

By: Rogers

To: Judiciary B

HOUSE BILL NO. 1218

1 AN ACT TO PRESCRIBE AN ADDITIONAL TERM OF PUNISHMENT FOR
2 FELONS WHO USE FIREARMS IN THE COMMISSION OF THEIR CRIMES; AND FOR
3 RELATED PURPOSES.

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

5 SECTION 1. (1) (a) For the purposes of this section,
6 "firearm" means any weapon, including a starter gun, which will or
7 is designed to or may readily be converted to expel a projectile
8 by the action of an explosive.

9 (b) The provisions of this section shall apply to the
10 following felonies:

- 11 (i) Murder, as defined in Section 97-3-19;
- 12 (ii) Mayhem, as defined in Section 97-3-59;
- 13 (iii) Kidnapping, as defined in Section 97-3-53;
- 14 (iv) Robbery, as defined in Section 97-3-73;
- 15 (v) Carjacking, as defined in Section 97-3-117;
- 16 (vi) Aggravated assault, as defined in Section
17 97-3-7;
- 18 (vii) Rape, as defined in Section 97-3-65;
- 19 (viii) Sexual battery, as defined in Section
20 97-3-95;
- 21 (ix) Unnatural intercourse, as defined in Section
22 97-29-59;
- 23 (x) Gratification of lust, as defined in Section
24 97-5-23;
- 25 (xi) Any felony punishable by death or
26 imprisonment in the state penitentiary for life; and

27 (xii) Any attempt to commit one or more of the
28 crimes listed in this paragraph (b).

29 (2) Notwithstanding any other provision of law, any person
30 who is convicted of a felony specified in subsection (1) of this
31 section, and who carried, displayed, brandished, or threatened
32 with a firearm during the commission of that felony, shall be
33 punished by a term of imprisonment of ten (10) years in the State
34 Penitentiary, which shall be imposed in addition and consecutively
35 to the punishment prescribed for that felony. The firearm need
36 not be operable or loaded for this enhancement to apply.

37 (3) Notwithstanding any other provision of law, any person
38 who is convicted of a felony specified in subsection (1) of this
39 section, and who in the commission of that felony intentionally
40 and personally discharged a firearm, shall be punished by a term
41 of imprisonment of twenty (20) years in the State Penitentiary,
42 which shall be imposed in addition and consecutively to the
43 punishment prescribed for that felony.

44 (4) Notwithstanding any other provision of law, any person
45 who is convicted of a felony specified in subsection (1) of this
46 section, and who in the commission of that felony intentionally
47 and personally discharged a firearm and proximately caused bodily
48 injury to any person other than an accomplice, shall be punished
49 by a term of imprisonment of twenty-five (25) years to life in the
50 State Penitentiary, which shall be imposed in addition and
51 consecutively to the punishment prescribed for that felony.

52 (5) For enhancement of the penalty for a felony offense to
53 apply, the prosecuting attorney if the defendant is charged by
54 information, or grand jury if an indictment is returned, shall
55 provide notice upon the information or indictment that the
56 prosecutor will seek the enhanced penalty provided in this
57 section. The notice shall be in a clause separate from and in
58 addition to the substantive offense charged and shall not be
59 considered as an element of the offense charged. There shall be

60 no mention in the guilt or innocence phase of the trial or in any
61 documents or evidence seen by the jury that an enhanced penalty
62 may be sought. For the penalties in this section to apply, the
63 existence of any required fact shall be either admitted by the
64 defendant in open court or found to be true by the trier of fact.

65 (6) Only one (1) additional term of imprisonment under this
66 section shall be imposed per person for each crime. If more than
67 one (1) enhancement per person is found true under this section,
68 the court shall impose upon that person the enhancement that
69 provides the longest term of imprisonment.

70 (7) Notwithstanding any other provision of law, probation
71 shall not be granted to, nor shall the execution or imposition of
72 sentence be suspended for, any person found to come within the
73 provisions of this section.

74 (8) The enhancements specified in this section shall not
75 apply to the lawful use or discharge of a firearm by a law
76 enforcement officer, or by any person in lawful self-defense,
77 lawful defense of another, or lawful defense of property.

78 SECTION 2. This act shall take effect and be in force from
79 and after July 1, 2000.