

2022

HB 478: Amendments to Rules of Evidence Regarding Expert Testimony in Criminal Cases

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Recommended Citation

Bentley Spain & Ronnie Thompson, *HB 478: Amendments to Rules of Evidence Regarding Expert Testimony in Criminal Cases*, 39 GA. ST. U. L. REV. 93 (2022).

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EVIDENCE

Opinions and Expert Testimony: Amend Chapter 7 of Title 24 of the Official Code of Georgia Annotated, Relating to Opinions and Expert Testimony, so as to Change the Rules of Evidence Regarding Expert Testimony in Criminal Cases; Provide for Related Matters; Provide for an Effective Date and Applicability; Repeal Conflicting Laws; and for Other Purposes

CODE SECTIONS:	O.C.G.A. §§ 24-7-702 (amended); 24-7-707 (repealed)
BILL NUMBER:	HB 478
ACT NUMBER:	743
GEORGIA LAWS:	2022 Ga. Laws 201
EFFECTIVE DATE:	July 1, 2022
SUMMARY:	The Act revises the Georgia Evidence Code to enhance the evidentiary standard for admitting expert testimony in criminal cases. Like in civil cases, expert testimony in criminal cases now must satisfy the <i>Daubert</i> standard for admission of scientific, technical, and other specialized evidence.

History

Minor revisions can result in major changes. This aphorism proves true with House Bill (HB) 478. Now law, HB 478—in simply crossing out a single word—ensures that Georgia is no longer the only state with differing standards for admission of expert testimony in civil and criminal cases.¹ Georgia law formerly applied a more lenient admissibility standard in criminal cases, a reality that confounded HB

1. Compare O.C.G.A. § 24-7-702 (2021), with O.C.G.A. § 24-7-702 (2022). The version that went into effect on July 1, 2022, removed the word “civil” to ensure that the Code section applies “in all proceedings.” § 24-7-702. Video Recording of House Judiciary Non-Civil Committee Meeting at 33 min., 54 sec. (Jan. 26, 2022) [hereinafter House Judiciary Non-Civil Video] (remarks by Rep. Bonnie Rich (R-97th)), <https://www.youtube.com/watch?v=KkmT76oI3bg&t=1810s> [<https://perma.cc/AER8-T232>].

478 sponsor, Representative Bonnie Rich (R-97th).² To Representative Rich, it made no sense that cases involving one’s life and liberty—where shaky scientific evidence could prove especially consequential—faced a less stringent standard than that which applied to controversies over monetary damages.³ Representative Rich introduced HB 478 to resolve this very dichotomy and achieve uniformity in civil and criminal cases.⁴

A complex history of common and statutory law underpinned Georgia’s differing standards for civil and criminal cases.⁵ Much of this history traces back to *Harper v. State*.⁶ In *Harper*, the Supreme Court of Georgia devised an admissibility standard applicable to both civil and criminal cases.⁷ The standard allowed for admission of expert testimony and scientific evidence so long as “the procedure or technique in question has reached a scientific stage of verifiable certainty.”⁸ In the decades following *Harper*, courts and practitioners struggled to pin down what exactly constituted a stage of verifiable scientific certainty.⁹ Semantics aside, the *Harper* standard, in practice, allowed practically all expert testimony to be admitted.¹⁰

Now repealed by HB 478, former Code section 24-7-707 reinforced *Harper*’s lenient standard in criminal cases.¹¹ Indeed, the Code section provided that expert opinions on scientific questions “shall always be

2. House Judiciary Non-Civil Video, *supra* note 1, at 32 min., 10 sec.; see Mark Loudon-Brown & M. Chris Fabricant, *Georgia Can Do Better Than Offer Uniquely Unequal Expert Evidence Standards*, DAILY REPORT (Jan. 27, 2021, 1:03 PM) [hereinafter *Georgia Can Do Better*], <https://www.law.com/dailyreportonline/2021/01/27/georgia-can-do-better-than-offer-uniquely-unequal-expert-evidence-standards/> [https://perma.cc/M99J-UYJS].

3. House Judiciary Non-Civil Video, *supra* note 1, at 35 min., 30 sec.

4. Video Recording of Senate Committee on Judiciary Meeting Part 1 at 5 min., 55 sec. (Mar. 24, 2022) (remarks by Rep. Bonnie Rich (R-97th)), <https://vimeo.com/showcase/8821960/video/691942611> [https://perma.cc/CU6K-KVU3].

5. See *Georgia Can Do Better*, *supra* note 2.

6. See *Harper v. State*, 249 Ga. 519, 524–25, 292 S.E.2d 389, 395 (1982); *Georgia Can Do Better*, *supra* note 2.

7. *Harper*, 249 Ga. at 525, 292 S.E.2d at 395.

8. *Id.*; *Georgia Can Do Better*, *supra* note 2.

9. Telephone Interview with Mark Loudon-Brown, Senior Attorney, Southern Center for Human Rights (May 26, 2022) [hereinafter Loudon-Brown Interview] (on file with the Georgia State University Law Review). In scrutinizing the soundness of the *Harper* standard, Mr. Loudon-Brown rhetorically asked “What is a stage of verifiable scientific certainty? What does that even mean? There’s no such thing. There’s no such thing as certainty in science.” *Id.*

10. *Id.*

11. O.C.G.A. § 24-7-707 (2021).

admissible” in criminal proceedings.¹² Although this language seems more lenient than the *Harper* standard given its absolute nature, Georgia courts generally read the *Harper* standard and the statutory language together as part of their lax approach to expert testimony in criminal cases.¹³

Tort reform in 2005 rendered moot any debates over the meaning of *Harper* in the *civil* arena.¹⁴ Business interests successfully persuaded the Georgia General Assembly to eliminate *Harper*’s applicability to civil cases.¹⁵ *Harper* was replaced by *Daubert*, a heightened standard that only permits scientific evidence which rests on a reliable foundation.¹⁶ Compared to the *Harper* standard, *Daubert* diminishes businesses’ liability exposure to tort claims grounded in shaky scientific evidence.¹⁷ Tort reform notwithstanding, *Harper* remained good law in criminal cases, creating the schism the Act ultimately resolved.¹⁸ In 2005, prosecutors opposed any efforts to apply *Daubert* in criminal cases, and the Georgia General Assembly complied.¹⁹

Times have changed. Prosecutors no longer oppose adopting *Daubert* in criminal proceedings.²⁰ In fact, prosecutors and defense attorneys rallied together in support of HB 478.²¹ Their unity may explain why after nearly two decades of standing alone, Georgia has finally joined the forty-nine other states in following a single admissibility standard for expert testimony in civil and criminal cases.²²

12. *Id.*

13. Loudon-Brown Interview, *supra* note 9.

14. *Georgia Can Do Better*, *supra* note 2.

15. *Id.*

16. *Id.*; see *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 590 (1993).

17. *Georgia Can Do Better*, *supra* note 2.

18. House Judiciary Non-Civil Video, *supra* note 1 at 38 min., 30 sec. (remarks by Jill Travis, Executive Director, Ga. Ass’n of Crim. Def. Laws.).

19. Paul S. Milich, *Georgia’s New Evidence Code – An Overview*, 28 GA. ST. U. L. REV. 379, 409 (2012).

20. See House Judiciary Non-Civil Video, *supra* note 1, at 38 min., 55 sec. (remarks by Jill Travis, Executive Director, Ga. Ass’n of Crim. Def. Laws.) (noting that “all of the parties who are stakeholders in this adventure have agreed to” the bill) .

21. *Id.*

22. See *id.* at 33 min., 54 sec. (remarks by Rep. Bonnie Rich (R-97th)).

*Bill Tracking of HB 478**Consideration and Passage by the House*

Representative Bonnie Rich (R-97th) sponsored HB 478 in the House with Representative James Burchett (R-176th), Representative Scott Holcomb (D-81st), Representative Mandi Ballinger (R-23rd), Representative Micah Gravley (R-67th), and Representative Mitchell Scoggins (R-14th) cosponsoring.²³ The bill was placed in the House hopper on February 16, 2021, and read for the first time on February 17, 2021.²⁴ HB 478 was read in the House for the second time on February 18, 2021, and referred to the House Judiciary Non-Civil Committee that same day.²⁵ The bill was not favorably reported by the Committee until January 27, 2022, when the Committee did so by substitute.²⁶ The substitute contained two amendments to the bill. First, the Committee changed the effective date of the bill from 2021 to 2022.²⁷ Second, the bill revised Code section (b) of 24-7-702 to make it align exactly with Federal Rule of Evidence 702 and the *Daubert* standard.²⁸ The bill, as substituted by the Committee, was read for the third time and debated on the House floor on February 2, 2022.²⁹ Representative Rich made a floor speech in support of the bill.³⁰ The House passed the substituted bill without amendment by a vote of 138 to 25 on February 2, 2022.³¹

23. Georgia General Assembly, HB 478, Bill Tracking [hereinafter HB 478, Bill Tracking], <https://www.legis.ga.gov/legislation/59725> [<https://perma.cc/XJ2E-A2Q7>].

24. *Id.*; State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022.

25. State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022; HB 478, Bill Tracking, *supra* note 23.

26. State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022; HB 478, Bill Tracking, *supra* note 23.

27. HB 478 (HCS), § 3, p. 3, l. 46, 2022 Ga. Gen. Assemb.

28. *Id.* § 1, pp. 1–2, ll. 15–25. Both the Act and Federal Rule of Evidence 702 now provide that “[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.” 2022 Ga. Laws 201, § 1, at 202 (codified at O.C.G.A. § 24-7-702(b) (2022)); FED. R. EVID. 702.

29. State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022; Video Recording of House Proceedings at 1 hr., 46 min., 50 sec (Feb. 2, 2022) [hereinafter House Proceedings Video], <https://youtu.be/nvBPujx4lJQ?t=6453> [<https://perma.cc/RX5L-C32A>].

30. House Proceedings Video, *supra* note 29 at 1 hr., 47 min., 33 sec. (remarks by Rep. Bonnie Rich (R-97th)).

31. State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022; Georgia House of Representatives Voting Record, HB 478, #472 (Feb. 2, 2022).

Consideration and Passage by the Senate

Senator Brian Strickland (R-17th) sponsored HB 478 in the Senate.³² The Senate read the bill for the first time and referred it to the Senate Judiciary Committee on February 3, 2022.³³ The Committee favorably reported the bill on March 25, 2022, and it was read in the Senate for the second time on March 28, 2022.³⁴ On March 30, 2022, the bill was read for the third time in the Senate and was debated on the floor.³⁵ The Senate passed the bill by a vote of 51 to 2 on March 30, 2022.³⁶ The House sent the bill to Governor Brian Kemp (R) on April 6, 2022, and the Governor signed the bill into law on May 2, 2022, as Act 743.³⁷ The effective date of the Act is July 1, 2022.³⁸

The Act

The Act amends Article 702 of Chapter 7 of Title 24 of the Official Code of Georgia Annotated “to change the rules of evidence regarding expert testimony in criminal cases.”³⁹ The Act also repeals Article 707 of Chapter 7 of Title 24 of the Official Code of Georgia Annotated.⁴⁰ The Act’s overall purpose is to create “parity” between the standards in civil and criminal cases regarding the admissibility of scientific expert testimony in Georgia.⁴¹

32. HB 478, Bill Tracking, *supra* note 23.

33. State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022; HB 478, Bill Tracking, *supra* note 23.

34. State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022.

35. State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022; Video Recording of Senate Proceedings at 4 hr., 56 min., 23 sec. (Mar. 30, 2022), https://www.youtube.com/watch?v=IxqMXeu4g2I&list=PLBFF_azbJKIwJbIXFXrKqijgnXRXz4MqG&index=39 [<https://perma.cc/AKB7-R2H8>].

36. State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022; Georgia Senate Voting Record, HB 478, #766 (Mar. 30, 2022).

37. State of Georgia Final Composite Status Sheet, HB 478, May 19, 2022.

38. HB 478, Bill Tracking, *supra* note 23; 2022 Ga. Laws 201, § 3, at 202.

39. 2022 Ga. Laws 201, § 1, at 201.

40. 2022 Ga. Laws 201, § 2, at 202.

41. Telephone Interview with Sen. Brian Strickland (R-17th) (July 6, 2022) [hereinafter Strickland Interview] (on file with the Georgia State University Law Review); *see* 2022 Ga. Laws 201.

Section 1

Section 1 revises subsections (a), (b), (d), (e), and (f) of the Official Code of Georgia Annotated section 24-7-702, “relating to expert opinion testimony in civil actions, medical experts, pretrial hearings, and precedential value of federal law.”⁴² The Act revises subsection (a) of Code section 24-7-702 by removing the word “civil” to make clear that the section and its recitation of the *Daubert* standard applies to “all proceedings[,]” both civil and criminal, in Georgia.⁴³ The language of subsection (b)(1)–(4) now directly tracks with Federal Rule of Evidence 702, which was adopted “in response” to the *Daubert* decision.⁴⁴

Subsection (d) now clarifies that the time limitation for pretrial hearings regarding the qualification of an expert under subsections (a) and (b) of this Code section applies only in civil cases.⁴⁵ Subsection (e) clarifies that the requirements of Code section 24-7-702 for providing expert testimony by affidavit apply only in civil proceedings.⁴⁶ Finally, subsection (f) removes the word “civil” to clarify that the subsection applies in “all proceedings.”⁴⁷

Section 2

Section 2 of the Act repeals Code section 24-7-707, which related to expert testimony in criminal proceedings specifically.⁴⁸ The repealed Code section made expert opinions universally acceptable in criminal cases, providing that their testimony on scientific questions “shall always be admissible.”⁴⁹

42. 2022 Ga. Laws 201, § 1, at 201.

43. 2022 Ga. Laws 201, § 1, at 201 (codified at O.C.G.A. § 24-7-702(a) (2022)).

44. § 24-7-702(b); FED. R. EVID. 702 advisory committee’s note to 2000 amendment.

45. § 24-7-702(d).

46. § 24-7-702(e).

47. Compare O.C.G.A. § 24-7-702(f) (2021), with O.C.G.A. § 24-7-702(f) (2022).

48. 2022 Ga. Laws 201, § 2, at 202 (formerly found at O.C.G.A. § 24-7-707 (2021)).

49. O.C.G.A. § 24-7-707 (2021).

Analysis

Georgia stood alone as the only state with differing admissibility standards for expert testimony in civil and criminal cases.⁵⁰ This distinction no longer holds.⁵¹ Veiled criticism from the Supreme Court of Georgia and concerns regarding wrongful convictions ultimately propelled lawmakers into action.⁵²

A Warning Shot

Court decisions often spark legislative action.⁵³ Through their opinions, judges can alert legislators to an existing statute's constitutional vulnerabilities.⁵⁴ Such warnings can prove especially impactful in legislatures with few practicing lawyers.⁵⁵ This dynamic manifested with HB 478, where a single opinion from the Supreme Court of Georgia prompted the Act's introduction and eventual passage.⁵⁶

Until 2020, the Supreme Court of Georgia expressed no concerns regarding the mismatch in evidentiary standards between civil and criminal cases.⁵⁷ In 2008, the court even upheld the scheme against a constitutional challenge in *Mason v. Home Depot U.S.A.*⁵⁸ In that case, the plaintiffs argued that the more stringent admissibility standard they faced as civil litigants disadvantaged them compared to parties in criminal cases.⁵⁹ The court rejected their equal protection challenge, declaring that civil litigants and parties to criminal cases are not

50. House Judiciary Non-Civil Video, *supra* note 1, at 33 min., 54 sec.

51. *See* O.C.G.A. § 24-7-702 (2022).

52. Strickland Interview, *supra* note 41; House Judiciary Non-Civil Video, *supra* note 1, at 34 min., 35 sec.

53. Strickland Interview, *supra* note 41 (“You’ll often times hear [legislation] presented to our colleagues by saying this is something the supreme court or court of appeals asked us to do.”).

54. *See id.* Senator Brian Strickland (R-17th) indicated that new legislation can result from situations when “we have our appellate courts . . . and our judges saying that something should obviously be addressed.” *Id.*

55. *Id.* (remarking that there are “so few lawyers in the legislature”).

56. *Id.* (“Without that opinion, I’m not sure if we would have necessarily taken up [HB 478] this year.”).

57. *Woods v. State*, 310 Ga. 358, 359, 850 S.E.2d 735, 736 (2020).

58. *Mason v. Home Depot U.S.A.*, 283 Ga. 271, 273, 658 S.E.2d 603, 606 (2008).

59. *Id.*

similarly situated for purposes of equal protection.⁶⁰ In so holding, the court foreclosed any viable equal protection claim, which requires plaintiffs to show a difference in treatment from similarly situated individuals.⁶¹

The court's tenor changed twelve years later in 2020.⁶² In *Woods v. State*, a criminal defendant brought an equal protection challenge similar to the one brought in *Mason*.⁶³ Though the court transferred the case on jurisdictional grounds, Justice Nahmias fired a not-so-subtle warning shot in his one-sentence concurring opinion:

I agree that this appeal should be transferred to the Court of Appeals at this point, but if that court affirms Woods's convictions, I would be inclined to grant a petition for certiorari asking this Court to reconsider its equal protection holding in *Mason v. Home Depot U.S.A., Inc.* . . . as summarily extended to claims by criminal defendants in *Mitchell v. State*⁶⁴

The Georgia General Assembly took notice of Justice Nahmias's words.⁶⁵ In Senator Brian Strickland's (R-17th) view, the General Assembly likely would not have entertained HB 478 absent the concurrence.⁶⁶ Committee hearings lend support to Senator Strickland's contention.⁶⁷ One witness referenced the *Woods* decision explicitly, thereby planting Justice Nahmias's warning shot in the minds of legislators and underscoring the need for action.⁶⁸

60. *Id.* at 274, 658 S.E.2d at 607 (“[P]rocedure in civil cases is governed by the Civil Practice Act while procedure in criminal cases is governed by the provisions of Title 17 of the Official Code of Georgia, thus establishing a separation between the two spheres of litigation.”).

61. *Id.* at 275, 658 S.E.2d at 607.

62. *See Woods*, 310 Ga. at 359, 850 S.E.2d at 736.

63. *Id.*

64. *Id.* (Nahmias, J., concurring).

65. Strickland Interview, *supra* note 41.

66. *Id.*

67. House Judiciary Non-Civil Video, *supra* note 1, at 39 min., 15 sec. (remarks by Jill Travis, Executive Director, Ga. Ass’n of Crim. Def. Laws.).

68. *Id.* (“I think it is important for you to know that you are hopefully pleasing the supreme court by making this decision without having to wait for them to make this decision [given what] they’ve already stated in *Woods v. State*.”).

Miscarriages Of Justice

Justice Nahmias’s concurring opinion in *Woods* undoubtedly generated momentum for HB 478.⁶⁹ But normative concerns about wrongful convictions also drove efforts to revise Georgia’s evidentiary standards for expert testimony.⁷⁰ Georgia’s lower admissibility standard in criminal cases contributed to a statistic that lawmakers deemed troubling: twenty-five of the State’s thirty-nine wrongful convictions over the last three decades resulted at least partially from flawed forensic evidence.⁷¹ Georgia courts—in applying the lenient *Harper* standard—have allowed expert testimony on topics such as state-dependent memory and dog scent tracking.⁷² Their admission notwithstanding, these techniques lack scientific reliability.⁷³

Admission of unreliable scientific evidence can produce wrongful convictions.⁷⁴ A wrongful conviction strips one of their liberty and results in unnecessary expenditure of prison resources.⁷⁵ The Sheila Denton case provides an example of where dubious expert testimony

69. Strickland Interview, *supra* note 41.

70. House Judiciary Non-Civil Video, *supra* note 1, at 34 min., 35 sec. Representative Rich emphasized that 64% of wrongful convictions in the last three decades were due to faulty forensic evidence and the accompanying lower admissibility standard in criminal cases. *Id.*

71. *Georgia Can Do Better*, *supra* note 2; House Judiciary Non-Civil Video, *supra* note 1, at 34 min., 35 sec.

72. *Georgia Can Do Better*, *supra* note 2 (referencing *Glidewell v. State*, 279 Ga. App. 114, 118, 630 S.E.2d 621, 628–29 (2006), which allowed for testimony concerning state-dependent memory and *Bass v. State*, 288 Ga. App. 690, 697–98, 655 S.E.2d 303, 309 (2007), which permitted expert evidence on scent tracking and fire science). State-dependent memory refers to the psychological phenomenon that occurs when a person has a traumatic memory such that similar circumstances occurring at a later time can trigger a state of arousal which mimics the person’s prior experience. *Glidewell*, 279 Ga. App. at 118 n.1, 630 S.E.2d at 628 n.1.

73. *Georgia Can Do Better*, *supra* note 2. “Notwithstanding these many (preventable) wrongful convictions based on faulty forensic science, Georgia trial courts, applying [O.C.G.A. § 24-7-707 (2021)], continue to admit unreliable forensic science evidence. It was ‘[s]tate dependent memory flashback syndrome’” in *Glidewell* that was allowed under the old lenient standard. *Id.*

74. See generally Lindsey Basye & Andy Pierrotti, *Georgia Judge Rules Evidence “Inherently Unreliable,” Freeing Woman from Prison After Fifteen Years*, 11ALIVE NEWS [hereinafter *Unreliable Evidence*], <https://www.11alive.com/article/news/investigations/the-reveal/georgia-woman-freed-from-prison-over-flawed-bitemark-evidence/85-88f98a25-4bca-42f2-976b-1119738f1ca8> [https://perma.cc/U443-3V5D] (May 9, 2020, 1:44 AM).

75. House Judiciary Non-Civil Video, *supra* note 1, at 34 min., 35 sec. In discussing the impact of Georgia’s twenty-five wrongful convictions over the last three decades, Representative Rich emphasized that admission of faulty forensic evidence resulted in “twenty-five people who lost over 312 years of their lives and cost Georgia taxpayers over \$6.2 million.” *Id.*

proved especially consequential.⁷⁶ Denton received a life sentence and spent fifteen years in prison for a crime she did not commit.⁷⁷ At the time of her sentence in 2004, Denton had a teenage son who went on to have children as she served her prison term.⁷⁸

Denton's conviction was based on bite mark evidence.⁷⁹ Forensic dentists equate bite marks to fingerprints and assert that they can match marks to particular sets of teeth.⁸⁰ Many in the scientific community reject this technique as far less reliable than other forms of scientific evidence.⁸¹ Notwithstanding the shaky foundations that underlie bite mark evidence, expert testimony on the subject sunk Sheila Denton's defense in her murder trial.⁸²

Prosecutors accused Denton of murdering Eugene Garner.⁸³ Their evidence included bite mark evidence as well as implicating statements from a known heavy drug user.⁸⁴ After a forensic dentist testified that a bite mark on Garner's body "was probably made by Sheila Denton," the jury returned a guilty verdict for felony murder.⁸⁵

Denton's conviction remained intact for fifteen years.⁸⁶ In February 2020, a superior court judge threw out the verdict and offered a stern critique of bite mark evidence.⁸⁷ Denton is now free. The fifteen years

76. *Unreliable Evidence*, *supra* note 74.

77. *Id.*

78. *Id.*

79. *Id.*

80. Michael J. Saks, Thomas Albright, Thomas L. Bohan, Barbara E. Bierer, C. Michael Bowers, Mary A. Bush, Peter J. Bush & Arturo Casadevall et al., *Forensic Bitemark Identification: Weak Foundations, Exaggerated Claims*, 23 J.L. & BIOSCIENCES 538, 541 (2016) ("The claim of forensic dentists has been that they can accurately associate a bite mark to the one and only set of teeth in the world that could have produced the crime scene bite mark.").

81. *Id.* (explaining that bite marks reveal far less information as compared to DNA and fingerprints).

82. Innocence Staff, *Sheila Denton Is Freed After 15 Years of Wrongful Imprisonment*, INNOCENCE PROJECT (Apr. 9, 2020) [hereinafter *Sheila Denton Freed*], <https://innocenceproject.org/sheila-denton-is-freed-after-15-years-of-wrongful-imprisonment/> [https://perma.cc/KTN4-MKQ5]. In its closing, the State asserted that the bite mark evidence satisfied the burden for proving guilt beyond a reasonable doubt. *See id.*

83. *Unreliable Evidence*, *supra* note 74.

84. *Sheila Denton Freed*, *supra* note 82.

85. *Id.*

86. *Unreliable Evidence*, *supra* note 74.

87. *Sheila Denton Freed*, *supra* note 82. The judge wrote that "the bite mark evidence used at trial is now known to be unsupported by science" and doubted that bite mark evidence "will seldom, if ever, be probative of one having inflicted a particular bite mark." *Id.*

of freedom she lost, however, could be attributed to Georgia's low admissibility standard for expert testimony in criminal cases.⁸⁸

Looking Ahead

No longer will faulty bite mark evidence doom innocent defendants in Georgia criminal trials.⁸⁹ The Act ensures this. In applying the *Daubert* standard to criminal cases, the Act requires proffered scientific evidence to be reliable, a hurdle bite mark evidence fails to clear.⁹⁰ This elevated standard will prove consequential in excluding other shaky scientific evidence.⁹¹ Moving forward, Georgia courts can look to already-developed federal case law applying the *Daubert* standard to ensure that only reliable scientific evidence is admitted so no defendant faces the same fate as Sheila Denton.⁹²

Conclusion

Though a short three pages, the Act effects a long list of changes to Georgia's Evidence Code. Its principal impact brings Georgia in line with the forty-nine other states that maintain identical standards for admission of expert testimony in civil and criminal cases.⁹³ On a more local level, the Act's provisions avert potential constitutional challenges in Georgia courts and minimize the risk of wrongful convictions predicated on faulty scientific evidence.

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88. Loudon-Brown Interview, *supra* note 9.

89. *Id.*

90. *Id.* ("My position would be that *Daubert* precludes the admission of bite mark testimony today.").

91. *Georgia Can Do Better*, *supra* note 2.

92. O.C.G.A. § 24-7-702(f) (2022); House Judiciary Non-Civil Video, *supra* note 1, at 40 min., 21 sec. (remarks by Jill Travis, Ga. Ass'n of Crim. Def. Laws.) ("The beauty of mirroring the federal rule is that litigants can use the developed case law.").

93. House Judiciary Non-Civil Video, *supra* note 1, at 33 min., 54 sec.

