

House Bill 176 (AS PASSED HOUSE AND SENATE)

By: Representatives Smith of the 18<sup>th</sup>, Gunter of the 8<sup>th</sup>, Evans of the 57<sup>th</sup>, and Miller of the 62<sup>nd</sup>

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 amend Code Section 17-7-93 of the Official Code of Georgia  
7 Annotated, relating to reading of indictment or accusation, answer of accused to charge,  
8 recordation of "guilty" plea and pronouncement of judgment, withdrawn guilty pleas, and  
9 pleas by immigrants, so as to provide for a time frame regarding the withdrawal of a guilty  
10 plea; to provide for related matters; to provide for an effective date; to repeal conflicting  
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**PART I**

**SECTION 1-1.**

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

"(1)(A) As used in this paragraph, the term 'final judgment' shall include an order in a 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; the time limitations set forth in Code Section 5-5-40; or the time limitations related to a notice of appeal as set forth in this article, a defendant may move for leave to file an out-of-time motion for new trial or notice of appeal within 100 days from the expiration of the time period for the filing of such motion or notice:

(A) With the consent of the state;

37 (B) By showing excusable neglect;

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

40 (D) For other good cause shown.

41 (2) The trial court judge shall have jurisdiction to consider such motion for leave to file  
42 an out-of-time motion for new trial or notice of appeal. If the judge grants such motion,  
43 the defendant shall have 30 days to file an out-of-time motion for new trial or notice of  
44 appeal and the judge shall have the discretion to allow an extension of time for filing such  
45 motion or notice as set forth in Code Section 5-6-39.

46 (3) An indigent defendant shall have the right to the assistance of counsel to seek any  
47 relief offered under this Code section.

48 (b) In a criminal case, after a judgment of conviction, a defendant whose motion seeking  
49 an out-of-time motion for new trial or notice of appeal or whose granted out-of-time  
50 motion for new trial or notice of appeal was dismissed based upon the Supreme Court's  
51 decision in Cook v. State, 313 Ga. 471 (2022), and its progeny, shall have the right to move  
52 for leave to file an out-of-time motion for new trial or notice of appeal until June 30, 2026,  
53 pursuant to subsection (a) of this Code section. Any filing made pursuant to this subsection  
54 shall not be subject to the 100-day time limitation in subsection (a) of this Code section."

55 **PART II**

56 **SECTION 2-1.**

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

59 "(b) The motion may be amended any time on or before the ruling thereon; provided,  
60 however, that in criminal proceedings when the defendant substantially amends his or her

61 motion for new trial, the state shall be given ten days to respond and present evidence, or,  
62 in the discretion of the court, a longer period of time."

63 **PART III**

64 **SECTION 3-1.**

65 Code Section 17-7-93 of the Official Code of Georgia Annotated, relating to reading of  
66 indictment or accusation, answer of accused to charge, recordation of "guilty" plea and  
67 pronouncement of judgment, withdrawn guilty pleas, and pleas by immigrants, is amended  
68 by adding a new subsection to read as follows:

69 "(d) After the entry of a guilty plea which results in a conviction, a person may file a  
70 motion to withdraw such plea within 30 days of the entry of such judgment or within the  
71 term of court in which such plea was entered, whichever is later; provided, however, that  
72 such motion to withdraw shall toll the applicable statute of limitations and statutory  
73 demand for speedy trial from the date of the plea until the resolution of the motion to  
74 withdraw."

75 **PART IV**

76 **SECTION 4-1.**

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

79 **SECTION 4-2.**

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