

By: Kirby

To: Judiciary

SENATE BILL NO. 2783

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 enhancement per person is found true under this section, the  
68 court shall impose upon that person the enhancement that provides  
69 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.