

By: Representatives Fleming, Reynolds

To: Judiciary B

HOUSE BILL NO. 982  
(As Passed the House)

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 or fraudulent telephone  
11 solicitation shall be subject to enhancement as provided in  
12 Sections 99-19-351 through 99-19-357 if the felony or misdemeanor  
13 was committed against any victim who is sixty-five (65) years of  
14 age or older or who is disabled as described in 42 USCS 12102.

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

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

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

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

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

46 (b) That the defendant maliciously and with specific  
47 intent committed the offense to any victim who is sixty-five (65)  
48 years of age or older or who is disabled as described in 42 USCS  
49 12102.

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