

By: Senator(s) Burton

To: Judiciary

SENATE BILL NO. 2784

1 AN ACT TO PROVIDE ENHANCED PENALTIES FOR CRIMES COMMITTED
2 AGAINST PERSONS 65 YEARS OF AGE OR OLDER; TO REQUIRE NOTICE OF
3 PENALTY ENHANCEMENT; TO PROVIDE FOR A SEPARATE SENTENCING
4 PROCEEDING; TO PROVIDE THAT PENALTIES MAY BE DOUBLED; AND FOR
5 RELATED PURPOSES.

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

7 SECTION 1. The penalty for any felony or misdemeanor which
8 is a crime of violence or the crime of burglary or breaking and
9 entering the dwelling of another shall be subject to enhancement
10 as provided in this act if the felony or misdemeanor was committed
11 to any victim who is sixty-five (65) years of age or older.

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

20 (2) For enhancement of the penalty for a misdemeanor to
21 apply, the affiant, the prosecuting attorney if the defendant is
22 charged by information, or grand jury if an indictment is
23 returned, shall provide written notice that the enhanced penalty
24 will be sought as provided in this act. The notice shall be in a
25 clause separate from and in addition to the substantive offense
26 charge and shall not be considered as an element of the offense
27 charged.

28 (3) There shall be no mention in the guilt or innocence

29 phase of the trial or in any documents or evidence seen by the
30 jury that an enhanced penalty may be sought.

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

54 (2) In order to impose an enhanced penalty under the
55 provisions of this act, the jury must find beyond a reasonable
56 doubt:

57 (a) That the defendant perceived, knew, or had
58 reasonable grounds to know or perceive that the victim was within
59 the class delineated; and

60 (b) That the defendant maliciously and with specific
61 intent committed the offense to any victim who is sixty-five (65)
62 years of age or older.

63 SECTION 4. The penalty for the offense may be enhanced by
64 punishment for a term of imprisonment of up to twice that
65 authorized by law for the offense committed, or a fine of up to
66 twice that authorized by law for the offense committed, or both.

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