

By: Representatives Rotenberry, Reynolds,  
Banks, Fillingane, Lott, Mayo, Rushing

To: Judiciary B

## HOUSE BILL NO. 1162

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.

(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 3. (1) Upon conviction or adjudication of guilt of a defendant 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. 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 reasonable grounds to know or perceive that the victim was within 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, 2001.