

By: Representative Dixon

To: Judiciary B

HOUSE BILL NO. 1075

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. (1) The penalty for any felony or misdemeanor
9 shall 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 for any felony or
14 misdemeanor shall also be subject to enhancement if the victim of
15 the felony or misdemeanor was unarmed or in flight when subjected
16 to the crime.

17 (2) The penalty for any felony or misdemeanor shall be
18 subject to enhancement as provided in Sections 99-19-301 through
19 99-19-307 if the felony or misdemeanor was committed with the



specific intent to target an individual or group because of actual or perceived employment as a law enforcement officer, firefighter or emergency medical technician.

(3) As used in Sections 99-19-301 through 99-19-307:

(a) "Law enforcement officer" means any law enforcement officer, part-time law enforcement officer or law enforcement trainee as defined in Section 45-6-3, as well as any reserve or volunteer law enforcement officer and any federal law enforcement officer or employee whose permanent duties include making arrests, performing search and seizures, execution of criminal arrest warrants, execution of civil seizure warrants, or the care, custody, control or supervision of inmates.

(b) "Firefighter" means any firefighter regularly employed by a fire department of any municipality, county, or fire protection district of the State of Mississippi and includes a volunteer firefighter.

(c) "Emergency medical technician" means a person qualified under Sections 41-59-33 and 41-59-35.

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

99-19-303. (1) For enhancement of the penalty for a felony offense to apply, the prosecuting attorney if the defendant is charged by information, or grand jury if an indictment is returned, shall provide notice upon the information or indictment that the prosecutor will seek the enhanced penalty provided in



Sections 99-19-301 through 99-19-307. The notice shall be in a clause separate from and in addition to the substantive offense charged and shall not be considered as an element of the offense charged.

(2) For enhancement of the penalty for a misdemeanor to apply, the affiant, the prosecuting attorney if the defendant is charged by information, or grand jury if an indictment is returned, shall provide written notice that the enhanced penalty will be sought as provided in Sections 99-19-301 through 99-19-307. The notice shall state specific reasons why the enhanced penalty is being sought with detail as to any racial reasons, including whether the crime was white on white, black on black, white on black or black on white. The notice shall be in a clause separate from and in addition to the substantive offense charge and shall not be considered as an element of the offense 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. Section 99-19-305, Mississippi Code of 1972, is amended as follows:

99-19-305. (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 Sections 99-19-301 through 99-19-307, the court shall conduct a separate sentencing



70 proceeding to determine the sentence. The proceeding shall be
71 conducted by the trial judge before the trial jury as soon as
72 practicable. If, through impossibility or inability, the trial
73 jury is unable to reconvene for a hearing on the issue of penalty,
74 having determined the guilt of the accused, the trial judge shall
75 summon a jury to determine whether an enhanced penalty should be
76 imposed. If trial by jury has been waived, or if the defendant
77 pleaded guilty, the sentencing proceeding shall be conducted
78 before a jury impaneled for that purpose. Provided, however, that
79 if the defendant enters a plea of guilty and waives trial by jury
80 for the sentencing proceeding, the sentencing proceeding shall be
81 conducted before the trial judge sitting without a jury. In the
82 proceeding, evidence may be presented as to any matter that the
83 court deems relevant to sentence. However, this subsection shall
84 not be construed to authorize the introduction of any evidence
85 secured in violation of the Constitution of the United States or
86 of the State of Mississippi. The state and the defendant or his
87 counsel or both defendant and counsel shall be permitted to
88 present arguments for or against any sentence sought.

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

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



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

(3) That the victim was within the class delineated means that the reason the underlying crime was committed was the victim's actual or perceived race, color, religion, ethnicity, ancestry, national origin * * *, gender, * * * sexual orientation, if the victim of the felony or misdemeanor was unarmed or in flight when subjected to the crime, or that the reason the underlying crime was committed was the victim's actual or perceived employment as a law enforcement officer, firefighter or emergency medical technician.

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

99-19-307. If it is found beyond a reasonable doubt that the offense was committed by reason of (a) the actual or perceived race, color, ancestry, ethnicity, religion, national origin * * *, gender or sexual orientation of the victim or that the victim was unarmed or in flight from the crime scene, or (b) the victim's actual or perceived employment as a law enforcement officer, firefighter or emergency medical technician, then the penalty for the offense may be enhanced by punishment for a term of imprisonment of up to twice that authorized by law for the offense committed, or a fine of up to twice that authorized by law for the offense committed, or both.



120 **SECTION 5.** This act shall take effect and be in force from
121 and after July 1, 2018.

