

By: Senator(s) Sparks

To: Judiciary, Division B

SENATE BILL NO. 2246

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO REVISE THE PENALTY FOR SIMPLE POSSESSION OF SMALLER AMOUNTS OF
3 METHAMPHETAMINE; AND FOR 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) **Transfer and possession with intent to**
8 **transfer.** Except as authorized by this article, it is unlawful
9 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. If thirty (30) grams or less, by
38 imprisonment for not more than three (3) years or a fine of not
39 more than Three Thousand Dollars (\$3,000.00), or both;

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



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

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

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

(B) For synthetic cannabinoids:

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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

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

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

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

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

Upon conviction, a person shall be charged and sentenced as follows for a violation of this subsection with respect to:

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



138 (A) If less than one-tenth (0.1) gram or two (2)
139 dosage units, the violation is a misdemeanor and punishable by
140 imprisonment for not more than one (1) year or a fine of not more
141 than One Thousand Dollars (\$1,000.00), or both.

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

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

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

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

157 1. If thirty (30) grams or less of marijuana,
158 or ten (10) grams or less of synthetic cannabinoids, by a fine of
159 not less than One Hundred Dollars (\$100.00) nor more than Two
160 Hundred Fifty Dollars (\$250.00). The provisions of this paragraph
161 (2) (A) may be enforceable by summons if the offender provides
162 proof of identity satisfactory to the arresting officer and gives



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

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



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

201 (B) Marijuana:

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

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



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

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

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

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

(C) Synthetic cannabinoids:

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

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



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

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

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

(D) Methamphetamine:

1. If one (1) gram or less or five (5) dosage
units or less, a first offense is punishable by a fine of not more
than Two Hundred Fifty Dollars (\$250.00), or not more than thirty
(30) days in the county jail, or both; for a second offense
occurring within five (5) years, a fine of not less than Two
Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars
(\$1,000.00) and not less than five (5) days nor more than six (6)
months in the county jail; for a third or subsequent offense
occurring within five (5) years, the offense shall be a felony
punishable by imprisonment in the custody of the Department of
Corrections for not more than five (5) years or a fine of not more
than Fifty Thousand Dollars (\$50,000.00), or both. For a first or
second offense under this item, the court shall require the
defendant to participate in a drug education program approved by



the Division of Alcohol and Drug Abuse of the Department of Mental Health unless the court enters a written finding that a drug education program is inappropriate.

2. If more than one (1) gram or five (5) dosage units, but less than two (2) grams or ten (10) dosage units, by imprisonment in the custody of the Department of Corrections for not more than five (5) years or a fine of not more than Fifty Thousand Dollars (\$50,000.00), or both.

3. If two (2) or more grams or ten (10) or more dosage units, but less than ten (10) grams or twenty (20) dosage units, by imprisonment in the custody of the Department of Corrections for not more than eight (8) years or a fine of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00), or both.

4. If ten (10) or more grams or twenty (20) or more dosage units, but less than thirty (30) grams or forty (40) dosage units, by imprisonment in the custody of the Department of Corrections for not less than three (3) years nor more than twenty (20) years or a fine of not more than Five Hundred Thousand Dollars (\$500,000.00), or both.

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

(A) If less than fifty (50) grams or less than one hundred (100) dosage units, the offense is a misdemeanor and



punishable by not more than one (1) year or a fine of not more than One Thousand Dollars (\$1,000.00), or both.

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

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

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

(d) **Paraphernalia.** (1) It is unlawful for a person who is not authorized by the State Board of Medical Licensure, State Board of Pharmacy, or other lawful authority to use, or to possess with intent to use, paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal,



310 inject, ingest, inhale or otherwise introduce into the human body
311 a controlled substance in violation of the Uniform Controlled
312 Substances Law. Any person who violates this subsection (d)(1) is
313 guilty of a misdemeanor and, upon conviction, may be confined in
314 the county jail for not more than six (6) months, or fined not
315 more than Five Hundred Dollars (\$500.00), or both; however, no
316 person shall be charged with a violation of this subsection when
317 such person is also charged with the possession of thirty (30)
318 grams or less of marijuana under subsection (c)(2)(A) of this
319 section.

320 (2) It is unlawful for any person to deliver, sell,
321 possess with intent to deliver or sell, or manufacture with intent
322 to deliver or sell, paraphernalia, knowing, or under circumstances
323 where one reasonably should know, that it will be used to plant,
324 propagate, cultivate, grow, harvest, manufacture, compound,
325 convert, produce, process, prepare, test, analyze, pack, repack,
326 store, contain, conceal, inject, ingest, inhale, or otherwise
327 introduce into the human body a controlled substance in violation
328 of the Uniform Controlled Substances Law. Except as provided in
329 subsection (d)(3), a person who violates this subsection (d)(2) is
330 guilty of a misdemeanor and, upon conviction, may be confined in
331 the county jail for not more than six (6) months, or fined not
332 more than Five Hundred Dollars (\$500.00), or both.

333 (3) Any person eighteen (18) years of age or over who
334 violates subsection (d)(2) of this section by delivering or



335 selling paraphernalia to a person under eighteen (18) years of age
336 who is at least three (3) years his junior is guilty of a
337 misdemeanor and, upon conviction, may be confined in the county
338 jail for not more than one (1) year, or fined not more than One
339 Thousand Dollars (\$1,000.00), or both.

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

349 (e) It shall be unlawful for any physician practicing
350 medicine in this state to prescribe, dispense or administer any
351 amphetamine or amphetamine-like anorectics and/or central nervous
352 system stimulants classified in Schedule II, pursuant to Section
353 41-29-115, for the exclusive treatment of obesity, weight control
354 or weight loss. Any person who violates this subsection, upon
355 conviction, is guilty of a misdemeanor and may be confined for a
356 period not to exceed six (6) months, or fined not more than One
357 Thousand Dollars (\$1,000.00), or both.

358 (f) **Trafficking.** (1) Any person trafficking in controlled
359 substances shall be guilty of a felony and, upon conviction, shall



be imprisoned for a term of not less than ten (10) years nor more than forty (40) years and shall be fined not less than Five Thousand Dollars (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00). The ten-year mandatory sentence shall not be reduced or suspended. The person shall not be eligible for probation or parole, the provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

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

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

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

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

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



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

388 (g) **Aggravated trafficking.** Any person trafficking in
389 Schedule I or II controlled substances, except marijuana and
390 synthetic cannabinoids, of two hundred (200) grams or more shall
391 be guilty of aggravated trafficking and, upon conviction, shall be
392 sentenced to a term of not less than twenty-five (25) years nor
393 more than life in prison and shall be fined not less than Five
394 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
395 (\$1,000,000.00). The twenty-five-year sentence shall be a
396 mandatory sentence and shall not be reduced or suspended. The
397 person shall not be eligible for probation or parole, the
398 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to
399 the contrary notwithstanding.

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



409 (A) The offender was not a leader of the criminal
410 enterprise;

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

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

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

418 The court may also consider whether information and
419 assistance were furnished to a law enforcement agency, or its
420 designee, which, in the opinion of the trial judge, objectively
421 should or would have aided in the arrest or prosecution of others
422 who violate this subsection. The accused shall have adequate
423 opportunity to develop and make a record of all information and
424 assistance so furnished.

425 (2) If the court reduces the prescribed sentence
426 pursuant to this subsection, it must specify on the record the
427 circumstances warranting the departure.

428 **SECTION 2.** This act shall take effect and be in force from
429 and after July 1, 2021.

