

Introduced by Senator Wiener

(Coauthors: Assembly Members Kamlager, Low, and Quirk)

February 17, 2021

An act to amend Sections 11054, 11350, 11364, 11364.7, 11365, 11377, 11379, 11379.2, 11382, and 11550 of, to add Sections 11350.1, 11356.8, 11356.9, 11377.1, 11382.8, 11382.9, and 11402 to, and to add and repeal Section 131065 of, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 519, as introduced, Wiener. Controlled substances: decriminalization of certain hallucinogenic substances.

Existing law categorizes certain drugs and other substances as controlled substances and prohibits various actions related to those substances, including their manufacture, transportation, sale, possession, and ingestion.

This bill would make lawful the possession for personal use, as described, and the social sharing, as defined, of psilocybin, psilocyn, dimethyltryptamine (DMT), ibogaine, mescaline, lysergic acid diethylamide (LSD), ketamine, and 3,4-methylenedioxymethamphetamine (MDMA), by and with persons 21 years of age or older. The bill would provide penalties for possession of these substance on school grounds, or possession by, or sharing with, persons under 21 years of age.

The bill would also provide for the dismissal and sealing of pending and prior convictions for offenses that would be made lawful by the passage of this bill, as specified. The bill would require the Department of Justice to identify those records and provide them to local jurisdictions to initiate the required proceedings.

This bill would require the State Department of Public Health to convene a working group, as specified, to research and make recommendations to the Legislature regarding, among other things, the regulation and therapeutic use of these substances, as specified.

Existing law prohibits the possession of drug paraphernalia, as defined.

This bill would exempt from this prohibition, paraphernalia related to these specific substances. The bill would also exempt from the prohibition items used for the testing and analysis of controlled substances.

By eliminating and changing the elements of existing crimes and creating new offenses, and by requiring new duties of local prosecutors, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The War on Drugs has entailed overwhelming financial and
- 4 societal costs, and the policy behind it does not reflect a modern
- 5 understanding of substance use nor does it accurately reflect the
- 6 potential therapeutic benefits or harms of various substances.
- 7 (b) Criminalization has not deterred drug use, and has instead
- 8 made drug use less safe. It has created an unregulated underground
- 9 market in which difficult-to-verify dosages and the presence of
- 10 adulterants, including fentanyl, make the illicit drug supply
- 11 dangerous.
- 12 (c) Lack of honest drug education has laid the groundwork for
- 13 decades of misinformation, stigma, and cultural appropriation,
- 14 which have all contributed to increasing the dangers of drug use.

1 (d) Harm reduction tools including drug-checking kits, gas
2 chromatography mass spectrometry machines, milligram scales,
3 and capsules allow users to make more accurate, safer,
4 evidence-based decisions about their personal use. Allowing such
5 paraphernalia can increase public health and safety.

6 (e) Research is advancing to support the use of psychedelic
7 compounds with psychotherapy to treat mental health disorders,
8 such as anxiety, depression, post-traumatic stress disorder and
9 substance use disorder.

10 (f) Measure 109 in Oregon, which passed in November 2020
11 with a 56 percent vote of the state population, will establish a
12 regulated psilocybin therapy system in Oregon to provide people
13 therapeutic access to psilocybin.

14 (g) Measure 110 in Oregon, which passed in November 2020
15 with a 58 percent vote of the state population, decriminalized the
16 personal possession of all drugs, and almost 20 countries around
17 the world including Portugal, Czech Republic, and Spain have
18 expressly or effectively decriminalized the personal use of all
19 substances.

20 (h) To responsibly transition away from criminalization, protect
21 people who use or may use drugs, and avoid negative
22 environmental or cultural impacts, it is necessary to review the
23 full legal context in which these changes to the law are made,
24 incorporate evidence-based policy, consult with experts, and
25 maintain open discourse based in harm reduction, reciprocity, and
26 human rights into the process of developing alternative regulatory
27 systems.

28 (i) This act will allow for the noncommercial, personal use and
29 sharing of specified controlled substances, including for the
30 purposes of group counseling and community-based healing, or
31 other related services.

32 (j) These changes in law will not affect any restrictions on the
33 driving or operating a vehicle while impaired or an employer's
34 ability to restrict the use of controlled substance by its employees,
35 or affect the legal standard for negligence.

36 (k) Peyote is specifically excluded from the list of substances
37 to be decriminalized, and any cultivation, harvest, extraction,
38 tincture or other product manufactured or derived therefrom,
39 because of the nearly endangered status of the peyote plant and
40 the special significance peyote holds in Native American

1 spirituality. Section 11363 of the Health and Safety Code, which
2 makes it a crime in California to cultivate, harvest, dry, or process
3 any plant of the genus *Lophophora*, also known as Peyote, is not
4 amended or repealed.

5 (l) The State of California fully respects and supports the
6 continued Native American possession and use of peyote under
7 federal law, 42 U.S.C. 1996a, understanding that Native Americans
8 in the United States were persecuted and prosecuted for their
9 ceremonial practices and use of peyote for more than a century
10 and had to fight numerous legal and political battles to achieve the
11 current protected status, and the enactment of this legislation does
12 not intend to undermine explicitly or implicitly that status.

13 SEC. 2. Section 11054 of the Health and Safety Code is
14 amended to read:

15 11054. (a) The controlled substances listed in this section are
16 included in Schedule I.

17 (b) Opiates. Unless specifically excepted or unless listed in
18 another schedule, any of the following opiates, including their
19 isomers, esters, ethers, salts, and salts of isomers, esters, and ethers
20 whenever the existence of those isomers, esters, ethers, and salts
21 is possible within the specific chemical designation:

- 22 (1) Acetylmethadol.
- 23 (2) Allylprodine.
- 24 (3) Alphacetylmethadol (except levoalphacetylmethadol, also
25 known as ~~levo-alpha-acetylmethadol~~, *levo-alpha-acetylmethadol*,
26 levomethadyl acetate, or LAAM).
- 27 (4) Alphameprodine.
- 28 (5) Alphamethadol.
- 29 (6) Benzethidine.
- 30 (7) Betacetylmethadol.
- 31 (8) Betameprodine.
- 32 (9) Betamethadol.
- 33 (10) Betaprodine.
- 34 (11) Clonitazene.
- 35 (12) Dextromoramide.
- 36 (13) Diampromide.
- 37 (14) Diethylthiambutene.
- 38 (15) Difenoxin.
- 39 (16) Dimenoxadol.
- 40 (17) Dimepheptanol.

- 1 (18) Dimethylthiambutene.
- 2 (19) Dioxaphetyl butyrate.
- 3 (20) Dipipanone.
- 4 (21) Ethylmethylthiambutene.
- 5 (22) Etonitazene.
- 6 (23) Etoxeridine.
- 7 (24) Furethidine.
- 8 (25) Hydroxypethidine.
- 9 (26) Ketobemidone.
- 10 (27) Levomoramide.
- 11 (28) Levophenacymorphan.
- 12 (29) Morpheridine.
- 13 (30) Noracymethadol.
- 14 (31) Norlevorphanol.
- 15 (32) Normethadone.
- 16 (33) Norpipanone.
- 17 (34) Phenadoxone.
- 18 (35) Phenampromide.
- 19 (36) Phenomorphan.
- 20 (37) Phenoperidine.
- 21 (38) Piritramide.
- 22 (39) Proheptazine.
- 23 (40) Properidine.
- 24 (41) Propiram.
- 25 (42) Racemoramide.
- 26 (43) Tilidine.
- 27 (44) Trimeperidine.
- 28 (45) Any substance which contains any quantity of
- 29 acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a
- 30 derivative thereof.
- 31 (46) Any substance which contains any quantity of the thiophene
- 32 analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl]
- 33 acetanilide) or a derivative thereof.
- 34 (47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
- 35 (48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
- 36 (c) Opium derivatives. Unless specifically excepted or unless
- 37 listed in another schedule, any of the following opium derivatives,
- 38 its salts, isomers, and salts of isomers whenever the existence of
- 39 those salts, isomers, and salts of isomers is possible within the
- 40 specific chemical designation:

- 1 (1) Acetorphine.
- 2 (2) Acetyldihydrocodeine.
- 3 (3) Benzylmorphine.
- 4 (4) Codeine methylbromide.
- 5 (5) Codeine-N-Oxide.
- 6 (6) Cyprenorphine.
- 7 (7) Desomorphine.
- 8 (8) Dihydromorphine.
- 9 (9) Drotebanol.
- 10 (10) Etorphine (except hydrochloride salt).
- 11 (11) Heroin.
- 12 (12) Hydromorphanol.
- 13 (13) Methyldesorphine.
- 14 (14) Methyldihydromorphine.
- 15 (15) Morphine methylbromide.
- 16 (16) Morphine methylsulfonate.
- 17 (17) Morphine-N-Oxide.
- 18 (18) Myrophine.
- 19 (19) Nicocodeine.
- 20 (20) Nicomorphine.
- 21 (21) Normorphine.
- 22 (22) Pholcodine.
- 23 (23) Thebacon.
- 24 (d) Hallucinogenic substances. Unless specifically excepted or
- 25 unless listed in another schedule, any material, compound, mixture,
- 26 or preparation, which contains any quantity of the following
- 27 hallucinogenic substances, or which contains any of its salts,
- 28 isomers, and salts of isomers whenever the existence of those salts,
- 29 isomers, and salts of isomers is possible within the specific
- 30 chemical designation (for purposes of this subdivision only, the
- 31 term “isomer” includes the optical, position, and geometric
- 32 isomers):
- 33 (1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other
- 34 names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine;
- 35 4-bromo-2,5-DMA.
- 36 (2) 2,5-dimethoxyamphetamine—Some trade or other names:
- 37 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
- 38 (3) 4-methoxyamphetamine—Some trade or other names:
- 39 4 - m e t h o x y - a l p h a - m e t h y l p h e n e t h y l a m i n e ,
- 40 paramethoxyamphetamine, PMA.

- 1 (4) 5-methoxy-3,4-methylenedioxy-amphetamine.
- 2 (5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other
- 3 names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine;
- 4 “DOM”; and “STP.”
- 5 (6) 3,4-methylenedioxy amphetamine.
- 6 (7) 3,4,5-trimethoxy amphetamine.
- 7 (8) Bufotenine—Some trade or other names:
- 8 3-(beta-dimethylaminoethyl)-5-hydroxyindole;
- 9 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin,
- 10 5-hydroxy-N,N-dimethyltryptamine; mappine.
- 11 (9) Diethyltryptamine—Some trade or other names:
- 12 N,N-Diethyltryptamine; DET.
- 13 (10) Dimethyltryptamine—Some trade or other names: DMT.
- 14 (11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta,
- 15 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido
- 16 [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.
- 17 (12) Lysergic acid diethylamide.
- 18 (13) Cannabis.
- 19 (14) ~~Mescaline~~. *Mescaline, derived from plants presently*
- 20 *classified botanically in the Echinopsis genus of cacti, including,*
- 21 *without limitation, the Bolivian Torch Cactus, San Pedro Cactus,*
- 22 *or Peruvian Torch Cactus, but not including mescaline derived*
- 23 *from any plant described in paragraph (15).*
- 24 (15) Peyote—Meaning all parts of the plant presently classified
- 25 botanically as *Lophophora williamsii* Lemaire, whether growing
- 26 or not, the seeds thereof, any extract from any part of the plant,
- 27 and every compound, manufacture, salts, derivative, mixture, or
- 28 preparation of the plant, its seeds or extracts (interprets 21 U.S.C.
- 29 Sec. 812(c), Schedule 1(c)(12)).
- 30 (16) N-ethyl-3-piperidyl benzilate.
- 31 (17) N-methyl-3-piperidyl benzilate.
- 32 (18) Psilocybin.
- 33 (19) Psilocyn.
- 34 (20) Tetrahydrocannabinols. Synthetic equivalents of the
- 35 substances contained in the plant, or in the resinous extractives of
- 36 Cannabis, sp. and/or synthetic substances, derivatives, and their
- 37 isomers with similar chemical structure and pharmacological
- 38 activity such as the following: delta 1 cis or trans
- 39 tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans

1 tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or
2 trans tetrahydrocannabinol, and its optical isomers.

3 Because nomenclature of these substances is not internationally
4 standardized, compounds of these structures, regardless of
5 numerical designation of atomic positions covered.

6 (21) Ethylamine analog of phencyclidine—Some trade or other
7 names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)
8 ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine,
9 PCE.

10 (22) Pyrrolidine analog of phencyclidine—Some trade or other
11 names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.

12 (23) Thiophene analog of phencyclidine—Some trade or other
13 names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog
14 of phencyclidine, TPCP, TCP.

15 (e) Depressants. Unless specifically excepted or unless listed
16 in another schedule, any material, compound, mixture, or
17 preparation which contains any quantity of the following substances
18 having a depressant effect on the central nervous system, including
19 its salts, isomers, and salts of isomers whenever the existence of
20 those salts, isomers, and salts of isomers is possible within the
21 specific chemical designation:

22 (1) Mecloqualone.

23 (2) Methaqualone.

24 (3) Gamma hydroxybutyric acid (also known by other names
25 such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate;
26 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate),
27 including its immediate precursors, isomers, esters, ethers, salts,
28 and salts of isomers, esters, and ethers, including, but not limited
29 to, gammabutyrolactone, for which an application has not been
30 approved under Section 505 of the Federal Food, Drug, and
31 Cosmetic Act (21 U.S.C. Sec. 355).

32 (f) Unless specifically excepted or unless listed in another
33 schedule, any material, compound, mixture, or preparation which
34 contains any quantity of the following substances having a
35 stimulant effect on the central nervous system, including its
36 isomers:

37 (1) Cocaine base.

38 (2) Fenethylline, including its salts.

39 (3) N-Ethylamphetamine, including its salts.

1 SEC. 3. Section 11350 of the Health and Safety Code is
2 amended to read:

3 11350. (a) Except as otherwise provided in this division, every
4 person who possesses (1) any controlled substance specified in
5 subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
6 Section 11054, specified in paragraph ~~(14), (15)~~, (15) or (20) of
7 subdivision (d) of Section 11054, or specified in subdivision (b)
8 or (c) of Section 11055, or specified in subdivision (h) of Section
9 11056, or (2) any controlled substance classified in Schedule III,
10 IV, or V which is a narcotic drug, unless upon the written
11 prescription of a physician, dentist, podiatrist, or veterinarian
12 licensed to practice in this state, shall be punished by imprisonment
13 in a county jail for not more than one year, except that such person
14 shall instead be punished pursuant to subdivision (h) of Section
15 1170 of the Penal Code if that person has one or more prior
16 convictions for an offense specified in clause (iv) of subparagraph
17 (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal
18 Code or for an offense requiring registration pursuant to
19 subdivision (c) of Section 290 of the Penal Code.

20 (b) Except as otherwise provided in this division, whenever a
21 person who possesses any of the controlled substances specified
22 in subdivision (a), the judge may, in addition to any punishment
23 provided for pursuant to subdivision (a), assess against that person
24 a fine not to exceed seventy dollars (\$70) with proceeds of this
25 fine to be used in accordance with Section 1463.23 of the Penal
26 Code. The court shall, however, take into consideration the
27 defendant's ability to pay, and no defendant shall be denied
28 probation because of ~~his or her~~ *their* inability to pay the fine
29 permitted under this subdivision.

30 (c) Except in unusual cases in which it would not serve the
31 interest of justice to do so, whenever a court grants probation
32 pursuant to a felony conviction under this section, in addition to
33 any other conditions of probation which may be imposed, the
34 following conditions of probation shall be ordered:

35 (1) For a first offense under this section, a fine of at least one
36 thousand dollars (\$1,000) or community service.

37 (2) For a second or subsequent offense under this section, a
38 fine of at least two thousand dollars (\$2,000) or community service.

1 (3) If a defendant does not have the ability to pay the minimum
2 fines specified in paragraphs (1) and (2), community service shall
3 be ordered in lieu of the fine.

4 (d) It is not unlawful for a person other than the prescription
5 holder to possess a controlled substance described in subdivision
6 (a) if both of the following apply:

7 (1) The possession of the controlled substance is at the direction
8 or with the express authorization of the prescription holder.

9 (2) The sole intent of the possessor is to deliver the prescription
10 to the prescription holder for its prescribed use or to discard the
11 substance in a lawful manner.

12 (e) This section does not permit the use of a controlled substance
13 by a person other than the prescription holder or permit the
14 distribution or sale of a controlled substance that is otherwise
15 inconsistent with the prescription.

16 SEC. 4. Section 11350.1 is added to the Health and Safety
17 Code, to read:

18 11350.1. (a) Except as otherwise provided in subdivisions (b),
19 (c), (d), and (e) of this section and notwithstanding any other law,
20 all of the following shall be lawful for a person 21 years of age or
21 older and shall not be a violation of state or local law:

22 (1) The possession, processing, obtaining, or transportation of
23 mescaline, as described in paragraph (14) of subdivision (d) of
24 Section 11054, for personal use or for social sharing.

25 (2) The ingesting of mescaline.

26 (3) The social sharing of mescaline.

27 (4) The possession, planting, cultivating, harvesting, or
28 processing of plants capable of producing mescaline, except for
29 the plant presently classified botanically as *Lophophora williamsii*
30 Lemaire, on property owned or controlled by a person, for personal
31 use or social sharing by that person, and possession of any product
32 produced by those plants.

33 (b) Possession of mescaline on the grounds of any public or
34 private elementary, vocational, junior high, or high school, during
35 hours that the school is open for classes or school-related programs,
36 or at any time when minors are using the facility is punishable as
37 a misdemeanor.

38 (c) (1) A person who knowingly gives away or administers
39 mescaline to a person who is under 18 years of age in violation of
40 law shall be punished by imprisonment in a county jail for a period

1 of not more than six months or by a fine of not more than five
2 hundred dollars (\$500), or by both that fine and imprisonment, or
3 by imprisonment pursuant to subdivision (h) of Section 1170 of
4 the Penal Code.

5 (2) Notwithstanding paragraph (1), a person 18 years of age or
6 over who knowingly gives away or administers mescaline to a
7 minor under 14 years of age in violation of law shall be punished
8 by imprisonment in the state prison for a period of three, five, or
9 seven years.

10 (3) A person who knowingly gives away or administers
11 mescaline to a person who is at least 18 years of age, but under 21
12 years of age is guilty of an infraction.

13 (d) Except as otherwise provided, possession of mescaline by
14 a person under 18 years of age is punishable as an infraction and
15 shall require:

16 (1) Upon a finding that a first offense has been committed, four
17 hours of drug education or counseling and up to 10 hours of
18 community service over a period not to exceed 60 days,
19 commencing when the drug education or counseling services are
20 made available to them.

21 (2) Upon a finding that a second offense or subsequent offense
22 has been committed, six hours of drug education or counseling
23 and up to 20 hours of community service over a period not to
24 exceed 90 days, commencing when the drug education or
25 counseling services are made available to them.

26 (e) Except as otherwise provided, possession of mescaline by
27 a person at least 18 years of age but less than 21 years of age is
28 punishable as an infraction.

29 (f) Mescaline or related products involved in any way with
30 conduct deemed lawful by this section are not contraband nor
31 subject to seizure, and no conduct deemed lawful by this section
32 shall constitute the basis for detention, search, or arrest, or the
33 basis for the seizure or forfeiture of assets.

34 (g) As used in this section, the following terms are defined as
35 follows:

36 (1) “Financial gain” means the receipt of money or other
37 valuable consideration in exchange for the item being shared.
38 “Financial gain” does not include reasonable fees for counseling,
39 spiritual guidance, or related services that are provided in
40 conjunction with administering or use of mescaline under the

1 guidance and supervision, and on the premises, of the person
2 providing those services.

3 (2) “Personal use” means for the personal ingestion or other
4 personal and noncommercial use by the person in possession.

5 (3) “Social sharing” means the giving away or consensual
6 administering of mescaline by a person 21 years of age or older,
7 to another person 21 years of age or older, not for financial gain,
8 including in the context of group counseling, spiritual guidance,
9 community-based healing, or related services.

10 SEC. 5. Section 11356.8 is added to the Health and Safety
11 Code, to read:

12 11356.8. (a) A person currently serving a sentence for a
13 conviction, whether by trial or by open or negotiated plea, who
14 would not have been guilty under Section 11350.1 or 11402 had
15 those sections been in effect at the time of the offense may petition
16 for a recall or dismissal of sentence before the trial court that
17 entered the judgment of conviction in the case to request
18 resentencing or dismissal in accordance with those sections.

19 (b) Upon receiving a petition under subdivision (a), the court
20 shall presume the petitioner satisfies the criteria in subdivision (a)
21 unless the party opposing the petition proves by clear and
22 convincing evidence that the petitioner does not satisfy the criteria.
23 If the petitioner satisfies the criteria in subdivision (a), the court
24 shall grant the petition to recall the sentence or dismiss the sentence
25 because it is legally invalid unless the court determines that
26 granting the petition would pose an unreasonable risk of danger
27 to public safety.

28 (1) In exercising its discretion, the court may consider, but shall
29 not be limited to evidence provided for in subdivision (b) of Section
30 1170.18 of the Penal Code.

31 (2) As used in this section, “unreasonable risk of danger to
32 public safety” has the same meaning as provided in subdivision
33 (c) of Section 1170.18 of the Penal Code.

34 (c) A person who is serving a sentence and is resentenced
35 pursuant to subdivision (b) shall be given credit for any time
36 already served and shall be subject to supervision for one year
37 following completion of their time in custody or shall be subject
38 to whatever supervision time they would have otherwise been
39 subject to after release, whichever is shorter, unless the court, in
40 its discretion, as part of its resentencing order, releases the person

1 from supervision. In that case, the person is subject to parole
2 supervision under Section 3000.08 of the Penal Code or postrelease
3 community supervision under subdivision (a) of Section 3451 of
4 the Penal Code by the designated agency and the jurisdiction of
5 the court in the county in which the offender is released or resides,
6 or in which an alleged violation of supervision has occurred, for
7 the purpose of hearing petitions to revoke supervision and impose
8 a term of custody.

9 (d) Under no circumstances may resentencing under this section
10 result in the imposition of a term longer than the original sentence,
11 or the reinstatement of charges dismissed pursuant to a negotiated
12 plea agreement.

13 (e) A person who has completed their sentence for a conviction
14 under this article or Chapter 6.5 (commencing with Section 11400),
15 whether by trial or open or negotiated plea, who would not have
16 been guilty of an offense or who would have been guilty of a lesser
17 offense under Section 11350.1 or 11402 had those sections been
18 in effect at the time of the offense, may file an application before
19 the trial court that entered the judgment of conviction in their case
20 to have the conviction dismissed and sealed because the prior
21 conviction is now legally invalid.

22 (f) The court shall presume the petitioner satisfies the criteria
23 in subdivision (e) unless the party opposing the application proves
24 by clear and convincing evidence that the petitioner does not satisfy
25 the criteria in subdivision (e). Once the applicant satisfies the
26 criteria in subdivision (e), the court shall redesignate the conviction
27 as a misdemeanor or infraction or dismiss and seal the conviction
28 as legally invalid as established under Sections 11350.1 and 11402.

29 (g) Unless requested by the applicant, no hearing is necessary
30 to grant or deny an application filed under subdivision (e).

31 (h) If the court that originally sentenced the petitioner is not
32 available, the presiding judge shall designate another judge to rule
33 on the petition or application.

34 (i) Nothing in this section is intended to diminish or abrogate
35 any rights or remedies otherwise available to the petitioner or
36 applicant.

37 (j) Nothing in this and related sections is intended to diminish
38 or abrogate the finality of judgments in any case not falling within
39 the purview of Section 11350.1 or 11402.

1 (k) A resentencing hearing ordered under this section shall
2 constitute a “postconviction release proceeding” under paragraph
3 (7) of subdivision (b) of Section 28 of Article I of the California
4 Constitution (Marsy’s Law).

5 (l) The provisions of this section shall apply equally to juvenile
6 delinquency adjudications and dispositions under Section 602 of
7 the Welfare and Institutions Code if the juvenile would not have
8 been guilty of an offense under Section 11350.1 or 11402.

9 (m) The Judicial Council shall promulgate and make available
10 all necessary forms to enable the filing of the petitions and
11 applications provided in this section.

12 SEC. 6. Section 11356.9 is added to the Health and Safety
13 Code, to read:

14 11356.9. (a) On or before July 1, 2022, the Department of
15 Justice shall review the records in the state summary criminal
16 history information database and shall identify past convictions
17 that are potentially eligible for recall or dismissal of sentence or
18 dismissal and sealing, pursuant to Section 11356.8. The department
19 shall notify the prosecution of all cases in their jurisdiction that
20 are eligible for recall or dismissal of sentence or dismissal and
21 sealing.

22 (b) The prosecution shall have until July 1, 2023, to review all
23 cases and determine whether to challenge the recall or dismissal
24 of sentence or dismissal and sealing.

25 (c) (1) The prosecution may challenge the resentencing of a
26 person pursuant to this section when the person does not meet the
27 criteria established in Section 11356.8 or presents an unreasonable
28 risk to public safety.

29 (2) The prosecution may challenge the dismissal and sealing of
30 a person pursuant to this section who has completed their sentence
31 for a conviction when the person does not meet the criteria
32 established in Section 11356.8.

33 (3) On or before July 1, 2023, the prosecution shall inform the
34 court and the public defender’s office in their county when they
35 are challenging a particular recall or dismissal of sentence or
36 dismissal and sealing. The prosecution shall inform the court when
37 they are not challenging a particular recall or dismissal of sentence
38 or dismissal and sealing.

39 (4) The public defender’s office, upon receiving notice from
40 the prosecution pursuant to paragraph (3), shall make a reasonable

1 effort to notify the person whose resentencing or dismissal is being
2 challenged.

3 (d) If the prosecution does not challenge the recall or dismissal
4 of sentence or dismissal and sealing by July 1, 2023, the court shall
5 reduce or dismiss the conviction pursuant to Section 11356.8.

6 (e) The court shall notify the department of the recall or
7 dismissal of sentence or dismissal and sealing and the department
8 shall modify the state summary criminal history information
9 database accordingly.

10 (f) The department shall post general information on its internet
11 website about the recall or dismissal of sentences or dismissal and
12 sealing authorized in this section.

13 (g) It is the intent of the Legislature that persons who are
14 currently serving a sentence or who proactively petition for a recall
15 or dismissal of sentence or dismissal and sealing pursuant to
16 Section 11356.8 be prioritized for review.

17 SEC. 7. Section 11364 of the Health and Safety Code is
18 amended to read:

19 11364. (a) It is unlawful to possess an opium pipe or any
20 device, contrivance, instrument, or paraphernalia used for
21 unlawfully injecting or smoking (1) a controlled substance specified
22 in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of
23 Section 11054, specified in paragraph ~~(14)~~, ~~(15)~~, (15) or (20) of
24 subdivision (d) of Section 11054, specified in subdivision (b) or
25 (c) of Section 11055, or specified in paragraph (2) of subdivision
26 (d) of Section 11055, or (2) a controlled substance that is a narcotic
27 drug classified in Schedule III, IV, or V.

28 (b) This section shall not apply to hypodermic needles or
29 syringes that have been containerized for safe disposal in a
30 container that meets state and federal standards for disposal of
31 sharps waste.

32 (c) Until January 1, 2026, as a public health measure intended
33 to prevent the transmission of HIV, viral hepatitis, and other
34 bloodborne diseases among persons who use syringes and
35 hypodermic needles, and to prevent subsequent infection of sexual
36 partners, newborn children, or other persons, this section shall not
37 apply to the possession solely for personal use of hypodermic
38 needles or syringes.

39 SEC. 8. Section 11364.7 of the Health and Safety Code is
40 amended to read:

1 11364.7. (a) (1) Except as authorized by law, any person who
2 delivers, furnishes, or transfers, possesses with intent to deliver,
3 furnish, or transfer, or manufactures with the intent to deliver,
4 furnish, or transfer, drug paraphernalia, knowing, or under
5 circumstances where one reasonably should know, that it will be
6 used to plant, propagate, cultivate, grow, harvest, compound,
7 convert, produce, process, prepare, ~~test, analyze,~~ pack, repack,
8 store, contain, conceal, inject, ingest, inhale, or otherwise introduce
9 into the human body a controlled substance, except as provided
10 in subdivision (b), in violation of this division, is guilty of a
11 misdemeanor.

12 (2) A public entity, its agents, or employees shall not be subject
13 to criminal prosecution for distribution of hypodermic needles or
14 syringes or any materials deemed by a local or state health
15 department to be necessary to prevent the spread of communicable
16 diseases, or to prevent drug overdose, injury, or disability to
17 participants in clean needle and syringe exchange projects
18 authorized by the public entity pursuant to Chapter 18
19 (commencing with Section 121349) of Part 4 of Division 105.

20 (3) *This subdivision does not apply to any paraphernalia that*
21 *is intended for use related to the personal possession or growing,*
22 *sharing, or safe use of any of the following substances:*

23 (A) *Dimethyltryptamine (DMT).*

24 (B) *Ibogaine.*

25 (C) *Lysergic acid diethylamide (LSD).*

26 (D) *Mescaline.*

27 (E) *Psilocybin.*

28 (F) *Psilocyn.*

29 (G) *Ketamine.*

30 (H) *3,4-methylenedioxyamphetamine (MDMA).*

31 (b) Except as authorized by law, any person who manufactures
32 with intent to deliver, furnish, or transfer drug paraphernalia
33 knowing, or under circumstances where one reasonably should
34 know, that it will be used to plant, propagate, cultivate, grow,
35 harvest, manufacture, compound, convert, produce, process,
36 prepare, test, analyze, pack, repack, store, contain, conceal, inject,
37 ingest, inhale, or otherwise introduce into the human body cocaine,
38 cocaine base, heroin, phencyclidine, or methamphetamine in
39 violation of this division shall be punished by imprisonment in a
40 county jail for not more than one year, or in the state prison.

1 (c) Except as authorized by law, any person, 18 years of age or
2 over, who violates subdivision (a) by delivering, furnishing, or
3 transferring drug paraphernalia to a person under 18 years of age
4 who is at least three years ~~his or her~~ junior, *younger*, or who, upon
5 the grounds of a public or private elementary, vocational, junior
6 high, or high school, possesses a hypodermic needle, as defined
7 in paragraph (7) of subdivision (a) of Section 11014.5, with the
8 intent to deliver, furnish, or transfer the hypodermic needle,
9 knowing, or under circumstances where one reasonably should
10 know, that it will be used by a person under 18 years of age to
11 inject into the human body a controlled substance, is guilty of a
12 misdemeanor and shall be punished by imprisonment in a county
13 jail for not more than one year, by a fine of not more than one
14 thousand dollars (\$1,000), or by both that imprisonment and fine.

15 (d) The violation, or the causing or the permitting of a violation,
16 of subdivision (a), (b), or (c) by a holder of a business or liquor
17 license issued by a city, county, or city and county, or by the State
18 of California, and in the course of the licensee's business shall be
19 grounds for the revocation of that license.

20 (e) All drug paraphernalia defined in Section 11014.5 is subject
21 to forfeiture and may be seized by any peace officer pursuant to
22 Section 11471 unless its distribution has been authorized pursuant
23 to subdivision (a).

24 (f) If any provision of this section or the application thereof to
25 any person or circumstance is held invalid, it is the intent of the
26 Legislature that the invalidity shall not affect other provisions or
27 applications of this section which can be given effect without the
28 invalid provision or application and to this end the provisions of
29 this section are severable.

30 SEC. 9. Section 11365 of the Health and Safety Code is
31 amended to read:

32 11365. (a) It is unlawful to visit or to be in any room or place
33 where any controlled substances which are specified in subdivision
34 (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
35 specified in paragraph ~~(14), (15),~~ (15) or (20) of subdivision (d)
36 of Section 11054, or specified in subdivision (b) or (c) or paragraph
37 (2) of subdivision (d) of Section 11055, or which are narcotic drugs
38 classified in Schedule III, IV, or V, are being unlawfully smoked
39 or used with knowledge that such activity is occurring.

1 (b) This section shall apply only where the defendant aids,
2 assists, or abets the perpetration of the unlawful smoking or use
3 of a controlled substance specified in subdivision (a). This
4 subdivision is declaratory of existing law as expressed in People
5 v. Cressey (1970) 2 Cal. 3d 836.

6 SEC. 10. Section 11377 of the Health and Safety Code is
7 amended to read:

8 11377. (a) Except as authorized by law and as otherwise
9 provided in subdivision (b) or Section 11375, or in Article 7
10 (commencing with Section 4211) of Chapter 9 of Division 2 of
11 the Business and Professions Code, every person who possesses
12 any controlled substance which is (1) classified in Schedule III,
13 IV, or V, and which is not a narcotic drug, *except the substance*
14 *specified in subdivision (g) of Section 11056*, (2) specified in
15 subdivision (d) of Section 11054, except paragraphs (10), (11),
16 (12), (13), (14), (15), (18), (19), and (20) of subdivision (d), (3)
17 specified in paragraph (11) of subdivision (c) of Section 11056,
18 (4) specified in paragraph (2) or (3) of subdivision (f) of Section
19 11054, or (5) specified in subdivision (d), (e), or (f) of Section
20 11055, unless upon the prescription of a physician, dentist,
21 podiatrist, or veterinarian, licensed to practice in this state, shall
22 be punished by imprisonment in a county jail for a period of not
23 more than one year, except that such person may instead be
24 punished pursuant to subdivision (h) of Section 1170 of the Penal
25 Code if that person has one or more prior convictions for an offense
26 specified in clause (iv) of subparagraph (C) of paragraph (2) of
27 subdivision (e) of Section 667 of the Penal Code or for an offense
28 requiring registration pursuant to subdivision (c) of Section 290
29 of the Penal Code.

30 (b) The judge may assess a fine not to exceed seventy dollars
31 (\$70) against any person who violates subdivision (a), with the
32 proceeds of this fine to be used in accordance with Section 1463.23
33 of the Penal Code. The court shall, however, take into consideration
34 the defendant's ability to pay, and no defendant shall be denied
35 probation because of ~~his or her~~ *their* inability to pay the fine
36 permitted under this subdivision.

37 (c) It is not unlawful for a person other than the prescription
38 holder to possess a controlled substance described in subdivision
39 (a) if both of the following apply:

1 (1) The possession of the controlled substance is at the direction
2 or with the express authorization of the prescription holder.

3 (2) The sole intent of the possessor is to deliver the prescription
4 to the prescription holder for its prescribed use or to discard the
5 substance in a lawful manner.

6 (d) This section does not permit the use of a controlled substance
7 by a person other than the prescription holder or permit the
8 distribution or sale of a controlled substance that is otherwise
9 inconsistent with the prescription.

10 SEC. 11. Section 11377.1 is added to the Health and Safety
11 Code, to read:

12 11377.1. (a) Except as otherwise provided in Sections 11377.5
13 and subdivisions (b), (c), (d), and (e) of this section, and
14 notwithstanding any other law, all of the following shall be lawful
15 for a person 21 years of age or older and shall not be a violation
16 of state or local law:

17 (1) The possession, processing, obtaining, or transportation of
18 a controlled substance specified in paragraph (10), (11), (12), (18),
19 or (19) of subdivision (d) of Section 11054, or in subdivision (g)
20 of Section 11056, for personal use or for social sharing.

21 (2) The ingesting of a substance described in paragraph (1).

22 (3) The social sharing of a substance described in paragraph
23 (1).

24 (4) The possession, planting, cultivating, harvesting, or
25 processing of plants capable of producing a substance described
26 in paragraph (1), on property owned or controlled by a person, for
27 personal use or social sharing by that person, and possession of
28 any product produced by those plants including spores or mycelium
29 capable of producing mushrooms or other material which contain
30 a controlled substance specified in paragraph (18) or (19) of
31 subdivision (d) of Section 11054, for that purpose.

32 (b) Possession of a controlled substance specified in paragraph
33 (10), (11), (12), (18), or (19) of subdivision (d) of Section 11054,
34 or in subdivision (g) of Section 11056, on the grounds of any public
35 or private elementary, vocational, junior high, or high school,
36 during hours that the school is open for classes or school-related
37 programs, or at any time when minors are using the facility is
38 punishable as a misdemeanor.

39 (c) (1) A person who knowingly gives away or administers a
40 controlled substance specified in paragraph (10), (11), (12), (18),

1 or (19) of subdivision (d) of Section 11054, or in subdivision (g)
2 of Section 11056, to a person who is under 18 years of age in
3 violation of law shall be punished by imprisonment in a county
4 jail for a period of not more than six months or by a fine of not
5 more than five hundred dollars (\$500), or by both that fine and
6 imprisonment, or by imprisonment pursuant to subdivision (h) of
7 Section 1170 of the Penal Code.

8 (2) Notwithstanding paragraph (1), a person 18 years of age or
9 over who knowingly gives away or administers a substance
10 described in paragraph (1) to a minor under 14 years of age in
11 violation of law shall be punished by imprisonment in the state
12 prison for a period of three, five, or seven years.

13 (3) A person who knowingly gives away or administers a
14 substance described in paragraph (1) to a person who is at least 18
15 years of age, but under 21 years of age is guilty of an infraction.

16 (d) Except as otherwise provided, possession of a controlled
17 substance specified in paragraph (10), (11), (12), (18), or (19) of
18 subdivision (d) of Section 11054, or in subdivision (g) of Section
19 11056, by a person under 18 years of age is punishable as an
20 infraction and shall require:

21 (1) Upon a finding that a first offense has been committed, four
22 hours of drug education or counseling and up to 10 hours of
23 community service over a period not to exceed 60 days,
24 commencing when the drug education or counseling services are
25 made available to them.

26 (2) Upon a finding that a second offense or subsequent offense
27 has been committed, six hours of drug education or counseling
28 and up to 20 hours of community service over a period not to
29 exceed 90 days, commencing when the drug education or
30 counseling services are made available to them.

31 (e) Except as otherwise provided, possession of a controlled
32 substance specified in paragraph (10), (11), (12), (18), or (19) of
33 subdivision (d) of Section 11054, or in subdivision (g) of Section
34 11056, by a person at least 18 years of age but less than 21 years
35 of age is punishable as an infraction.

36 (f) A controlled substance described in this section or any related
37 product involved in any way with conduct deemed lawful by this
38 section are not contraband nor subject to seizure, and no conduct
39 deemed lawful by this section shall constitute the basis for

1 detention, search, or arrest, or the basis for the seizure or forfeiture
2 of assets.

3 (g) As used in this section, the following terms are defined as
4 follows:

5 (1) “Financial gain” means the receipt of money or other
6 valuable consideration in exchange for the item being shared.
7 “Financial gain” does not include reasonable fees for counseling,
8 spiritual guidance, or related services that are provided in
9 conjunction with administering or use of a controlled substance
10 described in this section under the guidance and supervision, and
11 on the premises, of the person providing those services.

12 (2) “Personal use” means for the personal ingestion or other
13 personal and noncommercial use by the person in possession.

14 (3) “Social sharing” means the giving away or consensual
15 administering of a controlled substance described in this section
16 by a person 21 years of age or older, to another person 21 years
17 of age or older, not for financial gain, including in the context of
18 group counseling, spiritual guidance, community-based healing,
19 or related services.

20 SEC. 12. Section 11379 of the Health and Safety Code is
21 amended to read:

22 11379. (a) Except as otherwise provided in subdivision ~~(b)~~
23 *(b)*, in *Section 11377.1*, and in Article 7 (commencing with Section
24 4211) of Chapter 9 of Division 2 of the Business and Professions
25 Code, every person who transports, imports into this state, sells,
26 furnishes, administers, or gives away, or offers to transport, import
27 into this state, sell, furnish, administer, or give away, or attempts
28 to import into this state or transport any controlled substance which
29 is (1) classified in Schedule III, IV, or V and which is not a narcotic
30 drug, except subdivision (g) of Section 11056, (2) specified in
31 subdivision (d) of Section 11054, except paragraphs (13), (14),
32 (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in
33 paragraph (11) of subdivision (c) of Section 11056, (4) specified
34 in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5)
35 specified in subdivision (d) or (e), except paragraph (3) of
36 subdivision (e), or specified in subparagraph (A) of paragraph (1)
37 of subdivision (f), of Section 11055, unless upon the prescription
38 of a physician, dentist, podiatrist, or veterinarian, licensed to
39 practice in this state, shall be punished by imprisonment pursuant

1 to subdivision (h) of Section 1170 of the Penal Code for a period
2 of two, three, or four years.

3 (b) Notwithstanding the penalty provisions of subdivision (a),
4 any person who transports any controlled substances specified in
5 subdivision (a) within this state from one county to another
6 noncontiguous county shall be punished by imprisonment pursuant
7 to subdivision (h) of Section 1170 of the Penal Code for three, six,
8 or nine years.

9 (c) For purposes of this section, “transports” means to transport
10 for sale.

11 (d) Nothing in this section is intended to preclude or limit
12 prosecution under an aiding and abetting theory, accessory theory,
13 or a conspiracy theory.

14 SEC. 13. Section 11379.2 of the Health and Safety Code is
15 amended to read:

16 11379.2. Except as otherwise provided in *Section 11377.1 and*
17 *in Article 7 (commencing with Section 4211) of Chapter 9 of*
18 *Division 2 of the Business and Professions Code, every person*
19 *who possesses for sale or sells any controlled substance specified*
20 *in subdivision (g) of Section 11056 shall be punished by*
21 *imprisonment in the county jail for a period of not more than one*
22 *year or in the state prison.*

23 SEC. 14. Section 11382 of the Health and Safety Code is
24 amended to read:

25 11382. ~~Every~~ *Except as otherwise provided in Section 11377.1,*
26 *every person who agrees, consents, or in any manner offers to*
27 *unlawfully sell, furnish, transport, administer, or give any*
28 *controlled substance which is (a) classified in Schedule III, IV, or*
29 *V and which is not a narcotic drug, or (b) specified in subdivision*
30 *(d) of Section 11054, except paragraphs (13), (14), (15), and (20)*
31 *of subdivision (d), specified in paragraph (11) of subdivision (c)*
32 *of Section 11056, or specified in subdivision (d), (e), or (f) of*
33 *Section 11055, to any person, or offers, arranges, or negotiates to*
34 *have that controlled substance unlawfully sold, delivered,*
35 *transported, furnished, administered, or given to any person and*
36 *then sells, delivers, furnishes, transports, administers, or gives, or*
37 *offers, or arranges, or negotiates to have sold, delivered,*
38 *transported, furnished, administered, or given to any person any*
39 *other liquid, substance, or material in lieu of that controlled*
40 *substance shall be punished by imprisonment in the county jail for*

1 not more than one year, or pursuant to subdivision (h) of Section
2 1170 of the Penal Code.

3 SEC. 15. Section 11382.8 is added to the Health and Safety
4 Code, to read:

5 11382.8. (a) A person currently serving a sentence for a
6 conviction, whether by trial or by open or negotiated plea, who
7 would not have been guilty under Section 11377.1, had those
8 sections been in effect at the time of the offense may petition for
9 a recall or dismissal of sentence before the trial court that entered
10 the judgment of conviction in the case to request resentencing or
11 dismissal in accordance with those sections.

12 (b) Upon receiving a petition under subdivision (a), the court
13 shall presume the petitioner satisfies the criteria in subdivision (a)
14 unless the party opposing the petition proves by clear and
15 convincing evidence that the petitioner does not satisfy the criteria.
16 If the petitioner satisfies the criteria in subdivision (a), the court
17 shall grant the petition to recall the sentence or dismiss the sentence
18 because it is legally invalid unless the court determines that
19 granting the petition would pose an unreasonable risk of danger
20 to public safety.

21 (1) In exercising its discretion, the court may consider, but shall
22 not be limited to evidence provided for in subdivision (b) of Section
23 1170.18 of the Penal Code.

24 (2) As used in this section, “unreasonable risk of danger to
25 public safety” has the same meaning as provided in subdivision
26 (c) of Section 1170.18 of the Penal Code.

27 (c) A person who is serving a sentence and is resentenced
28 pursuant to subdivision (b) shall be given credit for any time
29 already served and shall be subject to supervision for one year
30 following completion of their time in custody or shall be subject
31 to whatever supervision time they would have otherwise been
32 subject to after release, whichever is shorter, unless the court, in
33 its discretion, as part of its resentencing order, releases the person
34 from supervision. In that case, the person is subject to parole
35 supervision under Section 3000.08 of the Penal Code or postrelease
36 community supervision under subdivision (a) of Section 3451 of
37 the Penal Code by the designated agency and the jurisdiction of
38 the court in the county in which the offender is released or resides,
39 or in which an alleged violation of supervision has occurred, for

1 the purpose of hearing petitions to revoke supervision and impose
2 a term of custody.

3 (d) Under no circumstances may resentencing under this section
4 result in the imposition of a term longer than the original sentence,
5 or the reinstatement of charges dismissed pursuant to a negotiated
6 plea agreement.

7 (e) A person who has completed their sentence for a conviction
8 under this article or Article 7 (commencing with Section 11390),
9 whether by trial or open or negotiated plea, who would not have
10 been guilty of an offense or who would have been guilty of a lesser
11 offense under Section 11377.1, had those sections been in effect
12 at the time of the offense, may file an application before the trial
13 court that entered the judgment of conviction in their case to have
14 the conviction dismissed and sealed because the prior conviction
15 is now legally invalid.

16 (f) The court shall presume the petitioner satisfies the criteria
17 in subdivision (e) unless the party opposing the application proves
18 by clear and convincing evidence that the petitioner does not satisfy
19 the criteria in subdivision (e). Once the applicant satisfies the
20 criteria in subdivision (e), the court shall redesignate the conviction
21 as a misdemeanor or infraction or dismiss and seal the conviction
22 as legally invalid as now established under Section 11377.1.

23 (g) Unless requested by the applicant, no hearing is necessary
24 to grant or deny an application filed under subdivision (e).

25 (h) If the court that originally sentenced the petitioner is not
26 available, the presiding judge shall designate another judge to rule
27 on the petition or application.

28 (i) Nothing in this section is intended to diminish or abrogate
29 any rights or remedies otherwise available to the petitioner or
30 applicant.

31 (j) Nothing in this and related sections is intended to diminish
32 or abrogate the finality of judgments in any case not falling within
33 the purview of Section 11377.1.

34 (k) A resentencing hearing ordered under this section shall
35 constitute a “postconviction release proceeding” under paragraph
36 (7) of subdivision (b) of Section 28 of Article I of the California
37 Constitution (Marsy’s Law).

38 (l) The provisions of this section shall apply equally to juvenile
39 delinquency adjudications and dispositions under Section 602 of

1 the Welfare and Institutions Code if the juvenile would not have
2 been guilty of an offense under Section 11377.1.

3 (m) The Judicial Council shall promulgate and make available
4 all necessary forms to enable the filing of the petitions and
5 applications provided in this section.

6 SEC. 16. Section 11382.9 is added to the Health and Safety
7 Code, to read:

8 11382.9. (a) On or before July 1, 2022, the Department of
9 Justice shall review the records in the state summary criminal
10 history information database and shall identify past convictions
11 that are potentially eligible for recall or dismissal of sentence or
12 dismissal and sealing, pursuant to Section 11382.8. The department
13 shall notify the prosecution of all cases in their jurisdiction that
14 are eligible for recall or dismissal of sentence or dismissal and
15 sealing.

16 (b) The prosecution shall have until July 1, 2023, to review all
17 cases and determine whether to challenge the recall or dismissal
18 of sentence or dismissal and sealing.

19 (c) (1) The prosecution may challenge the resentencing of a
20 person pursuant to this section when the person does not meet the
21 criteria established in Section 11382.8 or presents an unreasonable
22 risk to public safety.

23 (2) The prosecution may challenge the dismissal and sealing of
24 a person pursuant to this section who has completed their sentence
25 for a conviction when the person does not meet the criteria
26 established in Section 11382.8.

27 (3) On or before July 1, 2023, the prosecution shall inform the
28 court and the public defender's office in their county when they
29 are challenging a particular recall or dismissal of sentence or
30 dismissal and sealing. The prosecution shall inform the court when
31 they are not challenging a particular recall or dismissal of sentence
32 or dismissal and sealing.

33 (4) The public defender's office, upon receiving notice from
34 the prosecution pursuant to paragraph (3), shall make a reasonable
35 effort to notify the person whose resentencing or dismissal is being
36 challenged.

37 (d) If the prosecution does not challenge the recall or dismissal
38 of sentence or dismissal and sealing by July 1, 2023, the court shall
39 reduce or dismiss the conviction pursuant to Section 11382.8.

1 (e) The court shall notify the department of the recall or
2 dismissal of sentence or dismissal and sealing and the department
3 shall modify the state summary criminal history information
4 database accordingly.

5 (f) The department shall post general information on its internet
6 website about the recall or dismissal of sentences or dismissal and
7 sealing authorized in this section.

8 (g) It is the intent of the Legislature that persons who are
9 currently serving a sentence or who proactively petition for a recall
10 or dismissal of sentence or dismissal and sealing pursuant to
11 Section 11382.8 be prioritized for review.

12 SEC. 17. Section 11402 is added to the Health and Safety Code,
13 to read:

14 11402. (a) As provided in this section, this chapter does not
15 apply to 3,4-methylenedioxymethamphetamine, otherwise known
16 as MDMA.

17 (b) Except as otherwise provided in this section, and
18 notwithstanding any other law, all of the following shall be lawful
19 for a person 21 years of age or older and shall not be a violation
20 of state or local law:

21 (1) The possession, processing, obtaining, or transportation of
22 a controlled substance described in subdivision (a) for personal
23 use or for social sharing.

24 (2) The ingesting of a substance described in subdivision (a).

25 (3) The social sharing of a substance described in subdivision
26 (a).

27 (c) Possession of a controlled substance described in subdivision
28 (a) on the grounds of any public or private elementary, vocational,
29 junior high, or high school, during hours that the school is open
30 for classes or school-related programs, or at any time when minors
31 are using the facility is punishable as a misdemeanor.

32 (d) (1) A person who knowingly gives away or administers a
33 controlled substance described in subdivision (a) to a person who
34 is under 18 years of age in violation of law shall be punished by
35 imprisonment in a county jail for a period of not more than six
36 months or by a fine of not more than five hundred dollars (\$500),
37 or by both such fine and imprisonment, or by imprisonment
38 pursuant to subdivision (h) of Section 1170 of the Penal Code.

39 (2) Notwithstanding paragraph (1), a person 18 years of age or
40 over who knowingly gives away or administers a substance

1 described in subdivision (a) to a minor under 14 years of age in
2 violation of law shall be punished by imprisonment in the state
3 prison for a period of three, five, or seven years.

4 (3) A person who knowingly gives away or administers a
5 substance described in subdivision (a) to a person who is at least
6 18 years of age, but under 21 years of age is guilty of an infraction.

7 (e) Except as otherwise provided, possession of a controlled
8 substance described in subdivision (a) by a person under 18 years
9 of age is punishable as an infraction and shall require:

10 (1) Upon a finding that a first offense has been committed, four
11 hours of drug education or counseling and up to 10 hours of
12 community service over a period not to exceed 60 days,
13 commencing when the drug education or counseling services are
14 made available to them.

15 (2) Upon a finding that a second offense or subsequent offense
16 has been committed, six hours of drug education or counseling
17 and up to 20 hours of community service over a period not to
18 exceed 90 days, commencing when the drug education or
19 counseling services are made available to them.

20 (f) Except as otherwise provided, possession of a controlled
21 substance described in subdivision (a) by a person at least 18 years
22 of age but less than 21 years of age is punishable as an infraction.

23 (g) A controlled substance described in subdivision (a) or any
24 related product involved in any way with conduct deemed lawful
25 by this section are not contraband nor subject to seizure, and no
26 conduct deemed lawful by this section shall constitute the basis
27 for detention, search, or arrest, or the basis for the seizure or
28 forfeiture of assets.

29 (h) As used in this section, the following terms are defined as
30 follows:

31 (1) “Financial gain” means the receipt of money or other
32 valuable consideration in exchange for the item being shared.
33 “Financial gain” does not include reasonable fees for counseling,
34 spiritual guidance, or related services that are provided in
35 conjunction with administering or use of a controlled substance
36 described in subdivision (a) under the guidance and supervision,
37 and on the premises, of the person providing those services.

38 (2) “Personal use” means for the personal ingestion or other
39 personal and noncommercial use by the person in possession.

1 (3) “Social sharing” means the giving away or consensual
 2 administering of a controlled substance described in subdivision
 3 (a) by a person 21 years of age or older, to another person 21 years
 4 of age or older, not for financial gain, including in the context of
 5 group counseling, spiritual guidance, community-based healing,
 6 or related services.

7 SEC. 18. Section 11550 of the Health and Safety Code is
 8 amended to read:

9 11550. (a) A person shall not use, or be under the influence
 10 of any controlled substance that is (1) specified in subdivision (b),
 11 (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
 12 specified in paragraph ~~(14)~~, (15), (21), (22), or (23) of subdivision
 13 (d) of Section 11054, specified in subdivision (b) or (c) of Section
 14 11055, or specified in paragraph (1) or (2) of subdivision (d) or in
 15 paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic
 16 drug classified in Schedule III, IV, or V, except when administered
 17 by or under the direction of a person licensed by the state to
 18 dispense, prescribe, or administer controlled substances. It shall
 19 be the burden of the defense to show that it comes within the
 20 exception. A person convicted of violating this subdivision is guilty
 21 of a misdemeanor and shall be sentenced to serve a term of not
 22 more than one year in a county jail. The court may also place a
 23 person convicted under this subdivision on probation for a period
 24 not to exceed five years.

25 (b) (1) A person who is convicted of violating subdivision (a)
 26 when the offense occurred within seven years of that person being
 27 convicted of two or more separate violations of that subdivision,
 28 and refuses to complete a licensed drug rehabilitation program
 29 offered by the court pursuant to subdivision (c), shall be punished
 30 by imprisonment in a county jail for not less than 180 days nor
 31 more than one year. In no event does the court have the power to
 32 absolve a person convicted of a violation of subdivision (a) who
 33 is punishable under this subdivision from the obligation of spending
 34 at least 180 days in confinement in a county jail unless there are
 35 no licensed drug rehabilitation programs reasonably available.

36 (2) For the purpose of this section, a drug rehabilitation program
 37 is not reasonably available unless the person is not required to pay
 38 more than the court determines that ~~he or she is~~ *they are* reasonably
 39 able to pay in order to participate in the program.

1 (c) (1) The court may, when it would be in the interest of
2 justice, permit a person convicted of a violation of subdivision (a)
3 punishable under subdivision (a) or (b) to complete a licensed drug
4 rehabilitation program in lieu of part or all of the imprisonment in
5 a county jail. As a condition of sentencing, the court may require
6 the offender to pay all or a portion of the drug rehabilitation
7 program.

8 (2) In order to alleviate jail overcrowding and to provide
9 recidivist offenders with a reasonable opportunity to seek
10 rehabilitation pursuant to this subdivision, counties are encouraged
11 to include provisions to augment licensed drug rehabilitation
12 programs in their substance abuse proposals and applications
13 submitted to the state for federal and state drug abuse funds.

14 (d) In addition to any fine assessed under this section, the judge
15 may assess a fine not to exceed seventy dollars (\$70) against a
16 person who violates this section, with the proceeds of this fine to
17 be used in accordance with Section 1463.23 of the Penal Code.
18 The court shall, however, take into consideration the defendant's
19 ability to pay, and a defendant shall not be denied probation
20 because of ~~his or her~~ *their* inability to pay the fine permitted under
21 this subdivision.

22 (e) (1) Notwithstanding subdivisions (a) and (b) or any other
23 law, a person who is unlawfully under the influence of cocaine,
24 cocaine base, heroin, methamphetamine, or phencyclidine while
25 in the immediate personal possession of a loaded, operable firearm
26 is guilty of a public offense punishable by imprisonment in a
27 county jail for not exceeding one year or in state prison.

28 (2) As used in this subdivision "immediate personal possession"
29 includes, but is not limited to, the interior passenger compartment
30 of a motor vehicle.

31 (f) Every person who violates subdivision (e) is punishable
32 upon the second and each subsequent conviction by imprisonment
33 in the state prison for two, three, or four years.

34 (g) This section does not prevent deferred entry of judgment
35 or a defendant's participation in a preguilty plea drug court program
36 under Chapter 2.5 (commencing with Section 1000) of Title 6 of
37 Part 2 of the Penal Code unless the person is charged with violating
38 subdivision (b) or (c) of Section 243 of the Penal Code. A person
39 charged with violating this section by being under the influence
40 of any controlled substance which is specified in paragraph (21),

1 (22), or (23) of subdivision (d) of Section 11054 or in paragraph
2 (3) of subdivision (e) of Section 11055 and with violating either
3 subdivision (b) or (c) of Section 243 of the Penal Code or with a
4 violation of subdivision (e) shall be ineligible for deferred entry
5 of judgment or a preguilty plea drug court program.

6 SEC. 19. Section 131065 is added to the Health and Safety
7 Code, to read:

8 131065. (a) The State Department of Public Health shall
9 convene a working group to study and make recommendations
10 regarding the decriminalization, regulation, and safe therapeutic
11 and legal use of those controlled substance specified in paragraph
12 (10), (11), (12), (14), (18), or (19) of subdivision (d) of Section
13 11054, or in subdivision (g) of Section 11056, and of
14 3,4-methylenedioxymethamphetamine.

15 (b) The State Public Health Officer or their designee shall chair
16 the working group.

17 (c) The working group shall include, without limitation, persons
18 with expertise in psychedelic therapy, medicine and public health,
19 drug policy, and traditional indigenous use of psychedelic
20 substances, including representatives from the National Council
21 of the Native American Church and Indian tribes in California.

22 (d) The working group is authorized to contract with outside
23 entities, including public or private universities for research
24 assistance.

25 (e) The working group shall study, without limitation, all of the
26 following:

27 (1) The available research on the safety and efficacy of using
28 controlled substances specified in subdivision (a) in a therapeutic
29 setting for treating depression, anxiety, addiction, and other mental
30 health conditions.

31 (2) The available research on the public health and public safety
32 implications of decriminalizing controlled substances specified in
33 subdivision (a).

34 (3) The available research on the safe use of controlled
35 substances specified in subdivision (a) for nontherapeutic uses
36 including as part of religious, spiritual, or creative experiences.

37 (4) Decriminalization and therapeutic use models for the
38 controlled substances specified in subdivision (a) from other
39 jurisdictions.

1 (f) The working group shall develop policy recommendation
2 regarding, without limitation, all of the following:

3 (1) The authorization of various controlled substances for
4 therapeutic and personal uses.

5 (2) The appropriate regulation of the therapeutic use of
6 controlled substances, including qualifications, training, and
7 licensing of therapists or facilitators.

8 (3) The regulation of controlled substances specified in
9 subdivision (a) for nontherapeutic use, including responsible
10 marketing.

11 (4) Safe and equitable access, use, and delivery of the controlled
12 substances specified in subdivision (a).

13 (5) Policies for minimizing use-related risks related to product
14 safety, appropriate use, and impacts of addiction and substance
15 abuse.

16 (g) The commission shall, by no later than January 1, 2024,
17 submit a report to the Legislature, detailing their findings.

18 (h) The report required by subdivision (g) shall be submitted in
19 compliance with Section 9795 of the Government Code.

20 (i) This section shall remain in effect only until January 1, 2025,
21 and as of that date is repealed.

22 SEC. 20. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution for certain
24 costs that may be incurred by a local agency or school district
25 because, in that regard, this act creates a new crime or infraction,
26 eliminates a crime or infraction, or changes the penalty for a crime
27 or infraction, within the meaning of Section 17556 of the
28 Government Code, or changes the definition of a crime within the
29 meaning of Section 6 of Article XIII B of the California
30 Constitution.

31 However, if the Commission on State Mandates determines that
32 this act contains other costs mandated by the state, reimbursement
33 to local agencies and school districts for those costs shall be made
34 pursuant to Part 7 (commencing with Section 17500) of Division
35 4 of Title 2 of the Government Code.

O