determine the request, out of the presence of the jury. The burden of proving that the evidence of similar transactions or occurrences should be admitted shall be upon the prosecution. The state may present during the trial evidence of only those similar transactions or occurrences specifically approved by the judge." The current official rules (Council of Superior Court Judges, as of Mar. 6, 2025) carry at Rule 31.3 a note that it was deleted in light of O.C.G.A. §§ 24-4-404(b), 24-4-412 to 24-4-414 and 24-4-417: "Deleted effective June 4, 2015." ↩
24. GPS fifty-state survey, whether jury selection is part of the trial record in a non-capital felony trial: recorded as a matter of course in 31 states; only on request, or excluded from the required record, in 12 (Georgia among them); judge-directed in 5; unsettled in one; contested in one. The nine states that record in every case and transcribe on request are Alaska, Arkansas, Illinois, Louisiana, Maine, New Jersey, Pennsylvania, Tennessee and West Virginia. Every cell verified against a primary source; full record at gps.press/post-conviction-fifty-states-data/. ↩
25. O.C.G.A. § 24-4-404(b): "The prosecution in a criminal proceeding shall provide reasonable notice to the defense in advance of trial, unless pretrial notice is excused by the court upon good cause shown, of the general nature of any such evidence it intends to introduce at trial. Notice shall not be required when the evidence of prior crimes, wrongs, or acts is offered to prove the circumstances immediately surrounding the charged crime, motive, or prior difficulties between the accused and the alleged victim." ↩