

*****Pending*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 2290

By Representative(s) Committee

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

7 SECTION 1. The penalty for any felony or misdemeanor shall
8 be subject to enhancement as provided in this act if the felony or
9 misdemeanor was committed if the defendant knew or should have
10 known that the victim is sixty-five (65) years of age or older.

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

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

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

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

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

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

63 (b) That the defendant maliciously and with specific
64 intent committed the offense because the victim was within the
65 class delineated.

66 (3) That the victim was within the class delineated means
67 that the reason the underlying crime was committed was because the
68 defendant knew or should have known that the victim is sixty-five
69 (65) years of age or older.

70 SECTION 4. In the event it is found beyond a reasonable
71 doubt that the offense was committed and the defendant knew or
72 should have known that the victim is sixty-five (65) years of age
73 or older, then the penalty for the offense may be enhanced by
74 punishment for a term of imprisonment of up to twice that
75 authorized by law for the offense committed, or a fine of up to
76 twice that authorized by law for the offense committed, or both.

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

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO PROVIDE ENHANCED PENALTIES FOR CRIMES OF VIOLENCE
2 COMMITTED AGAINST PERSONS AGED 65 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.