

1 HB260
2 180110-1
3 By Representatives Greer, Mooney, Hanes, Butler, Patterson,
4 Wood, Ledbetter, Rowe, South, Faulkner, Hill, Nordgren, Lee,
5 Crawford, Brown, Holmes (M), Wingo and Fincher
6 RFD: Judiciary
7 First Read: 16-FEB-17

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8 SYNOPSIS: Under existing court rules, there is a
9 procedure to initiate a collateral challenge of a
10 conviction of a capital offense after the
11 conclusion of a direct appeal of the conviction.

12 Also under existing law, there are certain
13 enumerated capital offenses.

14 This bill would provide that Rule 32.2(c) of
15 the Alabama Rules of Criminal Procedure shall apply
16 only to non-death penalty cases.

17 This bill would provide for specific time
18 frames for an appellant to file petitions for
19 post-conviction remedies in death penalty cases.

20 This bill would provide that direct
21 appellate remedies and post-conviction remedies
22 under Rule 32 of the Alabama Rules of Criminal
23 Procedure shall be pursued concurrently.

24 This bill would require the trial court
25 judge in death penalty cases to appoint appellate
26 counsel for both direct appeal and post-conviction
27 remedies within a specified time.

1 This bill would prohibit consideration of
2 any petition for post-conviction relief or writs,
3 within a specified time after the direct appeal has
4 concluded.

5 This bill would provide a specified time for
6 consideration of a properly filed petition for
7 post-conviction relief under Rule 32 of the Alabama
8 Rules of Criminal Procedure pending at the time of
9 the conclusion of direct appeal and affirmation of
10 death sentence.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT

15
16 Relating to capital offenses and appeals relating to
17 capital punishment; to provide that Rule 32.2(c) of the
18 Alabama Rules of Criminal Procedure shall apply only to
19 non-death penalty cases; to provide for specific time frames
20 for an appellant to file petitions for post-conviction
21 remedies in death penalty cases; to provide that direct
22 appellate remedies and post-conviction remedies under Rule 32
23 of the Alabama Rules of Criminal Procedure shall be pursued
24 concurrently; to require the trial court judge in death
25 penalty cases to appoint appellate counsel for both direct
26 appeal and post-conviction remedies within a specified time;
27 to prohibit consideration of any petitions for post-conviction

1 relief or writs within a specified time after the direct
2 appeal has concluded; and to provide a specified time for
3 consideration of properly filed petitions for post-conviction
4 relief under Rule 32 of the Alabama Rules of Criminal
5 Procedure pending at the time of the conclusion of direct
6 appeal and affirmation of death sentence.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. This act shall be known and may be cited
9 as the "Fair Justice Act."

10 Section 2. (a) Rule 32.2(c) of the Alabama Rules of
11 Criminal Procedure shall not apply to cases in which a
12 criminal defendant is convicted of capital murder and
13 sentenced to death, and files a petition for post-conviction
14 relief under the grounds specified in Rule 32.1(a), (e), or
15 (f) of the Alabama Rules of Criminal Procedure.

16 (b) Post-conviction remedies sought pursuant to Rule
17 32 of the Alabama Rules of Criminal Procedure in death penalty
18 cases shall be pursued concurrently and simultaneously with
19 the direct appeal of a case in which the death penalty was
20 imposed. In all cases, the trial court shall appoint to the
21 defendant, if he or she is deemed indigent or as the trial
22 judge deems appropriate, separate counsel for the purposes of
23 direct appeal and separate counsel for purposes of
24 post-conviction relief under this act within 30 days of the
25 entry of the order pronouncing the defendant's death sentence.

26 (c) A circuit court shall not entertain a petition
27 for post-conviction relief from a case in which the death

1 penalty was imposed on the grounds specified in Rule 32.1(a)
2 of the Alabama Rules of Criminal Procedure unless the
3 petition, including any amendments to the petition, is filed
4 within 180 days of the filing of the appellant/defendant's
5 first brief or direct appeal of a case in which the death
6 penalty was imposed pursuant to the Alabama Rules of Appellate
7 Procedure. The same time period for filing a claim pursuant to
8 Rule 32.1(a) of the Alabama Rules of Criminal Procedure shall
9 also apply to any petition filed pursuant to Rule 32.1(b) of
10 the Alabama Rules of Criminal Procedure if the basis of the
11 claim regarding the court's lack of jurisdiction is known or
12 should have been known within this time period. Any such claim
13 not filed within this time period shall be considered waived.
14 If the evidence of the court's lack of jurisdiction could not
15 have been discovered within the time period, then the
16 petitioner shall not be precluded from filing a petition
17 pursuant to Rule 32.1(b) of the Alabama Rules of Criminal
18 Procedure.

19 (d) A circuit court, before the filing date
20 applicable to the defendant under subsection (c), for good
21 cause shown and after notice and an opportunity to be heard
22 from the Attorney General, or other attorney representing the
23 State of Alabama, may grant one 90-day extension that begins
24 on the filing date applicable to the defendant under
25 subsection (c).

26 (e) Within 90 days of the filing of the state's
27 answer to a petition for post-conviction relief properly filed

1 pursuant to this act, the circuit court shall issue an order
2 setting forth those claims in the petition that should be
3 summarily dismissed and those claims, if any, that should be
4 set for an evidentiary hearing. If the petition for
5 post-conviction relief properly filed pursuant to this act is
6 still pending at the time of the issuance of the Certificate
7 of Judgment on direct appeal, the court in which the petition
8 is pending shall issue a final order on the petition or appeal
9 within 180 days.

10 (f) In the event post-conviction counsel files an
11 untimely petition or fails to file a petition before the
12 filing date applicable under this act, the circuit court shall
13 direct post-conviction counsel to show good cause
14 demonstrating extraordinary circumstances as to why the
15 petition was not properly filed. After post-conviction
16 counsel's response, the circuit may:

17 (1) Find that good cause has been shown and permit
18 counsel to continue representing the defendant and set a new
19 filing deadline for the petition, which may not be more than
20 30 days from the date the court permits counsel to continue
21 representation; or

22 (2) Find that good cause has not been shown and
23 dismiss any untimely filed petition; or

24 (3) Appoint new and different counsel to represent
25 the defendant and establish a new filing deadline for the
26 petition, which may not be more than 270 days after the date
27 the circuit court appoints new counsel. In the instance that

1 this subdivision is applicable, and new counsel is appointed,
2 the circuit court in which the petition is pending shall issue
3 a final order on the petition or appeal within 180 days of the
4 filing of the petition.

5 (g) The time for filing a petition for
6 post-conviction relief under Rule 32.1(f) to seek an
7 out-of-time appeal from the dismissal or denial of a petition
8 in a case in which the death penalty was imposed previously
9 filed under Rule 32.1 of the Alabama Rules of Criminal
10 Procedure shall be 180 days from the date the petitioner
11 discovers the dismissal or denial, irrespective for the
12 deadlines specified in this act, and provided further that
13 this provision shall not extend any deadline as applied to the
14 previously filed petition.

15 (h) Any petition for post-conviction relief filed
16 pursuant to this act after the filing date that is applicable
17 to the defendant under this act is untimely. Rule 32.7(b) of
18 the Alabama Rules of Criminal Procedure shall not apply to any
19 amendments to a petition for post-conviction relief filed
20 pursuant to this act after the filing date that is applicable
21 to the defendant under this act. Any amendments to a petition
22 for post-conviction relief filed pursuant to this act filed
23 after the filing date that is applicable to the defendant
24 under this act shall be treated as a successive petition under
25 Rule 32.2(b) of the Alabama Rules of Criminal Procedure.

26 (i) The circuit court shall not entertain a petition
27 in a case in which the death penalty has been imposed based on

1 the grounds specified in Rule 32.1(e) of the Alabama Rules of
2 Criminal Procedure unless the petition for post-conviction
3 relief is filed within the time period specified in subsection
4 (c) or (d), or within six months after the discovery of the
5 newly discovered material facts, whichever is later.

6 Section 3. This act shall apply to any defendant who
7 is sentenced to death after the effective date of this act.

8 Section 4. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.