

1 HB113  
2 154770-1  
3 By Representatives Greer and DeMarco  
4 RFD: Judiciary  
5 First Read: 14-JAN-14  
6 PFD: 01/10/2014

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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 under the  
15 Alabama Rules of Criminal Procedure, Rule 32.2(c)  
16 shall apply 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 petitions 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 properly filed petitions 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                   This bill would include prosecutors as  
12 members of law enforcement and make the murder of a  
13 prosecutor an enumerated capital offense.

14                   This bill would make the murder of a family  
15 member of law enforcement to avenge, intimidate, or  
16 retaliate an enumerated capital offense.

17                   This bill would make a murder on the campus  
18 of a school an enumerated capital offense.

19                   This bill would make a murder in a day care  
20 or licensed child care facility an enumerated  
21 capital offense.

22                   This bill would make the murder of a victim,  
23 juror, or associated family member in order to  
24 avenge, intimidate, or retaliate an enumerated  
25 capital offense.

1                   This bill would make the murder of a victim  
2 under a Protection From Abuse Order an enumerated  
3 capital offense.

4                   This bill would make a murder during an  
5 illegal narcotics transaction an enumerated capital  
6 offense.

7                   This bill would make the murder of a judge  
8 because of his or her official actions or position  
9 an enumerated capital offense.

10                   This bill would make the murder of a family  
11 member of a police officer, sheriff, deputy, state  
12 trooper, federal law enforcement officer,  
13 prosecutor, or any other state or federal peace  
14 officer of any kind, or prison or jail guard, or a  
15 judge which is committed to avenge, intimidate, or  
16 retaliate because of an official action of the  
17 police officer, sheriff, deputy, state trooper,  
18 federal law enforcement officer, prosecutor, or any  
19 other state or federal peace officer of any kind,  
20 or prison or jail guard, or judge an enumerated  
21 capital offense.

22                   This bill would make a murder under  
23 specified circumstances associated with gangs or  
24 organized crime an enumerated capital offense

25                   Amendment 621 of the Constitution of Alabama  
26 of 1901 prohibits a general law whose purpose or  
27 effect would be to require a new or increased

1 expenditure of local funds from becoming effective  
2 with regard to a local governmental entity without  
3 enactment by a 2/3 vote unless: it comes within one  
4 of a number of specified exceptions; it is approved  
5 by the affected entity; or the Legislature  
6 appropriates funds, or provides a local source of  
7 revenue, to the entity for the purpose.

8 The purpose or effect of this bill would be  
9 to require a new or increased expenditure of local  
10 funds within the meaning of Amendment 621. However,  
11 the bill does not require approval of a local  
12 governmental entity or enactment by a 2/3 vote to  
13 become effective because it comes within one of the  
14 specified exceptions contained in Amendment 621.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT  
19

20 Relating to capital offenses and appeals relating to  
21 capital punishment; to provide that Rule 32.2(c) of the  
22 Alabama Rules of Criminal Procedure shall apply only to  
23 non-death penalty cases; to provide for specific time frames  
24 for an appellant to file petitions for post-conviction  
25 remedies in death penalty cases; to provide that direct  
26 appellate remedies and post-conviction remedies under Rule 32  
27 of the Alabama Rules of Criminal Procedure shall be pursued

1 concurrently; to require the trial court judge in death  
2 penalty cases to appoint appellate counsel for both direct  
3 appeal and post-conviction remedies within a specified time;  
4 to prohibit consideration of any petitions for post-conviction  
5 relief or writs within a specified time after the direct  
6 appeal has concluded; to provide a specified time for  
7 consideration of properly filed petitions for post-conviction  
8 relief under Rule 32 of the Alabama Rules of Criminal  
9 Procedure pending at the time of the conclusion of direct  
10 appeal and affirmation of death sentence; to amend Section  
11 13A-5-40, Code of Alabama 1975, relating to enumerated capital  
12 offenses; to include prosecutors as members of law  
13 enforcement; to include as capital offenses the murder of a  
14 prosecutor; the murder of a family member of law enforcement  
15 to avenge, intimidate, or retaliate; murder on the campus of a  
16 school; murder in a day care or licensed child care facility;  
17 murder of a victim, juror, or associated family member in  
18 order to avenge, intimidate, or retaliate; murder of a victim  
19 under a Protection From Abuse Order; murder during an illegal  
20 narcotics transaction; murder of a judge because of his or her  
21 official actions or position; the murder of a family member of  
22 a police officer, sheriff, deputy, state trooper, federal law  
23 enforcement officer, prosecutor, or any state or federal peace  
24 officer, prison or jail guard, or a judge which is committed  
25 to avenge, intimidate, or retaliate because of an official  
26 action; and murder under specified circumstances associated  
27 with gangs or organized crime; and in connection therewith

1 would have as its purpose or effect the requirement of a new  
2 or increased expenditure of local funds within the meaning of  
3 Amendment 621 of the Constitution of Alabama of 1901.

4 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

7 Section 2. (a) Rule 32.2(c) of the Alabama Rules of  
8 Criminal Procedure shall not apply to cases in which the  
9 defendant was sentenced to death.

10 (b) A court may not entertain a petition for  
11 post-conviction relief from a conviction or death sentence on  
12 the grounds specified in Rule 32.1(a) and (f) of the Alabama  
13 Rules of Criminal Procedure unless the petition is filed as  
14 follows:

15 (1) In the case of a conviction appealed to the  
16 Court of Criminal Appeals, within 180 days after the  
17 appellant-defendant has filed his or her first or initial  
18 brief on direct appeal of a death sentence pursuant to the  
19 Alabama Rules of Appellate Procedure.

20 (2) In the case of a conviction not appealed to the  
21 Court of Criminal Appeals, within one year of defendant's  
22 sentence of death ordered by the circuit court trial judge;  
23 however, the time for filing a petition for post-conviction  
24 relief to seek an out-of-time appeal from the dismissal or  
25 denial of a petition previously filed under Rule 32.1 of the  
26 Alabama Rules of Criminal Procedure shall be six months from  
27 the date the petitioner discovers the dismissal or denial,

1       irrespective of the deadlines specified in subdivisions (1)  
2       and (2), and provided further that the provisions of  
3       subdivision (2) may not extend any deadlines as they may apply  
4       to the previously filed petition.

5               (c) The court may not entertain a petition based on  
6       the grounds specified in Rule 32.1(e) of the Alabama Rules of  
7       Criminal Procedure unless the petition for post-conviction  
8       relief is filed within the time period specified in  
9       subdivisions (1) and (2) of this section, or within six months  
10      after the discovery of the newly discovered material facts,  
11      whichever is later.

12              (d) 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 the death sentence. In all cases, the  
16      trial judge shall appoint to defendant, if he or she is deemed  
17      sufficiently indigent, appellate counsel for the purposes of  
18      post-conviction relief and direct appeal within 30 days of the  
19      entry of the order pronouncing defendant's death sentence.

20              (e) A petition for post-conviction relief, or state  
21      remedies for post-conviction relief of any kind, or amendments  
22      may not be filed with any court in the State of Alabama after  
23      180 days following the final order affirming the respective  
24      death sentence on direct appeal, nor may any court in the  
25      State of Alabama consider a newly filed petition, or issue a  
26      writ, in support of the filings after the 180-day period has  
27      lapsed.



1 (f) All properly filed petitions for post-conviction  
2 remedies pending at the time of the final order affirming the  
3 respective death sentence on direct appeal shall be heard by  
4 the court in which the respective petition is pending within  
5 180 days of the respective final order affirming the death  
6 sentence on direct appeal. Pending petitions for  
7 post-conviction remedies properly preserved under this section  
8 for consideration may be appealed consistent with the Alabama  
9 Rules of Court.

10 (g) If a petition is filed with an application for  
11 leave to proceed in forma pauperis, the application shall be  
12 accompanied by a certificate of the warden, or other  
13 appropriate officer of the institution in which the petitioner  
14 is confined, stating the amount of money or securities on  
15 deposit to the petitioner's credit in any account in the  
16 institution for up to, but not exceeding, 12 months, which  
17 certificate may be considered by the court in acting upon the  
18 application for leave to proceed in forma pauperis.

19 Section 3. Section 13A-5-40 of the Code of Alabama  
20 1975, is amended to read as follows:

21 "§13A-5-40.

22 "(a) The following are capital offenses:

23 "(1) Murder by the defendant during a kidnapping in  
24 the first degree or an attempt thereof committed by the  
25 defendant.

26 "(2) Murder by the defendant during a robbery in the  
27 first degree or an attempt thereof committed by the defendant.

1           "(3) Murder by the defendant during a rape in the  
2 first or second degree or an attempt thereof committed by the  
3 defendant; or murder by the defendant during sodomy in the  
4 first or second degree or an attempt thereof committed by the  
5 defendant.

6           "(4) Murder by the defendant during a burglary in  
7 the first or second degree or an attempt thereof committed by  
8 the defendant.

9           "(5) Murder of any police officer, sheriff, deputy,  
10 state trooper, federal law enforcement officer, prosecutor, or  
11 any other state or federal peace officer of any kind, or  
12 prison or jail guard, while such officer or guard is on duty,  
13 regardless of whether the defendant knew or should have known  
14 the victim was an officer or guard on duty, or because of some  
15 official or job-related act or performance of such law  
16 enforcement officer or guard.

17           "(6) Murder committed while the defendant is under  
18 sentence of life imprisonment.

19           "(7) Murder done for a pecuniary or other valuable  
20 consideration or pursuant to a contract or for hire.

21           "(8) Murder by the defendant during sexual abuse in  
22 the first or second degree or an attempt thereof committed by  
23 the defendant.

24           "(9) Murder by the defendant during arson in the  
25 first or second degree committed by the defendant; or murder  
26 by the defendant by means of explosives or explosion.

1           "(10) Murder wherein two or more persons are  
2 murdered by the defendant by one act or pursuant to one scheme  
3 or course of conduct.

4           "(11) Murder by the defendant when the victim is a  
5 state or federal public official or former public official and  
6 the murder stems from or is caused by or is related to his  
7 official position, act, or capacity.

8           "(12) Murder by the defendant during the act of  
9 unlawfully assuming control of any aircraft by use of threats  
10 or force with intent to obtain any valuable consideration for  
11 the release of said aircraft or any passenger or crewmen  
12 thereon or to direct the route or movement of said aircraft,  
13 or otherwise exert control over said aircraft.

14           "(13) Murder by a defendant who has been convicted  
15 of any other murder in the 20 years preceding the crime;  
16 provided that the murder which constitutes the capital crime  
17 shall be murder as defined in subsection (b) of this section;  
18 and provided further that the prior murder conviction referred  
19 to shall include murder in any degree as defined at the time  
20 and place of the prior conviction.

21           "(14) Murder when the victim is subpoenaed, or has  
22 been subpoenaed, to testify, or the victim had testified, in  
23 any preliminary hearing, grand jury proceeding, criminal trial  
24 or criminal proceeding of whatever nature, or civil trial or  
25 civil proceeding of whatever nature, in any municipal, state,  
26 or federal court, when the murder stems from, is caused by, or  
27 is related to the capacity or role of the victim as a witness.

1           "(15) Murder when the victim is less than fourteen  
2 years of age.

3           "(16) Murder committed by or through the use of a  
4 deadly weapon fired or otherwise used from outside a dwelling  
5 while the victim is in a dwelling.

6           "(17) Murder committed by or through the use of a  
7 deadly weapon while the victim is in a vehicle.

8           "(18) Murder committed by or through the use of a  
9 deadly weapon fired or otherwise used within or from a  
10 vehicle.

11           "(19) Murder committed by the defendant on the  
12 campus of a school. The term school for the purpose of this  
13 subdivision means a public or private institution of learning,  
14 including all pre-kindergarten through grade 12 schools,  
15 institutions, technical or vocational schools, community  
16 colleges, two-year postsecondary institutions, or any  
17 institution of higher learning.

18           "(20) Murder committed by the defendant in a day  
19 care or licensed or statutorily exempted child care facility,  
20 as defined by Section 38-7-2.

21           "(21) Murder committed by the defendant of an  
22 associated or relevant victim, juror, or associated family  
23 member when the victim is under an order of protection from  
24 abuse by the defendant.

25           "(22) Murder committed by the defendant during an  
26 illegal narcotics transaction.

1           "(23) Murder committed by the defendant of a judge  
2 because of the official or job related act or performance by  
3 the judge.

4           "(24) Murder committed by the defendant which is  
5 intended to influence, avenge, intimidate, or retaliate  
6 against a street gang or anyone associated with or refusing to  
7 associate with any organized criminal organization.

8           "(25) Murder committed by the defendant of any  
9 family member of any of the persons referenced in subdivision  
10 (5) or (23) if the intended purpose of the murder is to  
11 avenge, intimidate, or retaliate against the person referenced  
12 in subdivision (5) or (23).

13           (b) Except as specifically provided to the contrary  
14 in the last part of subdivision (a)(13) of this section, the  
15 terms "murder" and "murder by the defendant" as used in this  
16 section to define capital offenses mean murder as defined in  
17 Section 13A-6-2(a)(1), but not as defined in Section  
18 13A-6-2(a)(2) and (3). Subject to the provisions of Section  
19 13A-5-41, murder as defined in Section 13A-6-2(a)(2) and (3),  
20 as well as murder as defined in Section 13A-6-2(a)(1), may be  
21 a lesser included offense of the capital offenses defined in  
22 subsection (a) of this section.

23           (c) A defendant who does not personally commit the  
24 act of killing which constitutes the murder is not guilty of a  
25 capital offense defined in subsection (a) of this section  
26 unless that defendant is legally accountable for the murder  
27 because of complicity in the murder itself under the

1 provisions of Section 13A-2-23, in addition to being guilty of  
2 the other elements of the capital offense as defined in  
3 subsection (a) of this section.

4 "(d) To the extent that a crime other than murder is  
5 an element of a capital offense defined in subsection (a) of  
6 this section, a defendant's guilt of that other crime may also  
7 be established under Section 13A-2-23. When the defendant's  
8 guilt of that other crime is established under Section  
9 13A-2-23, that crime shall be deemed to have been "committed  
10 by the defendant" within the meaning of that phrase as it is  
11 used in subsection (a) of this section."

12 Section 4. Although this bill would have as its  
13 purpose or effect the requirement of a new or increased  
14 expenditure of local funds, the bill is excluded from further  
15 requirements and application under Amendment 621 because the  
16 bill defines a new crime or amends the definition of an  
17 existing crime.

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