

By: Representative Bomgar

To: Drug Policy

HOUSE BILL NO. 1194

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,  
2 TO CLARIFY PENALTIES REGARDING DRUG POLICIES; AND FOR RELATED  
3 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) **Transfer and possession with intent to**  
8 **transfer.** Except as otherwise 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) **Punishment for transfer and possession with intent to**  
17 **transfer.** Except as otherwise provided in Section 41-29-142, any



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

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

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

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

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

36 (2) (A) For marijuana:

37 1. \* \* \* To sale, barter, transfer,  
38 distribute, or deliver thirty (30) grams or less, by imprisonment  
39 for not more than three (3) years or a fine of not more than Three  
40 Thousand Dollars (\$3,000.00), or both, otherwise, the provisions  
41 of subsection (c) (2) (A) of this section shall apply;



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 fine of  
160 not less than One Hundred Dollars (\$100.00) nor more than Two  
161 Hundred Fifty Dollars (\$250.00). The provisions of this paragraph  
162 (2) (A) may be enforceable by summons if the offender provides  
163 proof of identity satisfactory to the arresting officer and gives  
164 written promise to appear in court satisfactory to the arresting  
165 officer, as directed by the summons. A second conviction under



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

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

188                   2. Additionally, a person who is the operator  
189 of a motor vehicle, who possesses on his person or knowingly keeps  
190 or allows to be kept in a motor vehicle within the area of the





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

202 (B) Marijuana:

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

210 2. If two hundred fifty (250) or more grams  
211 but less than five hundred (500) grams, by imprisonment for not  
212 less than two (2) years nor more than eight (8) years or by a fine  
213 of not more than Fifty Thousand Dollars (\$50,000.00), or both;

214 3. If five hundred (500) or more grams but  
215 less than one (1) kilogram, by imprisonment for not less than four



216 (4) years nor more than sixteen (16) years or a fine of not more  
217 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

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

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

226 (C) Synthetic cannabinoids:

227 1. If more than ten (10) grams but less than  
228 twenty (20) grams, by a fine of not more than One Thousand Dollars  
229 (\$1,000.00), or confinement in the county jail for not more than  
230 one (1) year, or both; or by a fine of not more than Three  
231 Thousand Dollars (\$3,000.00), or imprisonment in the custody of  
232 the Department of Corrections for not more than three (3) years,  
233 or both;

234 2. If twenty (20) or more grams but less than  
235 forty (40) grams, by imprisonment for not less than two (2) years  
236 nor more than eight (8) years or by a fine of not more than Fifty  
237 Thousand Dollars (\$50,000.00), or both;

238 3. If forty (40) or more grams but less than  
239 two hundred (200) grams, by imprisonment for not less than four



240 (4) years nor more than sixteen (16) years or a fine of not more  
241 than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both;

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

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

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

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

258 (C) If one hundred fifty (150) or more grams or  
259 five hundred (500) or more dosage units, but less than three  
260 hundred (300) grams or one thousand (1,000) dosage units, by  
261 imprisonment for not less than two (2) years nor more than eight  
262 (8) years or a fine of not more than Fifty Thousand Dollars  
263 (\$50,000.00), or both.



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

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

286 (2) It is unlawful for any person to deliver, sell,  
287 possess with intent to deliver or sell, or manufacture with intent  
288 to deliver or sell, paraphernalia, knowing, or under circumstances



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

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

306 (4) It is unlawful for any person to place in any  
307 newspaper, magazine, handbill, or other publication any  
308 advertisement, knowing, or under circumstances where one  
309 reasonably should know, that the purpose of the advertisement, in  
310 whole or in part, is to promote the sale of objects designed or  
311 intended for use as paraphernalia. Any person who violates this  
312 subsection is guilty of a misdemeanor and, upon conviction, may be



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

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

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

333 (2) "Trafficking in controlled substances" as used  
334 herein means:

335 (A) A violation of subsection (a) of this section  
336 involving thirty (30) or more grams or forty (40) or more dosage



337 units of a Schedule I or II controlled substance except marijuana  
338 and synthetic cannabinoids;

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

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

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

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

354 (g) **Aggravated trafficking.** Any person trafficking in  
355 Schedule I or II controlled substances, except marijuana and  
356 synthetic cannabinoids, of two hundred (200) grams or more shall  
357 be guilty of aggravated trafficking and, upon conviction, shall be  
358 sentenced to a term of not less than twenty-five (25) years nor  
359 more than life in prison and shall be fined not less than Five  
360 Thousand Dollars (\$5,000.00) nor more than One Million Dollars  
361 (\$1,000,000.00). The twenty-five-year sentence shall be a



362 mandatory sentence and shall not be reduced or suspended. The  
363 person shall not be eligible for probation or parole, the  
364 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to  
365 the contrary notwithstanding.

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

375 (A) The offender was not a leader of the criminal  
376 enterprise;

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

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

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

384 The court may also consider whether information and  
385 assistance were furnished to a law enforcement agency, or its  
386 designee, which, in the opinion of the trial judge, objectively





387 should or would have aided in the arrest or prosecution of others  
388 who violate this subsection. The accused shall have adequate  
389 opportunity to develop and make a record of all information and  
390 assistance so furnished.

391 (2) If the court reduces the prescribed sentence  
392 pursuant to this subsection, it must specify on the record the  
393 circumstances warranting the departure.

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

