

By: Senator(s) Hall

To: Judiciary

SENATE BILL NO. 2049

1 AN ACT TO AMEND SECTIONS 99-19-301, 99-19-305 AND 99-19-307,  
2 MISSISSIPPI CODE OF 1972, TO INCLUDE GANG CRIMINAL ACTIVITIES  
3 INCLUDING GANG INITIATION CRIMES AS A HATE CRIME SUBJECT TO  
4 ENHANCEMENT OF PENALTIES; AND FOR RELATED PURPOSES. BE IT  
5 ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:  
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7 SECTION 1. Section 99-19-301, Mississippi Code of 1972, is  
8 amended as follows:

9 99-19-301. (1) The following terms shall have the meanings  
10 ascribed to them herein unless the context requires otherwise:

11 (a) "Street gang" means an association of two (2) or  
12 more individuals, the purpose of whose association is the  
13 generation of income through continuing criminal enterprise.

14 (b) "Violent street gang drug enterprise" means a  
15 criminal enterprise involving the use, sale or distribution of  
16 drugs and having an organizational structure acting as a  
17 continuing criminal conspiracy which employs violence and any  
18 other criminal activity to sustain the enterprise.

19 (c) "Hate crime" means any felony or misdemeanor  
20 committed by any person who is a member of a street gang or  
21 violent street gang drug enterprise either as a part of the  
22 initiation of the person into the gang or gang enterprise or as a  
23 part of the criminal activities of the members of the street gang  
24 or violent street gang drug enterprise, or which is committed  
25 because of the actual or perceived race, color, ancestry,  
26 ethnicity, religion, national origin or gender of the victim.

27  
28 (2) The penalty for any felony or misdemeanor shall be

29 subject to enhancement as provided in Sections 99-19-301 through  
30 99-19-307 if the felony or misdemeanor was \* \* \* a hate crime.

31 SECTION 2. Section 99-19-305, Mississippi Code of 1972, is  
32 amended as follows:

33 99-19-305. (1) Upon conviction or adjudication of guilt of  
34 a defendant where notice has been duly given that an enhanced  
35 penalty will be sought as provided in Sections 99-19-301 through  
36 99-19-307, the court shall conduct a separate sentencing  
37 proceeding to determine the sentence. The proceeding shall be  
38 conducted by the trial judge before the trial jury as soon as  
39 practicable. If, through impossibility or inability, the trial  
40 jury is unable to reconvene for a hearing on the issue of penalty,  
41 having determined the guilt of the accused, the trial judge shall  
42 summon a jury to determine whether an enhanced penalty should be  
43 imposed. If trial by jury has been waived, or if the defendant  
44 pleaded guilty, the sentencing proceeding shall be conducted  
45 before a jury impaneled for that purpose. Provided, however, that  
46 if the defendant enters a plea of guilty and waives trial by jury  
47 for the sentencing proceeding, the sentencing proceeding shall be  
48 conducted before the trial judge sitting without a jury. In the  
49 proceeding, evidence may be presented as to any matter that the  
50 court deems relevant to sentence. However, this subsection shall  
51 not be construed to authorize the introduction of any evidence  
52 secured in violation of the Constitution of the United States or  
53 of the State of Mississippi. The state and the defendant or his  
54 counsel or both defendant and counsel shall be permitted to  
55 present arguments for or against any sentence sought.

56 (2) In order to impose an enhanced penalty under the  
57 provisions of Sections 99-19-301 through 99-19-307, the jury must  
58 find beyond a reasonable doubt:

59 (a) (i) That the defendant perceived, knew, or had  
60 reasonable grounds to know or perceive that the victim was within  
61 the class delineated; \* \* \*

62           (ii) That the defendant maliciously and with  
63 specific intent committed the offense because the victim was  
64 within the class delineated; and

65           (iii) That the victim was within the class  
66 delineated means that the reason the underlying crime was  
67 committed was the victim's actual or perceived race, color,  
68 religion, ethnicity, ancestry, national origin or gender; or

69           (b) That the felony or misdemeanor was committed by a  
70 person who was a member of a street gang or violent street gang  
71 drug enterprise either as a part of the initiation of the person  
72 into the gang or gang enterprise or as a part of the criminal  
73 activities of the members of the street gang or violent street  
74 gang drug enterprise.

75           SECTION 3. Section 99-19-307, Mississippi Code of 1972, is  
76 amended as follows:

77           99-19-307. In the event sufficient elements under Section  
78 99-19-305 are found beyond a reasonable doubt to have been  
79 elements of the offense, then the penalty for the offense may be  
80 enhanced by punishment for a term of imprisonment of up to twice  
81 that authorized by law for the offense committed, or a fine of up  
82 to twice that authorized by law for the offense committed, or  
83 both.

84           SECTION 4. This act shall take effect and be in force from  
85 and after July 1, 1999.