

By: Representative Dixon

To: Judiciary B

HOUSE BILL NO. 1146

1 AN ACT TO AMEND SECTIONS 99-19-301, 99-19-303, 99-19-305 AND
2 99-19-307, MISSISSIPPI CODE OF 1972, TO REVISE THE APPLICATION OF
3 PROVISIONS OF LAW PROVIDING FOR ENHANCED PENALTIES FOR CRIMES
4 COMMITTED FOR DISCRIMINATORY PURPOSES; AND FOR RELATED PURPOSES.

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

6 **SECTION 1.** Section 99-19-301, Mississippi Code of 1972, is
7 amended as follows:

8 99-19-301. The penalty for any felony or misdemeanor shall
9 be subject to enhancement as provided in Sections 99-19-301
10 through 99-19-307 if the felony or misdemeanor was committed
11 because of the actual or perceived race, color, ancestry,
12 ethnicity, religion, national origin * * *, gender or sexual
13 orientation of the victim. The penalty shall also be subject to
14 enhancement if the victim was unarmed or in flight from a crime
15 scene.

16 **SECTION 2.** Section 99-19-303, Mississippi Code of 1972, is
17 amended as follows:

18 99-19-303. (1) For enhancement of the penalty for a felony
19 offense to apply, the prosecuting attorney if the defendant is



20 charged by information, or grand jury if an indictment is
21 returned, shall provide notice upon the information or indictment
22 that the prosecutor will seek the enhanced penalty provided in
23 Sections 99-19-301 through 99-19-307. The notice shall be in a
24 clause separate from and in addition to the substantive offense
25 charged and shall not be considered as an element of the offense
26 charged.

27 (2) For enhancement of the penalty for a misdemeanor to
28 apply, the affiant, the prosecuting attorney if the defendant is
29 charged by information, or grand jury if an indictment is
30 returned, shall provide written notice that the enhanced penalty
31 will be sought as provided in Sections 99-19-301 through
32 99-19-307. The notice shall state specific reasons why the
33 enhanced penalty is being sought with detail as to any racial
34 reasons including whether the crime was white on white, black on
35 black, white on black or black on white. The notice shall be in a
36 clause separate from and in addition to the substantive offense
37 charge and shall not be considered as an element of the offense
38 charged.

39 (3) There shall be no mention in the guilt or innocence
40 phase of the trial or in any documents or evidence seen by the
41 jury that an enhanced penalty may be sought.

42 **SECTION 3.** Section 99-19-305, Mississippi Code of 1972, is
43 amended as follows:



44 99-19-305. (1) Upon conviction or adjudication of guilt of
45 a defendant where notice has been duly given that an enhanced
46 penalty will be sought as provided in Sections 99-19-301 through
47 99-19-307, the court shall conduct a separate sentencing
48 proceeding to determine the sentence. The proceeding shall be
49 conducted by the trial judge before the trial jury as soon as
50 practicable. If, through impossibility or inability, the trial
51 jury is unable to reconvene for a hearing on the issue of penalty,
52 having determined the guilt of the accused, the trial judge shall
53 summon a jury to determine whether an enhanced penalty should be
54 imposed. If trial by jury has been waived, or if the defendant
55 pleaded guilty, the sentencing proceeding shall be conducted
56 before a jury impaneled for that purpose. Provided, however, that
57 if the defendant enters a plea of guilty and waives trial by jury
58 for the sentencing proceeding, the sentencing proceeding shall be
59 conducted before the trial judge sitting without a jury. In the
60 proceeding, evidence may be presented as to any matter that the
61 court deems relevant to sentence. However, this subsection shall
62 not be construed to authorize the introduction of any evidence
63 secured in violation of the Constitution of the United States or
64 of the State of Mississippi. The state and the defendant or his
65 counsel or both defendant and counsel shall be permitted to
66 present arguments for or against any sentence sought.



67 (2) In order to impose an enhanced penalty under the
68 provisions of Sections 99-19-301 through 99-19-307, the jury must
69 find beyond a reasonable doubt:

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

73 (b) That the defendant maliciously and with specific
74 intent committed the offense because the victim was within the
75 class delineated.

76 (3) That the victim was within the class delineated means
77 that the reason the underlying crime was committed was the
78 victim's actual or perceived race, color, religion, ethnicity,
79 ancestry, national origin * * *, gender or sexual orientation, or
80 that the victim was unarmed or in flight from a crime scene.

81 **SECTION 4.** Section 99-19-307, Mississippi Code of 1972, is
82 amended as follows:

83 99-19-307. In the event it is found beyond a reasonable
84 doubt that the offense was committed by reason of the actual or
85 perceived race, color, ancestry, ethnicity, religion, national
86 origin * * *, gender or sexual orientation of the victim or that
87 the victim was unarmed or in flight from the crime scene, then the
88 penalty for the offense may be enhanced by punishment for a term
89 of imprisonment of up to twice that authorized by law for the
90 offense committed, or a fine of up to twice that authorized by law
91 for the offense committed, or both.



92 **SECTION 5.** This act shall take effect and be in force from
93 and after July 1, 2013.

