

By: Representative McInnis

To: Judiciary B

HOUSE BILL NO. 597

1 AN ACT TO PROVIDE FOR ENHANCED PENALTIES FOR CRIMES COMMITTED
2 BY LAW ENFORCEMENT OFFICERS, PRISON GUARDS, SECURITY OFFICERS OR
3 OTHER PERSONS PERFORMING LAW ENFORCEMENT OR SECURITY RELATED
4 DUTIES; TO PROVIDE FOR NOTICE WHEN SEEKING ENHANCED PENALTIES; TO
5 PROVIDE FOR SENTENCING PROCEEDINGS; TO PROVIDE FOR PENALTY
6 ENHANCEMENT UP TO TWICE THE PENALTY AUTHORIZED BY LAW; AND FOR
7 RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. The penalty for any felony or misdemeanor shall
10 be subject to enhancement as provided in this act if the felony or
11 misdemeanor was committed by a law enforcement officer as defined
12 in Section 45-6-3, a prison guard, an employee of a private
13 security firm who is a security officer or any person performing
14 duties related to law enforcement or security.

15 SECTION 2. (1) For enhancement of the penalty for a felony
16 offense to apply, the prosecuting attorney if the defendant is
17 charged by information, or grand jury if an indictment is
18 returned, shall provide notice upon the information or indictment
19 that the prosecutor will seek the enhanced penalty provided in
20 this act. The notice shall be in a clause separate from and in
21 addition to the substantive offense charged and shall not be
22 considered as an element of the offense charged.

23 (2) For enhancement of the penalty for a misdemeanor to
24 apply, the affiant, the prosecuting attorney if the defendant is
25 charged by information, or grand jury if an indictment is
26 returned, shall provide written notice that the enhanced penalty
27 will be sought as provided in this act. The notice shall be in a
28 clause separate from and in addition to the substantive offense

29 charge and shall not be considered as an element of the offense
30 charged.

31 (3) There shall be no mention in the guilt or innocence
32 phase of the trial or in any documents or evidence seen by the
33 jury that an enhanced penalty may be sought.

34 SECTION 3. (1) Upon conviction or adjudication of guilt of
35 a defendant where notice has been duly given that an enhanced
36 penalty will be sought as provided in this act, the court shall
37 conduct a separate sentencing proceeding to determine the
38 sentence. The proceeding shall be conducted by the trial judge
39 before the trial jury as soon as practicable. If, through
40 impossibility or inability, the trial jury is unable to reconvene
41 for a hearing on the issue of penalty, having determined the guilt
42 of the accused, the trial judge shall summon a jury to determine
43 whether an enhanced penalty should be imposed. If trial by jury
44 has been waived, or if the defendant pleaded guilty, the
45 sentencing proceeding shall be conducted before a jury impaneled
46 for that purpose. Provided, however, that if the defendant enters
47 a plea of guilty and waives trial by jury for the sentencing
48 proceeding, the sentencing proceeding shall be conducted before
49 the trial judge sitting without a jury. In the proceeding,
50 evidence may be presented as to any matter that the court deems
51 relevant to sentence. However, this subsection shall not be
52 construed to authorize the introduction of any evidence secured in
53 violation of the Constitution of the United States or of the State
54 of Mississippi. The state and the defendant or his counsel or
55 both defendant and counsel shall be permitted to present arguments
56 for or against any sentence sought.

57 (2) In order to impose an enhanced penalty under the
58 provisions of this act, the jury must find beyond a reasonable
59 doubt that the defendant is a law enforcement officer or is
60 employed in any capacity as described in Section 1 of this act.

61 SECTION 4. In the event it is found beyond a reasonable
62 doubt that the offense was committed by a person described in
63 Section 1 of this act, then the penalty for the offense may be
64 enhanced by punishment for a term of imprisonment of up to twice
65 that authorized by law for the offense committed, or a fine of up

66 to twice that authorized by law for the offense committed, or
67 both.

68 SECTION 5. This act shall take effect and be in force from
69 and after July 1, 1999.