

# Georgia Habeas Corpus Overview

## What is habeas corpus?

### Three possible uses.

- To challenge a criminal conviction
- To challenge pretrial incarceration
- In some child custody situations

### The writ of habeas corpus.

- Dates back to 13th century England
- In Georgia, it is a creation of statute

### It is a civil remedy.

No right to counsel. Counsel need not be effective.

### Civil practice act applies.

- Discovery, with the court's permission
- Petitioner could be called for cross examination
- Refusal to answer could be deemed an admission

## Overview of Georgia habeas statutes

O.C.G.A. 9-14-1 through 9-14-53

Note that there is now a 4 year statute of limitations in felony cases

## Who can file?

A person who is locked up

A person under "pretext of restraint".

Suffering a consequence of a conviction such as reporting to probation, being placed on sex offender registry, denial of job, etc.

Exact meaning of "pretext of restraint" is subject to litigation

District attorneys and judges sometimes don't "get" this one

## When can you file?

Within four years of conviction or the end of direct appeal for felonies.

Within one year of conviction for misdemeanors

There is a "safety valve" in the statute of limitations. 9-14-42

Date on which the facts supporting the claims presented could have been discovered through the exercise of due diligence.

The date the impediment to filing was removed.

The date on which a retroactive right was declared available on collateral review

## Appeal from habeas.

### State.

File your notice of appeal and await docketing

### Petitioner.

File a notice of appeal 30 days after appeal

File a petition for certificate of probable cause to appeal 30 days after final order

## Why file a state habeas petition?

You exhausted your direct appeal.

You are being held in violation of a constitutional right.

Your claim was not or could not have been presented before now

There has been a "miscarriage of justice" -- "approaching the nature of one who, not only is not guilty of the specific offense for which he is convicted, but further, is not culpable in the circumstances under inquiry." Gavin v. Vasquez, 261 Ga. 606

## Where do you file?

If in custody, the county of the prison/jail

If not in custody, the county of conviction