

By: Representative Gipson

To: Drug Policy

HOUSE BILL NO. 701

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,  
2 TO REVISE THE PENALTIES FOR SELL OF CONTROLLED SUBSTANCES; AND FOR  
3 RELATED PURPOSES.

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

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

7 41-29-139. (a) Except as authorized by this article, it is  
8 unlawful for any person knowingly or intentionally:

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

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

15 (b) Except as otherwise provided in Section 41-29-142, any  
16 person who violates subsection (a) of this section in the  
17 following amounts shall be, if convicted, sentenced as follows:



18 (1) In the case of controlled substances classified in  
19 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,  
20 except \* \* \* marijuana or synthetic cannabinoids, such person may,  
21 upon conviction for an amount of the controlled substance of:

22 (A) Less than two (2) grams or ten (10) dosage  
23 units, be imprisoned for not more than eight (8) years or fined  
24 not more than Fifty Thousand Dollars (\$50,000.00), or both.

25 (B) Two (2) grams or ten (10) dosage units or  
26 more, but less than ten (10) grams or twenty (20) dosage units, be  
27 imprisoned for not less than three (3) years nor more than twenty  
28 (20) years or fined not more than Two Hundred Fifty Thousand  
29 Dollars (\$250,000.00), or both.

30 (C) Ten (10) grams or twenty (20) dosage units or  
31 more, but less than thirty (30) grams or forty (40) dosage units,  
32 be imprisoned for not less five (5) years nor more than thirty  
33 (30) years or fined not more than Five Hundred Thousand Dollars  
34 (\$500,000.00).

35 (2) In the case of \* \* \* marijuana or synthetic  
36 cannabinoids \* \* \*, such person \* \* \* may, upon conviction, \* \* \*  
37 for an amount of the controlled substance of \* \* \*:

38 (A) Thirty (30) grams or less of marijuana or  
39 synthetic cannabinoids, be imprisoned for not more than three (3)  
40 years or fined not more than Three Thousand Dollars (\$3,000.00),  
41 or both;



42                   (B) More than thirty (30) grams but less than two  
43 hundred fifty (250) grams of marijuana or synthetic cannabinoids,  
44 be imprisoned for not more than five (5) years or fined not more  
45 than Five Thousand Dollars (\$5,000.00), or both;

46                   (C) More than two hundred fifty (250) grams but  
47 less than five hundred (500) grams of marijuana or synthetic  
48 cannabinoids, be imprisoned for not less than three (3) years nor  
49 more than ten (10) years or fined not more than Fifteen Thousand  
50 Dollars (\$15,000.00), or both;

51                   (D) More than five hundred (500) grams but less  
52 than one (1) kilogram of marijuana or synthetic cannabinoids, be  
53 imprisoned for not less than five (5) years nor more than twenty  
54 (20) years or fined not more than Twenty Thousand Dollars  
55 (\$20,000.00), or both.

56       \* \* \*

57                   ( \* \* \*3) In the case of controlled substances  
58 classified in Schedules III and IV, as set out in Sections  
59 41-29-117 and 41-29-119, such person may, upon conviction for an  
60 amount of the controlled substance of:

61                   (A) Less than two (2) grams or ten (10) dosage  
62 units, be imprisoned for not more than \* \* \* five (5) years or  
63 fined not more than Five Thousand Dollars (\$5,000.00), or both;

64                   (B) Two (2) grams or ten (10) dosage units or more  
65 but less than ten (10) grams or twenty (20) dosage units, be



66 imprisoned for not more than eight (8) years or fined not more  
67 than Fifty Thousand Dollars (\$50,000.00), or both;

68 (C) Ten (10) grams or twenty (20) dosage units or  
69 more but less than thirty (30) grams or forty (40) dosage units,  
70 be imprisoned for not more than fifteen (15) years or fined not  
71 more than One Hundred Thousand Dollars (\$100,000.00) \* \* \*, or  
72 both;

73 (D) Thirty (30) grams or forty (40) dosage units  
74 or more but less than five hundred (500) grams or two thousand  
75 five hundred (2,500) dosage units, be imprisoned for not more than  
76 twenty (20) years or fined not more than Two Hundred Fifty  
77 Thousand Dollars (\$250,000.00), or both.

78 ( \* \* \*4) In the case of controlled substances  
79 classified in Schedule V, as set out in Section 41-29-121, such  
80 person may, upon conviction for an amount of the controlled  
81 substance of:

82 (A) Less than two (2) grams or ten (10) dosage  
83 units, be imprisoned for not more than one (1) year or fined not  
84 more than Five Thousand Dollars (\$5,000.00), or both;

85 (B) Two (2) grams or ten (10) dosage units or more  
86 but less than ten (10) grams or twenty (20) dosage units, be  
87 imprisoned for not more than five (5) years or fined not more than  
88 Ten Thousand Dollars (\$10,000.00), or both;

89 (C) Ten (10) grams or twenty (20) dosage units or  
90 more but less than thirty (30) grams or forty (40) dosage units,



91 be imprisoned for not more than ten (10) years or fined not more  
92 than Twenty Thousand Dollars (\$20,000.00) \* \* \*, or both;

93 (D) Thirty (30) grams or forty (40) dosage units  
94 or more but less than five hundred (500) grams or two thousand  
95 five hundred (2,500) dosage units, be imprisoned for not more than  
96 fifteen (15) years or fined not more than Fifty Thousand Dollars  
97 (\$50,000.00), or both.

98 (c) It is unlawful for any person knowingly or intentionally  
99 to possess any controlled substance unless the substance was  
100 obtained directly from, or pursuant to, a valid prescription or  
101 order of a practitioner while acting in the course of his  
102 professional practice, or except as otherwise authorized by this  
103 article. The penalties for any violation of this subsection (c)  
104 with respect to a controlled substance classified in Schedules I,  
105 II, III, IV or V, as set out in Section 41-29-113, 41-29-115,  
106 41-29-117, 41-29-119 or 41-29-121, including marijuana or  
107 synthetic cannabinoids, shall be based on dosage unit as defined  
108 herein or the weight of the controlled substance as set forth  
109 herein as appropriate:

110 "Dosage unit (d.u.)" means a tablet or capsule, or in the  
111 case of a liquid solution, one (1) milliliter. In the case of  
112 lysergic acid diethylamide (LSD) the term, "dosage unit" means a  
113 stamp, square, dot, microdot, tablet or capsule of a controlled  
114 substance.



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

118 The weight set forth refers to the entire weight of any  
119 mixture or substance containing a detectable amount of the  
120 controlled substance.

121 If a mixture or substance contains more than one (1)  
122 controlled substance, the weight of the mixture or substance is  
123 assigned to the controlled substance that results in the greater  
124 punishment.

125 Any person who violates this subsection with respect to:

126 (1) A controlled substance classified in Schedule I or  
127 II, except marijuana or synthetic cannabinoids, in the following  
128 amounts shall be charged and sentenced as follows:

129 (A) Less than one-tenth (0.1) gram or two (2)  
130 dosage units shall be charged as a misdemeanor and, upon  
131 conviction, may be imprisoned for up to one (1) year or fined not  
132 more than One Thousand Dollars (\$1,000.00), or both.

133 (B) One-tenth (0.1) gram or two (2) dosage units  
134 or more but less than two (2) grams or ten (10) dosage units, may  
135 be imprisoned for not more than three (3) years or a fine of not  
136 more than Fifty Thousand Dollars (\$50,000.00), or both.

137 (C) Two (2) grams or ten (10) dosage units or more  
138 but less than ten (10) grams or twenty (20) dosage units, may be



139 imprisoned for not more than eight (8) years and fined not more  
140 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both.

141 (D) Ten (10) grams or twenty (20) dosage units or  
142 more but less than thirty (30) grams or forty (40) dosage units,  
143 may be imprisoned for not less than three (3) years nor more than  
144 twenty (20) years and fined not more than Five Hundred Thousand  
145 Dollars (\$500,000.00), or both.

146 (2) Marijuana or synthetic cannabinoids in the  
147 following amounts shall be charged and sentenced as follows:

148 (A) Thirty (30) grams or less by a fine of not  
149 less than One Hundred Dollars (\$100.00) nor more than Two Hundred  
150 Fifty Dollars (\$250.00). The provisions of this paragraph shall  
151 be enforceable by summons, provided the offender provides proof of  
152 identity satisfactory to the arresting officer and gives written  
153 promise to appear in court satisfactory to the arresting officer,  
154 as directed by the summons. A second conviction under this  
155 section within two (2) years shall be punished by a fine of Two  
156 Hundred Fifty Dollars (\$250.00) and not less than five (5) days  
157 nor more than sixty (60) days in the county jail and mandatory  
158 participation in a drug education program, approved by the  
159 Division of Alcohol and Drug Abuse of the State Department of  
160 Mental Health, unless the court enters a written finding that such  
161 drug education program is inappropriate. A third or subsequent  
162 conviction under this section within two (2) years is a  
163 misdemeanor punishable by a fine of not less than Two Hundred



164 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars  
165 (\$500.00) and confinement for not less than five (5) days nor more  
166 than six (6) months in the county jail. Upon a first or second  
167 conviction under this section, the courts shall forward a report  
168 of such conviction to the Mississippi Bureau of Narcotics which  
169 shall make and maintain a private, nonpublic record for a period  
170 not to exceed two (2) years from the date of conviction. The  
171 private, nonpublic record shall be solely for the use of the  
172 courts in determining the penalties which attach upon conviction  
173 under this section and shall not constitute a criminal record for  
174 the purpose of private or administrative inquiry and the record of  
175 each conviction shall be expunged at the end of the period of two  
176 (2) years following the date of such conviction;

177 (B) Additionally, a person who is the operator of  
178 a motor vehicle, who possesses on his person or knowingly keeps or  
179 allows to be kept in a motor vehicle within the area of the  
180 vehicle normally occupied by the driver or passengers, more than  
181 one (1) gram, but not more than thirty (30) grams, of marijuana or  
182 synthetic cannabinoids is guilty of a misdemeanor and, upon  
183 conviction, may be fined not more than One Thousand Dollars  
184 (\$1,000.00) and confined for not more than ninety (90) days in the  
185 county jail. For the purposes of this subsection, such area of  
186 the vehicle shall not include the trunk of the motor vehicle or  
187 the areas not normally occupied by the driver or passengers if the  
188 vehicle is not equipped with a trunk. A utility or glove





189 compartment shall be deemed to be within the area occupied by the  
190 driver and passengers;

191 (C) More than thirty (30) grams but less than two  
192 hundred fifty (250) grams may be fined not more than One Thousand  
193 Dollars (\$1,000.00), or confined in the county jail for not more  
194 than one (1) year, or both; or fined not more than Three Thousand  
195 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for  
196 not more than three (3) years, or both;

197 (D) Two hundred fifty (250) grams but less than  
198 five hundred (500) grams, by imprisonment for not less than two  
199 (2) years nor more than eight (8) years or by a fine of not more  
200 than Fifty Thousand Dollars (\$50,000.00), or both;

201 (E) Five hundred (500) grams but less than one (1)  
202 kilogram, by imprisonment for not less than four (4) years nor  
203 more than sixteen (16) years or a fine of less than Two Hundred  
204 Fifty Thousand Dollars (\$250,000.00), or both;

205 (F) One (1) kilogram but less than five (5)  
206 kilograms, by imprisonment for not less than six (6) years nor  
207 more than twenty-four (24) years or a fine of not more than Five  
208 Hundred Thousand Dollars (\$500,000.00), or both;

209 (G) Five (5) kilograms or more, by imprisonment  
210 for not less than ten (10) years nor more than thirty (30) years  
211 or a fine of not more than One Million Dollars (\$1,000,000.00), or  
212 both.



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

216 (A) Less than fifty (50) grams or less than one  
217 hundred (100) dosage units is a misdemeanor and punishable by not  
218 more than one (1) year or a fine of not more than One Thousand  
219 Dollars (\$1,000.00), or both.

220 (B) Fifty (50) grams or one hundred (100) dosage  
221 units or more but less than one hundred fifty (150) grams or five  
222 hundred (500) dosage units, by imprisonment for not less than one  
223 (1) year nor more than four (4) years or a fine of not more than  
224 Ten Thousand Dollars (\$10,000.00), or both.

225 (C) One hundred fifty (150) grams or Five Hundred  
226 (500) dosage units or more but less than three hundred (300) grams  
227 or one thousand (1,000) dosage units, by imprisonment for not less  
228 than two (2) years nor more than eight (8) years or a fine of not  
229 more than Fifty Thousand Dollars (\$50,000.00), or both.

230 (D) Three hundred (300) grams or one thousand  
231 (1,000) dosage units or more but less than five hundred (500)  
232 grams or two thousand five hundred (2,500) dosage units, by  
233 imprisonment for not less than four (4) years nor more than  
234 sixteen (16) years or a fine of not more than Two Hundred Fifty  
235 Thousand Dollars (\$250,000.00), or both.

236 (d) (1) It is unlawful for a person who is not authorized  
237 by the State Board of Medical Licensure, State Board of Pharmacy,



238 or other lawful authority to use, or to possess with intent to  
239 use, paraphernalia to plant, propagate, cultivate, grow, harvest,  
240 manufacture, compound, convert, produce, process, prepare, test,  
241 analyze, pack, repack, store, contain, conceal, inject, ingest,  
242 inhale or otherwise introduce into the human body a controlled  
243 substance in violation of the Uniform Controlled Substances Law.  
244 Any person who violates this subsection is guilty of a misdemeanor  
245 and, upon conviction, may be confined in the county jail for not  
246 more than six (6) months, or fined not more than Five Hundred  
247 Dollars (\$500.00), or both; however, no person shall be charged  
248 with a violation of this subsection when such person is also  
249 charged with the possession of one (1) ounce or less of marijuana  
250 or synthetic cannabinoids under subsection (c) (2) (A) of this  
251 section.

252           (2) It is unlawful for any person to deliver, sell,  
253 possess with intent to deliver or sell, or manufacture with intent  
254 to deliver or sell, paraphernalia, knowing, or under circumstances  
255 where one reasonably should know, that it will be used to plant,  
256 propagate, cultivate, grow, harvest, manufacture, compound,  
257 convert, produce, process, prepare, test, analyze, pack, repack,  
258 store, contain, conceal, inject, ingest, inhale, or otherwise  
259 introduce into the human body a controlled substance in violation  
260 of the Uniform Controlled Substances Law. Any person who violates  
261 this subsection is guilty of a misdemeanor and, upon conviction,  
262 may be confined in the county jail for not more than six (6)



263 months, or fined not more than Five Hundred Dollars (\$500.00), or  
264 both.

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

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

281 (e) It shall be unlawful for any physician practicing  
282 medicine in this state to prescribe, dispense or administer any  
283 amphetamine or amphetamine-like anorectics and/or central nervous  
284 system stimulants classified in Schedule II, pursuant to Section  
285 41-29-115, for the exclusive treatment of obesity, weight control  
286 or weight loss. Any person who violates this subsection, upon  
287 conviction, is guilty of a misdemeanor and may be confined for a



288 period not to exceed six (6) months, or fined not more than One  
289 Thousand Dollars (\$1,000.00), or both.

290 (f) (1) Any person trafficking in controlled substances  
291 shall be guilty of a felony and, upon conviction, shall be  
292 imprisoned for a term of not less than ten (10) years nor more  
293 than forty (40) years. The ten-year mandatory sentence shall not  
294 be reduced or suspended. The person shall not be eligible for  
295 probation or parole, the provisions of Sections 41-29-149,  
296 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the  
297 contrary notwithstanding during the sentence and shall be fined  
298 not less than Five Thousand Dollars (\$5,000.00) nor more than One  
299 Million Dollars (\$1,000,000.00).

300 (2) "Trafficking in controlled substances" as used  
301 herein means:

302 (A) A violation of subsection (a) of this section  
303 involving thirty (30) grams or forty (40) dosage units or more of  
304 a Schedule I or II substance except marijuana or synthetic  
305 cannabinoids;

306 (B) A violation of subsection (c) of this section  
307 involving five hundred (500) grams or two thousand five hundred  
308 (2,500) dosage units of a Schedule III, IV or V substance;

309 (C) A violation of subsection (c) of this section  
310 involving thirty (30) grams or forty (40) dosage units or more of  
311 a Schedule I or II substance except marijuana or synthetic  
312 cannabinoids; \* \* \*



313 (D) \* \* \* A violation of subsection (c) of this  
314 section involving five hundred (500) grams or two thousand five  
315 hundred (2,500) dosage units or more of a Schedule III, IV or V  
316 substance; or

317 (E) A violation of subsection (a) of this section  
318 involving one (1) kilogram or more of marijuana or synthetic  
319 cannabinoids.

320 (3) The provisions of this subsection shall not apply  
321 to any person who furnishes information and assistance to the  
322 bureau, or its designee, which, in the opinion of the trial judge  
323 objectively should or would have aided in the arrest or  
324 prosecution of others who violate this subsection. The accused  
325 shall have adequate opportunity to develop and make a record of  
326 all information and assistance so furnished.

327 (4) If the trial judge finds that the accused furnished  
328 information and assistance that aided in the arrest and/or  
329 prosecution of others who violated this section, the accused may  
330 be prosecuted for the offense of possession of controlled  
331 substance pursuant to Section 41-29-139(c) and sentenced to not  
332 less than five (5) years nor more than thirty (30) years and fined  
333 not more than Five Hundred Thousand Dollars (\$500,000.00).

334 (g) Any person trafficking in Schedule I or II substances,  
335 except marijuana, of two hundred (200) grams or more shall be  
336 guilty of aggravated trafficking and, upon conviction, shall be  
337 sentenced to a term of not less than twenty-five (25) years nor



338 more than life in prison. The twenty-five-year sentence shall be  
339 a mandatory sentence and shall not be reduced or suspended. The  
340 person shall not be eligible for probation or parole, the  
341 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33,  
342 Mississippi Code of 1972, to the contrary notwithstanding during  
343 the sentence and shall be fined not less than Five Thousand  
344 Dollars (\$5,000.00) nor more than One Million Dollars  
345 (\$1,000,000.00).

346 (h) (1) Notwithstanding any provision of this section, a  
347 person who has been convicted of an offense under this section  
348 that requires the judge to impose a prison sentence which cannot  
349 be suspended or reduced and is ineligible for probation or parole  
350 may, at the discretion of the court, receive a sentence of  
351 imprisonment that is no less than twenty-five percent (25%) of the  
352 sentence prescribed by the applicable statute. In considering  
353 whether to apply the departure from the sentence prescribed, the  
354 court shall conclude that:

355 (A) The offender was not a leader of the criminal  
356 enterprise;

357 (B) The offender did not use violence or a weapon  
358 during the crime;

359 (C) The offense did not result in a death or  
360 serious bodily injury of a person not a party to the criminal  
361 enterprise; and



362 (D) The interests of justice are not served by the  
363 imposition of the prescribed mandatory sentence.

364 (2) If the court reduces the prescribed sentence  
365 pursuant to this subsection, it must specify on the record the  
366 circumstances warranting the departure.

367 **SECTION 2.** This act shall take effect and be in force from  
368 and after July 1, 2016.

