

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

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

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 require an appellant to file
18 petitions for post-conviction remedies in death
19 penalty cases within a specific time frame.

20 This bill would require an appellant to
21 pursue direct appellate remedies and
22 post-conviction remedies under Rule 32 of the
23 Alabama Rules of Criminal Procedure 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 petitions for post-conviction relief or writs
3 within a specified time after the direct appeal has
4 concluded.

5 This bill would provide that properly filed
6 petitions for post-conviction relief under Rule 32
7 of the Alabama Rules of Criminal Procedure that are
8 still pending at the time of the conclusion of
9 direct appeal and affirmation of death sentence may
10 be considered for a specified amount of time.

11
12 A BILL
13 TO BE ENTITLED
14 AN ACT

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

1 the direct appeal has concluded; and to provide that properly
2 filed petitions for post-conviction relief under Rule 32 of
3 the Alabama Rules of Criminal Procedure that are still pending
4 at the time of the conclusion of direct appeal and affirmation
5 of death sentence may be considered for a specified amount of
6 time.

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 where the defendant is deemed indigent
21 or as the trial judge deems appropriate, the trial court,
22 within 30 days of the entry of the order pronouncing the
23 defendant's death sentence, shall appoint the defendant a
24 separate counsel for the purposes of post-conviction relief
25 under this act.

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 properly filed petition for post-conviction

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

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

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

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

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

1 the circuit court in which the petition is pending shall issue
2 a final order on the petition or appeal within 180 days of the
3 filing of the petition.

4 (g) The time for filing a petition for
5 post-conviction relief under Rule 32.1(f) in a case in which
6 the death penalty was imposed shall be 180 days from the date
7 the petitioner discovers the dismissal or denial, irrespective
8 of the deadlines specified in this act. This provision shall
9 not extend the deadline of a previously filed petition under
10 Rule 32.1 of the Alabama Rules of Criminal Procedure.

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

22 (i) The circuit court shall not entertain a petition
23 in a case in which the death penalty has been imposed based on
24 the grounds specified in Rule 32.1(e) of the Alabama Rules of
25 Criminal Procedure unless the petition for post-conviction
26 relief is filed within the time period specified in subsection

1 (c) or (d), or within six months after the discovery of the
2 newly discovered material facts, whichever is later.

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

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