

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 2808

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE PENALTY FOR POSSESSION OF CERTAIN AMOUNTS OF
3 COCAINE; AND FOR RELATED PURPOSES. BE IT ENACTED BY THE
4 LEGISLATURE OF THE STATE OF MISSISSIPPI:

5
6 SECTION 1. Section 41-29-139, Mississippi Code of 1972, is
7 amended as follows:

8 41-29-139. (a) Except as authorized by this article, it is
9 unlawful for any person knowingly or intentionally:

10 (1) To sell, barter, transfer, manufacture, distribute,
11 dispense or possess with intent to sell, barter, transfer,
12 manufacture, distribute or dispense, a controlled substance; or

13 (2) To create, sell, barter, transfer, distribute,
14 dispense or possess with intent to create, sell, barter, transfer,
15 distribute or dispense, a counterfeit substance.

16 (b) Except as otherwise provided in subsections (f) and (g)
17 of this section or in Section 41-29-142, any person who violates
18 subsection (a) of this section shall be sentenced as follows:

19 (1) In the case of controlled substances classified in
20 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
21 except one (1) ounce or less of marihuana, and except a first
22 offender as defined in Section 41-29-149(e) who violates
23 subsection (a) of this section with respect to less than one (1)
24 kilogram but more than one (1) ounce of marihuana, such person
25 may, upon conviction, be imprisoned for not more than thirty (30)
26 years and shall be fined not less than Five Thousand Dollars
27 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or

28 both;

29 (2) In the case of a first offender who violates
30 subsection (a) of this section with an amount less than one (1)
31 kilogram but more than one (1) ounce of marihuana as classified in
32 Schedule I, as set out in Section 41-29-113, such person is guilty
33 of a felony and upon conviction may be imprisoned for not more
34 than twenty (20) years or fined not more than Thirty Thousand
35 Dollars (\$30,000.00), or both;

36 (3) In the case of one (1) ounce or less of marihuana,
37 such person may, upon conviction, be imprisoned for not more than
38 three (3) years or fined not more than Three Thousand Dollars
39 (\$3,000.00), or both;

40 (4) In the case of controlled substances classified in
41 Schedules III and IV, as set out in Sections 41-29-117 and
42 41-29-119, such person may, upon conviction, be imprisoned for not
43 more than twenty (20) years and shall be fined not less than One
44 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
45 Thousand Dollars (\$250,000.00), or both; and

46 (5) In the case of controlled substances classified in
47 Schedule V, as set out in Section 41-29-121, such person may, upon
48 conviction, be imprisoned for not more than ten (10) years and
49 shall be fined not less than One Thousand Dollars (\$1,000.00) nor
50 more than Fifty Thousand Dollars (\$50,000.00), or both.

51 (c) It is unlawful for any person knowingly or intentionally
52 to possess any controlled substance unless the substance was
53 obtained directly from, or pursuant to, a valid prescription or
54 order of a practitioner while acting in the course of his
55 professional practice, or except as otherwise authorized by this
56 article. The penalties for any violation of this subsection (c)
57 with respect to a controlled substance classified in Schedules I,
58 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,
59 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be
60 based on dosage unit as defined herein or the weight of the
61 controlled substance as set forth herein as appropriate:

62 "Dosage unit (d.u.);" means a tablet or capsule, or in the
63 case of a liquid solution, one (1) milliliter. In the case of
64 lysergic acid diethylamide (LSD) the term, "dosage unit" means a

65 stamp, square, dot, microdot, tablet or capsule of a controlled
66 substance.

67 For any controlled substance that does not fall within the
68 definition of the term "dosage unit," the penalties shall be based
69 upon the weight of the controlled substance.

70 The weight set forth refers to the entire weight of any
71 mixture or substance containing a detectable amount of the
72 controlled substance.

73 If a mixture or substance contains more than one (1)
74 controlled substance, the weight of the mixture or substance is
75 assigned to the controlled substance that results in the greater
76 punishment.

77 Any person who violates this subsection with respect to:

78 (1) A controlled substance classified in Schedule I or
79 II, except marihuana, in the following amounts shall be charged
80 and sentenced as follows:

81 (A) (i) For such controlled substances other than
82 cocaine, less than one-tenth (0.1) gram or one (1) dosage unit or
83 less may be charged as a misdemeanor or felony. If charged by
84 indictment as a felony: by imprisonment not less than one (1) nor
85 more than four (4) years and a fine not more than Ten Thousand
86 Dollars (\$10,000.00). If charged as a misdemeanor: by
87 imprisonment for up to one (1) year and a fine not more than One
88 Thousand Dollars (\$1,000.00).

89 (ii) For less than one-tenth (0.1) gram or
90 one (1) dosage unit of cocaine, by imprisonment for not more than
91 seven (7) years and a fine of not more than Twenty Thousand
92 Dollars (\$20,000.00).

93 (B) One-tenth (0.1) gram but less than two (2)
94 grams or two (2) dosage units but less than ten (10) dosage units,
95 by imprisonment for not less than two (2) years nor more than
96 eight (8) years and a fine of not more than Fifty Thousand Dollars
97 (\$50,000.00).

98 (C) Two (2) grams but less than ten (10) grams or
99 ten (10) dosage units but less than twenty (20) dosage units, by
100 imprisonment for not less than four (4) years nor more than
101 sixteen (16) years and a fine of not more than Two Hundred Fifty
102 Thousand Dollars (\$250,000.00).

103 (D) Ten (10) grams but less than thirty (30) grams
104 or twenty (20) dosage units but not more than forty (40) dosage
105 units, by imprisonment for not less than six (6) years nor more
106 than twenty-four (24) years and a fine of not more than Five
107 Hundred Thousand Dollars (\$500,000.00).

108 (E) Thirty (30) grams or more or forty (40) dosage
109 units or more, by imprisonment for not less than ten (10) years
110 nor more than thirty (30) years and a fine of not more than One
111 Million Dollars (\$1,000,000.00).

112 (2) Marihuana in the following amounts shall be charged
113 and sentenced as follows:

114 (A) Thirty (30) grams or less by a fine of not
115 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
116 Fifty Dollars (\$250.00). The provisions of this paragraph shall
117 be enforceable by summons, provided the offender provides proof of
118 identity satisfactory to the arresting officer and gives written
119 promise to appear in court satisfactory to the arresting officer,
120 as directed by the summons. A second conviction under this
121 section within two (2) years shall be punished by a fine of Two
122 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
123 nor more than sixty (60) days in the county jail and mandatory
124 participation in a drug education program, approved by the
125 Division of Alcohol and Drug Abuse of the State Department of
126 Mental Health, unless the court enters a written finding that such
127 drug education program is inappropriate. A third or subsequent
128 conviction under this section within two (2) years is a
129 misdemeanor punishable by a fine of not less than Two Hundred
130 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars

131 (\$500.00) and confinement for not less than five (5) days nor more
132 than six (6) months in the county jail. Upon a first or second
133 conviction under this section the courts shall forward a report of
134 such conviction to the Mississippi Bureau of Narcotics which shall
135 make and maintain a private, nonpublic record for a period not to
136 exceed two (2) years from the date of conviction. The private,
137 nonpublic record shall be solely for the use of the courts in
138 determining the penalties which attach upon conviction under this
139 section and shall not constitute a criminal record for the purpose
140 of private or administrative inquiry and the record of each
141 conviction shall be expunged at the end of the period of two (2)
142 years following the date of such conviction;

143 (B) Additionally, a person who is the operator of
144 a motor vehicle, who possesses on his person or knowingly keeps or
145 allows to be kept in a motor vehicle within the area of the
146 vehicle normally occupied by the driver or passengers, more than
147 one (1) gram, but not more than thirty (30) grams, of marihuana is
148 guilty of a misdemeanor and upon conviction may be fined not more
149 than One Thousand Dollars (\$1,000.00) and confined for not more
150 than ninety (90) days in the county jail. For the purposes of
151 this subsection, such area of the vehicle shall not include the
152 trunk of the motor vehicle or the areas not normally occupied by
153 the driver or passengers if the vehicle is not equipped with a
154 trunk. A utility or glove compartment shall be deemed to be
155 within the area occupied by the driver and passengers;

156 (C) More than thirty (30) grams but less than two
157 hundred fifty (250) grams may be fined not more than One Thousand
158 Dollars (\$1,000.00), or confined in the county jail for not more
159 than one (1) year, or both; or fined not more than Three Thousand
160 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
161 not more than three (3) years, or both;

162 (D) Two hundred fifty (250) grams but less than
163 five hundred (500) grams, by imprisonment for not less than two

164 (2) years nor more than eight (8) years and by a fine of not more
165 than Fifty Thousand Dollars (\$50,000.00);

166 (E) Five hundred (500) grams but less than one (1)
167 kilogram, by imprisonment for not less than four (4) years nor
168 more than sixteen (16) years and a fine of less than Two Hundred
169 Fifty Thousand Dollars (\$250,000.00);

170 (F) One (1) kilogram but less than five (5)
171 kilograms, by imprisonment for not less than six (6) years nor
172 more than twenty-four (24) years and a fine of not more than Five
173 Hundred Thousand Dollars (\$500,000.00);

174 (G) Five (5) kilograms or more, by imprisonment
175 for not less than ten (10) years nor more than thirty (30) years
176 and a fine of not more than One Million Dollars (\$1,000,000.00).

177 (3) A controlled substance classified in Schedule III,
178 IV or V as set out in Sections 41-29-117 through 41-29-121, upon
179 conviction, may be punished as follows:

180 (A) Less than fifty (50) grams or less than one
181 hundred (100) dosage units is a misdemeanor and punishable by not
182 more than one (1) year and a fine of not more than One Thousand
183 Dollars (\$1,000.00).

184 (B) Fifty (50) grams but less than one hundred
185 fifty (150) grams or one hundred (100) dosage units but less than
186 five hundred (500) dosage units, by imprisonment for not less than
187 one (1) year nor more than four (4) years and a fine of not more
188 than Ten Thousand Dollars (\$10,000.00).

189 (C) One hundred fifty (150) grams but less than
190 three hundred (300) grams or five hundred (500) dosage units but
191 less than one thousand (1,000) dosage units, by imprisonment for
192 not less than two (2) years nor more than eight (8) years and a
193 fine of not more than Fifty Thousand Dollars (\$50,000.00).

194 (D) Three hundred (300) grams but less than five
195 hundred (500) grams or one thousand (1,000) dosage units but less
196 than two thousand five hundred (2,500) dosage units, by

197 imprisonment for not less than four (4) years nor more than
198 sixteen (16) years and a fine of not more than Two Hundred Fifty
199 Thousand Dollars (\$250,000.00).

200 (E) More than five hundred (500) grams or more
201 than two thousand five hundred (2,500) dosage units, by
202 imprisonment for not less than six (6) years nor more than
203 twenty-four (24) years and a fine of not more than Five Hundred
204 Thousand Dollars (\$500,000.00).

205 (d) (1) It is unlawful for a person who is not authorized
206 by the State Board of Medical Licensure, State Board of Pharmacy,
207 or other lawful authority to use, or to possess with intent to
208 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
209 manufacture, compound, convert, produce, process, prepare, test,
210 analyze, pack, repack, store, contain, conceal, inject, ingest,
211 inhale or otherwise introduce into the human body a controlled
212 substance in violation of the Uniform Controlled Substances Law.
213 Any person who violates this subsection is guilty of a misdemeanor
214 and upon conviction may be confined in the county jail for not
215 more than six (6) months, or fined not more than Five Hundred
216 Dollars (\$500.00), or both; however, no person shall be charged
217 with a violation of this subsection when such person is also
218 charged with the possession of one (1) ounce or less of marihuana
219 under subsection (c)(2)(A) of this section.

220 (2) It is unlawful for any person to deliver, sell,
221 possess with intent to deliver or sell, or manufacture with intent
222 to deliver or sell, paraphernalia, knowing, or under circumstances
223 where one reasonably should know, that it will be used to plant,
224 propagate, cultivate, grow, harvest, manufacture, compound,
225 convert, produce, process, prepare, test, analyze, pack, repack,
226 store, contain, conceal, inject, ingest, inhale, or otherwise
227 introduce into the human body a controlled substance in violation
228 of the Uniform Controlled Substances Law. Any person who violates
229 this subsection is guilty of a misdemeanor and upon conviction may

230 be confined in the county jail for not more than six (6) months,
231 or fined not more than Five Hundred Dollars (\$500.00), or both.

232 (3) Any person eighteen (18) years of age or over who
233 violates subsection (d)(2) of this section by delivering or
234 selling paraphernalia to a person under eighteen (18) years of age
235 who is at least three (3) years his junior is guilty of a
236 misdemeanor and upon conviction may be confined in the county jail
237 for not more than one (1) year, or fined not more than One
238 Thousand Dollars (\$1,000.00), or both.

239 (4) It is unlawful for any person to place in any
240 newspaper, magazine, handbill, or other publication any
241 advertisement, knowing, or under circumstances where one
242 reasonably should know, that the purpose of the advertisement, in
243 whole or in part, is to promote the sale of objects designed or
244 intended for use as paraphernalia. Any person who violates this
245 subsection is guilty of a misdemeanor and upon conviction may be
246 confined in the county jail for not more than six (6) months, or
247 fined not more than Five Hundred Dollars (\$500.00), or both.

248 (e) It shall be unlawful for any physician practicing
249 medicine in this state to prescribe, dispense or administer any
250 amphetamine or amphetamine-like anorectics and/or central nervous
251 system stimulants classified in Schedule II, pursuant to Section
252 41-29-115, for the exclusive treatment of obesity, weight control
253 or weight loss. Any person who violates this subsection, upon
254 conviction, is guilty of a misdemeanor and may be confined for a
255 period not to exceed six (6) months, or fined not more than One
256 Thousand Dollars (\$1,000.00), or both.

257 (f) Except as otherwise authorized in this article, any
258 person twenty-one (21) years of age or older who knowingly sells,
259 barter, transfers, manufactures, distributes or dispenses during
260 any twelve (12) consecutive month period: (i) ten (10) pounds or
261 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
262 two (2) or more ounces of cocaine or of any mixture containing

263 cocaine as described in Section 41-29-105(s), Mississippi Code of
264 1972; or (iv) one hundred (100) or more dosage units of morphine,
265 Demerol or Dilaudid, shall be guilty of a felony and, upon
266 conviction thereof, shall be sentenced to life imprisonment and
267 such sentence shall not be reduced or suspended nor shall such
268 person be eligible for probation or parole, the provisions of
269 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
270 of 1972, to the contrary notwithstanding. The provisions of this
271 subsection shall not apply to any person who furnishes information
272 and assistance to the bureau or its designee which, in the opinion
273 of the trial judge objectively should or would have aided in the
274 arrest or prosecution of others who violate this subsection. The
275 accused shall have adequate opportunity to develop and make a
276 record of all information and assistance so furnished.

277 (g) (1) Any person trafficking in controlled substances
278 shall be guilty of a felony and upon conviction shall be
279 imprisoned for a term of thirty (30) years and such sentence shall
280 not be reduced or suspended nor shall such person be eligible for
281 probation or parole, the provisions of Sections 41-29-149,
282 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
283 contrary notwithstanding and shall be fined not less than Five
284 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
285 (\$1,000,000.00).

286 (2) "Trafficking in controlled substances" as used
287 herein means to engage in three (3) or more component offenses
288 within any twelve (12) consecutive month period where at least two
289 (2) of the component offenses occurred in different counties. A
290 component offense is any act which would constitute a violation of
291 subsection (a) of this section. Prior convictions shall not be
292 used as component offenses to establish the charge of trafficking
293 in controlled substances.

294 (3) The charge of trafficking in controlled substances
295 shall be set forth in one (1) count of an indictment with each of

296 the component offenses alleged therein and it may be charged and
297 tried in any county where a component offense occurred. An
298 indictment for trafficking in controlled substances may also be
299 returned by the State Grand Jury of Mississippi provided at least
300 two (2) of the component offenses occurred in different circuit
301 court districts.

302 SECTION 2. This act shall take effect and be in force from
303 and after July 1, 1999.