

By: Representative Fleming

To: Judiciary B

HOUSE BILL NO. 982

1 AN ACT TO AMEND SECTIONS 99-19-351 AND 99-19-355, MISSISSIPPI
2 CODE OF 1972, TO INCLUDE DISABLED PERSONS IN THE LAW WHICH
3 PROVIDES FOR ENHANCED PENALTIES WHEN CRIMES ARE COMMITTED AGAINST
4 SUCH PERSONS; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 99-19-351, Mississippi Code of 1972, is
7 amended as follows:

8 99-19-351. The penalty for any felony or misdemeanor which
9 is a crime of violence or the crime of burglary or breaking and
10 entering the dwelling of another shall be subject to enhancement
11 as provided in Sections 99-19-351 through 99-19-357 if the felony
12 or misdemeanor was committed against any victim who is sixty-five
13 (65) years of age or older or who is disabled.

14 **SECTION 2.** Section 99-19-355, Mississippi Code of 1972, is
15 amended as follows:

16 99-19-355. (1) Upon conviction or adjudication of guilt of
17 a defendant where notice has been duly given that an enhanced
18 penalty will be sought as provided in Sections 99-19-351 through
19 99-19-357, the court shall conduct a separate sentencing
20 proceeding to determine the sentence. The proceeding shall be
21 conducted by the trial judge before the trial jury as soon as
22 practicable. If, through impossibility or inability, the trial
23 jury is unable to reconvene for a hearing on the issue of penalty,
24 having determined the guilt of the accused, the trial judge shall
25 summon a jury to determine whether an enhanced penalty should be
26 imposed. If trial by jury has been waived, or if the defendant
27 pleaded guilty, the sentencing proceeding shall be conducted
28 before a jury impaneled for that purpose. If the defendant enters

29 a plea of guilty and waives trial by jury for the sentencing
30 proceeding, the sentencing proceeding shall be conducted before
31 the trial judge sitting without a jury. In the proceeding,
32 evidence may be presented as to any matter that the court deems
33 relevant to sentence. This subsection shall not be construed to
34 authorize the introduction of any evidence secured in violation of
35 the Constitution of the United States or of the State of
36 Mississippi. The state and the defendant, or his counsel, or both
37 defendant and counsel, shall be permitted to present arguments for
38 or against any sentence sought.

39 (2) In order to impose an enhanced penalty under the
40 provisions of Sections 99-19-351 through 99-19-357, the jury must
41 find beyond a reasonable doubt:

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

45 (b) That the defendant maliciously and with specific
46 intent committed the offense to any victim who is sixty-five (65)
47 years of age or older or who is disabled.

48 **SECTION 3.** This act shall take effect and be in force from
49 and after July 1, 2007.