

By: Representatives Reynolds, Franks

To: Judiciary B

## HOUSE BILL NO. 1267

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.

26 (3) There shall be no mention in the guilt or innocence  
27 phase of the trial or in any documents or evidence seen by the

28 jury that an enhanced penalty may be sought.

29       SECTION 3. (1) Upon conviction or adjudication of guilt of  
30 a defendant where notice has been duly given that an enhanced  
31 penalty will be sought as provided in this act, the court shall  
32 conduct a separate sentencing proceeding to determine the  
33 sentence. The proceeding shall be conducted by the trial judge  
34 before the trial jury as soon as practicable. If, through  
35 impossibility or inability, the trial jury is unable to reconvene  
36 for a hearing on the issue of penalty, having determined the guilt  
37 of the accused, the trial judge shall summon a jury to determine  
38 whether an enhanced penalty should be imposed. If trial by jury  
39 has been waived, or if the defendant pleaded guilty, the  
40 sentencing proceeding shall be conducted before a jury impaneled  
41 for that purpose. Provided, however, that if the defendant enters  
42 a plea of guilty and waives trial by jury for the sentencing  
43 proceeding, the sentencing proceeding shall be conducted before  
44 the trial judge sitting without a jury. In the proceeding,  
45 evidence may be presented as to any matter that the court deems  
46 relevant to sentence. However, this subsection shall not be  
47 construed to authorize the introduction of any evidence secured in  
48 violation of the Constitution of the United States or of the State  
49 of Mississippi. The state and the defendant or his counsel or  
50 both defendant and counsel shall be permitted to present arguments  
51 for or against any sentence sought.

52       (2) In order to impose an enhanced penalty under the  
53 provisions of this act, the jury must find beyond a reasonable  
54 doubt:

55               (a) That the defendant perceived, knew, or had  
56 reasonable grounds to know or perceive that the victim was within  
57 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, 2000.