

House Bill 126 (COMMITTEE SUBSTITUTE)

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 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, so
2 as to change a provision relating to judgments deemed directly appealable; to change
3 provisions relating to cases requiring application of appeal; to provide for a definition; to
4 provide for an out-of-time remedy for certain types of postjudgment relief in criminal cases;
5 to provide for procedure and time frames; to change provisions relating to amendments on
6 motions for new trial; to provide for related matters; to provide for an effective date; to repeal
7 conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **PART I**
10 **SECTION 1-1.**

11 Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended
12 by revising paragraph (1) of subsection (a) of Code Section 5-6-34, relating to judgments and
13 rulings deemed directly appealable, as follows:

14 "(1)(A) As used in this paragraph, the term 'final judgment' shall include an order in a
15 criminal proceeding with a multiple-count indictment or accusation which results in an

adjudication of fewer than all of the counts in such indictment or accusation, the 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 1-2.

Said title is further amended by adding a new paragraph to subsection (a) of Code Section 5-6-35, relating to cases requiring application for appeal, to read as follows:

"(5.3) Direct appeals from guilty pleas;"

SECTION 1-3.

Said title 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, after a verdict in a jury or bench trial for the filing of a notice of appeal following a judgment of conviction in a criminal case after a verdict in a jury or bench trial, and except as provided in subsection (b) of this Code section, upon motion made within 100 days 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. If the judge grants such motion, the defendant shall have 30 days to file an out-of-time motion for

new trial or notice of appeal and the judge shall have the discretion to allow an extension of time for filing such motion or notice as set forth in Code Section 5-6-39. An indigent defendant shall be entitled to representation for purposes of seeking an out-of-time motion for new trial or notice of appeal under this subsection.

(b) In a criminal case, after a judgment of conviction, a defendant whose motion seeking an out-of-time motion for new trial or notice of appeal or whose granted out-of-time motion for new trial or notice of appeal was dismissed based upon the Supreme Court's decision in *Cook v. State*, 313 Ga. 471 (March 15, 2022), and its progeny, shall have the right to file another motion seeking an out-of-time motion for new trial or notice of appeal until June 30, 2025."

PART II

SECTION 2-1.

Said title is further amended by revising subsection (b) of Code Section 5-5-40, relating to time for motion for new trial generally, as follows:

"(b) The motion may be amended any time on or before the ruling thereon; provided, however, that in criminal proceedings when the defendant substantially amends his or her motion for new trial, the state shall be given ten days to respond and present evidence, or, in the discretion of the court, a longer period of time."

PART III

SECTION 3-1.

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

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SECTION 3-2.

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