



## PROGRAM NARRATIVE

### 1. STATEMENT OF PROBLEM

Georgia is a large state, with 159 counties, by far the highest rate of people under correctional control in the country, and a current prison population of roughly 55,000. If, as studies suggest, at least 4% of people in prison are innocent, then an estimated 2,200 innocent people currently are incarcerated in Georgia prisons for crimes they did not commit. Many of their pleas for help are likely contained in the 7,700 requests for assistance the Georgia Innocence Project (GIP) has received since 2002.

The barriers to exoneration in Georgia are great. Georgia has never recognized a constitutional right to release from prison or a new trial based upon actual innocence and has no examples of a miscarriage of justice based upon innocence successfully providing a gateway for review of otherwise procedurally barred or defaulted claims. Georgia's governor cannot issue pardons in post-conviction cases. With only a few notable, recent exceptions, prosecutors throughout the state routinely and successfully use procedural timeliness barriers to argue for denial of requests for new trials involving exculpatory DNA evidence or for habeas relief involving constitutional claims with associated credible claims of innocence. There is no recorded interrogation law in Georgia, no statutory right to compensation following exoneration, and no enforcement mechanism for either Georgia's post-conviction evidence preservation law or for the eyewitness identification procedures law. There are more relaxed evidentiary standards for

admission of expert testimony in criminal cases than in civil cases, and until just last year, there was no Conviction Integrity Unit in any of Georgia's 159 counties.

Georgia Innocence Project (GIP) is the first and only innocence organization in the state of Georgia. Founded in 2002, GIP is an independent, freestanding non-profit dedicated to correcting and preventing wrongful convictions and to supporting the exonerated. GIP has exonerated eight men using post-conviction DNA testing, which in turn identified four actual perpetrators who had all committed violent crimes (rapes and armed robbery). Additionally, post-conviction DNA testing has further clearly identified the apparent actual perpetrators of violent crimes (sexual assault and murders) in three additional, unrelated cases, yet those cases remain in litigation and GIP's clients remain in prison.

### [\*\*Georgia Innocence Project Case Process\*\*](#)

GIP cases progress through three stages: Application, Screening, and Representation. At Phase 1 of the Application Stage, GIP determines whether the applicant appears to meet GIP's four case acceptance criteria: 1) Georgia post-conviction case; 2) factual innocence claim (as opposed to legal innocence claims, i.e., self-defense, consent, or insanity), usually where the identity of the perpetrator as an issue at trial; 3) preference for physical evidence that can be DNA tested; and 4) at least three years left on prison sentence. Approximately 10% of applicants proceed to Phase 2 to complete a 15-page application. GIP's Intake Manager then compiles easily accessible information and oversees creation of a memo recommending advancement, additional review, or rejection. Sometimes, in difficult cases, the trial transcript will be reviewed at this stage to inform the decision. The ultimate decision is made at a GIP case meeting with lawyers. Current Georgia Cases: Phase 1 = 62; Phase 2 = 40. (15% are Fulton County cases.) GIP also has 246 people Waitlisted to begin Phase 1. In 2018-2019, GIP closed 482 Application Stage cases.

Roughly 5% of total applicants progress to the Screening Stage. In Phase 1 of the Screening Stage, GIP compiles all records relevant to the case from the applicant and through public records requests. The records are reviewed and painstakingly “digested” into relevant work product documents. A memo is created summarizing the case, assessing the wrongful conviction factors and innocence claim, and recommending next steps. If investigation, witness interviews, or evidence searches are needed, the case proceeds to Phase 2 under the direct supervision of a GIP attorney. At completion of this phase, GIP determines whether a case should advance to representation or be rejected. GIP has 23 Georgia Screening Stage cases, which are all inactive (“On Hold”) – meaning no-one is assigned to or advancing the cases. (30% of these cases are from Fulton County.) Every person in the Screening Stage has been advised of the “On Hold” status and will be notified when their case is active again. In 2018-2019, GIP closed one Georgia Screening Stage case.

At the Representation Stage, GIP enters a limited representation agreement with our clients, usually for the purpose of conducting and litigating post-conviction DNA testing. GIP recently also started representing clients in state habeas cases. GIP has 27 Georgia representation stage cases (15% of which are from Fulton County). Twenty cases are active and handled by GIP’s two Georgia Staff Attorneys, with assistance from GIP’s Executive Director. Seven representation cases are backlogged and inactive, awaiting assignment to an attorney. On January 8, 2020, GIP secured one exoneration (that case is now closed and not counted in the foregoing numbers).

For years, GIP struggled financially in the wake of the 2008 economic downturn, which in turn led to insufficient resources to adequately address the thousands of requests for help and the many obstacles to securing exonerations in Georgia. In recent years, the situation has improved. However, the organization is still struggling with an insufficient capacity to respond to

overwhelming need. In the past 18 months, GIP has greatly reduced its representation-stage backlog, but it still has a large backlog at the screening and application stages. One of GIP's primary goals in the near future is to unclog GIP's case pipeline.

### **Fulton County Conviction Integrity Unit Case Process**

In 2019, Fulton County District Attorney Paul L. Howard, Jr. formed the state's first and only Conviction Integrity Unit (CIU) to help remedy and prevent wrongful convictions. CIU considers claims of actual innocence which are predicated on factual matter, with credible evidence of innocence capable of being investigated and potentially substantiated and have not been previously litigated. CIU will consider evidence that could have been known or discovered but was not exploited at the time of conviction. CIU will move to vacate each conviction where there is clear and convincing evidence of actual innocence or CIU no longer believes the available evidence supports the conviction beyond a reasonable doubt.

CIU's staff consists of a full-time Director/Attorney and a part-time Investigator. The Director reports directly to the elected District Attorney. CIU also uses a Review Committee to assist in reviewing claims. The Review Committee is an independent group of citizens selected from a diverse cross-section of individuals and groups involved in the criminal justice system.

In its first 6 months of operation, CIU has received 121 case review requests, including 54 actual innocence claims (46 from *pro se* applicants). There are five main CIU case review phases:

1. Intake. During intake, CIU tracks and reviews the many letters attorneys, defendants, family members, and other people submit. All submissions are screened to determine if there is any basis to reject them.
2. Initial Review. CIU then conducts an initial review of all accepted submissions. At this stage, CIU collects and reviews relevant case documents to make an initial determination if

more investigation is warranted. Initial impressions of the case are submitted to the Review Committee to consider and potentially approve for further investigation.

3. Investigation. At the investigation phase, CIU requests and reviews the entire court record, the District Attorney's Office records and any available law enforcement records. These records are shared with defense counsel, subject to the Discovery and Cooperation Agreement (DCA) both CIU and defense counsel sign. Based on the particular needs of an investigation, CIU will also attempt to locate and test any physical evidence, locate and re-interview any witnesses, and pursue any other relevant evidentiary investigations that may not already be reflected in the record of the case. CIU then holistically evaluates all of this evidence to determine whether it validates the applicant's claims of innocence. The file is then submitted to the Review Committee to consider again and potentially approve for acceptance.

4. Acceptance. After the CIU accepts a case, it will inform the victim(s) or their surviving family members of the results of the investigation. CIU will then pursue any viable form of relief by working collaboratively with the applicant. Relief is most often available in state court, but if that remedy is unavailable, the CIU may support a clemency application or parole petition.

5. Closure. A CIU case is closed when it is declined and/or rejected, when a court grants relief, or when all avenues for relief are denied.

### **Mutual Challenges**

Though independent of each other, GIP and CIU are necessarily connected. GIP accepts cases from across Georgia, and Fulton County is Georgia's most populated county with the highest number of criminal convictions, representing almost 10% of the 55,000 people incarcerated in Georgia's prisons. Statistically, there may be over 200 people convicted in Fulton County who are serving time for crimes they did not commit. GIP and CIU thus have overlapping cases: depending

on case stage, between 15 to 30% of GIP's cases originate from Fulton County. GIP and CIU each are tackling the massive problem of correcting and preventing wrongful convictions in a state with all the challenges described above. And GIP and CIU each are searching for ways to leverage limited resources to increase capacity to help more people.

## 2. Project Design and Implementation

Problem	Goals	Objectives	Deliverables
There is not enough staff to complete the investigations of all the claims of innocence in Georgia and Fulton County	GIP will screen and investigate more innocence claims, advancing those cases toward exoneration or other resolution	GIP will hire a project attorney to: (1) create a formal pro bono lawyers' program to investigate and evaluate post-conviction innocence claims for potential representation; (2) collaborate with CIU to prioritize cases, assess data	1. Identify and report number of post-conviction / appellate claims of innocence reviewed, and the stage of review conducted for each case
	CIU will ensure more claims move efficiently through the CIU system, securing representation where appropriate, to correct more wrongful convictions	CIU will hire a project manager to coordinate and streamline processing of innocence claims, and help evaluate systemic issues that compromise the rule of law	2. Document systemic review of areas of risk of wrongful conviction; recommend strategies to mitigate these risks
		Establish formal partnership between GIP and CIU Identify actual perpetrator of crime	
* Note: This is not a research project.			

Through this project of *Streamlining the Investigation and Correction of Wrongful Convictions in Georgia*, GIP and CIU come together as lead applicant and sub-recipient to accomplish just that. GIP proposes to hire a Project Attorney to coordinate with pro bono lawyers and legal professionals at firms to work up GIP's screening stage cases, advancing them toward

resolution. Screening is time and labor intensive: it often involves creating detailed factual summaries of thousands of pages of documents. By hiring a Project Attorney to efficiently manage volunteers, GIP can maximize the number of people it can help in the least amount of time. Additionally, since up to 30% of GIP cases are from the Fulton County District Attorney's Office, the grant will enable CIU to hire a Project Manager to help standardize and streamline their operations while processing claims. That efficiency, in turn, will reduce the workload and demands on GIP, while facilitating a cooperative and information-sharing relationship to more effectively identify, correct, and prevent wrongful convictions in Georgia.

The first step in streamlining case investigation and litigation is to create and utilize standardized policies, procedures, and templates when feasible. To that end, GIP's legal team and the newly hired GIP Project Attorney will promptly design and/or finalize the following:

- Case prioritization standards;
- System for working with GIP's paralegal to submit and track open records act requests responses for highest priority screening cases;
- Training materials for pro bono lawyers and legal professionals;
- IT systems for sharing and collaborating on files;
- Mechanisms for monitoring and supporting volunteers to ensure timely project completion;
- MOU's with firms describing the requested work, relevant time frames, status conferences, and support provided;
- Mechanics of volunteers returning completed reviews and finalizing their participation;
- Criteria and templates for Project Attorney to evaluate factual and legal claims and make recommendations;
- Timeframes for case staffing meetings to evaluate and assess case progress and recommendations.

Additionally, GIP will work with CIU's Director and CIU's Project Manager to design a system to document and track CIU innocence claims in a way most likely to highlight patterns and indicators of potential wrongful convictions. GIP currently collects and tracks that data in its case management system, Clio. CIU's Project Manager will document information across CIU's innocence claims, such as asserted wrongful conviction factors (e.g. flawed identification procedures, flawed confession procedures, invalid and overstated forensics) as well as data such as key actors, dates, locations, and demographics. CIU will share that data with GIP upon completion, as well as at quarterly intervals during meetings between GIP and CIU, so GIP and CIU can cross-reference that data to ensure investigative efforts are not being duplicated, and so the highest priority cases are being identified and prioritized.

CIU will highlight cases in which it is seeking investigative support and an attorney for an unrepresented applicant, and GIP may choose to accept any of those cases for screening work-up, and/or representation if appropriate. If GIP chooses to review a CIU case, CIU's Project Manager will prioritize that case to collect, review, and assess all associated records and information, and to provide those documents in digital form to GIP's attorney, along with a modified Cooperation and Disclosure (Screening) agreement that protects GIP and CIU interests, and the applicant's rights during the screening process. GIP's Project Attorney will oversee any additional work up needed to determine whether GIP is willing to represent the applicant through the CIU process.

GIP's Project Attorney will then develop a pro bono program which will including: recruiting volunteer attorneys and legal professionals, executing MOU's, assigning cases; training pro bono lawyers and professionals at law firms about how to work up screening stage cases, digest the records, recognize indicators of wrongful conviction and assess the factual claims; and monitoring the volunteers' work to provide support and conducting case status updates. The goal

is, within 6 months of assignment, the volunteers will have made significant progress toward case-screening completion. Upon return of the file to GIP at the end of Phase 1, the Project Attorney will review the submitted materials and conduct their own case evaluation and recommendation. GIP's Project Attorney and GIP's legal team then decides whether to:

<b>Fulton County Cases</b>	<b>Non-Fulton County Cases</b>
Recommend case for advancement through CIU and agree to represent applicant (GIP file stays open, perhaps GIP secures co-counsel)	Advance case to representation stage (GIP file stays open, perhaps added to Waitlist)
Recommend case for advancement through CIU but decline representation and instead recommend different counsel (GIP closes file)	Reject case but refer to a non-innocence lawyer (GIP closes file)
Decline to recommend advancement through CIU and decline representation. (GIP closes file)	Reject case outright (GIP closes file)
Conduct additional defense investigation to make a decision about the foregoing (GIP keeps file open)	Conduct additional investigation in order to make decision (File stays open)

Non-CIU cases that are recommended by GIP's legal team for representation will be assigned to a GIP attorney in accordance with internal caseload limits, or added to a waitlist if necessary. GIP attorneys may recruit the screening volunteer or other attorneys as co-counsel on the case, and the Project Attorney will assist with that process. For CIU cases slated for representation by GIP and advancement through CIU, GIP will enter appropriate agreements and waivers with the client, and then notify CIU of the same. GIP and CIU will enter a new Cooperation and Disclosure (Representation) agreement, and CIU's Project Manager, Director, and Investigator will work closely with GIP to advance the claim toward exoneration or other appropriate resolution.

The grant will dramatically increase the number of innocence claims that can be evaluated and advanced toward resolution, thereby dramatically increasing the likelihood of identifying and

resolving wrongful convictions in Georgia. By enabling GIP, through the Project Attorney, to manage and effectively leverage the resources offered by teams of volunteer lawyers and professionals, under-resourced cases can be promptly activated and assessed. By further enabling the CIU through the Project Manager to streamline operations, more efficiently compile and review records, and to share information and collaborate with GIP, the ability to promptly identify and remedy wrongful convictions in Georgia is further increased.

### **3. Capabilities and Competencies**

#### **Georgia Innocence Project**

GIP's skilled legal team will help implement the grant plan and support the Project Attorney, who, at least initially, will report directly to GIP's Executive Director.

- Executive Director (ED) Clare Gilbert, is a licensed attorney with over 16 years of experience in relevant areas of law. She has directed GIP since mid-2016, and she oversees the organization's administrative and programmatic functions, reports to the Board of Directors, and leads a staff of 9 full time employees, including the legal team below. Clare was a public defender for several years before joining GIP, and also worked as a policy lawyer at the Government Accountability Project, and as a victim's advocate in Bexar County District Attorney's Office.
- Staff Attorney Jennifer Whitfield will work closely with GIP's Project Attorney (GPA), and may ultimately become the GPA's supervising attorney. Jennifer worked for several years as an Assistant U.S. Attorney, and before that as an associate in the law firm of Covington and Burling. She litigated GIP's most recent January 2020 exoneration.

- Staff Attorney Adam McClay clerked on the 11th Circuit Court of Appeals, where he also worked for years as staff attorney. Before that, Adam was an associate at Sidley Austin, and he loves to write a strong appellate brief.
- Intake Manager Raylynn Hughes has been with GIP since 2016 and has a master's degree in library science. Raylynn is a fantastic resource for facilitating case-management.
- Operations Manager Matt Holbrook has also been with GIP since 2016 and is the organization's technology guru. If there is a way to automate or standardize something, Matt will identify and implement it successfully.
- Investigator Ron Grosse will provide defense investigative support as needed prior to and during representation. Ron worked with the Federal Bureau of Investigation for over 28 years.
- Case Analyst Jheanelle Girvan will assist the Project Attorney with non-Fulton County Open Records Act requests and associated response tracking and file management. Jheanelle has significant experience with making such requests and tracking down records and evidence.

Additionally, GIP's ED has spoken with several Pro Bono Partners and Coordinators at large Atlanta firms, who report they anticipate significant interest in this type of pro bono project, because it is manageable, time-limited, legal support staff can participate along with lawyers, and it interesting work for an important cause. A similar backlog reduction project was successfully implemented by the Mid-Atlantic Innocence Project.

GIP plans to recruit for the Project Attorney through GIP's usual job recruitment channels, which include several locations tailored to reach diverse candidates.

### [\*\*Fulton County District Attorney / CIU Director\*\*](#)

Paul L. Howard, Jr. was elected the Fulton County District Attorney in 1996. Since taking office, Mr. Howard has launched several innovative programs including the Compliant Room, a

Gang Prevention Center, a Sexual Assault Kit Initiative Program, a Victim Witness Program, and a juvenile intervention program called Project Level Up. With a staff of approximately 150 attorneys, Mr. Howard heads the largest prosecutor's office in Georgia. For many years, the Fulton County District Attorney's Office (FCDAO) has extended the opportunity to defendants who wish to seek an exoneration request based upon DNA, fingerprint, or other qualified sciences. On several occasions, full exoneration has occurred as a result of the testing or discovery of additional evidence including on two GIP cases. In August 2019, Mr. Howard became the first and only prosecutor in the state to establish a Conviction Integrity Unit.

In August 2019, FCDAO hired Aimee Maxwell, the former head of the Georgia Innocence Project, to serve as the first Fulton County District Attorney's Office Conviction Integrity Unit Director. Ms. Maxwell is a 30+ year criminal defense lawyer. She is an Atlanta native, received her undergraduate degree from the University of Georgia and her law degree from Georgia State University. During her 30+ year legal career Maxwell helped found and lead the Georgia Innocence Project, served as the President of the Georgia Association of Criminal Defense Lawyers and trained thousands of lawyers while working with the Georgia Indigent Defense Council. In addition to drafting and implementing all new policies and procedures for CIU, in just the few short months she's been with CIU, she completed a sentence modification and release from prison of Darrell Hall, a man who was serving life in prison for possessing a small amount of cocaine in 1991.

CIU's Project Manager will also collaborate and work with CIU's Investigator, Trina Swanson Lucas. Investigator Lucas has over 27 years of experience in criminal investigations, with significant experience in conducting, managing and overseeing complex investigations, an extensive network of law enforcement contacts and a thorough working knowledge of criminal

judicial processes. In tandem with the CIU director, her primary charge is to reinvestigates actual innocence cases. Lucas deconstructs the case and begins the investigation anew. She assembles all the known facts from the available documentation and determines if there is new evidence available to support the claim of innocence. Lucas will then locate and interview witnesses, locate evidence, and interview the claimant to further explore the claim.

CIU will recruit the Project Manager by posting the available position in the places required by county administration, and to the Innocence Network through GIP in order to reach diverse candidates.

### **Fiscal Accountability**

The non-profit organization applicant of this grant is Georgia Innocence Project, Inc. and the sub-recipient is the Conviction Integrity Unit of the Office of the Fulton County District Attorney, of the Fulton County Government. Grant administration will be facilitated by the sub-recipient. Funding for respective staff will be directed to the respective organization/government (Project Attorney: GIP; Project Manager: CIU).

The Fulton County Finance Department serves as a central point through which all revenues and disbursements of the general Fulton County Government are channeled and manages the County's debt and investment portfolio, risk management and internal audit. Expenditures are tracked via the County's financial system, AMS. Budgeted vs. Actual amounts are tracked and monitored by County departments and grants administrative staff. Requests for payments are processed through the County's Grants Administration Division. Drawdowns occur in a timely manner and according to the grantors instructions to ensure timely reimbursement for grant activities. Internal controls include approved grant budget line items which are assigned object codes in the County's financial system, AMS. Only expenditures that can be assigned to those

object codes are approved for reimbursement. The county's Grants Administrator, Angela Ash has extensive experience providing administrative oversight to federal awards. She is a Certified Public Accountant and a Certified Grants Management Specialist (CGMS). County departments are required to monitor all sub-awards in accordance with applicable rules, regulations and any individual grantor requirements.

Georgia Innocence Project and the Fulton County Government, Office of the Fulton County District Attorney, Conviction Integrity Unit jointly agree with the representations made in the attached "Financial Management and System of Internal Controls Questionnaire."

#### **4. Plan for Collecting Data Required for Performance Measures**

GIP currently tracks all performance measurement data described in the final column of "Appendix A: Performance Measures Table" within the BJA-2020-17139 Competitive Grant Solicitation, and GIP has the current capacity to expand beyond that. GIP starts collecting the data into GIP's Clio case management system upon receipt of an initial request for help. As the case advances to Application Stage - Phase 2 and beyond, GIP collects and inputs increasing amounts of data into GIP-created customized fields on the Clio dashboard, from which reports are run. GIP tracks location in the case flow process, and routinely pulls reports on the same. Through the custom fields, GIP also tracks demographics, data from the crime, investigation and trial, (wrongful) conviction factors, key actors and witnesses, and other information. GIP can mine this data to identify patterns and inform case selection and other decisions. GIP's Operations Manager and Intake Manager work together closely to design, implement and monitor tracking of this data.

CIU currently documents and tracks: every request for review; all case selection determinations; Review Board recommendations; investigation results; the prosecutorial determination; and the litigation results. CIU will also track the causes of the wrongful conviction.

Through this grant, GIP will work with CIU, to the extent necessary, to design and facilitate advanced data tracking on their end, which will then be shared and discussed with GIP through quarterly meetings. (Applicant and client confidentiality and conflict of interest concerns will be factored into these meetings.) These joint data tracking efforts will help identify and eliminate duplicate efforts between GIP and CUI, and highlight and prioritize the cases with strongest indicators of potential wrongful conviction or injustice.

The verifiable and quantifiable performance measures discussed above are then easily reportable to DOJ. GIP's Operations Manager and CIU's Director will oversee that reporting process, which will be administered by Fulton County's grant administrator.