

By: Senator(s) Jordan

To: Drug Policy; Judiciary,
Division B

SENATE BILL NO. 2286

1 AN ACT TO AMEND SECTION 41-29-139, MISSISSIPPI CODE OF 1972,
2 TO PROVIDE ENHANCED PENALTIES FOR TRANSFER OR POSSESSION WITH
3 INTENT TO TRANSFER HEROIN OR FENTANYL; TO CREATE NEW SECTION
4 97-3-28, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT AN OVERDOSE
5 DEATH ATTRIBUTABLE TO THE UNLAWFUL DISTRIBUTION OF CERTAIN
6 CONTROLLED SUBSTANCES WILL CONSTITUTE MANSLAUGHTER; AND FOR
7 RELATED PURPOSES.

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

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

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

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

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



20 (b) **Punishment for transfer and possession with intent to**
21 **transfer.** Except as otherwise provided in Section 41-29-142, any
22 person who violates subsection (a) of this section shall be, if
23 convicted, sentenced as follows:

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

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

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

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

40 (2) (A) For marijuana:

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



44 2. If more than thirty (30) grams but less
45 than two hundred fifty (250) grams, by imprisonment for not more
46 than five (5) years or a fine of not more than Five Thousand
47 Dollars (\$5,000.00), or both;

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

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

56 (B) For synthetic cannabinoids:

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

60 2. If more than ten (10) grams but less than
61 twenty (20) grams, by imprisonment for not more than five (5)
62 years or a fine of not more than Five Thousand Dollars
63 (\$5,000.00), or both;

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



68 4. If forty (40) or more grams but less than
69 two hundred (200) grams, by imprisonment for not less than five
70 (5) years nor more than twenty (20) years or a fine of not more
71 than Twenty Thousand Dollars (\$20,000.00), or both.

72 (C) For heroin and fentanyl:

73 1. If less than two (2) grams or ten (10)
74 dosage units, by imprisonment for not more than twelve (12) years
75 or a fine of not more than One Hundred Thousand Dollars
76 (\$100,000.00), or both;

77 2. If two (2) or more grams or ten (10) or
78 more dosage units, but less than ten (10) grams or twenty (20)
79 dosage units, by imprisonment for not less than ten (10) years nor
80 more than thirty (30) years or a fine of not more than Five
81 Hundred Thousand Dollars (\$500,000.00), or both;

82 3. If ten (10) or more grams or twenty (20)
83 or more dosage units, but less than thirty (30) grams or forty
84 (40) dosage units, by imprisonment for not less than fifteen (15)
85 years nor more than forty (40) years or a fine of not more than
86 One Million Dollars (\$1,000,000.00), or both.

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

89 (A) If less than two (2) grams or ten (10) dosage
90 units, by imprisonment for not more than five (5) years or a fine
91 of 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 eight (8) years or a fine
95 of not more than Fifty Thousand Dollars (\$50,000.00), 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 fifteen (15) years
99 or a fine of not more than One Hundred Thousand Dollars
100 (\$100,000.00), or both;

101 (D) If 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 twenty (20) years or a fine of not more than Two
105 Hundred Fifty Thousand Dollars (\$250,000.00), or both.

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

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

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

115 (C) If ten (10) or more grams or twenty (20) or
116 more dosage units, but less than thirty (30) grams or forty (40)



117 dosage units, by imprisonment for not more than ten (10) years or
118 a fine of not more than Twenty Thousand Dollars (\$20,000.00), or
119 both;

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

125 (c) **Simple possession.** It is unlawful for any person
126 knowingly or intentionally to possess any controlled substance
127 unless the substance was obtained directly from, or pursuant to, a
128 valid prescription or order of a practitioner while acting in the
129 course of his professional practice, or except as otherwise
130 authorized by this article. The penalties for any violation of
131 this subsection (c) with respect to a controlled substance
132 classified in Schedules I, II, III, IV or V, as set out in Section
133 41-29-113, 41-29-115, 41-29-117, 41-29-119 or 41-29-121, including
134 marijuana or synthetic cannabinoids, shall be based on dosage unit
135 as defined herein or the weight of the controlled substance as set
136 forth herein as appropriate:

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



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

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

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

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

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

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

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

164 (C) If two (2) or more grams or ten (10) or more
165 dosage units, but less than ten (10) grams or twenty (20) dosage
166 units, by imprisonment for not more than eight (8) years or a fine



167 of not more than Two Hundred Fifty Thousand Dollars (\$250,000.00),
168 or both.

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

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

175 1. If thirty (30) grams or less of marijuana
176 or ten (10) grams or less of synthetic cannabinoids, by a fine of
177 not less than One Hundred Dollars (\$100.00) nor more than Two
178 Hundred Fifty Dollars (\$250.00). The provisions of this paragraph
179 (2) (A) may be enforceable by summons if the offender provides
180 proof of identity satisfactory to the arresting officer and gives
181 written promise to appear in court satisfactory to the arresting
182 officer, as directed by the summons. A second conviction under
183 this section within two (2) years is a misdemeanor punishable by a
184 fine of Two Hundred Fifty Dollars (\$250.00), not more than sixty
185 (60) days in the county jail, and mandatory participation in a
186 drug education program approved by the Division of Alcohol and
187 Drug Abuse of the State Department of Mental Health, unless the
188 court enters a written finding that a drug education program is
189 inappropriate. A third or subsequent conviction under this
190 paragraph (2) (A) within two (2) years is a misdemeanor punishable
191 by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor



192 more than One Thousand Dollars (\$1,000.00) and confinement for not
193 more than six (6) months in the county jail.

194 Upon a first or second conviction under this paragraph
195 (2) (A), the courts shall forward a report of the conviction to the
196 Mississippi Bureau of Narcotics which shall make and maintain a
197 private, nonpublic record for a period not to exceed two (2) years
198 from the date of conviction. The private, nonpublic record shall
199 be solely for the use of the courts in determining the penalties
200 which attach upon conviction under this paragraph (2) (A) and shall
201 not constitute a criminal record for the purpose of private or
202 administrative inquiry and the record of each conviction shall be
203 expunged at the end of the period of two (2) years following the
204 date of such conviction;

205 2. Additionally, a person who is the operator
206 of a motor vehicle, who possesses on his person or knowingly keeps
207 or allows to be kept in a motor vehicle within the area of the
208 vehicle normally occupied by the driver or passengers, more than
209 one (1) gram, but not more than thirty (30) grams of marijuana or
210 not more than ten (10) grams of synthetic cannabinoids is guilty
211 of a misdemeanor and, upon conviction, may be fined not more than
212 One Thousand Dollars (\$1,000.00) or confined for not more than
213 ninety (90) days in the county jail, or both. For the purposes of
214 this subsection, such area of the vehicle shall not include the
215 trunk of the motor vehicle or the areas not normally occupied by
216 the driver or passengers if the vehicle is not equipped with a



217 trunk. A utility or glove compartment shall be deemed to be
218 within the area occupied by the driver and passengers;

219 (B) Marijuana:

220 1. If more than thirty (30) grams but less
221 than two hundred fifty (250) grams, by a fine of not more than One
222 Thousand Dollars (\$1,000.00), or confinement in the county jail
223 for not more than one (1) year, or both; or by a fine of not more
224 than Three Thousand Dollars (\$3,000.00), or imprisonment in the
225 custody of the Department of Corrections for not more than three
226 (3) years, or both;

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

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

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

239 5. If five (5) kilograms or more, by
240 imprisonment for not less than ten (10) years nor more than thirty



241 (30) years or a fine of not more than One Million Dollars
242 (\$1,000,000.00), or both.

243 (C) Synthetic cannabinoids:

244 1. If more than ten (10) grams but less than
245 twenty (20) grams, by a fine of not more than One Thousand Dollars
246 (\$1,000.00), or confinement in the county jail for not more than
247 one (1) year, or both; or by a fine of not more than Three
248 Thousand Dollars (\$3,000.00), or imprisonment in the custody of
249 the Department of Corrections for not more than three (3) years,
250 or both;

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

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

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

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



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

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

275 (C) If one hundred fifty (150) or more grams or
276 five hundred (500) or more dosage units, but less than three
277 hundred (300) grams or one thousand (1,000) dosage units, by
278 imprisonment for not less than two (2) years nor more than eight
279 (8) years or a fine of not more than Fifty Thousand Dollars
280 (\$50,000.00), or both.

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

287 (d) **Paraphernalia.** (1) It is unlawful for a person who is
288 not authorized by the State Board of Medical Licensure, State
289 Board of Pharmacy, or other lawful authority to use, or to possess
290 with intent to use, paraphernalia to plant, propagate, cultivate,



291 grow, harvest, manufacture, compound, convert, produce, process,
292 prepare, test, analyze, pack, repack, store, contain, conceal,
293 inject, ingest, inhale or otherwise introduce into the human body
294 a controlled substance in violation of the Uniform Controlled
295 Substances Law. Any person who violates this subsection (d)(1) 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; however, no
299 person shall be charged with a violation of this subsection when
300 such person is also charged with the possession of thirty (30)
301 grams or less of marijuana under subsection (c)(2)(A) of this
302 section.

303 (2) It is unlawful for any person to deliver, sell,
304 possess with intent to deliver or sell, or manufacture with intent
305 to deliver or sell, paraphernalia, knowing, or under circumstances
306 where one reasonably should know, that it will be used to plant,
307 propagate, cultivate, grow, harvest, manufacture, compound,
308 convert, produce, process, prepare, test, analyze, pack, repack,
309 store, contain, conceal, inject, ingest, inhale, or otherwise
310 introduce into the human body a controlled substance in violation
311 of the Uniform Controlled Substances Law. Except as provided in
312 subsection (d)(3), a person who violates this subsection (d)(2) 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.



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

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

332 (e) It shall be unlawful for any physician practicing
333 medicine in this state to prescribe, dispense or administer any
334 amphetamine or amphetamine-like anorectics and/or central nervous
335 system stimulants classified in Schedule II, pursuant to Section
336 41-29-115, for the exclusive treatment of obesity, weight control
337 or weight loss. Any person who violates this subsection, upon
338 conviction, is guilty of a misdemeanor and may be confined for a
339 period not to exceed six (6) months, or fined not more than One
340 Thousand Dollars (\$1,000.00), or both.



341 (f) **Trafficking.** (1) Any person trafficking in controlled
342 substances shall be guilty of a felony and, upon conviction, shall
343 be imprisoned for a term of not less than ten (10) years nor more
344 than forty (40) years and shall be fined not less than Five
345 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
346 (\$1,000,000.00). The ten-year mandatory sentence shall not be
347 reduced or suspended. The person shall not be eligible for
348 probation or parole, the provisions of Sections 41-29-149,
349 47-5-139, 47-7-3 and 47-7-33, to the contrary notwithstanding.

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

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

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

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

364 (D) A violation of subsection (c) of this section
365 involving five hundred (500) or more grams or two thousand five



366 hundred (2,500) or more dosage units of a Schedule III, IV or V
367 controlled substance; or

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

371 (g) **Aggravated trafficking.** Any person trafficking in
372 Schedule I or II controlled substances, except marijuana and
373 synthetic cannabinoids, of two hundred (200) grams or more shall
374 be guilty of aggravated trafficking and, upon conviction, shall be
375 sentenced to a term of not less than twenty-five (25) years nor
376 more than life in prison and shall be fined not less than Five
377 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
378 (\$1,000,000.00). The twenty-five-year sentence shall be a
379 mandatory sentence and shall not be reduced or suspended. The
380 person shall not be eligible for probation or parole, the
381 provisions of Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, to
382 the contrary notwithstanding.

383 (h) **Sentence mitigation.** (1) Notwithstanding any provision
384 of this section, a person who has been convicted of an offense
385 under this section that requires the judge to impose a prison
386 sentence which cannot be suspended or reduced and is ineligible
387 for probation or parole may, at the discretion of the court,
388 receive a sentence of imprisonment that is no less than
389 twenty-five percent (25%) of the sentence prescribed by the



390 applicable statute. In considering whether to apply the departure
391 from the sentence prescribed, the court shall conclude that:

392 (A) The offender was not a leader of the criminal
393 enterprise;

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

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

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

401 The court may also consider whether information and
402 assistance were furnished to a law enforcement agency, or its
403 designee, which, in the opinion of the trial judge, objectively
404 should or would have aided in the arrest or prosecution of others
405 who violate this subsection. The accused shall have adequate
406 opportunity to develop and make a record of all information and
407 assistance so furnished.

408 (2) If the court reduces the prescribed sentence
409 pursuant to this subsection, it must specify on the record the
410 circumstances warranting the departure.

411 **SECTION 2.** The following shall be codified as Section
412 97-3-28, Mississippi Code of 1972:

413 97-3-28. The death of a human being caused by an overdose of
414 a controlled substance listed either in Schedule I, Section



415 41-29-113, or Schedule II, Section 41-29-115, when the controlled
416 substance was unlawfully distributed to the deceased by a person
417 eighteen (18) years of age or older, shall be manslaughter if the
418 controlled substance unlawfully distributed to the deceased is
419 proven to be the proximate cause of the death.

420 **SECTION 3.** This act shall take effect and be in force from
421 and after July 1, 2022.

