MISSISSIPPI LEGISLATURE REGULAR SESSION 2001

By: Senator(s) Burton, Walls, Hyde-Smith, Harden, White (5th), Frazier, Jackson

To: Public Health and Welfare

SENATE BILL NO. 2112

AN ACT TO PROVIDE ENHANCED PENALTIES FOR CRIMES COMMITTED AGAINST PERSONS 65 YEARS OF AGE OR OLDER; TO REQUIRE NOTICE OF PENALTY ENHANCEMENT; TO PROVIDE FOR A SEPARATE SENTENCING PROCEEDING; TO PROVIDE THAT PENALTIES MAY BE DOUBLED; AND FOR RELATED PURPOSES.

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

SECTION 1. The penalty for any felony or misdemeanor which is a crime of violence or the crime of burglary or breaking and entering the dwelling of another shall be subject to enhancement as provided in this act if the felony or misdemeanor was committed against any victim who is sixty-five (65) years of age or older.

SECTION 2. (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 this act. 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 this act. 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. (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 this act, the court shall conduct a separate sentencing proceeding to determine the sentence. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge shall summon a jury to determine whether an enhanced penalty should be imposed. If trial by jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. If the defendant enters a plea of guilty and waives trial by jury for the sentencing proceeding, the sentencing proceeding shall be conducted before the trial judge sitting without a jury. In the proceeding, evidence may be presented as to any matter that the court deems relevant to sentence. This subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or of the State of Mississippi. The state and the defendant, or his counsel, or both defendant and counsel, shall be permitted to present arguments for or against any sentence sought.

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

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

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

SECTION 4. 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.

SECTION 5. This act shall take effect and be in force from and after July 1, 2001.