

1 SB194
2 156422-2
3 By Senators Holtzclaw, Ward, Fielding, Sanford, Scofield,
4 Williams, Marsh, Pittman, Orr, Taylor, Allen, Dial, Holley,
5 Hightower, Brewbaker, Bussman, Waggoner, Beason and Glover
6 RFD: Judiciary
7 First Read: 15-JAN-14

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

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

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

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

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

25 This bill would require the trial court
26 judge in death penalty cases to appoint appellate

1 counsel for both direct appeal and post-conviction
2 remedies within a specified time.

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

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

13
14 A BILL

15 TO BE ENTITLED

16 AN ACT

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

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

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

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

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

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

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

1 (e) Within 90 days of the filing of the state's
2 answer to a petition for post-conviction relief properly filed
3 pursuant to this act, the circuit court shall issue an order
4 setting forth those claims in the petition that should be
5 summarily dismissed and those claims, if any, that should be
6 set for an evidentiary hearing. If the petition for
7 post-conviction relief properly filed pursuant to this act is
8 still pending at the time of the issuance of the Certificate
9 of Judgment on direct appeal, the court in which the petition
10 is pending shall issue a final order on the petition or appeal
11 within 180 days.

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

19 (1) Find that good cause has been shown and permit
20 counsel to continue representing the defendant and set a new
21 filing deadline for the petition, which may not be more than
22 30 days from the date the court permits counsel to continue
23 representation; or

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

26 (3) Appoint new and different counsel to represent
27 the defendant and establish a new filing deadline for the

1 petition, which may not be more than 270 days after the date
2 the circuit court appoints new counsel. In the instance that
3 this subdivision is applicable, and new counsel is appointed,
4 the circuit court in which the petition is pending shall issue
5 a final order on the petition or appeal within 180 days of the
6 filing of the petition.

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

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

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

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

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