

1 SB187
2 181927-3
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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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

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

1 of death sentence may be considered for a specified amount of
2 time.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

12 (b) Post-conviction remedies sought pursuant to Rule
13 32 of the Alabama Rules of Criminal Procedure in death penalty
14 cases shall be pursued concurrently and simultaneously with
15 the direct appeal of a case in which the death penalty was
16 imposed. In all cases where the defendant is deemed indigent
17 or as the trial judge deems appropriate, the trial court,
18 within 30 days of the entry of the order pronouncing the
19 defendant's death sentence, shall appoint the defendant a
20 separate counsel for the purposes of post-conviction relief
21 under this act.

22 (c) The Alabama Supreme Court and the Alabama State
23 Bar Association shall maintain a list of attorneys admitted to
24 practice law in the state who are qualified to serve as
25 post-conviction counsel. In establishing such a list, the
26 supreme court and the bar association shall consider all

1 relevant factors, including, but not limited to, the
2 following:

3 (1) The attorney's background.

4 (2) The attorney's criminal appellate experience and
5 training.

6 (3) An assessment by the supreme court and the bar
7 association as to whether the attorney is competent to provide
8 quality legal representation.

9 (d) A circuit court shall not entertain a petition
10 for post-conviction relief from a case in which the death
11 penalty was imposed on the grounds specified in Rule 32.1(a)
12 of the Alabama Rules of Criminal Procedure unless the
13 petition, including any amendments to the petition, is filed
14 within 365 days of the filing of the appellant defendant's
15 first brief or direct appeal of a case in which the death
16 penalty was imposed pursuant to the Alabama Rules of Appellate
17 Procedure.

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

25 (f) Within 90 days of the filing of the state's
26 answer to a properly filed petition for post-conviction
27 relief, the circuit court shall issue an order setting forth

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

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

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

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

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

1 a final order on the petition or appeal within 180 days of the
2 filing of the petition.

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

11 (i) 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 (j) 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.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 14-FEB-17

Read for the second time and placed on the calen-
dar 1 amendment..... 06-APR-17

Read for the third time and passed as amended 18-APR-17

Yeas 28
Nays 5

Patrick Harris,
Secretary.