

By: Representatives Holloway, Sykes

To: Drug Policy

HOUSE BILL NO. 139

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE THAT A 1ST OFFENSE SIMPLE POSSESSION OF THIRTY GRAMS OR
3 LESS OF MARIJUANA OR TEN GRAMS OR LESS OF SYNTHETIC CANNABINOIDS
4 SHALL BE A CIVIL OFFENSE AND NOT A CRIMINAL OFFENSE; AND FOR
5 RELATED PURPOSES.

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

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

9 41-29-139. (a) **Transfer and possession with intent to**
10 **transfer.** Except as authorized by this article, it is unlawful
11 for any person knowingly or intentionally:

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

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

18 (b) **Punishment for transfer and possession with intent to**
19 **transfer.** Except as otherwise provided in Section 41-29-142, any



20 person who violates subsection (a) of this section shall be, if
21 convicted, sentenced as follows:

22 (1) For controlled substances classified in Schedule I
23 or II, as set out in Sections 41-29-113 and 41-29-115, other than
24 marijuana or synthetic cannabinoids:

25 (A) If less than two (2) grams or ten (10) dosage
26 units, by imprisonment for not more than eight (8) years or a fine
27 of not more than Fifty Thousand Dollars (\$50,000.00), or both.

28 (B) If two (2) or more grams or ten (10) or more
29 dosage units, but less than ten (10) grams or twenty (20) dosage
30 units, by imprisonment for not less than three (3) years nor more
31 than twenty (20) years or a fine of not more than Two Hundred
32 Fifty Thousand Dollars (\$250,000.00), or both.

33 (C) If ten (10) or more grams or twenty (20) or
34 more dosage units, but less than thirty (30) grams or forty (40)
35 dosage units, by imprisonment for not less than five (5) years nor
36 more than thirty (30) years or a fine of not more than Five
37 Hundred Thousand Dollars (\$500,000.00), or both.

38 (2) (A) For marijuana:

39 1. If thirty (30) grams or less, by
40 imprisonment for not more than three (3) years or a fine of not
41 more than Three Thousand Dollars (\$3,000.00), or both;

42 2. If more than thirty (30) grams but less
43 than two hundred fifty (250) grams, by imprisonment for not more



44 than five (5) years or a fine of not more than Five Thousand
45 Dollars (\$5,000.00), or both;

46 3. If two hundred fifty (250) or more grams
47 but less than five hundred (500) grams, by imprisonment for not
48 less than three (3) years nor more than ten (10) years or a fine
49 of not more than Fifteen Thousand Dollars (\$15,000.00), or both;

50 4. If five hundred (500) or more grams but
51 less than one (1) kilogram, by imprisonment for not less than five
52 (5) years nor more than twenty (20) years or a fine of not more
53 than Twenty Thousand Dollars (\$20,000.00), or both.

54 (B) For synthetic cannabinoids:

55 1. If ten (10) grams or less, by imprisonment
56 for not more than three (3) years or a fine of not more than Three
57 Thousand Dollars (\$3,000.00), or both;

58 2. If more than ten (10) grams but less than
59 twenty (20) grams, by imprisonment for not more than five (5)
60 years or a fine of not more than Five Thousand Dollars
61 (\$5,000.00), or both;

62 3. If twenty (20) or more grams but less than
63 forty (40) grams, by imprisonment for not less than three (3)
64 years nor more than ten (10) years or a fine of not more than
65 Fifteen Thousand Dollars (\$15,000.00), or both;

66 4. If forty (40) or more grams but less than
67 two hundred (200) grams, by imprisonment for not less than five



68 (5) years nor more than twenty (20) years or a fine of not more
69 than Twenty Thousand Dollars (\$20,000.00), or both.

70 (3) For controlled substances classified in Schedules
71 III and IV, as set out in Sections 41-29-117 and 41-29-119:

72 (A) If less than two (2) grams or ten (10) dosage
73 units, by imprisonment for not more than five (5) years or a fine
74 of not more than Five Thousand Dollars (\$5,000.00), or both;

75 (B) If two (2) or more grams or ten (10) or more
76 dosage units, but less than ten (10) grams or twenty (20) dosage
77 units, by imprisonment for not more than eight (8) years or a fine
78 of not more than Fifty Thousand Dollars (\$50,000.00), or both;

79 (C) If ten (10) or more grams or twenty (20) or
80 more dosage units, but less than thirty (30) grams or forty (40)
81 dosage units, by imprisonment for not more than fifteen (15) years
82 or a fine of not more than One Hundred Thousand Dollars
83 (\$100,000.00), or both;

84 (D) If thirty (30) or more grams or forty (40) or
85 more dosage units, but less than five hundred (500) grams or two
86 thousand five hundred (2,500) dosage units, by imprisonment for
87 not more than twenty (20) years or a fine of not more than Two
88 Hundred Fifty Thousand Dollars (\$250,000.00), or both.

89 (4) For controlled substances classified in Schedule V,
90 as set out in Section 41-29-121:



91 (A) If less than two (2) grams or ten (10) dosage
92 units, by imprisonment for not more than one (1) year or a fine of
93 not more than Five Thousand Dollars (\$5,000.00), or both;

94 (B) If two (2) or more grams or ten (10) or more
95 dosage units, but less than ten (10) grams or twenty (20) dosage
96 units, by imprisonment for not more than five (5) years or a fine
97 of not more than Ten Thousand Dollars (\$10,000.00), or both;

98 (C) If ten (10) or more grams or twenty (20) or
99 more dosage units, but less than thirty (30) grams or forty (40)
100 dosage units, by imprisonment for not more than ten (10) years or
101 a fine of not more than Twenty Thousand Dollars (\$20,000.00), or
102 both;

103 (D) For thirty (30) or more grams or forty (40) or
104 more dosage units, but less than five hundred (500) grams or two
105 thousand five hundred (2,500) dosage units, by imprisonment for
106 not more than fifteen (15) years or a fine of not more than Fifty
107 Thousand Dollars (\$50,000.00), or both.

108 (c) **Simple possession.** It is unlawful for any person
109 knowingly or intentionally to possess any controlled substance
110 unless the substance was obtained directly from, or pursuant to, a
111 valid prescription or order of a practitioner while acting in the
112 course of his professional practice, or except as otherwise
113 authorized by this article. The penalties for any violation of
114 this subsection (c) with respect to a controlled substance
115 classified in Schedules I, II, III, IV or V, as set out in Section



116 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including
117 marijuana or synthetic cannabinoids, shall be based on dosage unit
118 as defined herein or the weight of the controlled substance as set
119 forth herein as appropriate:

120 "Dosage unit (d.u.)" means a tablet or capsule, or in the
121 case of a liquid solution, one (1) milliliter. In the case of
122 lysergic acid diethylamide (LSD) the term, "dosage unit" means a
123 stamp, square, dot, microdot, tablet or capsule of a controlled
124 substance.

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

128 The weight set forth refers to the entire weight of any
129 mixture or substance containing a detectable amount of the
130 controlled substance.

131 If a mixture or substance contains more than one (1)
132 controlled substance, the weight of the mixture or substance is
133 assigned to the controlled substance that results in the greater
134 punishment.

135 A person shall be charged and sentenced as follows for a
136 violation of this subsection with respect to:

137 (1) A controlled substance classified in Schedule I or
138 II, except marijuana and synthetic cannabinoids:

139 (A) If less than one-tenth (0.1) gram or two (2)
140 dosage units, the violation is a misdemeanor and punishable by



141 imprisonment for not more than one (1) year or a fine of not more
142 than One Thousand Dollars (\$1,000.00), or both.

143 (B) If one-tenth (0.1) gram or more or two (2) or
144 more dosage units, but less than two (2) grams or ten (10) dosage
145 units, by imprisonment for not more than three (3) years or a fine
146 of not more than Fifty Thousand Dollars (\$50,000.00), or both.

147 (C) If two (2) or more grams or ten (10) or more
148 dosage units, but less than ten (10) grams or twenty (20) dosage
149 units, by imprisonment for not more than eight (8) years or a fine
150 of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00),
151 or both.

152 (D) If ten (10) or more grams or twenty (20) or
153 more dosage units, but less than thirty (30) grams or forty (40)
154 dosage units, by imprisonment for not less than three (3) years
155 nor more than twenty (20) years or a fine of not more than Five
156 Hundred Thousand Dollars (\$500,000.00), or both.

157 (2) (A) Marijuana and synthetic cannabinoids:

158 1. If thirty (30) grams or less of marijuana
159 or ten (10) grams or less of synthetic cannabinoids, by a civil
160 fine of not less than One Hundred Dollars (\$100.00) nor more than
161 Two Hundred Fifty Dollars (\$250.00). The offense shall be a civil
162 offense, and shall not be a criminal offense. The fines shall be
163 paid to the municipality or county in which the offense occurred.

164 The provisions of this paragraph (2) (A) may be enforceable by
165 summons if the offender provides proof of identity satisfactory to



166 the arresting officer and gives written promise to appear in court
167 satisfactory to the arresting officer, as directed by the summons.
168 A second conviction under this section within two (2) years is a
169 misdemeanor punishable by a fine of Two Hundred Fifty Dollars
170 (\$250.00), not more than sixty (60) days in the county jail, and
171 mandatory participation in a drug education program approved by
172 the Division of Alcohol and Drug Abuse of the State Department of
173 Mental Health, unless the court enters a written finding that a
174 drug education program is inappropriate. A third or subsequent
175 conviction under this paragraph (2) (A) within two (2) years is a
176 misdemeanor punishable by a fine of not less than Two Hundred
177 Fifty Dollars (\$250.00) nor more than One Thousand Dollars
178 (\$1,000.00) and confinement for not more than six (6) months in
179 the county jail.

180 Upon a first or second conviction under this paragraph
181 (2) (A), the courts shall forward a report of the conviction to the
182 Mississippi Bureau of Narcotics which shall make and maintain a
183 private, nonpublic record for a period not to exceed two (2) years
184 from the date of conviction. The private, nonpublic record shall
185 be solely for the use of the courts in determining the penalties
186 which attach upon conviction under this paragraph (2) (A) and shall
187 not constitute a criminal record for the purpose of private or
188 administrative inquiry and the record of each conviction shall be
189 expunged at the end of the period of two (2) years following the
190 date of such conviction;



191 2. Additionally, a person who is the operator
192 of a motor vehicle, who possesses on his person or knowingly keeps
193 or allows to be kept in a motor vehicle within the area of the
194 vehicle normally occupied by the driver or passengers, more than
195 one (1) gram, but not more than thirty (30) grams of marijuana or
196 not more than ten (10) grams of synthetic cannabinoids is guilty
197 of a misdemeanor and, upon conviction, may be fined not more than
198 One Thousand Dollars (\$1,000.00) or confined for not more than
199 ninety (90) days in the county jail, or both. For the purposes of
200 this subsection, such area of the vehicle shall not include the
201 trunk of the motor vehicle or the areas not normally occupied by
202 the driver or passengers if the vehicle is not equipped with a
203 trunk. A utility or glove compartment shall be deemed to be
204 within the area occupied by the driver and passengers;

205 (B) Marijuana:

206 1. If more than thirty (30) grams but less
207 than two hundred fifty (250) grams, by a fine of not more than One
208 Thousand Dollars (\$1,000.00), or confinement in the county jail
209 for not more than one (1) year, or both; or by a fine of not more
210 than Three Thousand Dollars (\$3,000.00), or imprisonment in the
211 custody of the Department of Corrections for not more than three
212 (3) years, or both;

213 2. If two hundred fifty (250) or more grams
214 but less than five hundred (500) grams, by imprisonment for not



215 less than two (2) years nor more than eight (8) years or by a fine
216 of not more than Fifty Thousand Dollars (\$50,000.00), or both;

217 3. If five hundred (500) or more grams but
218 less than one (1) kilogram, by imprisonment for not less than four
219 (4) years nor more than sixteen (16) years or a fine of not more
220 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

221 4. If one (1) kilogram or more but less than
222 five (5) kilograms, by imprisonment for not less than six (6)
223 years nor more than twenty-four (24) years or a fine of not more
224 than Five Hundred Thousand Dollars (\$500,000.00), or both;

225 5. If five (5) kilograms or more, by
226 imprisonment for not less than ten (10) years nor more than thirty
227 (30) years or a fine of not more than One Million Dollars
228 (\$1,000,000.00), or both.

229 (C) Synthetic cannabinoids:

230 1. If more than ten (10) grams but less than
231 twenty (20) grams, by a fine of not more than One Thousand Dollars
232 (\$1,000.00), or confinement in the county jail for not more than
233 one (1) year, or both; or by a fine of not more than Three
234 Thousand Dollars (\$3,000.00), or imprisonment in the custody of
235 the Department of Corrections for not more than three (3) years,
236 or both;

237 2. If twenty (20) or more grams but less than
238 forty (40) grams, by imprisonment for not less than two (2) years



239 nor more than eight (8) years or by a fine of not more than Fifty
240 Thousand Dollars (\$50,000.00), or both;

241 3. If forty (40) or more grams but less than
242 two hundred (200) grams, by imprisonment for not less than four
243 (4) years nor more than sixteen (16) years or a fine of not more
244 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

245 4. If two hundred (200) or more grams, by
246 imprisonment for not less than six (6) years nor more than
247 twenty-four (24) years or a fine of not more than Five Hundred
248 Thousand Dollars (\$500,000.00), or both.

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

252 (A) If less than fifty (50) grams or less than one
253 hundred (100) dosage units, the offense is a misdemeanor and
254 punishable by not more than one (1) year or a fine of not more
255 than One Thousand Dollars (\$1,000.00), or both.

256 (B) If fifty (50) or more grams or one hundred
257 (100) or more dosage units, but less than one hundred fifty (150)
258 grams or five hundred (500) dosage units, by imprisonment for not
259 less than one (1) year nor more than four (4) years or a fine of
260 not more than Ten Thousand Dollars (\$10,000.00), or both.

261 (C) If one hundred fifty (150) or more grams or
262 five hundred (500) or more dosage units, but less than three
263 hundred (300) grams or one thousand (1,000) dosage units, by



264 imprisonment for not less than two (2) years nor more than eight
265 (8) years or a fine of not more than Fifty Thousand Dollars
266 (\$50,000.00), or both.

267 (D) If three hundred (300) or more grams or one
268 thousand (1,000) or more dosage units, but less than five hundred
269 (500) grams or two thousand five hundred (2,500) dosage units, by
270 imprisonment for not less than four (4) years nor more than
271 sixteen (16) years or a fine of not more than Two Hundred Fifty
272 Thousand Dollars (\$250,000.00), or both.

273 (d) **Paraphernalia.** (1) It is unlawful for a person who is
274 not authorized by the State Board of Medical Licensure, State
275 Board of Pharmacy, or other lawful authority to use, or to possess
276 with intent to use, paraphernalia to plant, propagate, cultivate,
277 grow, harvest, manufacture, compound, convert, produce, process,
278 prepare, test, analyze, pack, repack, store, contain, conceal,
279 inject, ingest, inhale or otherwise introduce into the human body
280 a controlled substance in violation of the Uniform Controlled
281 Substances Law. Any person who violates this subsection (d)(1) is
282 guilty of a misdemeanor and, upon conviction, may be confined in
283 the county jail for not more than six (6) months, or fined not
284 more than Five Hundred Dollars (\$500.00), or both; however, no
285 person shall be charged with a violation of this subsection when
286 such person is also charged with the possession of thirty (30)
287 grams or less of marijuana under subsection (c)(2)(A) of this
288 section.



289 (2) It is unlawful for any person to deliver, sell,
290 possess with intent to deliver or sell, or manufacture with intent
291 to deliver or sell, paraphernalia, knowing, or under circumstances
292 where one reasonably should know, that it will be used to plant,
293 propagate, cultivate, grow, harvest, manufacture, compound,
294 convert, produce, process, prepare, test, analyze, pack, repack,
295 store, contain, conceal, inject, ingest, inhale, or otherwise
296 introduce into the human body a controlled substance in violation
297 of the Uniform Controlled Substances Law. Except as provided in
298 subsection (d) (3), a person who violates this subsection (d) (2) is
299 guilty of a misdemeanor and, upon conviction, may be confined in
300 the county jail for not more than six (6) months, or fined not
301 more than Five Hundred Dollars (\$500.00), or both.

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

309 (4) It is unlawful for any person to place in any
310 newspaper, magazine, handbill, or other publication any
311 advertisement, knowing, or under circumstances where one
312 reasonably should know, that the purpose of the advertisement, in
313 whole or in part, is to promote the sale of objects designed or



314 intended for use as paraphernalia. Any person who violates this
315 subsection is guilty of a misdemeanor and, upon conviction, may be
316 confined in the county jail for not more than six (6) months, or
317 fined not more than Five Hundred Dollars (\$500.00), or both.

318 (e) It shall be unlawful for any physician practicing
319 medicine in this state to prescribe, dispense or administer any
320 amphetamine or amphetamine-like anorectics and/or central nervous
321 system stimulants classified in Schedule II, pursuant to Section
322 41-29-115, for the exclusive treatment of obesity, weight control
323 or weight loss. Any person who violates this subsection, upon
324 conviction, is guilty of a misdemeanor and may be confined for a
325 period not to exceed six (6) months, or fined not more than One
326 Thousand Dollars (\$1,000.00), or both.

327 (f) **Trafficking.** (1) Any person trafficking in controlled
328 substances shall be guilty of a felony and, upon conviction, shall
329 be imprisoned for a term of not less than ten (10) years nor more
330 than forty (40) years and shall be fined not less than Five
331 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
332 (\$1,000,000.00). The ten-year mandatory sentence shall not be
333 reduced or suspended. The person shall not be eligible for
334 probation or parole, the provisions of Sections 41-29-149,
335 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

336 (2) "Trafficking in controlled substances" as used
337 herein means:



338 (A) A violation of subsection (a) of this section
339 involving thirty (30) or more grams or forty (40) or more dosage
340 units of a Schedule I or II controlled substance except marijuana
341 and synthetic cannabinoids;

342 (B) A violation of subsection (a) of this section
343 involving five hundred (500) or more grams or two thousand five
344 hundred (2,500) or more dosage units of a Schedule III, IV or V
345 controlled substance;

346 (C) A violation of subsection (c) of this section
347 involving thirty (30) or more grams or forty (40) or more dosage
348 units of a Schedule I or II controlled substance except marijuana
349 and synthetic cannabinoids;

350 (D) A violation of subsection (c) of this section
351 involving five hundred (500) or more grams or two thousand five
352 hundred (2,500) or more dosage units of a Schedule III, IV or V
353 controlled substance; or

354 (E) A violation of subsection (a) of this section
355 involving one (1) kilogram or more of marijuana or two hundred
356 (200) grams or more of synthetic cannabinoids.

357 (g) **Aggravated trafficking.** Any person trafficking in
358 Schedule I or II controlled substances, except marijuana and
359 synthetic cannabinoids, of two hundred (200) grams or more shall
360 be guilty of aggravated trafficking and, upon conviction, shall be
361 sentenced to a term of not less than twenty-five (25) years nor
362 more than life in prison and shall be fined not less than Five



363 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
364 (\$1,000,000.00). The twenty-five-year sentence shall be a
365 mandatory sentence and shall not be reduced or suspended. The
366 person shall not be eligible for probation or parole, the
367 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to
368 the contrary notwithstanding.

369 (h) **Sentence mitigation.** (1) Notwithstanding any provision
370 of this section, a person who has been convicted of an offense
371 under this section that requires the judge to impose a prison
372 sentence which cannot be suspended or reduced and is ineligible
373 for probation or parole may, at the discretion of the court,
374 receive a sentence of imprisonment that is no less than
375 twenty-five percent (25%) of the sentence prescribed by the
376 applicable statute. In considering whether to apply the departure
377 from the sentence prescribed, the court shall conclude that:

378 (A) The offender was not a leader of the criminal
379 enterprise;

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

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

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



387 The court may also consider whether information and
388 assistance were furnished to a law enforcement agency, or its
389 designee, which, in the opinion of the trial judge, objectively
390 should or would have aided in the arrest or prosecution of others
391 who violate this subsection. The accused shall have adequate
392 opportunity to develop and make a record of all information and
393 assistance so furnished.

394 (2) If the court reduces the prescribed sentence
395 pursuant to this subsection, it must specify on the record the
396 circumstances warranting the departure.

397 **SECTION 2.** This act shall take effect and be in force from
398 and after July 1, 2018.

