

5-2017

# Wrongful Convictions Research Guide

Amy Bement

Follow this and additional works at: [https://readingroom.law.gsu.edu/lib\\_student](https://readingroom.law.gsu.edu/lib_student)



Part of the [Law Commons](#)

---

## Institutional Repository Citation

Bement, Amy, "Wrongful Convictions Research Guide" (2017). *Law Library Student-Authored Works*. 110.  
[https://readingroom.law.gsu.edu/lib\\_student/110](https://readingroom.law.gsu.edu/lib_student/110)

This Article was created by a Georgia State University College of Law student for the Advanced Legal Research class. It has been preserved in its original form, and may no longer reflect the current law. It has been uploaded to the Digital Archive @ GSU in a free and open access format for historical purposes. For more information, please contact [mbutler@gsu.edu](mailto:mbutler@gsu.edu).

## Wrongful Convictions Research Guide

By Amy Bement

### Contents

Wrongful Convictions Research Guide.....	1
Introduction, Scope, and Jurisdiction.....	2
Disclaimer.....	2
Primary Sources.....	2
Headnotes.....	2
Constitutions.....	2
Case Law – Federal.....	3
Case Law – Georgia.....	3
Statutory Law – Federal.....	3
Statutory Law – Georgia.....	4
Secondary Sources.....	4
Additional Research Guides.....	4
Websites.....	4
Law Reviews & Journals.....	4
Articles/Reports Available Online.....	4
American Law Reports.....	5
Treatises.....	5
Books.....	5
Statistics.....	5
Blogs.....	6
News Articles.....	6
Podcasts.....	6
For Self Help.....	6
GENERAL OVERVIEW OF THE APPELLATE PROCESS.....	6
RESOURCES FOR THE APPELLATE PROCESS.....	6
Court Rules and Forms.....	7
Organizations and Government Entities.....	7
Federal Agencies.....	8
State Agencies.....	8

## Introduction, Scope, and Jurisdiction

This guide is designed to provide a broad overview of information relating to wrongful convictions. Whether you are conducting research or seeking to initiate your own legal proceedings for an exoneration, this guide can provide some helpful starting points. While many of the research tools contained in this guide are national in scope, you will also find Georgia-specific resources.

### Disclaimer

This research guide is a starting point for a law student or an attorney to research the area of Wrongful Convictions. This guide should not be considered as legal advice or as a legal opinion on any specific facts or circumstances. If you need further assistance in researching this topic or have specific legal questions, please contact a reference librarian in the Georgia State University College of Law Library or consult an attorney.

## Primary Sources

### Headnotes

Lexis Advance (Browse Topics)

- Criminal Law & Procedure > Appeals
- Criminal Law & Procedure > Habeas Corpus
- Criminal Law & Procedure > Post-Conviction Proceedings

WestlawNext (West Key Number System)

- Topic: Criminal Law, Key Numbers 905–965 (110k905–k965): Motions for New Trial
- Topic: Criminal Law, Key Numbers 1400–1689 (110k1400–k1689): Post-Conviction Relief
- Topic: Criminal Law, Key Numbers 1870–1979 (110k1870–k1979): Adequacy of Representation
- Topic: Habeas Corpus, Key Numbers: 311–440 (197k311–k440): Federal Court Review of Petitions by State Prisoners
- Topic: Habeas Corpus, Key Number 462 (197k462): Criminal Liability; Innocence
- Topic: Habeas Corpus, Key Number 486 (197k486): Adequacy and Effectiveness of Counsel
- Topic: Habeas Corpus, Key Numbers 489–494 (197k489–k494): Evidence
- Topic: Habeas Corpus, Key Number 715 (197k715): Criminal Proceedings, Weight and Sufficiency

### Constitutions

[U.S. Constitution](#) – Relevant Provisions

- [Fifth Amendment](#) = “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law . . . .”
- [Sixth Amendment](#) = “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.”
- [Eighth Amendment](#) = “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”
- [Fourteenth Amendment](#) = “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

[Georgia Constitution](#) – Relevant Provisions

- [Article I, Section I, Paragraph I](#) = “Life, liberty, and property. No person shall be deprived of life, liberty, or property except by due process of law.”
- [Article I, Section I, Paragraph XI](#) = “Right to trial by jury; number of jurors; selection and compensation of jurors. (a) The right to trial by jury shall remain inviolate, except that the court shall render judgment without the verdict of a jury in all civil cases where no issuable defense is filed and where a jury is not demanded in writing by either party. In criminal cases, the defendant shall have a public and speedy trial by an impartial jury; and the jury shall be the judges of the law and the facts.”

- [Article I, Section I, Paragraph XIV](#) = “Benefit of counsel: accusation: list of witnesses: compulsory process. Every person charged with an offense against the laws of this state shall have the privilege and benefit of counsel; shall be furnished with a copy of the accusation or indictment and, on demand, with a list of the witnesses on whose testimony such charge is founded; shall have compulsory process to obtain the testimony of that person’s own witnesses; and shall be confronted with the witnesses testifying against such person.”
- [Article I, Section I, Paragraph XVII](#) = “Bail; fines; punishment; arrest, abuse of prisoners. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; nor shall any person be abused in being arrested, while under arrest, or in prison.”

## Case Law – Federal

Federal cases can be found in [LexisNexis](#) or [Westlaw](#). [Google Scholar](#) is a free online resource to search case law. Make sure to select “Case Law” under the search bar. Additionally, the library contains federal case reporters in print:

- [United States Reports \(U.S.\)](#) – Call Number: KF101 .A2, Law Library, Row 12
- [Supreme Court Reporter \(S. Ct.\)](#) – Call Number: KF101 .S8, Law Library, Row 13
- [Federal Reporter \(F., F.2d, F.3d\)](#) – Call Number: KF105 .F4, Law Library, Rows 14–16
- [Federal Supplement \(F. Supp., F. Supp. 2d, F. Supp. 3d\)](#) – Call Number: KF120 .F42, Law Library, Rows 17–18

The following list of federal cases, while not exhaustive, provides a good starting point for understanding some of the standards involved in appealing a conviction:

- *Thompson v. Louisville*, 362 U.S. 199 (1960) – “no evidence” rule – if there is no relevant evidence of a crucial element of the crime, the conviction cannot stand.
- *In re Winship*, 397 U.S. 358 (1970) – every element of the crime must be proven beyond a reasonable doubt; the evidence presented must be sufficient for a reasonable jury to have found guilt beyond a reasonable doubt.
- *Jackson v. Virginia*, 443 U.S. 307 (1979) – adopts the *Winship* standard above for federal habeas corpus review.
- *Herrera v. Collins*, 506 U.S. 390 (1992) – claims of “actual innocence” based on new evidence alone are not enough to secure federal habeas review; must have an independent constitutional violation.
- *Schlup v. Delo*, 513 U.S. 298 (1995) – a petitioner must only show that a constitutional error more likely than not resulted in the conviction of an innocent person in order for the court to hear his case; this case rejects the former higher standard that required a petitioner to provide clear and convincing evidence.
- *McQuiggin v. Perkins*, 133 S. Ct. 1924 (2013) – a claim of actual innocence (if proven) is sufficient to overcome the one-year statute of limitations under AEDPA.

## Case Law – Georgia

Georgia state cases can be found in [LexisNexis](#) or [Westlaw](#). [Google Scholar](#) is a free online resource to search case law. Make sure to select “Case Law” under the search bar. Additionally, the library contains state case reporters in print:

- [Georgia Reports \(Ga.\)](#) – Call Number: KFG45 .A35, Law Library, Row 2
- [Georgia Appeals Reports \(Ga. App.\)](#) – Call Number: KFG48 .A35, Law Library, Rows 2–3
- [South Eastern Reporter \(S.E., S.E.2d\)](#) – Call Number: KF135 .S6, Law Library, Row 26

The following list of Georgia cases, while not exhaustive, provides a good starting point for understanding some of the standards involved in appealing a conviction:

- *Hardison v. Martin*, 254 Ga. 719 (1989) – individuals who are not in custody, but are suffering collateral consequences from a conviction (such as not being able to vote) may be entitled to relief.
- *Hall v. Vargas*, 278 Ga. 868 (2005) – the respondent (usually the warden/state) can show that the petitioner already raised the claims in a habeas petition on direct appeal; if successful, petitioners claim cannot be reviewed.
- *Bruce v. Smith*, 275 Ga. 432 (2001) – the petitioner can overcome respondent’s claim that the issues were already resolved on direct appeal if he can show a change in the facts or case law since the issue was decided.
- *Valenzuela v. Newsome*, 253 Ga. 793 (1985) – even if a petitioner did not correctly follow all procedures, justice may require hearing his claim to avoid a miscarriage of justice.
- *Gaither v. Gibby*, 267 Ga. 96 (1996) – in a habeas corpus proceeding, the petitioner must show by a preponderance of the evidence that a constitutional right was violated, undermining the validity of his conviction.

## Statutory Law – Federal

Federal criminal law is primarily contained in Title 18 of the United States Code. Title 28 covers judicial procedure and contains information regarding the process of federal habeas appeals. [LexisNexis](#) and [Westlaw](#) both provide access to the Code. Several free online resources also provide access to the United States Code:

- [United States Code \(FDsys\)](#)
- [Legal Information Institute \(LII\)](#)
- [Justia](#)

The United States Code can also be found in print in the library:

- [United States Code Official \(U.S.C.\)](#) – Call Number: KF62 .A2, Law Library, Row 8
- [United States Code Annotated \(U.S.C.A.\)](#) – Call Number: KF62 .T4, Law Library, Row 8
- [United States Code Service \(U.S.C.S.\)](#) – Call Number: KF62 .L38, Law Library, Row 9

Relevant Provisions of the United States Code

- [Anti-Terrorism and Effective Death Penalty Act of 1996 \(AEDPA\)](#), Pub. L. No. 104-132, 110 Stat. 1214.
- [28 U.S.C. § 2254](#) – remedies in federal court for prisoners in state custody
- [28 U.S.C. § 2255](#) – remedies in federal court for prisoners in federal custody

## Statutory Law – Georgia

Information regarding criminal law and offenses can be found in Title 16 of the Official Code of Georgia Annotated (O.C.G.A.). Title 17 covers criminal procedure in Georgia. Rules regarding filing appeals can be found in Title 9 of the code which covers civil procedure.

Print

- [Official Code of Georgia Annotated](#) – Call Number KFG30 1981 .A23, Law Library

Online

- [LexisNexis Official Code of Georgia](#)

Relevant Provisions of the Georgia Code

- [§ 9-14-42](#) – specifies the time limitations for filing a state habeas corpus proceeding for both misdemeanors and felonies.
- [§ 9-14-43](#) – requires state habeas petitions to be filed in the superior court of the county in which the petitioner is being detained.
- [§ 9-14-44](#) – lays out the requirements for what must be included in the petition for habeas corpus
- [§ 9-14-45](#) – requires the habeas petition to be served upon the person having custody of the petitioner (usually the warden)
- [§ 9-14-48\(d\)](#) – allows a petitioner to overcome procedural defaults if he can show that not hearing his petition would result in a miscarriage of justice
- [§ 9-14-51](#) – requires a petitioner to raise all possible grounds for relief in his or her first petition (or amended petition). Claims not raised are considered waived unless a judge determines the claims could not reasonably have been raised in the original petition.

Federal Rules

- [Federal Rules of Criminal Procedure](#) – these rules govern criminal proceedings in all federal courts. Each U.S. District Court also has its own local rules that supplement the Federal Rules of Criminal Procedure.
- [Federal Rules of Evidence](#) – these rules control the admission of evidence in criminal cases in all federal courts.

## Secondary Sources

### Additional Research Guides

[University of Cincinnati](#)  
[Northeastern University School of Law](#)  
[University of Illinois at Urbana-Champaign](#)

### Websites

[National Registry of Exonerations](#)

This website contains a fully searchable database of over 2000 exonerations. Using the “Detailed View,” results can be narrowed by one or more categories or search terms, including age, race, county or state, type of crime, sentence, and reason for wrongful conviction.

### Law Reviews & Journals

Law reviews and journals dealing with criminal law can be found on Westlaw, LexisNexis, and HeinOnline.

### Articles/Reports Available Online

- [Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods \(2016\)](#)
- [Many Prisoners on Death Row are Wrongfully Convicted \(2014\)](#)
- [Donald E. Wilkes Jr., The Writ of Habeas Corpus in Georgia \(2007\)](#)
- [Federal Habeas Corpus: A Brief Legal Overview \(2006\)](#)

- [One Hundred Years later: Wrongful Convictions After a Century of Research](#)
- [National Summit on Wrongful Convictions: Building a Systemic Approach to Prevent Wrongful Convictions \(2013\)](#)

## American Law Reports

This legal resource contains articles written by legal scholars that summarize emerging or changing areas of law. The database of reports can be searched on either Westlaw or LexisNexis.

- Suggested search terms:
  - actual innocence
  - AEDPA
  - collateral consequences
  - habeas corpus
  - ineffective assistance of counsel
  - miscarriage of justice
  - newly discovered evidence
  - postconviction DNA testing
  - postconviction relief
  - wrongful conviction

## Treatises

- Garrett Beaumont, *Avoiding Reversible Error in Criminal Cases* (2013)
  - Online: Westlaw
- Nancy M. Burkoff & John M. Burkoff, *Ineffective Assistance of Counsel* (2013)
  - Online: Westlaw
- Bennett L. Gershman, *Prosecutorial Misconduct* (2002-date)
  - Online: Westlaw
- Wayne R. LaFave et al., *Criminal Procedure* (5th ed., 2009)
  - Online: Westlaw
  - Print – Call Number: KF9619 .L34 2009
- Joseph F. Lawless, *Prosecutorial Misconduct* (4th ed., 2008-date)
  - Online: LexisNexis
  - Print – Call Number: KF9640 .L38 1999
- Donald E. Wilkes, *Federal Post Conviction Remedies Handbook* (2010-date)
  - Online: Westlaw

## Books

- James R. Acker & Allison D. Redlich, *Wrongful Conviction: Law, Science, and Policy*
  - Print – Call Number: [KF9756 .A25 2011](#)
- Sarah Cooper, *Controversies in Innocence Cases in America* (2014)
  - Online: [ProQuest ebrary](#)
- *Examining Wrongful Convictions: Stepping Back, Moving Forward* (James R. Acker et al., eds. 2014)
  - Print – Call Number: [KF9756 .E93 2014](#)
- Brandon L. Garrett, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*
  - Print – Call Number: [KF9756 .G37 2011](#)
- Jim Petro & Nancy Petro, *False Justice: Eight Myths that Convict the Innocent*
  - Print – Call Number: [KF9756 .P47](#)
- Michael L. Radelet et al., *In Spite of Innocence: Erroneous Convictions in Capital Cases*
  - Print – Call Number: [KF9756 .R33 1992](#)
- Barry Scheck, Peter Neufield & Jim Dwyer, *Actual Innocence: When Justice Goes Wrong and How to Make It Right*
  - Print – Call Number: [KF9756 .D98 2003](#)
- Richard A. Stack, *Grave Injustice: Unearthing Wrongful Executions* (2013)
  - Print – Call Number: [HV8699 .U5 S484 2013](#)
- *Wrongful Convictions and Miscarriages of Justice* (C. Ronald Huff & Maring Killias, eds. 2013)
  - Print – Call Number: [HV9960 .N7 W76 2013](#)

## Statistics

- [Bureau of Justice Statistics](#)

- [FBI Uniform Crime Reports](#)
- [National Archive of Criminal Justice Statistics](#)
- [GBI Crime Statistics Database](#)

## Blogs

- [The Wrongful Convictions Blog](#)

## News Articles

- [A Record Number of Wrongfully Convicted People Were Exonerated in 2015](#)
- [The Staggering Number of Wrongful Convictions in America \(2015\)](#)

## Podcasts

- [Undisclosed](#)
- [Actual Innocence](#)
- [Truth & Justice](#)

## *For Self Help*

### GENERAL OVERVIEW OF THE APPELLATE PROCESS

This is a rough overview of the basic structure for the process of appeals. Individual cases may differ. Each step of this process is subject to time limits, procedural requirements, and the rules of the specific court.

Step 1: After conviction, file a motion for a new trial with trial court.

Step 2: Appeal denial to Ga. Court of Appeals.

Step 3: Appeal denial to Ga. Supreme Court.

Step 4: File appeal with U.S. Supreme Court. If cert is denied, or if time expires 90 days after you could have filed, your “direct” appeal is over. Now begins the process of “collateral” appeals.

Step 5: File a state habeas petition with the trial court.

Step 6: Appeal denial to Ga. Court of Appeals.

Step 7: Appeal denial to Ga. Supreme Court.

Step 8: Appeal denial to U.S. Supreme Court.

Step 9: File federal habeas petition in U.S. District Court.

Step 10: Appeal denial to U.S. Court of Appeal.

Step 11: Appeal denial to U.S. Supreme Court.

\*\*If you exhaust this process, and later discover new evidence, you must start all over with the state habeas process. If the state process is not available because of procedural rules, then you can file a federal habeas petition.

### RESOURCES FOR THE APPELLATE PROCESS

#### [Georgia Appellate Practice Handbook \(7th ed. 2012\)](#)

This is a must-have resource for anyone looking to navigate the appellate process in Georgia. While this handbook applies to both civil and criminal appeals, its explanations of the various parts of the appeals process is invaluable. Chapter Eleven focuses specifically on the criminal appellate process. Chapter Sixteen contains templates of forms that can be used in the appeals process.

#### [State Habeas Corpus in Georgia](#)

This is a comprehensive explanation of the habeas corpus procedure in Georgia. The resource includes statutory and case citations, as well as practice tips for those navigating the process on their own.

#### [Know Your Rights: Federal Habeas Corpus \(Criminal Cases\) \(2011\)](#)

This resource provides an explanation of the federal habeas corpus procedure and outlines the requirements a petitioner must meet. It includes citations to cases and statutory law.

## Court Rules and Forms

Any time you are filing a motion or a brief, make sure to check the rules of the specific court you are filing with. Small details can matter. Each court provides its own rules regarding briefs, procedures, and filing. Sometimes forms are included within the rules, so make sure to look.

### *Georgia Courts*

[Georgia Superior Courts](#)

[Inmate/Habeas Corpus Form](#)

[Georgia Court of Appeals](#)

[A Citizen's Guide to Filing Appeals in the Court of Appeals of Georgia](#)

[Georgia Supreme Court](#)

*Federal District Court for the Northern District of Georgia*

[Local Rules](#)

[Federal Rules](#)

[Prisoner Forms and Instructions](#)

*Federal District Court for the Middle District of Georgia*

[Rules](#)

[Forms](#)

*Federal District Court for the Southern District of Georgia*

[Rules](#)

[Forms](#)

*Eleventh Circuit Court of Appeals*

[Rules](#)

[Forms](#)

*United States Supreme Court*

[Rules](#)

## Organizations and Government Entities

### [The Innocence Network](#)

This site provides a list of innocence organizations that can be viewed alphabetically, by geographical area, or on a map. It also maintains a [Brief Bank](#) of all the amicus briefs filed by the Innocence Network on behalf of criminal defendants. Categories listed in the brief bank include Actual Innocence, Ineffective Assistance of Counsel, Police & Prosecutorial Misconduct, among others.

### [Georgia Innocence Project](#)

This non-profit organization works to help wrongfully convicted prisoners in Georgia.

### [The Georgia Resource Center](#)

The Georgia Resource Center is a small, non-profit law office established to provide free, high quality representation to indigent death-sentenced Georgia prisoners in state and federal habeas corpus proceedings challenging their capital convictions and death sentences.

### [Georgia Association of Criminal Defense Lawyers](#)

This site is primarily for criminal defense lawyers, however, it contains a "[Lawyer Search](#)" that can help you locate a criminal defense lawyer in your area. It also provides a "[Links & Resources](#)" page.

### [National Association of Criminal Defense Lawyers](#)

Some of the resources on this site are accessible to members only, however there are numerous helpful resources available to the public. NACDL publishes various reports and studies regarding the criminal justice system. Take time to explore the various links to see if NACDL has what you are looking for. Some notable resources include the [Post-Conviction Innocence Claims Toolbox](#), the [Brief and Motion Bank](#), and the [Restoration of Rights Project](#).

### [Collateral Consequences Resource Center](#)

This site contains many articles and resources discussing how to restore rights after serving a sentence. Look for "State-Specific Guides to Restoration of Rights, Pardon, Sealing & Expungement" and use the drop down list to find your state. For an explanation of the restoration process in Georgia click [here](#).

### [American Bar Association – Criminal Justice Section](#)

### [American Civil Liberties Union](#)

### [Southern Center for Human Rights](#)

### [Southern Poverty Law Center](#)

## Federal Agencies

[Department of Justice](#)

[Federal Bureau of Investigation](#)

[National Commission on Forensic Science](#)

## State Agencies

[Georgia Bureau of Investigation](#)

[Georgia Public Defender Council](#)