

*****Pending*****

AMENDMENT No. 1 PROPOSED TO

Senate Bill NO. 2901

By Representative(s) Committee

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

SECTION 1. Section 99-37-25, Mississippi Code of 1972, is
amended as follows:

99-37-25. (1) (a) When a person is brought into a doctor's
office, a hospital or a medical clinic in this state by a law
enforcement agency as the victim of an alleged rape or sexual
assault, or comes into a doctor's office, a hospital or a medical
clinic in the state alleging rape or sexual assault against the
person which results in a criminal investigation, the bill for the
initial medical examination and the preparation of the rape kit
will be sent to the district attorney who has jurisdiction over
the prosecution of the alleged occurrence. The county in which
the alleged offense occurred shall pay for the initial medical
examination conducted for the procurement of evidence to aid in
the investigation and prosecution of the alleged offense. Such
payment shall be limited to the customary and usual hospital and
physician charges for such services in the area. Such payment
shall be made by the county directly to the health care provider.
No bill for the initial examination will be submitted to the
victim, nor shall the medical facility hold the victim responsible
for payment. However, if the victim refuses to cooperate with the
investigation or prosecution of the case, the county may seek

30 reimbursement from the victim. The victim may be billed for any
31 further medical services not required for the investigation and
32 prosecution of the alleged offense. In cases where the damage
33 caused by the alleged rape or sexual assault requires medical
34 treatment or diagnosis in addition to the initial examination, the
35 patient will be given information about the availability of victim
36 compensation and the procedure for applying for such compensation.

37 (b) Upon application submitted by the district
38 attorney, * * * provided the proper warrant or court order has
39 been issued, the county in which an offense of rape or of
40 felonious abuse or battery of a child as described in Section
41 97-5-39, touching or handling a child for lustful purposes as
42 described in Section 97-5-23, exploitation of children as
43 described in Section 97-5-33 or sexual battery as described in
44 Section 97-3-95, or an attempt to commit such offense has occurred
45 shall pay for a medical examination of the person arrested,
46 charged or convicted of such offense to determine if the person so
47 arrested, charged or convicted has any sexually transmitted
48 disease. Such payment shall be made by the county directly to the
49 health care provider or other service performing the tests. The
50 results of such test shall be made available to the victim or, if
51 the victim is a child, to the guardian of the victim.

52 (2) Any defendant who is convicted of, or pleads guilty or
53 nolo contendere to, an offense in violation of rape, felonious
54 abuse or battery of a child as described in Section 97-5-39,
55 touching or handling a child for lustful purposes as described in
56 Section 97-5-23, exploitation of children as described in Section
57 97-5-33 or sexual battery as described in Section 97-3-95, or an
58 attempt to commit any such offense, shall be ordered by the court
59 to make restitution to the county in an amount equal to the
60 compensation paid by the county to the victim or medical provider
61 for the initial medical examination and tests for sexually

transmitted diseases. Such restitution shall be in addition to any restitution which the court orders the defendant to pay the victim under the provisions of Chapter 37 of Title 99, (Sections 99-37-1 through 99-37-21), Mississippi Code of 1972.

(3) The board of supervisors of any county is hereby authorized, in its discretion, to make application for and comply with such requirements as may be necessary to qualify for any federal funds as may be made available through the Department of Criminal Justice Planning as a result of services rendered to crime victims under the provisions of this section.

SECTION 2. The penalty for any felony or misdemeanor shall be subject to enhancement as provided in this act if the felony or misdemeanor was committed if the defendant knew or should have known that the victim is sixty-five (65) years of age or older.

SECTION 3. (1) For enhancement of the penalty for a felony offense to apply, the prosecuting attorney if the defendant is charged by information, or grand jury if an indictment is returned, shall provide notice upon the information or indictment that the prosecutor will seek the enhanced penalty provided in this act. The notice shall be in a clause separate from and in addition to the substantive offense charged and shall not be considered as an element of the offense charged.

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

(3) There shall be no mention in the guilt or innocence phase of the trial or in any documents or evidence seen by the

jury that an enhanced penalty may be sought.

SECTION 4. (1) Upon conviction or adjudication of guilt of a defendant of a crime of violence where notice has been duly given that an enhanced penalty will be sought as provided in this act, the court shall conduct a separate sentencing proceeding to determine the sentence. For the purpose of this act "crime of violence" means any crime which involves physical injury or attempted physical injury to any person or which results in death or an attempted killing. "Crime of violence" shall also include burglary of an occupied dwelling. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge shall summon a jury to determine whether an enhanced penalty should be imposed. If trial by jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. Provided, however, that if the defendant enters a plea of guilty and waives trial by jury for the sentencing proceeding, the sentencing proceeding shall be conducted before the trial judge sitting without a jury. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Mississippi. The state and the defendant or his counsel or both defendant and counsel shall be permitted to present arguments for or against any sentence sought.

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

(a) That the defendant perceived, knew, or had

126 reasonable grounds to know or perceive that the victim was within
127 the class delineated; and

128 (b) That the defendant maliciously and with specific
129 intent committed the offense because the victim was within the
130 class delineated.

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

135 SECTION 5. In the event it is found beyond a reasonable
136 doubt that the offense was committed and the defendant knew or
137 should have known that the victim is sixty-five (65) years of age
138 or older, then the penalty for the offense may be enhanced by
139 punishment for a term of imprisonment of up to twice that
140 authorized by law for the offense committed, or a fine of up to
141 twice that authorized by law for the offense committed, or both.

142 SECTION 6. This act shall take effect and be in force from
143 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 AMEND SECTION 99-37-25, MISSISSIPPI CODE OF 1972,
2 TO CLARIFY RESPONSIBILITY FOR PAYMENT OF MEDICAL EXAMINATION OF
3 SEXUAL ASSAULT VICTIMS; TO PROVIDE ENHANCED PENALTIES FOR CRIMES
4 OF VIOLENCE COMMITTED AGAINST PERSONS AGED 65 OR OLDER; TO REQUIRE
5 NOTICE OF PENALTY ENHANCEMENT; TO PROVIDE FOR A SEPARATE
6 SENTENCING PROCEEDING; TO PROVIDE THAT PENALTIES MAY BE DOUBLED;
7 AND FOR RELATED PURPOSES.