

By: Representative Compretta

To: Judiciary A

HOUSE BILL NO. 1520

1 AN ACT TO AMEND SECTIONS 41-29-139 AND 41-29-142, MISSISSIPPI
2 CODE OF 1972, TO PROVIDE ENHANCED PENALTIES FOR CERTAIN DRUG
3 VIOLATIONS IN THE PRESENCE OF A MINOR; 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) Except as authorized by this article, it is
8 unlawful for any person knowingly or intentionally:

9 (1) To sell, barter, transfer, manufacture, distribute,
10 dispense or possess with intent to sell, barter, transfer,
11 manufacture, distribute or dispense, a controlled substance; or

12 (2) To create, sell, barter, transfer, distribute,
13 dispense or possess with intent to create, sell, barter, transfer,
14 distribute or dispense, a counterfeit substance.

15 (b) Except as otherwise provided in subsections (f) and (g)
16 of this section or in Section 41-29-142, any person who violates
17 subsection (a) of this section shall be sentenced as follows:

18 (1) In the case of controlled substances classified in
19 Schedule I or II, as set out in Sections 41-29-113 and 41-29-115,
20 except thirty (30) grams or less of marihuana, and except a first
21 offender as defined in Section 41-29-149(e) who violates
22 subsection (a) of this section with respect to less than one (1)
23 kilogram but more than thirty (30) grams of marihuana, such person
24 may, upon conviction, be imprisoned for not more than thirty (30)
25 years and shall be fined not less than Five Thousand Dollars
26 (\$5,000.00) nor more than One Million Dollars (\$1,000,000.00), or
27 both;

28 (2) In the case of a first offender who violates
29 subsection (a) of this section with an amount less than one (1)
30 kilogram but more than thirty (30) grams of marihuana as
31 classified in Schedule I, as set out in Section 41-29-113, such
32 person is guilty of a felony and upon conviction may be imprisoned
33 for not more than twenty (20) years or fined not more than Thirty
34 Thousand Dollars (\$30,000.00), or both;

35 (3) In the case of thirty (30) grams or less of
36 marihuana, such person may, upon conviction, be imprisoned for not
37 more than three (3) years or fined not more than Three Thousand
38 Dollars (\$3,000.00), or both;

39 (4) In the case of controlled substances classified in
40 Schedules III and IV, as set out in Sections 41-29-117 and
41 41-29-119, such person may, upon conviction, be imprisoned for not
42 more than twenty (20) years and shall be fined not less than One
43 Thousand Dollars (\$1,000.00) nor more than Two Hundred Fifty
44 Thousand Dollars (\$250,000.00), or both; and

45 (5) In the case of controlled substances classified in
46 Schedule V, as set out in Section 41-29-121, such person may, upon
47 conviction, be imprisoned for not more than ten (10) years and
48 shall be fined not less than One Thousand Dollars (\$1,000.00) nor
49 more than Fifty Thousand Dollars (\$50,000.00), or both.

50 (c) It is unlawful for any person knowingly or intentionally
51 to possess any controlled substance unless the substance was
52 obtained directly from, or pursuant to, a valid prescription or
53 order of a practitioner while acting in the course of his
54 professional practice, or except as otherwise authorized by this
55 article. The penalties for any violation of this subsection (c)
56 with respect to a controlled substance classified in Schedules I,
57 II, III, IV or V, as set out in Sections 41-29-113, 41-29-115,
58 41-29-117, 41-29-119 or 41-29-121, including marihuana, shall be
59 based on dosage unit as defined herein or the weight of the
60 controlled substance as set forth herein as appropriate:

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

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

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

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

76 Any person who violates this subsection with respect to:

77 (1) A controlled substance classified in Schedule I or
78 II, except marihuana, in the following amounts shall be charged
79 and sentenced as follows:

80 (A) Less than one-tenth (0.1) gram or one (1)
81 dosage unit or less may be charged as a misdemeanor or felony. If
82 charged by indictment as a felony: by imprisonment not less than
83 one (1) nor more than four (4) years and a fine not more than Ten
84 Thousand Dollars (\$10,000.00). If charged as a misdemeanor: by
85 imprisonment for up to one (1) year and a fine not more than One
86 Thousand Dollars (\$1,000.00).

87 (B) One-tenth (0.1) gram but less than two (2)
88 grams or two (2) dosage units but less than ten (10) dosage units,
89 by imprisonment for not less than two (2) years nor more than
90 eight (8) years and a fine of not more than Fifty Thousand Dollars
91 (\$50,000.00).

92 (C) Two (2) grams but less than ten (10) grams or
93 ten (10) dosage units but less than twenty (20) dosage units, by

94 imprisonment for not less than four (4) years nor more than
95 sixteen (16) years and a fine of not more than Two Hundred Fifty
96 Thousand Dollars (\$250,000.00).

97 (D) Ten (10) grams but less than thirty (30) grams
98 or twenty (20) dosage units but not more than forty (40) dosage
99 units, by imprisonment for not less than six (6) years nor more
100 than twenty-four (24) years and a fine of not more than Five
101 Hundred Thousand Dollars (\$500,000.00).

102 (E) Thirty (30) grams or more or forty (40) dosage
103 units or more, by imprisonment for not less than ten (10) years
104 nor more than thirty (30) years and a fine of not more than One
105 Million Dollars (\$1,000,000.00).

106 (2) Marihuana in the following amounts shall be charged
107 and sentenced as follows:

108 (A) Thirty (30) grams or less by a fine of not
109 less than One Hundred Dollars (\$100.00) nor more than Two Hundred
110 Fifty Dollars (\$250.00). The provisions of this paragraph shall
111 be enforceable by summons, provided the offender provides proof of
112 identity satisfactory to the arresting officer and gives written
113 promise to appear in court satisfactory to the arresting officer,
114 as directed by the summons. A second conviction under this
115 section within two (2) years shall be punished by a fine of Two
116 Hundred Fifty Dollars (\$250.00) and not less than five (5) days
117 nor more than sixty (60) days in the county jail and mandatory
118 participation in a drug education program, approved by the
119 Division of Alcohol and Drug Abuse of the State Department of
120 Mental Health, unless the court enters a written finding that such
121 drug education program is inappropriate. A third or subsequent
122 conviction under this section within two (2) years is a
123 misdemeanor punishable by a fine of not less than Two Hundred
124 Fifty Dollars (\$250.00) nor more than Five Hundred Dollars
125 (\$500.00) and confinement for not less than five (5) days nor more
126 than six (6) months in the county jail. Upon a first or second

127 conviction under this section the courts shall forward a report of
128 such conviction to the Mississippi Bureau of Narcotics which shall
129 make and maintain a private, nonpublic record for a period not to
130 exceed two (2) years from the date of conviction. The private,
131 nonpublic record shall be solely for the use of the courts in
132 determining the penalties which attach upon conviction under this
133 section and shall not constitute a criminal record for the purpose
134 of private or administrative inquiry and the record of each
135 conviction shall be expunged at the end of the period of two (2)
136 years following the date of such conviction. A person who is
137 convicted of a violation of this subsection (c)(2)(A) where the
138 violation occurs in the presence of a minor child under the age of
139 eighteen (18) years shall be subject to an enhanced penalty of
140 twice the penalty provided herein;

141 (B) Additionally, a person who is the operator of
142 a motor vehicle, who possesses on his person or knowingly keeps or
143 allows to be kept in a motor vehicle within the area of the
144 vehicle normally occupied by the driver or passengers, more than
145 one (1) gram, but not more than thirty (30) grams, of marihuana is
146 guilty of a misdemeanor and upon conviction may be fined not more
147 than One Thousand Dollars (\$1,000.00) and confined for not more
148 than ninety (90) days in the county jail. For the purposes of
149 this subsection, such area of the vehicle shall not include the
150 trunk of the motor vehicle or the areas not normally occupied by
151 the driver or passengers if the vehicle is not equipped with a
152 trunk. A utility or glove compartment shall be deemed to be
153 within the area occupied by the driver and passengers;

154 (C) More than thirty (30) grams but less than two
155 hundred fifty (250) grams may be fined not more than One Thousand
156 Dollars (\$1,000.00), or confined in the county jail for not more
157 than one (1) year, or both; or fined not more than Three Thousand
158 Dollars (\$3,000.00), or imprisoned in the State Penitentiary for
159 not more than three (3) years, or both;

160 (D) Two hundred fifty (250) grams but less than
161 five hundred (500) grams, by imprisonment for not less than two
162 (2) years nor more than eight (8) years and by a fine of not more
163 than Fifty Thousand Dollars (\$50,000.00);

164 (E) Five hundred (500) grams but less than one (1)
165 kilogram, by imprisonment for not less than four (4) years nor
166 more than sixteen (16) years and a fine of less than Two Hundred
167 Fifty Thousand Dollars (\$250,000.00);

168 (F) One (1) kilogram but less than five (5)
169 kilograms, by imprisonment for not less than six (6) years nor
170 more than twenty-four (24) years and a fine of not more than Five
171 Hundred Thousand Dollars (\$500,000.00);

172 (G) Five (5) kilograms or more, by imprisonment
173 for not less than ten (10) years nor more than thirty (30) years
174 and a fine of not more than One Million Dollars (\$1,000,000.00).

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

178 (A) Less than fifty (50) grams or less than one
179 hundred (100) dosage units is a misdemeanor and punishable by not
180 more than one (1) year and a fine of not more than One Thousand
181 Dollars (\$1,000.00).

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

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

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

198 (E) Five hundred (500) grams or more or two
199 thousand five hundred (2,500) dosage units or more, by
200 imprisonment for not less than six (6) years nor more than
201 twenty-four (24) years and a fine of not more than Five Hundred
202 Thousand Dollars (\$500,000.00).

203 (d) (1) It is unlawful for a person who is not authorized
204 by the State Board of Medical Licensure, State Board of Pharmacy,
205 or other lawful authority to use, or to possess with intent to
206 use, paraphernalia to plant, propagate, cultivate, grow, harvest,
207 manufacture, compound, convert, produce, process, prepare, test,
208 analyze, pack, repack, store, contain, conceal, inject, ingest,
209 inhale or otherwise introduce into the human body a controlled
210 substance in violation of the Uniform Controlled Substances Law.
211 Any person who violates this subsection is guilty of a misdemeanor
212 and upon conviction may be confined in the county jail for not
213 more than six (6) months, or fined not more than Five Hundred
214 Dollars (\$500.00), or both; however, no person shall be charged
215 with a violation of this subsection when such person is also
216 charged with the possession of one (1) ounce or less of marihuana
217 under subsection (c)(2)(A) of this section.

218 (2) It is unlawful for any person to deliver, sell,
219 possess with intent to deliver or sell, or manufacture with intent
220 to deliver or sell, paraphernalia, knowing, or under circumstances
221 where one reasonably should know, that it will be used to plant,
222 propagate, cultivate, grow, harvest, manufacture, compound,
223 convert, produce, process, prepare, test, analyze, pack, repack,
224 store, contain, conceal, inject, ingest, inhale, or otherwise

225 introduce into the human body a controlled substance in violation
226 of the Uniform Controlled Substances Law. Any person who violates
227 this subsection is guilty of a misdemeanor and upon conviction may
228 be confined in the county jail for not more than six (6) months,
229 or fined not more than Five Hundred Dollars (\$500.00), or both.

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

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

246 (e) It shall be unlawful for any physician practicing
247 medicine in this state to prescribe, dispense or administer any
248 amphetamine or amphetamine-like anorectics and/or central nervous
249 system stimulants classified in Schedule II, pursuant to Section
250 41-29-115, for the exclusive treatment of obesity, weight control
251 or weight loss. Any person who violates this subsection, upon
252 conviction, is guilty of a misdemeanor and may be confined for a
253 period not to exceed six (6) months, or fined not more than One
254 Thousand Dollars (\$1,000.00), or both.

255 (f) Except as otherwise authorized in this article, any
256 person twenty-one (21) years of age or older who knowingly sells,
257 barter, transfers, manufactures, distributes or dispenses during

258 any twelve (12) consecutive month period: (i) ten (10) pounds or
259 more of marihuana; (ii) two (2) ounces or more of heroin; (iii)
260 two (2) or more ounces of cocaine or of any mixture containing
261 cocaine as described in Section 41-29-105(s), Mississippi Code of
262 1972; or (iv) one hundred (100) or more dosage units of morphine,
263 Demerol or Dilaudid, shall be guilty of a felony and, upon
264 conviction thereof, shall be sentenced to life imprisonment and
265 such sentence shall not be reduced or suspended nor shall such
266 person be eligible for probation or parole, the provisions of
267 Sections 41-29-149, 47-5-139, 47-7-3 and 47-7-33, Mississippi Code
268 of 1972, to the contrary notwithstanding. The provisions of this
269 subsection shall not apply to any person who furnishes information
270 and assistance to the bureau or its designee which, in the opinion
271 of the trial judge objectively should or would have aided in the
272 arrest or prosecution of others who violate this subsection. The
273 accused shall have adequate opportunity to develop and make a
274 record of all information and assistance so furnished.

275 (g) (1) Any person trafficking in controlled substances
276 shall be guilty of a felony and upon conviction shall be
277 imprisoned for a term of thirty (30) years and such sentence shall
278 not be reduced or suspended nor shall such person be eligible for
279 probation or parole, the provisions of Sections 41-29-149,
280 47-5-139, 47-7-3 and 47-7-33, Mississippi Code of 1972, to the
281 contrary notwithstanding and shall be fined not less than Five
282 Thousand Dollars (\$5,000.00) nor more than One Million Dollars
283 (\$1,000,000.00).

284 (2) "Trafficking in controlled substances" as used
285 herein means to engage in three (3) or more component offenses
286 within any twelve (12) consecutive month period where at least two
287 (2) of the component offenses occurred in different counties. A
288 component offense is any act which would constitute a violation of
289 subsection (a) of this section. Prior convictions shall not be

290 used as component offenses to establish the charge of trafficking
291 in controlled substances.

292 (3) The charge of trafficking in controlled substances
293 shall be set forth in one (1) count of an indictment with each of
294 the component offenses alleged therein and it may be charged and
295 tried in any county where a component offense occurred. An
296 indictment for trafficking in controlled substances may also be
297 returned by the State Grand Jury of Mississippi provided at least
298 two (2) of the component offenses occurred in different circuit
299 court districts.

300 **SECTION 2.** Section 41-29-142, Mississippi Code of 1972, is
301 amended as follows:

302 41-29-142. (1) Except as provided in subsection (f) of
303 Section 41-29-139 or in subsection (2) of this section, any person
304 who violates or conspires to violate Section 41-29-139(a)(1),
305 Mississippi Code of 1972, by selling, bartering, transferring,
306 manufacturing, distributing, dispensing or possessing with intent
307 to sell, barter, transfer, manufacture, distribute or dispense, a
308 controlled substance, in or on, or within one thousand five
309 hundred (1,500) feet of, a building or outbuilding which is all or
310 part of a public or private elementary, vocational or secondary
311 school, or any church, public park, ballpark, public gymnasium,
312 youth center or movie theater or within one thousand (1,000) feet
313 of, the real property comprising such public or private
314 elementary, vocational or secondary school, or any church, public
315 park, ballpark, public gymnasium, youth center or movie theater
316 shall, upon conviction thereof, be punished by the term of
317 imprisonment or a fine, or both, of that authorized by Section
318 41-29-139(b) and, in the discretion of the court, may be punished
319 by a term of imprisonment or a fine, or both, of up to twice that
320 authorized by Section 41-29-139(b).

321 (2) Except as otherwise provided in subsection (f) of
322 Section 41-29-139, any person who violates or conspires to violate

323 Section 41-29-139(a)(1), Mississippi Code of 1972, by selling,
324 bartering, transferring, manufacturing, distributing, dispensing
325 or possessing with intent to sell, barter, transfer, manufacture,
326 distribute or dispense, a controlled substance, in or on, or
327 within one thousand five hundred (1,500) feet of, a building or
328 outbuilding which is all or part of a public or private
329 elementary, vocational or secondary school, or any church, public
330 park, ballpark, public gymnasium, youth center or movie theater or
331 within one thousand (1,000) feet of, the real property comprising
332 such public or private elementary, vocational or secondary school,
333 or any church, public park, ballpark, public gymnasium, youth
334 center or movie theater after a prior conviction under subsection
335 (1) of this section has become final, shall, upon conviction
336 thereof, be punished by a term of imprisonment of not less than
337 three (3) years and not more than life, and in the discretion of
338 the court, may be punished by a term of imprisonment of up to
339 three (3) times that authorized by Section 41-29-139(b), for a
340 first offense, or a fine of up to three (3) times that authorized
341 by Section 41-29-139(b), for a first offense, or both.

342 (3) Except as provided in subsection (f) of Section
343 41-29-139, any person who violates or conspires to violate Section
344 41-29-139(a)(1) by selling, bartering, manufacturing,
345 distributing, dispensing or possessing with intent to sell,
346 barter, transfer, manufacture, distribute or dispense a controlled
347 substance in the presence of a minor within one thousand five
348 hundred (1,500) feet of a building or outbuilding which is all or
349 part of a school or any church shall, upon conviction, be punished
350 by a term of imprisonment and fine twice that authorized by
351 Section 41-29-139(b).

352 **SECTION 3.** This act shall take effect and be in force from
353 and after July 1, 2005.