

By: Representative Bain

To: Judiciary B

HOUSE BILL NO. 485

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO REVISE JUDICIAL DISCRETION IN SENTENCING; 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 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



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

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

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

52 (B) For synthetic cannabinoids:

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

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

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

64 4. If forty (40) or more grams but less than
65 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



114 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including
115 marijuana or synthetic cannabinoids, shall be based on dosage unit
116 as defined herein or the weight of the controlled substance as set
117 forth herein as appropriate:

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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



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

200 (B) Marijuana:

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

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

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



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

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

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

224 (C) Synthetic cannabinoids:

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

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

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



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

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

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

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

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

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



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

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

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



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

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

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



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

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

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

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

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



335 units of a Schedule I or II controlled substance except marijuana
336 and synthetic cannabinoids;

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

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

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

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

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



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

364 (h) **Sentence mitigation.** (1) Notwithstanding any provision
365 of this section, a person who has been convicted of an offense
366 under this section that requires the judge to impose a prison
367 sentence which cannot be suspended or reduced and is ineligible
368 for probation or parole may, at the discretion of the court,
369 receive a * * * reduction of the sentence prescribed by the
370 applicable statute. In considering whether to apply the departure
371 from the sentence prescribed, the court shall conclude that:

372 (A) The offender was not a leader of the criminal
373 enterprise;

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

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

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

381 The court may also consider whether information and
382 assistance were furnished to a law enforcement agency, or its
383 designee, which, in the opinion of the trial judge, objectively
384 should or would have aided in the arrest or prosecution of others



385 who violate this subsection. The accused shall have adequate
386 opportunity to develop and make a record of all information and
387 assistance so furnished.

388 (2) If the court reduces the prescribed sentence
389 pursuant to this subsection, it must specify on the record the
390 circumstances warranting the departure.

391 **SECTION 2.** This act shall take effect and be in force from
392 and after July 1, 2022.

