

## House Resolution 1703

By: Representatives Gunter of the 8<sup>th</sup>, Smith of the 18<sup>th</sup>, Leverett of the 123<sup>rd</sup>, Panitch of the 51<sup>st</sup>, Holcomb of the 101<sup>st</sup>, and others

## A RESOLUTION

1 Creating the House Study Committee on Criminal Post-Conviction Litigation; and for other  
2 purposes.

3 WHEREAS, pursuant to the Sixth Amendment of the United States Constitution and  
4 Article I, Section I, Paragraph XIV of the Georgia Constitution, all persons charged with a  
5 crime are guaranteed the right to counsel; and

6 WHEREAS, a violation of that right occurs when counsel's performance was deficient and  
7 that counsel's deficient performance prejudiced the accused's defense, see *Strickland v.*  
8 *Washington*, 466 U.S. 668, 687 (1984); and

9 WHEREAS, in *Simpson v. State*, 250 Ga. 365, 367 (1982), the Georgia Supreme Court held  
10 ineffectiveness claims should be raised in a motion for new trial; or as held in *Glover v.*  
11 *State*, 266 Ga. 183, 184 (1996), ineffectiveness claims should be raised before appeal if the  
12 opportunity to do so is available; and

13 WHEREAS, as a result of these cases, new counsel must be appointed to litigate the motion  
14 for new trial, as trial counsel cannot litigate their own ineffectiveness because there is an  
15 ethical prohibition against a lawyer acting also as a witness when presenting a claim of

16 ineffective assistance of counsel concerning the trial which he or she, himself or herself, had  
17 conducted, see *Garland v. State*, 283 Ga. 201 (2008); and

18 WHEREAS, when the matter concerns a defendant who was represented by a public  
19 defender in this state, the new counsel cannot come from the same circuit public defender's  
20 office that handled the trial, see *In re Formal Advisory Opinion 10-1*, 293 Ga. 397 (2013);  
21 and

22 WHEREAS, as a result of these appointments, time is needed for new counsel to become  
23 acclimated with the case and this needed time regularly causes years-long delays before the  
24 motion for new trial is resolved; and

25 WHEREAS, the Georgia Supreme Court in *Owens v. State*, 303 Ga. 254 (2018), expressed  
26 extreme concern at the many cases taking years, and sometimes decades, between a motion  
27 for new trial being filed and being adjudicated and as a result formulated and adopted  
28 Uniform Superior Court Rule 39.1 on January 1, 2019; and

29 WHEREAS, Rule 39.1 requires superior courts to provide the Georgia Supreme Court with  
30 a semi-annual list of all felony cases either pending judgment on a motion for new trial or  
31 transmission of a record on appeal in such superior court; and

32 WHEREAS, the lists provided to the Georgia Supreme Court contain many cases that have  
33 motions for new trial in need of resolution; and

34 WHEREAS, the current system of raising ineffective assistance of counsel claims as a part  
35 of the original appeal from the criminal conviction is inefficient, imposes unnecessary delays  
36 in resolving original appeals, has greatly complicated the provision of counsel for indigent

37 defendants, and makes Georgia an outlier compared to other states and the federal  
38 government; and

39 WHEREAS, Chief Justice Nels Peterson issued a recent concurring opinion joined by six  
40 other justices in which he wrote of the current system, "Georgia's post-conviction litigation  
41 system is a mess. It's a mess in large part because of a series of well-meaning but  
42 short-sighted decisions this Court made over the course of several decades." *Sanders v.*  
43 *State*, No. S26A0222, 2026 Ga. LEXIS 75, at \*3 (Mar. 3, 2026); and

44 WHEREAS, the Chief Justice ended his concurring opinion by stating, "In short, the system  
45 is broken. We did a lot of the breaking. But it will require legislative action to fix it."  
46 *Sanders v. State*, No. S26A0222, 2026 Ga. LEXIS 75, at \*8 (Mar. 3, 2026).

47 NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES:

48 (1) **Creation of House study committee.** There is created the House Study Committee  
49 on Criminal Post-Conviction Litigation.

50 (2) **Members and officers.**

51 (A) The committee shall be composed of twelve members.

52 (B) The Speaker of the House of Representatives shall appoint five members of the  
53 committee as follows:

54 (i) One member shall be the chairperson of the House Committee on Judiciary;

55 (ii) One member shall be the chairperson of the House Committee on Judiciary,  
56 Non-Civil;

57 (iii) One member shall be the chairperson of the Judicial Subcommittee for the House  
58 Committee on Appropriations; and

59 (iv) Two members of the House of Representatives.

60 (C) The Speaker shall also appoint an additional seven nonlegislative members of the  
61 committee as follows:

62 (i) The president of the Georgia Association of Criminal Defense Lawyers, or his or  
63 her designee;

64 (ii) The executive director of the Prosecuting Attorneys' Council of Georgia, or his  
65 or her designee;

66 (iii) The president of the State Bar of Georgia, or his or her designee;

67 (iv) The Attorney General of Georgia, or his or her designee;

68 (v) The Chief Justice of the Georgia Supreme Court, or his or her designee; and

69 (vi) Two superior court judges.

70 (D) The Speaker shall designate a legislative member of the committee as chairperson  
71 of the committee.

72 (3) **Powers and duties.** The committee shall undertake a study of the conditions, needs,  
73 issues, and problems mentioned above or related thereto and recommend any action or  
74 legislation which the committee deems necessary or appropriate.

75 (4) **Meetings.** The chairperson shall call all meetings of the committee. The committee  
76 may conduct such meetings at such places and at such times as it may deem necessary or  
77 convenient to enable it to exercise fully and effectively its powers, perform its duties, and  
78 accomplish the objectives and purposes of this resolution.

79 (5) **Allowances, expenses, and funding.**

80 (A) The legislative members of the committee shall receive the allowances provided  
81 for in Code Section 28-1-8 of the Official Code of Georgia Annotated.

82 (B) Members of the committee who are state officials, other than legislative members,  
83 or who are state employees shall receive no compensation for their services on the  
84 committee, but they may be reimbursed for expenses incurred by them in the  
85 performance of their duties as members of the committee in the same manner as they  
86 are reimbursed for expenses in their capacities as state officials or employees.

87 (C) Members of the committee who are not legislators, state officials, or state  
88 employees shall receive a daily expense allowance in an amount the same as that  
89 specified in subsection (b) of Code Section 45-7-21 of the Official Code of Georgia  
90 Annotated, as well as the mileage or transportation allowance authorized for state  
91 employees.

92 (D) The allowances authorized by this resolution shall not be received by any member  
93 of the committee for more than five days unless additional days are authorized. Funds  
94 necessary to carry out the provisions of this resolution shall come from funds  
95 appropriated to the House of Representatives; except that funds for the reimbursement  
96 of the expenses of state officials, other than legislative members, and for the  
97 reimbursement of the expenses of state employees shall come from funds appropriated  
98 to or otherwise available to their respective agencies.

99 **(6) Report.**

100 (A) In the event the committee adopts any specific findings or recommendations that  
101 include suggestions for proposed legislation, the chairperson shall file a report of the  
102 same prior to the date of abolishment specified in this resolution, subject to  
103 subparagraph (C) of this paragraph.

104 (B) In the event the committee adopts a report that does not include suggestions for  
105 proposed legislation, the chairperson shall file the report, subject to subparagraph (C)  
106 of this paragraph.

107 (C) No report shall be filed unless the same has been approved prior to the date of  
108 abolishment specified in this resolution by majority vote of a quorum of the committee.  
109 A report so approved shall be signed by the chairperson of the committee and filed with  
110 the Clerk of the House of Representatives.

111 (D) In the absence of an approved report, the chairperson may file with the Clerk of the  
112 House of Representatives a copy of the minutes of the meetings of the committee in lieu  
113 thereof.

114 (7) **Abolishment.** The committee shall stand abolished on December 1, 2026.