

1 SB187
2 181927-4
3 By Senators Ward, Reed, Dial, Holley, Scofield, Albritton,
4 Shelnutt, Livingston, Stutts and Waggoner
5 RFD: Judiciary
6 First Read: 14-FEB-17

1 SB187

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4 ENROLLED, An Act,

5 Relating to appeals of capital punishment; to
6 provide that Rule 32.2(c) of the Alabama Rules of Criminal
7 Procedure shall apply only to non-death penalty cases; to
8 provide a specific time frame for an appellant to file
9 petitions for post-conviction remedies in death penalty cases;
10 to require appellants to pursue direct appellate remedies and
11 post-conviction remedies under Rule 32 of the Alabama Rules of
12 Criminal Procedure concurrently; to require the trial court
13 judge in death penalty cases to appoint appellate counsel for
14 both direct appeal and post-conviction remedies within a
15 specified time; to prohibit consideration of petitions for
16 post-conviction relief or writs within a specified time after
17 the direct appeal has concluded; and to provide that properly
18 filed petitions for post-conviction relief under Rule 32 of
19 the Alabama Rules of Criminal Procedure that are still pending
20 at the time of the conclusion of direct appeal and affirmation
21 of death sentence may be considered for a specified amount of
22 time.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

7 (b) Post-conviction remedies sought pursuant to Rule
8 32 of the Alabama Rules of Criminal Procedure in death penalty
9 cases shall be pursued concurrently and simultaneously with
10 the direct appeal of a case in which the death penalty was
11 imposed. In all cases where the defendant is deemed indigent
12 or as the trial judge deems appropriate, the trial court,
13 within 30 days of the entry of the order pronouncing the
14 defendant's death sentence, shall appoint the defendant a
15 separate counsel for the purposes of post-conviction relief
16 under this act. Appointed counsel shall be compensated
17 pursuant to Chapter 12 of Title 15, Code of Alabama 1975;
18 provided, however, that notwithstanding any provision of that
19 chapter to the contrary, the total fee awarded shall not
20 exceed seventy-five hundred dollars (\$7,500), which may be
21 waived by the Director of the Office of Indigent Defense
22 Services for good cause shown.

23 (c) A circuit court shall not entertain a petition
24 for post-conviction relief from a case in which the death
25 penalty was imposed on the grounds specified in Rule 32.1(a)

1 of the Alabama Rules of Criminal Procedure unless the
2 petition, including any amendments to the petition, is filed
3 within 365 days of the filing of the appellant defendant's
4 first brief on direct appeal of a case in which the death
5 penalty was imposed pursuant to the Alabama Rules of Appellate
6 Procedure.

7 (d) A circuit court, before the filing date
8 applicable to the defendant under subsection (c), for good
9 cause shown and after notice and an opportunity to be heard
10 from the Attorney General, or other attorney representing the
11 State of Alabama, may grant one 90-day extension that begins
12 on the filing date applicable to the defendant under
13 subsection (c).

14 (e) Within 90 days of the filing of the state's
15 answer to a properly filed petition for post-conviction
16 relief, the circuit court shall issue an order setting forth
17 those claims in the petition that should be summarily
18 dismissed and those claims, if any, that should be set for an
19 evidentiary hearing. If the properly filed petition for
20 post-conviction relief is still pending at the time of the
21 issuance of the certificate of judgment on direct appeal, the
22 court in which the petition is pending shall issue a final
23 order on the petition or appeal within 180 days.

24 (f) If post-conviction counsel files an untimely
25 petition or fails to file a petition before the filing date

1 applicable under this act, the circuit court shall direct
2 post-conviction counsel to show good cause demonstrating
3 extraordinary circumstances as to why the petition was not
4 properly filed. After post-conviction counsel's response, the
5 circuit court may do any of the following:

6 (1) Find that good cause has been shown and permit
7 counsel to continue representing the defendant and set a new
8 filing deadline for the petition, which may not be more than
9 30 days from the date the court permits counsel to continue
10 representation.

11 (2) Find that good cause has not been shown and
12 dismiss any untimely filed petition.

13 (3) Appoint new and different counsel to represent
14 the defendant and establish a new filing deadline for the
15 petition, which may not be more than 270 days after the date
16 the circuit court appoints new counsel. In the instance that
17 this subdivision is applicable and new counsel is appointed,
18 the circuit court in which the petition is pending shall issue
19 a final order on the petition or appeal within 180 days of the
20 filing of the petition.

21 (g) The time for filing a petition for
22 post-conviction relief under Rule 32.1(f) in a case in which
23 the death penalty was imposed shall be six months from the
24 date the petitioner discovers the dismissal or denial,
25 irrespective of the deadlines specified in this act. This

1 provision shall not extend the deadline of a previously filed
2 petition under Rule 32.1 of the Alabama Rules of Criminal
3 Procedure.

4 (h) Any petition for post-conviction relief filed
5 pursuant to this act after the filing date that is applicable
6 to the defendant under this act is untimely. Rule 32.7(b) of
7 the Alabama Rules of Criminal Procedure shall not apply to any
8 amendments to a petition for post-conviction relief filed
9 pursuant to this act after the filing date that is applicable
10 to the defendant under this act. Any amendments to a petition
11 for post-conviction relief filed pursuant to this act filed
12 after the filing date that is applicable to the defendant
13 under this act shall be treated as a successive petition under
14 Rule 32.2(b) of the Alabama Rules of Criminal Procedure.

15 (i) The circuit court shall not entertain a petition
16 in a case in which the death penalty has been imposed based on
17 the grounds specified in Rule 32.1(e) of the Alabama Rules of
18 Criminal Procedure unless the petition for post-conviction
19 relief is filed within the time period specified in subsection
20 (c) or (d), or within six months after the discovery of the
21 newly discovered material facts, whichever is later.

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

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

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President and Presiding Officer of the Senate

Speaker of the House of Representatives

SB187

Senate 18-APR-17

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed 16-MAY-17

Senate concurred in House amendment 18-MAY-17

By: Senator Ward