

By: Representative Moore (60th)

To: Penitentiary; Judiciary
A

HOUSE BILL NO. 1092

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT ANY PERSON WHO IS CONVICTED OF POSSESSING OR OF
3 HAVING THE INTENT TO POSSESS CONTROLLED OR COUNTERFEIT SUBSTANCES
4 AND IS FINED AT LEAST \$5,000.00 SHALL BE REQUIRED TO SERVE
5 EIGHTY-FIVE PERCENT OF HIS SENTENCE UPON CONVICTION; TO AMEND
6 SECTION 47-7-3, MISSISSIPPI CODE OF 1972, IN CONFORMITY THERETO;
7 AND FOR RELATED PURPOSES.

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

9 **SECTION 1.** Section 41-29-139, Mississippi Code of 1972, is
10 amended as follows:

11 41-29-139. (a) Except as authorized by this article, it is
12 unlawful for any person knowingly or intentionally:

13 (1) To sell, barter, transfer, manufacture, distribute,
14 dispense or possess with intent to sell, barter, transfer,
15 manufacture, distribute or dispense, a controlled substance; or

16 (2) To create, sell, barter, transfer, distribute,
17 dispense or possess with intent to create, sell, barter, transfer,
18 distribute or dispense, a counterfeit substance.

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

22 (1) In the case of controlled substances classified in
23 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
24 except one (1) ounce or less of marihuana, and except a first
25 offender as defined in Section 41-29-149(e) who violates
26 subsection (a) of this section with respect to less than one (1)
27 kilogram but more than one (1) ounce of marihuana, such person
28 may, upon conviction, be imprisoned for not more than thirty (30)
29 years and shall be fined not less than Five Thousand Dollars



30 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
31 both;

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

39 (3) In the case of one (1) ounce or less of marihuana,
40 such person may, upon conviction, be imprisoned for not more than
41 three (3) years or fined not more than Three Thousand Dollars
42 (\$3,000.00), or both;

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

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

54 (c) It is unlawful for any person knowingly or intentionally
55 to possess any controlled substance unless the substance was
56 obtained directly from, or pursuant to, a valid prescription or
57 order of a practitioner while acting in the course of his
58 professional practice, or except as otherwise authorized by this
59 article. The penalties for any violation of this subsection (c)
60 with respect to a controlled substance classified in Schedules I,
61 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,
62 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be



63 based on dosage unit as defined herein or the weight of the
64 controlled substance as set forth herein as appropriate:

65 "Dosage unit (d.u.)" means a tablet or capsule, or in the
66 case of a liquid solution, one (1) milliliter. In the case of
67 lysergic acid diethylamide (LSD) the term, "dosage unit" means a
68 stamp, square, dot, microdot, tablet or capsule of a controlled
69 substance.

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

73 The weight set forth refers to the entire weight of any
74 mixture or substance containing a detectable amount of the
75 controlled substance.

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

80 Any person who violates this subsection with respect to:

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

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

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



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

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

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

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

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



129 (\$500.00) and confinement for not less than five (5) days nor more
130 than six (6) months in the county jail. Upon a first or second
131 conviction under this section the courts shall forward a report of
132 such conviction to the Mississippi Bureau of Narcotics which shall
133 make and maintain a private, nonpublic record for a period not to
134 exceed two (2) years from the date of conviction. The private,
135 nonpublic record shall be solely for the use of the courts in
136 determining the penalties which attach upon conviction under this
137 section and shall not constitute a criminal record for the purpose
138 of private or administrative inquiry and the record of each
139 conviction shall be expunged at the end of the period of two (2)
140 years following the date of such conviction;

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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



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

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

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

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

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



261 cocaine as described in Section 41-29-105(s), Mississippi Code of
262 1972; or (iv) one hundred (100) or more dosage units of morphine,
263 Demerol or Dilaudid, shall be guilty of a felony and, upon
264 conviction thereof, shall be sentenced to life imprisonment and
265 such sentence shall not be reduced or suspended nor shall such
266 person be eligible for probation or parole, the provisions of
267 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
268 of 1972, to the contrary notwithstanding. The provisions of this
269 subsection shall not apply to any person who furnishes information
270 and assistance to the bureau or its designee which, in the opinion
271 of the trial judge objectively should or would have aided in the
272 arrest or prosecution of others who violate this subsection. The
273 accused shall have adequate opportunity to develop and make a
274 record of all information and assistance so furnished.

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

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

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



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

300 (h) Any person who is convicted of possessing or of having
301 the intent to possess controlled or counterfeit substances that
302 are classified in Schedules I, II, III, IV and V, as set out in
303 this article, and receives a sentence that carries a fine of at
304 least Five Thousand Dollars (\$5,000.00) shall be subject to
305 Section 47-5-138(5) which requires offenders to serve at least
306 eighty-five percent (85%) of their sentences.

307 **SECTION 2.** Section 47-7-3, Mississippi Code of 1972, is
308 amended as follows:

309 47-7-3. (1) Every prisoner who has been convicted of any
310 offense against the State of Mississippi, and is confined in the
311 execution of a judgment of such conviction in the Mississippi
312 State Penitentiary for a definite term or terms of one (1) year or
313 over, or for the term of his or her natural life, whose record of
314 conduct shows that such prisoner has observed the rules of the
315 penitentiary, and who has served not less than one-fourth (1/4) of
316 the total of such term or terms for which such prisoner was
317 sentenced, or, if sentenced to serve a term or terms of thirty
318 (30) years or more, or, if sentenced for the term of the natural
319 life of such prisoner, has served not less than ten (10) years of
320 such life sentence, may be released on parole as hereinafter
321 provided, except that:

322 (a) No prisoner convicted as a confirmed and habitual
323 criminal under the provisions of Sections 99-19-81 through
324 99-19-87 shall be eligible for parole;

325 (b) Any person who shall have been convicted of a sex
326 crime shall not be released on parole except for a person under



327 the age of nineteen (19) who has been convicted under Section
328 97-3-67;

329 (c) No one shall be eligible for parole until he shall
330 have served one (1) year of his sentence, unless such person has
331 accrued any meritorious earned time allowances, in which case he
332 shall be eligible for parole if he has served (i) nine (9) months
333 of his sentence or sentences, when his sentence or sentences is
334 two (2) years or less; (ii) ten (10) months of his sentence or
335 sentences when his sentence or sentences is more than two (2)
336 years but no more than five (5) years; and (iii) one (1) year of
337 his sentence or sentences when his sentence or sentences is more
338 than five (5) years;

339 (d) (i) No person shall be eligible for parole who
340 shall, on or after January 1, 1977, be convicted of robbery or
341 attempted robbery through the display of a firearm until he shall
342 have served ten (10) years if sentenced to a term or terms of more
343 than ten (10) years or if sentenced for the term of the natural
344 life of such person. If such person is sentenced to a term or
345 terms of ten (10) years or less, then such person shall not be
346 eligible for parole. The provisions of this paragraph (d) shall
347 also apply to any person who shall commit robbery or attempted
348 robbery on or after July 1, 1982, through the display of a deadly
349 weapon. This subparagraph (d)(i) shall not apply to persons
350 convicted after September 30, 1994;

351 (ii) No person shall be eligible for parole who
352 shall, on or after October 1, 1994, be convicted of robbery,
353 attempted robbery or carjacking as provided in Section 97-3-115 et
354 seq., through the display of a firearm or drive-by shooting as
355 provided in Section 97-3-109. The provisions of this subparagraph
356 (d)(ii) shall also apply to any person who shall commit robbery,
357 attempted robbery, carjacking or a drive-by shooting on or after
358 October 1, 1994, through the display of a deadly weapon;



359 (e) No person shall be eligible for parole who, on or
360 after July 1, 1994, is charged, tried, convicted and sentenced to
361 life imprisonment without eligibility for parole under the
362 provisions of Section 99-19-101;

363 (f) No person shall be eligible for parole who is
364 charged, tried, convicted and sentenced to life imprisonment under
365 the provisions of Section 99-19-101;

366 (g) Except as otherwise provided in Section
367 41-29-139(h), no person shall be eligible for parole who is
368 convicted or whose suspended sentence is revoked after June 30,
369 1995, except that a first offender convicted of a nonviolent crime
370 after January 1, 2000, may be eligible for parole if the offender
371 meets the requirements in subsection (1) and this paragraph. In
372 addition to other requirements, if a first offender is convicted
373 of a drug or driving under the influence felony, the offender must
374 complete a drug and alcohol rehabilitation program prior to parole
375 or the offender may be required to complete a post-release drug
376 and alcohol program as a condition of parole. For purposes of
377 this paragraph, "nonviolent crime" means a felony other than
378 homicide, robbery, manslaughter, sex crimes, arson, burglary of an
379 occupied dwelling, aggravated assault, kidnapping, felonious abuse
380 of vulnerable adults, felonies with enhanced penalties, the sale
381 or manufacture of a controlled substance under the Uniform
382 Controlled Substances Law, and felony child abuse.

383 (2) Notwithstanding any other provision of law, an inmate
384 shall not be eligible to receive earned time, good time or any
385 other administrative reduction of time which shall reduce the time
386 necessary to be served for parole eligibility as provided in
387 subsection (1) of this section; however, this subsection shall not
388 apply to the advancement of parole eligibility dates pursuant to
389 the Prison Overcrowding Emergency Powers Act. Moreover,
390 meritorious earned time allowances may be used to reduce the time



391 necessary to be served for parole eligibility as provided in
392 paragraph (c) of subsection (1) of this section.

393 (3) The State Parole Board shall by rules and regulations
394 establish a method of determining a tentative parole hearing date
395 for each eligible offender taken into the custody of the
396 Department of Corrections. The tentative parole hearing date
397 shall be determined within ninety (90) days after the department
398 has assumed custody of the offender. Such tentative parole
399 hearing date shall be calculated by a formula taking into account
400 the offender's age upon first commitment, number of prior
401 incarcerations, prior probation or parole failures, the severity
402 and the violence of the offense committed, employment history and
403 other criteria which in the opinion of the board tend to validly
404 and reliably predict the length of incarceration necessary before
405 the offender can be successfully paroled.

406 (4) Any inmate within twenty-four (24) months of his parole
407 eligibility date and who meets the criteria established by the
408 classification board shall receive priority for placement in any
409 educational development and job training programs. Any inmate
410 refusing to participate in an educational development or job
411 training program may be ineligible for parole.

412 **SECTION 3.** This act shall take effect and be in force from
413 and after July 1, 2003.

