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To: Judiciary B

HOUSE BILL NO. 449
(As Passed the House)

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

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

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

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

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

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

28 jury that an enhanced penalty may be sought.

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

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

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

58 (b) That the defendant maliciously and with specific
59 intent committed the offense because the victim was within the
60 class delineated.

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

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

72 SECTION 5. This act shall take effect and be in force from
73 and after July 1, 2000.