

House Bill 126

By: Representatives Smith of the 18th, Gunter of the 8th, Evans of the 57th, Reeves of the 99th,
and Panitch of the 51st

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated,
2 relating to appellate practice, so as to change a provision relating to judgments deemed
3 directly appealable; to provide for a definition; to provide for an out-of-time remedy for
4 certain types of postjudgment relief in criminal cases; to provide for procedure and time
5 frames; to provide for related matters; to provide for an effective date; to repeal conflicting
6 laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 2 of Chapter 6 of Title 5 of the Official Code of Georgia Annotated, relating to
10 appellate practice, is amended by revising paragraph (1) of subsection (a) of Code Section
11 5-6-34, relating to judgments and rulings deemed directly appealable, as follows:

12 "(1)(A) As used in this paragraph, the term 'final judgment' shall include an order in a
13 criminal proceeding with a multiple-count indictment or accusation which results in an
14 adjudication of fewer than all of the counts in such indictment or accusation, the
15 remainder of which are ordered dead docketed.

(B) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;"

SECTION 2.

Said article is further amended by adding a new Code section to read as follows:

"5-6-39.1.

(a)(1) Notwithstanding the availability of habeas corpus relief under Article 2 of Chapter 14 of Title 9 or the time limitations set forth in Code Section 5-5-40, for the filing of a motion for new trial or, in this article, for the filing of a notice of appeal following a judgment of conviction in a criminal case, and except as provided in subsection (b) of this Code section, upon motion made within one year from the expiration of the time period for such filing, a defendant may seek an out-of-time motion for new trial or notice of appeal:

(A) With the consent of the state;

(B) By showing excusable neglect;

(C) By showing that the failure to timely file such motion or notice was attributable to the deficient performance of such defendant's counsel; or

(D) By other good cause shown.

(2) The trial court judge shall have jurisdiction to consider such motion and the discretion to allow the defendant an extension of 30 days for filing such motion or notice. An indigent defendant shall be entitled to representation for purposes of such motion or notice.

(b) In a criminal case, following a judgment of conviction, any person whose out-of-time pleading was dismissed or eliminated for jurisdictional reasons based upon the Supreme Court's ruling in Cook v. State, 313 Ga. 471 (March 15, 2022), and its progeny, and whose remedy cannot be accomplished under subsection (a) of this Code section, shall have the right to file a motion for new trial or notice of appeal until June 30, 2025."

42 **SECTION 3.**

43 This Act shall become effective upon its approval by the Governor or upon its becoming law
44 without such approval.

45 **SECTION 4.**

46 All laws and parts of laws in conflict with this Act are repealed.