

AMENDED IN SENATE MARCH 25, 2021

**SENATE BILL**

**No. 519**

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**Introduced by Senator Wiener**

*(Coauthors: Senators Kamlager and Newman)*

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

February 17, 2021

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An act to amend Sections 11054, ~~11150.2~~, 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 11382.9, and 11402 to, ~~and~~ to add and repeal Section 131065 of, *to repeal Section 11999 of, and to repeal Article 7 (commencing with Section 11390) of Chapter 6 of Division 10 of, the Health and Safety Code, relating to controlled substances.*

LEGISLATIVE COUNSEL'S DIGEST

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

~~Existing~~

(1) *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.

*(2) Existing law prohibits the cultivation, transfer, or transportation, as specified, of any spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn.*

*This bill would repeal those provisions.*

*(3) Existing law, contingent upon specified changes in federal law regarding the federally controlled substance cannabidiol, would deem a physician, pharmacist, or other healing arts licensee who prescribes, furnishes, or dispenses a product composed of cannabidiol in accordance with that federal law, to be in compliance with state law governing those acts, as specified.*

*This bill would make those provisions also applicable to the controlled substances made lawful by this bill.*

*(4) Existing law creates a Research Advisory Panel, as specified, to conduct hearings on, and in other ways study, research projects concerning cannabis or hallucinogenic drugs.*

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~~, *the substances made lawful by this bill*, as specified.

~~Existing~~

*(5) Existing law prohibits the possession of drug paraphernalia, as defined.*

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

*(6) Existing law states the intent of the Legislature that the messages and information provided by various state drug and alcohol programs promote no unlawful use of any drugs or alcohol.*

*This bill would repeal those provisions.*

~~By~~

(7) *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.

(8) *This bill would state that its provisions are severable.*

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.

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

20 (e) Research is advancing to support the use of psychedelic  
21 compounds with psychotherapy to treat mental health disorders,

1 such as anxiety, depression, post-traumatic stress disorder and  
2 substance use disorder.

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

7 (g) Measure 110 in Oregon, which passed in November 2020  
8 with a 58 percent vote of the state population, decriminalized the  
9 personal possession of all drugs, and almost 20 countries around  
10 the world including Portugal, Czech Republic, and Spain have  
11 expressly or effectively decriminalized the personal use of all  
12 substances.

13 (h) *The City of Oakland and the City of Santa Cruz have both*  
14 *passed resolutions decriminalizing and deprioritizing the*  
15 *enforcement of the possession, use, and propagation of psychedelic*  
16 *plants and fungi. Since June 2019, the Cities of Ann Arbor,*  
17 *Michigan; Somerville, Massachusetts; and Cambridge,*  
18 *Massachusetts; have all decriminalized the possession, use, and*  
19 *propagation of psychedelic plants and fungi at the local level.*  
20 *Also, in 2020, Washington, D.C., passed Initiative 81 to*  
21 *decriminalize and deprioritize the possession and use of*  
22 *psychedelic plants and fungi with 76 percent voter approval.*

23 (h)

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

32 (i)

33 (j) This act will allow for the noncommercial, personal use and  
34 sharing of specified controlled substances, including for the  
35 purposes of group counseling and community-based healing, or  
36 other related services.

37 (j)

38 (k) These changes in law will not affect any restrictions on the  
39 driving or operating a vehicle while impaired or an employer's

1 ability to restrict the use of controlled substance by its employees,  
2 or affect the legal standard for negligence.

3 ~~(k)~~

4 (l) Peyote is specifically excluded from the list of substances  
5 to be decriminalized, and any cultivation, harvest, extraction,  
6 tincture or other product manufactured or derived therefrom,  
7 because of the nearly endangered status of the peyote plant and  
8 the special significance peyote holds in Native American  
9 spirituality. Section 11363 of the Health and Safety Code, which  
10 makes it a crime in California to cultivate, harvest, dry, or process  
11 any plant of the genus *Lophophora*, also known as Peyote, is not  
12 amended or repealed.

13 ~~(t)~~

14 (m) The State of California fully respects and supports the  
15 continued Native American possession and use of peyote under  
16 federal law, 42 U.S.C. 1996a, understanding that Native Americans  
17 in the United States were persecuted and prosecuted for their  
18 ceremonial practices and use of peyote for more than a century  
19 and had to fight numerous legal and political battles to achieve the  
20 current protected status, and the enactment of this legislation does  
21 not intend to undermine explicitly or implicitly that status.

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

24 11054. (a) The controlled substances listed in this section are  
25 included in Schedule I.

26 (b) Opiates. Unless specifically excepted or unless listed in  
27 another schedule, any of the following opiates, including their  
28 isomers, esters, ethers, salts, and salts of isomers, esters, and ethers  
29 whenever the existence of those isomers, esters, ethers, and salts  
30 is possible within the specific chemical designation:

31 (1) Acetylmethadol.

32 (2) Allylprodine.

33 (3) Alphacetylmethadol (except levoalphacetylmethadol, also  
34 known as levo-alpha-acetylmethadol, levomethadyl acetate, or  
35 LAAM).

36 (4) Alphameprodine.

37 (5) Alphamethadol.

38 (6) Benzethidine.

39 (7) Betacetylmethadol.

40 (8) Betameprodine.

- 1 (9) Betamethadol.
- 2 (10) Betaprodine.
- 3 (11) Clonitazene.
- 4 (12) Dextromoramide.
- 5 (13) Diampromide.
- 6 (14) Diethylthiambutene.
- 7 (15) Difenoxin.
- 8 (16) Dimenoxadol.
- 9 (17) Dimepheptanol.
- 10 (18) Dimethylthiambutene.
- 11 (19) Dioxaphetyl butyrate.
- 12 (20) Dipipanone.
- 13 (21) Ethylmethylthiambutene.
- 14 (22) Etonitazene.
- 15 (23) Etoxeridine.
- 16 (24) Furethidine.
- 17 (25) Hydroxypethidine.
- 18 (26) Ketobemidone.
- 19 (27) Levomoramide.
- 20 (28) Levophenacymorphan.
- 21 (29) Morpheridine.
- 22 (30) Noracymethadol.
- 23 (31) Norlevorphanol.
- 24 (32) Normethadone.
- 25 (33) Norpipanone.
- 26 (34) Phenadoxone.
- 27 (35) Phenampromide.
- 28 (36) Phenomorphan.
- 29 (37) Phenoperidine.
- 30 (38) Pir tramide.
- 31 (39) Proheptazine.
- 32 (40) Properidine.
- 33 (41) Propiram.
- 34 (42) Racemoramide.
- 35 (43) Tilidine.
- 36 (44) Trimeperidine.
- 37 (45) Any substance which contains any quantity of
- 38 acetylfentanyl (N-[1-phenethyl-4-piperidiny] acetanilide) or a
- 39 derivative thereof.

1 (46) Any substance which contains any quantity of the thiophene  
2 analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl]  
3 acetanilide) or a derivative thereof.

4 (47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).

5 (48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).

6 (c) Opium derivatives. Unless specifically excepted or unless  
7 listed in another schedule, any of the following opium derivatives,  
8 its salts, isomers, and salts of isomers whenever the existence of  
9 those salts, isomers, and salts of isomers is possible within the  
10 specific chemical designation:

11 (1) Acetorphine.

12 (2) Acetyldihydrocodeine.

13 (3) Benzylmorphine.

14 (4) Codeine methylbromide.

15 (5) Codeine-N-Oxide.

16 (6) Cyprenorphine.

17 (7) Desomorphine.

18 (8) Dihydromorphine.

19 (9) Drotebanol.

20 (10) Etorphine (except hydrochloride salt).

21 (11) Heroin.

22 (12) Hydromorphanol.

23 (13) Methyldesorphine.

24 (14) Methyldihydromorphine.

25 (15) Morphine methylbromide.

26 (16) Morphine methylsulfonate.

27 (17) Morphine-N-Oxide.

28 (18) Myrophine.

29 (19) Nicocodeine.

30 (20) Nicomorphine.

31 (21) Normorphine.

32 (22) Pholcodine.

33 (23) Thebacon.

34 (d) Hallucinogenic substances. Unless specifically excepted or  
35 unless listed in another schedule, any material, compound, mixture,  
36 or preparation, which contains any quantity of the following  
37 hallucinogenic substances, or which contains any of its salts,  
38 isomers, and salts of isomers whenever the existence of those salts,  
39 isomers, and salts of isomers is possible within the specific  
40 chemical designation (for purposes of this subdivision only, the

- 1 term “isomer” includes the optical, position, and geometric  
2 isomers):
- 3 (1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other  
4 names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine;  
5 4-bromo-2,5-DMA.
- 6 (2) 2,5-dimethoxyamphetamine—Some trade or other names:  
7 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
- 8 (3) 4-methoxyamphetamine—Some trade or other names:  
9 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 ,  
10 paramethoxyamphetamine, PMA.
- 11 (4) 5-methoxy-3,4-methylenedioxy-amphetamine.
- 12 (5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other  
13 names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine;  
14 “DOM”; and “STP.”
- 15 (6) 3,4-methylenedioxy amphetamine.
- 16 (7) 3,4,5-trimethoxy amphetamine.
- 17 (8) Bufotenine—Some trade or other names:  
18 3 - ( b e t a - d i m e t h y l a m i n o e t h y l ) - 5 - h y d r o x y i n d o l e ;  
19 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin,  
20 5-hydroxy-N,N-dimethyltryptamine; mappine.
- 21 (9) Diethyltryptamine—Some trade or other names:  
22 N,N-Diethyltryptamine; DET.
- 23 (10) Dimethyltryptamine—Some trade or other names: DMT.
- 24 (11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta,  
25 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido  
26 [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.
- 27 (12) Lysergic acid diethylamide.
- 28 (13) Cannabis.
- 29 (14) Mescaline, derived from plants presently classified  
30 botanically in the *Echinopsis* or *Trichocereus* genus of cacti,  
31 including, without limitation, the Bolivian Torch Cactus, San Pedro  
32 Cactus, or Peruvian Torch Cactus, but not including mescaline  
33 derived from any plant described in paragraph (15).
- 34 (15) Peyote—Meaning all parts of the plant presently classified  
35 botanically as *Lophophora williamsii* Lemaire, whether growing  
36 or not, the seeds thereof, any extract from any part of the plant,  
37 and every compound, manufacture, salts, derivative, mixture, or  
38 preparation of the plant, its seeds or extracts (interprets 21 U.S.C.  
39 Sec. 812(c), Schedule 1(c)(12)).
- 40 (16) N-ethyl-3-piperidyl benzilate.



1 (17) N-methyl-3-piperidyl benzilate.

2 (18) Psilocybin.

3 (19) Psilocyn.

4 (20) Tetrahydrocannabinols. Synthetic equivalents of the  
5 substances contained in the plant, or in the resinous extractives of  
6 Cannabis, sp. and/or synthetic substances, derivatives, and their  
7 isomers with similar chemical structure and pharmacological  
8 activity such as the following: delta 1 cis or trans  
9 tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans  
10 tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or  
11 trans tetrahydrocannabinol, and its optical isomers.

12 Because nomenclature of these substances is not internationally  
13 standardized, compounds of these structures, regardless of  
14 numerical designation of atomic positions covered.

15 (21) Ethylamine analog of phencyclidine—Some trade or other  
16 names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)  
17 ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine,  
18 PCE.

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

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

24 (e) Depressants. Unless specifically excepted or unless listed  
25 in another schedule, any material, compound, mixture, or  
26 preparation which contains any quantity of the following substances  
27 having a depressant effect on the central nervous system, including  
28 its salts, isomers, and salts of isomers whenever the existence of  
29 those salts, isomers, and salts of isomers is possible within the  
30 specific chemical designation:

31 (1) Mecloqualone.

32 (2) Methaqualone.

33 (3) Gamma hydroxybutyric acid (also known by other names  
34 such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate;  
35 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate),  
36 including its immediate precursors, isomers, esters, ethers, salts,  
37 and salts of isomers, esters, and ethers, including, but not limited  
38 to, gammabutyrolactone, for which an application has not been  
39 approved under Section 505 of the Federal Food, Drug, and  
40 Cosmetic Act (21 U.S.C. Sec. 355).

1 (f) Unless specifically excepted or unless listed in another  
2 schedule, any material, compound, mixture, or preparation which  
3 contains any quantity of the following substances having a  
4 stimulant effect on the central nervous system, including its  
5 isomers:

6 (1) Cocaine base.

7 (2) Fenethylamine, including its salts.

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

9 *SEC. 3. Section 11150.2 of the Health and Safety Code is*  
10 *amended to read:*

11 11150.2. (a) Notwithstanding any other law, if cannabidiol is  
12 excluded from Schedule I of the federal Controlled Substances  
13 Act and placed on a schedule of the act other than Schedule I, or  
14 if a product composed of cannabidiol is approved by the federal  
15 Food and Drug Administration and either placed on a schedule of  
16 the act other than Schedule I, or exempted from one or more  
17 provisions of the act, so as to permit a physician, pharmacist, or  
18 other authorized healing arts licensee acting within ~~his or her~~ *their*  
19 scope of practice, to prescribe, furnish, or dispense that product,  
20 the physician, pharmacist, or other authorized healing arts licensee  
21 who prescribes, furnishes, or dispenses that product in accordance  
22 with federal law shall be deemed to be in compliance with state  
23 law governing those acts.

24 (b) *Notwithstanding any other law, if psilocybin, psilocyn,*  
25 *dimethyltryptamine, ibogaine, mescaline, lysergic acid*  
26 *diethylamide, or 3,4-methylenedioxymethamphetamine is excluded*  
27 *from Schedule I of the federal Controlled Substances Act and*  
28 *placed on a schedule of the act other than Schedule I, or if a*  
29 *product composed of one of these substances is approved by the*  
30 *federal Food and Drug Administration and either placed on a*  
31 *schedule of the act other than Schedule I, or exempted from one*  
32 *or more provisions of the act, so as to permit a physician,*  
33 *pharmacist, or other authorized healing arts licensee acting within*  
34 *their scope of practice, to prescribe, furnish, or dispense that*  
35 *product, the physician, pharmacist, or other authorized healing*  
36 *arts licensee who prescribes, furnishes, or dispenses that product*  
37 *in accordance with federal law shall be deemed to be in compliance*  
38 *with state law governing those acts.*

39 (b)

1 (c) For purposes of this chapter, upon the effective date of ~~one~~  
 2 any of the changes in federal law described in subdivision ~~(a)~~, (a)  
 3 or (b), notwithstanding any other state law, a product composed  
 4 of ~~cannabidiol~~ *the excluded substance* may be prescribed,  
 5 furnished, dispensed, transferred, transported, possessed, or used  
 6 in accordance with federal law and is authorized pursuant to state  
 7 law.

8 (e)  
 9 (d) This section does not apply to any product containing  
 10 cannabidiol that is made or derived from industrial hemp, as  
 11 defined in Section 11018.5 and regulated pursuant to that section.

12 ~~SEC. 3.~~

13 SEC. 4. Section 11350 of the Health and Safety Code is  
 14 amended to read:

15 11350. (a) Except as otherwise provided in this division, every  
 16 person who possesses (1) any controlled substance specified in  
 17 subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of  
 18 Section 11054, specified in paragraph (15) or (20) of subdivision  
 19 (d) of Section 11054, or specified in subdivision (b) or (c) of  
 20 Section 11055, or specified in subdivision (h) of Section 11056,  
 21 or (2) any controlled substance classified in Schedule III, IV, or  
 22 V which is a narcotic drug, unless upon the written prescription  
 23 of a physician, dentist, podiatrist, or veterinarian licensed to  
 24 practice in this state, shall be punished by imprisonment in a county  
 25 jail for not more than one year, except that such person shall instead  
 26 be punished pursuant to subdivision (h) of Section 1170 of the  
 27 Penal Code if that person has one or more prior convictions for an  
 28 offense specified in clause (iv) of subparagraph (C) of paragraph  
 29 (2) of subdivision (e) of Section 667 of the Penal Code or for an  
 30 offense requiring registration pursuant to subdivision (c) of Section  
 31 290 of the Penal Code.

32 (b) Except as otherwise provided in this division, whenever a  
 33 person who possesses any of the controlled substances specified  
 34 in subdivision (a), the judge may, in addition to any punishment  
 35 provided for pursuant to subdivision (a), assess against that person  
 36 a fine not to exceed seventy dollars (\$70) with proceeds of this  
 37 fine to be used in accordance with Section 1463.23 of the Penal  
 38 Code. The court shall, however, take into consideration the  
 39 defendant's ability to pay, and no defendant shall be denied

1 probation because of their inability to pay the fine permitted under  
2 this subdivision.

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

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

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

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

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

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

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

23 (e) This section does not permit the use of a controlled substance  
24 by a person other than the prescription holder or permit the  
25 distribution or sale of a controlled substance that is otherwise  
26 inconsistent with the prescription.

27 ~~SEC. 4.~~

28 *SEC. 5.* Section 11350.1 is added to the Health and Safety  
29 Code, to read:

30 11350.1. (a) Except as otherwise provided in subdivisions (b),  
31 (c), (d), and (e) of this section and notwithstanding any other law,  
32 all of the following shall be lawful for a *natural* person 21 years  
33 of age or older and shall not be a violation of state or local law:

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

37 (2) The ingesting of mescaline.

38 (3) The social sharing of mescaline.

39 (4) The possession, planting, cultivating, harvesting, or  
40 processing of plants capable of producing mescaline, except for

1 the plant presently classified botanically as *Lophophora williamsii*  
2 Lemaire, on property owned or controlled by a person, for personal  
3 use or social sharing by that person, and possession of any product  
4 produced by those plants.

5 (b) Possession of mescaline *by a person 21 years of age or over*  
6 on the grounds of any public or private elementary, vocational,  
7 junior high, or high school, during hours that the school is open  
8 for classes or school-related programs, or at any time when minors  
9 are using the facility is punishable as a misdemeanor.

10 (c) (1) A person who knowingly gives away or administers  
11 mescaline to a person who is under 18 years of age in violation of  
12 law shall be punished by imprisonment in a county jail for a period  
13 of not more than six months or by a fine of not more than five  
14 hundred dollars (\$500), or by both that fine and imprisonment, or  
15 by imprisonment pursuant to subdivision (h) of Section 1170 of  
16 the Penal Code.

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

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

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

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

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

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

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

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

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

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

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

22 ~~SEC. 5.~~

23 *SEC. 6.* Section 11356.8 is added to the Health and Safety  
24 Code, to read:

25 11356.8. (a) A person currently serving a sentence for a  
26 conviction, whether by trial or by open or negotiated plea, who  
27 would not have been guilty under Section 11350.1 or 11402 had  
28 those sections been in effect at the time of the offense may petition  
29 for a recall or dismissal of sentence before the trial court that  
30 entered the judgment of conviction in the case to request  
31 resentencing or dismissal in accordance with those sections.

32 (b) Upon receiving a petition under subdivision (a), the court  
33 shall presume the petitioner satisfies the criteria in subdivision (a)  
34 unless the party opposing the petition proves by clear and  
35 convincing evidence that the petitioner does not satisfy the criteria.  
36 If the petitioner satisfies the criteria in subdivision (a), the court  
37 shall grant the petition to recall the sentence or dismiss the sentence  
38 because it is legally invalid unless the court determines that  
39 granting the petition would pose an unreasonable risk of danger  
40 to public safety.

1 (1) In exercising its discretion, the court may consider, but shall  
2 not be limited to evidence provided for in subdivision (b) of Section  
3 1170.18 of the Penal Code.

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

7 (c) A person who is serving a sentence and is resentenced  
8 pursuant to subdivision (b) shall be given credit for any time  
9 already served and shall be subject to supervision for one year  
10 following completion of their time in custody or shall be subject  
11 to whatever supervision time they would have otherwise been  
12 subject to after release, whichever is shorter, unless the court, in  
13 its discretion, as part of its resentencing order, releases the person  
14 from supervision. In that case, the person is subject to parole  
15 supervision under Section 3000.08 of the Penal Code or postrelease  
16 community supervision under subdivision (a) of Section 3451 of  
17 the Penal Code by the designated agency and the jurisdiction of  
18 the court in the county in which the offender is released or resides,  
19 or in which an alleged violation of supervision has occurred, for  
20 the purpose of hearing petitions to revoke supervision and impose  
21 a term of custody.

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

26 (e) A person who has completed their sentence for a conviction  
27 under this article or Chapter 6.5 (commencing with Section 11400),  
28 whether by trial or open or negotiated plea, who would not have  
29 been guilty of an offense or who would have been guilty of a lesser  
30 offense under Section 11350.1 or 11402 had those sections been  
31 in effect at the time of the offense, may file an application before  
32 the trial court that entered the judgment of conviction in their case  
33 to have the conviction dismissed and sealed because the prior  
34 conviction is now legally invalid.

35 (f) The court shall presume the petitioner satisfies the criteria  
36 in subdivision (e) unless the party opposing the application proves  
37 by clear and convincing evidence that the petitioner does not satisfy  
38 the criteria in subdivision (e). Once the applicant satisfies the  
39 criteria in subdivision (e), the court shall redesignate the conviction

1 as a misdemeanor or infraction or dismiss and seal the conviction  
2 as legally invalid as established under Sections 11350.1 and 11402.

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

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

8 (i) Nothing in this section is intended to diminish or abrogate  
9 any rights or remedies otherwise available to the petitioner or  
10 applicant.

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

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

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

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

25 ~~SEC. 6.~~

26 *SEC. 7.* Section 11356.9 is added to the Health and Safety  
27 Code, to read:

28 11356.9. (a) On or before July 1, 2022, the Department of  
29 Justice shall review the records in the state summary criminal  
30 history information database and shall identify past convictions  
31 that are potentially eligible for recall or dismissal of sentence or  
32 dismissal and sealing, pursuant to Section 11356.8. The department  
33 shall notify the prosecution of all cases in their jurisdiction that  
34 are eligible for recall or dismissal of sentence or dismissal and  
35 sealing.

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

39 (c) (1) The prosecution may challenge the resentencing of a  
40 person pursuant to this section when the person does not meet the



1 criteria established in Section 11356.8 or presents an unreasonable  
2 risk to public safety.

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

7 (3) On or before July 1, 2023, the prosecution shall inform the  
8 court and the public defender’s office in their county when they  
9 are challenging a particular recall or dismissal of sentence or  
10 dismissal and sealing. The prosecution shall inform the court when  
11 they are not challenging a particular recall or dismissal of sentence  
12 or dismissal and sealing.

13 (4) The public defender’s office, upon receiving notice from  
14 the prosecution pursuant to paragraph (3), shall make a reasonable  
15 effort to notify the person whose resentencing or dismissal is being  
16 challenged.

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

20 (e) The court shall notify the department of the recall or  
21 dismissal of sentence or dismissal and sealing and the department  
22 shall modify the state summary criminal history information  
23 database accordingly.

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

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

31 ~~SEC. 7.~~

32 *SEC. 8.* Section 11364 of the Health and Safety Code is  
33 amended to read:

34 11364. (a) It is unlawful to possess an opium pipe or any  
35 device, contrivance, instrument, or paraphernalia used for  
36 unlawfully injecting or smoking (1) a controlled substance specified  
37 in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of  
38 Section 11054, specified in paragraph (15) or (20) of subdivision  
39 (d) of Section 11054, specified in subdivision (b) or (c) of Section  
40 11055, or specified in paragraph (2) of subdivision (d) of Section

1 11055, or (2) a controlled substance that is a narcotic drug  
2 classified in Schedule III, IV, or V.

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

7 (c) Until January 1, 2026, as a public health measure intended  
8 to prevent the transmission of HIV, viral hepatitis, and other  
9 bloodborne diseases among persons who use syringes and  
10 hypodermic needles, and to prevent subsequent infection of sexual  
11 partners, newborn children, or other persons, this section shall not  
12 apply to the possession solely for personal use of hypodermic  
13 needles or syringes.

14 ~~SEC. 8:~~

15 *SEC. 9.* Section 11364.7 of the Health and Safety Code is  
16 amended to read:

17 11364.7. (a) (1) Except as authorized by law, any person who  
18 delivers, furnishes, or transfers, possesses with intent to deliver,  
19 furnish, or transfer, or manufactures with the intent to deliver,  
20 furnish, or transfer, drug paraphernalia, knowing, or under  
21 circumstances where one reasonably should know, that it will be  
22 used to plant, propagate, cultivate, grow, harvest, compound,  
23 convert, produce, process, prepare, pack, repack, store, contain,  
24 conceal, inject, ingest, inhale, or otherwise introduce into the  
25 human body a controlled substance, except as provided in  
26 subdivision (b), in violation of this division, is guilty of a  
27 misdemeanor.

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

36 (3) This subdivision does not apply to any paraphernalia that is  
37 ~~intended for use related to the personal possession or growing,~~  
38 ~~sharing, or safe use of~~ *to be used to plant, propagate, cultivate,*  
39 *grow, harvest, compound, convert, produce, process, prepare,*  
40 *pack, repack, store, contain, conceal, inject, ingest, inhale, or*

1 *otherwise introduce into the human body*, any of the following  
2 substances:

- 3 (A) Dimethyltryptamine (DMT).
- 4 (B) Ibogaine.
- 5 (C) Lysergic acid diethylamide (LSD).
- 6 (D) Mescaline.
- 7 (E) Psilocybin.
- 8 (F) Psilocyn.
- 9 (G) Ketamine.
- 10 (H) 3,4-methylenedioxyamphetamine (MDMA).

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

21 (c) Except as authorized by law, any person, 18 years of age or  
22 over, who violates subdivision (a) by delivering, furnishing, or  
23 transferring drug paraphernalia to a person under 18 years of age  
24 who is at least three years younger, or who, upon the grounds of  
25 a public or private elementary, vocational, junior high, or high  
26 school, possesses a hypodermic needle, as defined in paragraph  
27 (7) of subdivision (a) of Section 11014.5, with the intent to deliver,  
28 furnish, or transfer the hypodermic needle, knowing, or under  
29 circumstances where one reasonably should know, that it will be  
30 used by a person under 18 years of age to inject into the human  
31 body a controlled substance, is guilty of a misdemeanor and shall  
32 be punished by imprisonment in a county jail for not more than  
33 one year, by a fine of not more than one thousand dollars (\$1,000),  
34 or by both that imprisonment and fine.

35 (d) The violation, or the causing or the permitting of a violation,  
36 of subdivision (a), (b), or (c) by a holder of a business or liquor  
37 license issued by a city, county, or city and county, or by the State  
38 of California, and in the course of the licensee's business shall be  
39 grounds for the revocation of that license.

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

5 (f) If any provision of this section or the application thereof to  
6 any person or circumstance is held invalid, it is the intent of the  
7 Legislature that the invalidity shall not affect other provisions or  
8 applications of this section which can be given effect without the  
9 invalid provision or application and to this end the provisions of  
10 this section are severable.

11 ~~SEC. 9.~~

12 *SEC. 10.* Section 11365 of the Health and Safety Code is  
13 amended to read:

14 11365. (a) It is unlawful to visit or to be in any room or place  
15 where any controlled substances which are specified in subdivision  
16 (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,  
17 specified in paragraph (15) or (20) of subdivision (d) of Section  
18 11054, or specified in subdivision (b) or (c) or paragraph (2) of  
19 subdivision (d) of Section 11055, or which are narcotic drugs  
20 classified in Schedule III, IV, or V, are being unlawfully smoked  
21 or used with knowledge that such activity is occurring.

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

27 ~~SEC. 10.~~

28 *SEC. 11.* Section 11377 of the Health and Safety Code is  
29 amended to read:

30 11377. (a) Except as authorized by law and as otherwise  
31 provided in subdivision (b) or Section 11375, or in Article 7  
32 (commencing with Section 4211) of Chapter 9 of Division 2 of  
33 the Business and Professions Code, every person who possesses  
34 any controlled substance which is (1) classified in Schedule III,  
35 IV, or V, and which is not a narcotic drug, except the substance  
36 specified in subdivision (g) of Section 11056, (2) specified in  
37 subdivision (d) of Section 11054, except paragraphs (10), (11),  
38 (12), (13), (14), (15), (18), (19), and (20) of subdivision (d), (3)  
39 specified in paragraph (11) of subdivision (c) of Section 11056,  
40 (4) specified in paragraph (2) or (3) of subdivision (f) of Section

1 11054, or (5) specified in subdivision (d), (e), or (f) of Section  
2 11055, unless upon the prescription of a physician, dentist,  
3 podiatrist, or veterinarian, licensed to practice in this state, shall  
4 be punished by imprisonment in a county jail for a period of not  
5 more than one year, except that such person may instead be  
6 punished pursuant to subdivision (h) of Section 1170 of the Penal  
7 Code if that person has one or more prior convictions for an offense  
8 specified in clause (iv) of subparagraph (C) of paragraph (2) of  
9 subdivision (e) of Section 667 of the Penal Code or for an offense  
10 requiring registration pursuant to subdivision (c) of Section 290  
11 of the Penal Code.

12 (b) The judge may assess a fine not to exceed seventy dollars  
13 (\$70) against any person who violates subdivision (a), with the  
14 proceeds of this fine to be used in accordance with Section 1463.23  
15 of the Penal Code. The court shall, however, take into consideration  
16 the defendant's ability to pay, and no defendant shall be denied  
17 probation because of their inability to pay the fine permitted under  
18 this subdivision.

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

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

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

27 (d) This section does not permit the use of a controlled substance  
28 by a person other than the prescription holder or permit the  
29 distribution or sale of a controlled substance that is otherwise  
30 inconsistent with the prescription.

31 ~~SEC. 11.~~

32 *SEC. 12.* Section 11377.1 is added to the Health and Safety  
33 Code, to read:

34 11377.1. (a) Except as otherwise provided in Sections 11377.5  
35 and subdivisions (b), (c), (d), and (e) of this section, and  
36 notwithstanding any other law, all of the following shall be lawful  
37 for a *natural* person 21 years of age or older and shall not be a  
38 violation of state or local law:

39 (1) The possession, processing, obtaining, or transportation of  
40 a 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, for personal use or for social sharing.

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

4 (3) The social sharing of a substance described in paragraph  
5 (1).

6 (4) The possession, planting, cultivating, harvesting, or  
7 processing of plants capable of producing a substance described  
8 in paragraph (1), on property owned or controlled by a person, for  
9 personal use or social sharing by that person, and possession of  
10 any product produced by those plants including spores or mycelium  
11 capable of producing mushrooms or other material which contain  
12 a controlled substance specified in paragraph (18) or (19) of  
13 subdivision (d) of Section 11054, for that purpose.

14 (b) Possession of a controlled substance specified in paragraph  
15 (10), (11), (12), (18), or (19) of subdivision (d) of Section 11054,  
16 or in subdivision (g) of Section 11056, *by a person 21 years of*  
17 *age or over*, on the grounds of any public or private elementary,  
18 vocational, junior high, or high school, during hours that the school  
19 is open for classes or school-related programs, or at any time when  
20 minors are using the facility is punishable as a misdemeanor.

21 (c) (1) A person who knowingly gives away or administers a  
22 controlled substance specified in paragraph (10), (11), (12), (18),  
23 or (19) of subdivision (d) of Section 11054, or in subdivision (g)  
24 of Section 11056, to a person who is under 18 years of age in  
25 violation of law shall be punished by imprisonment in a county  
26 jail for a period of not more than six months or by a fine of not  
27 more than five hundred dollars (\$500), or by both that fine and  
28 imprisonment, or by imprisonment pursuant to subdivision (h) of  
29 Section 1170 of the Penal Code.

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

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

38 (d) Except as otherwise provided, possession of a controlled  
39 substance specified in paragraph (10), (11), (12), (18), or (19) of  
40 subdivision (d) of Section 11054, or in subdivision (g) of Section

1 11056, by a person under 18 years of age is punishable as an  
2 infraction and shall require:

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

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

13 (e) Except as otherwise provided, possession of a controlled  
14 substance specified in paragraph (10), (11), (12), (18), or (19) of  
15 subdivision (d) of Section 11054, or in subdivision (g) of Section  
16 11056, by a person at least 18 years of age but less than 21 years  
17 of age is punishable as an infraction.

18 (f) A controlled substance described in this section or any related  
19 product involved in any way with conduct deemed lawful by this  
20 section are not contraband nor subject to seizure, and no conduct  
21 deemed lawful by this section shall constitute the basis for  
22 detention, search, or arrest, or the basis for the seizure or forfeiture  
23 of assets.

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

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

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

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

1     ~~SEC. 12.~~

2     *SEC. 13.* Section 11379 of the Health and Safety Code is  
3 amended to read:

4     11379. (a) Except as otherwise provided in subdivision (b),  
5 in Section 11377.1, and in Article 7 (commencing with Section  
6 4211) of Chapter 9 of Division 2 of the Business and Professions  
7 Code, every person who transports, imports into this state, sells,  
8 furnishes, administers, or gives away, or offers to transport, import  
9 into this state, sell, furnish, administer, or give away, or attempts  
10 to import into this state or transport any controlled substance which  
11 is (1) classified in Schedule III, IV, or V and which is not a narcotic  
12 drug, except subdivision (g) of Section 11056, (2) specified in  
13 subdivision (d) of Section 11054, except paragraphs (13), (14),  
14 (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in  
15 paragraph (11) of subdivision (c) of Section 11056, (4) specified  
16 in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5)  
17 specified in subdivision (d) or (e), except paragraph (3) of  
18 subdivision (e), or specified in subparagraph (A) of paragraph (1)  
19 of subdivision (f), of Section 11055, unless upon the prescription  
20 of a physician, dentist, podiatrist, or veterinarian, licensed to  
21 practice in this state, shall be punished by imprisonment pursuant  
22 to subdivision (h) of Section 1170 of the Penal Code for a period  
23 of two, three, or four years.

24     (b) Notwithstanding the penalty provisions of subdivision (a),  
25 any person who transports any controlled substances specified in  
26 subdivision (a) within this state from one county to another  
27 noncontiguous county shall be punished by imprisonment pursuant  
28 to subdivision (h) of Section 1170 of the Penal Code for three, six,  
29 or nine years.

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

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

35     ~~SEC. 13.~~

36     *SEC. 14.* Section 11379.2 of the Health and Safety Code is  
37 amended to read:

38     11379.2. Except as otherwise provided in Section 11377.1 and  
39 in Article 7 (commencing with Section 4211) of Chapter 9 of  
40 Division 2 of the Business and Professions Code, every person



1 who possesses for sale or sells any controlled substance specified  
2 in subdivision (g) of Section 11056 shall be punished by  
3 imprisonment in the county jail for a period of not more than one  
4 year or in the state prison.

5 ~~SEC. 14.~~

6 *SEC. 15.* Section 11382 of the Health and Safety Code is  
7 amended to read:

8 11382. Except as otherwise provided in Section 11377.1, every  
9 person who agrees, consents, or in any manner offers to unlawfully  
10 sell, furnish, transport, administer, or give any controlled substance  
11 which is (a) classified in Schedule III, IV, or V and which is not  
12 a narcotic drug, or (b) specified in subdivision (d) of Section 11054,  
13 except paragraphs (13), (14), (15), and (20) of subdivision (d),  
14 specified in paragraph (11) of subdivision (c) of Section 11056,  
15 or specified in subdivision (d), (e), or (f) of Section 11055, to any  
16 person, or offers, arranges, or negotiates to have that controlled  
17 substance unlawfully sold, delivered, transported, furnished,  
18 administered, or given to any person and then sells, delivers,  
19 furnishes, transports, administers, or gives, or offers, or arranges,  
20 or negotiates to have sold, delivered, transported, furnished,  
21 administered, or given to any person any other liquid, substance,  
22 or material in lieu of that controlled substance shall be punished  
23 by imprisonment in the county jail for not more than one year, or  
24 pursuant to subdivision (h) of Section 1170 of the Penal Code.

25 ~~SEC. 15.~~

26 *SEC. 16.* Section 11382.8 is added to the Health and Safety  
27 Code, to read:

28 11382.8. (a) A person currently serving a sentence for a  
29 conviction, whether by trial or by open or negotiated plea, who  
30 would not have been guilty under Section 11377.1, had those  
31 sections been in effect at the time of the offense may petition for  
32 a recall or dismissal of sentence before the trial court that entered  
33 the judgment of conviction in the case to request resentencing or  
34 dismissal in accordance with those sections.

35 (b) Upon receiving a petition under subdivision (a), the court  
36 shall presume the petitioner satisfies the criteria in subdivision (a)  
37 unless the party opposing the petition proves by clear and  
38 convincing evidence that the petitioner does not satisfy the criteria.  
39 If the petitioner satisfies the criteria in subdivision (a), the court  
40 shall grant the petition to recall the sentence or dismiss the sentence

1 because it is legally invalid unless the court determines that  
2 granting the petition would pose an unreasonable risk of danger  
3 to public safety.

4 (1) In exercising its discretion, the court may consider, but shall  
5 not be limited to evidence provided for in subdivision (b) of Section  
6 1170.18 of the Penal Code.

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

10 (c) A person who is serving a sentence and is resentenced  
11 pursuant to subdivision (b) shall be given credit for any time  
12 already served and shall be subject to supervision for one year  
13 following completion of their time in custody or shall be subject  
14 to whatever supervision time they would have otherwise been  
15 subject to after release, whichever is shorter, unless the court, in  
16 its discretion, as part of its resentencing order, releases the person  
17 from supervision. In that case, the person is subject to parole  
18 supervision under Section 3000.08 of the Penal Code or postrelease  
19 community supervision under subdivision (a) of Section 3451 of  
20 the Penal Code by the designated agency and the jurisdiction of  
21 the court in the county in which the offender is released or resides,  
22 or in which an alleged violation of supervision has occurred, for  
23 the purpose of hearing petitions to revoke supervision and impose  
24 a term of custody.

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

29 (e) A person who has completed their sentence for a conviction  
30 under this article or *former* Article 7 (commencing with Section  
31 11390), whether by trial or open or negotiated plea, who would  
32 not have been guilty of an offense or who would have been guilty  
33 of a lesser offense under Section 11377.1, had those sections been  
34 in effect at the time of the offense, may file an application before  
35 the trial court that entered the judgment of conviction in their case  
36 to have the conviction dismissed and sealed because the prior  
37 conviction is now legally invalid.

38 (f) The court shall presume the petitioner satisfies the criteria  
39 in subdivision (e) unless the party opposing the application proves  
40 by clear and convincing evidence that the petitioner does not satisfy

1 the criteria in subdivision (e). Once the applicant satisfies the  
2 criteria in subdivision (e), the court shall redesignate the conviction  
3 as a misdemeanor or infraction or dismiss and seal the conviction  
4 as legally invalid as now established under Section 11377.1.

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

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

10 (i) Nothing in this section is intended to diminish or abrogate  
11 any rights or remedies otherwise available to the petitioner or  
12 applicant.

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

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

20 (l) The provisions of this section shall apply equally to juvenile  
21 delinquency adjudications and dispositions under Section 602 of  
22 the Welfare and Institutions Code if the juvenile would not have  
23 been guilty of an offense under Section 11377.1.

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

27 ~~SEC. 16.~~

28 *SEC. 17.* Section 11382.9 is added to the Health and Safety  
29 Code, to read:

30 11382.9. (a) On or before July 1, 2022, the Department of  
31 Justice shall review the records in the state summary criminal  
32 history information database and shall identify past convictions  
33 that are potentially eligible for recall or dismissal of sentence or  
34 dismissal and sealing, pursuant to Section 11382.8. The department  
35 shall notify the prosecution of all cases in their jurisdiction that  
36 are eligible for recall or dismissal of sentence or dismissal and  
37 sealing.

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

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

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

9 (3) On or before July 1, 2023, the prosecution shall inform the  
10 court and the public defender's office in their county when they  
11 are challenging a particular recall or dismissal of sentence or  
12 dismissal and sealing. The prosecution shall inform the court when  
13 they are not challenging a particular recall or dismissal of sentence  
14 or dismissal and sealing.

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

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

22 (e) The court shall notify the department of the recall or  
23 dismissal of sentence or dismissal and sealing and the department  
24 shall modify the state summary criminal history information  
25 database accordingly.

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

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

33 *SEC. 18. Article 7 (commencing with Section 11390) of Chapter*  
34 *6 of Division 10 of the Health and Safety Code is repealed.*

35 ~~SEC. 17.~~

36 *SEC. 19.* Section 11402 is added to the Health and Safety Code,  
37 to read:

38 11402. (a) As provided in this section, this chapter does not  
39 apply to 3,4-methylenedioxymethamphetamine, otherwise known  
40 as MDMA.

1 (b) Except as otherwise provided in this section, and  
2 notwithstanding any other law, all of the following shall be lawful  
3 for a *natural* person 21 years of age or older and shall not be a  
4 violation of state or local law:

5 (1) The possession, processing, obtaining, or transportation of  
6 a controlled substance described in subdivision (a) for personal  
7 use or for social sharing.

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

9 (3) The social sharing of a substance described in subdivision  
10 (a).

11 (c) Possession of a controlled substance described in subdivision  
12 (a) *by a person 21 years of age or over*, on the grounds of any  
13 public or private elementary, vocational, junior high, or high  
14 school, during hours that the school is open for classes or  
15 school-related programs, or at any time when minors are using the  
16 facility is punishable as a misdemeanor.

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

24 (2) Notwithstanding paragraph (1), a person 18 years of age or  
25 over who knowingly gives away or administers a substance  
26 described in subdivision (a) to a minor under 14 years of age in  
27 violation of law shall be punished by imprisonment in the state  
28 prison for a period of three, five, or seven years.

29 (3) A person who knowingly gives away or administers a  
30 substance described in subdivision (a) to a person who is at least  
31 18 years of age, but under 21 years of age is guilty of an infraction.

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

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

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

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

9 (g) A controlled substance described in subdivision (a) or any  
10 related product involved in any way with conduct deemed lawful  
11 by this section are not contraband nor subject to seizure, and no  
12 conduct deemed lawful by this section shall constitute the basis  
13 for detention, search, or arrest, or the basis for the seizure or  
14 forfeiture of assets.

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

17 (1) “Financial gain” means the receipt of money or other  
18 valuable consideration in exchange for the item being shared.  
19 “Financial gain” does not include reasonable fees for counseling,  
20 spiritual guidance, or related services that are provided in  
21 conjunction with administering or use of a controlled substance  
22 described in subdivision (a) under the guidance and supervision,  
23 and on the premises, of the person providing those services.

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

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

32 ~~SEC. 18:~~

33 *SEC. 20.* Section 11550 of the Health and Safety Code is  
34 amended to read:

35 11550. (a) A person shall not use, or be under the influence  
36 of any controlled substance that is (1) specified in subdivision (b),  
37 (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,  
38 specified in paragraph (15), (21), (22), or (23) of subdivision (d)  
39 of Section 11054, specified in subdivision (b) or (c) of Section  
40 11055, or specified in paragraph (1) or (2) of subdivision (d) or in

1 paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic  
2 drug classified in Schedule III, IV, or V, except when administered  
3 by or under the direction of a person licensed by the state to  
4 dispense, prescribe, or administer controlled substances. It shall  
5 be the burden of the defense to show that it comes within the  
6 exception. A person convicted of violating this subdivision is guilty  
7 of a misdemeanor and shall be sentenced to serve a term of not  
8 more than one year in a county jail. The court may also place a  
9 person convicted under this subdivision on probation for a period  
10 not to exceed five years.

11 (b) (1) A person who is convicted of violating subdivision (a)  
12 when the offense occurred within seven years of that person being  
13 convicted of two or more separate violations of that subdivision,  
14 and refuses to complete a licensed drug rehabilitation program  
15 offered by the court pursuant to subdivision (c), shall be punished  
16 by imprisonment in a county jail for not less than 180 days nor  
17 more than one year. In no event does the court have the power to  
18 absolve a person convicted of a violation of subdivision (a) who  
19 is punishable under this subdivision from the obligation of spending  
20 at least 180 days in confinement in a county jail unless there are  
21 no licensed drug rehabilitation programs reasonably available.

22 (2) For the purpose of this section, a drug rehabilitation program  
23 is not reasonably available unless the person is not required to pay  
24 more than the court determines that they are reasonably able to  
25 pay in order to participate in the program.

26 (c) (1) The court may, when it would be in the interest of  
27 justice, permit a person convicted of a violation of subdivision (a)  
28 punishable under subdivision (a) or (b) to complete a licensed drug  
29 rehabilitation program in lieu of part or all of the imprisonment in  
30 a county jail. As a condition of sentencing, the court may require  
31 the offender to pay all or a portion of the drug rehabilitation  
32 program.

33 (2) In order to alleviate jail overcrowding and to provide  
34 recidivist offenders with a reasonable opportunity to seek  
35 rehabilitation pursuant to this subdivision, counties are encouraged  
36 to include provisions to augment licensed drug rehabilitation  
37 programs in their substance abuse proposals and applications  
38 submitted to the state for federal and state drug abuse funds.

39 (d) In addition to any fine assessed under this section, the judge  
40 may assess a fine not to exceed seventy dollars (\$70) against a

1 person who violates this section, with the proceeds of this fine to  
2 be used in accordance with Section 1463.23 of the Penal Code.  
3 The court shall, however, take into consideration the defendant's  
4 ability to pay, and a defendant shall not be denied probation  
5 because of their inability to pay the fine permitted under this  
6 subdivision.

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

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

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

19 (g) This section does not prevent deferred entry of judgment  
20 or a defendant's participation in a preguilty plea drug court program  
21 under Chapter 2.5 (commencing with Section 1000) of Title 6 of  
22 Part 2 of the Penal Code unless the person is charged with violating  
23 subdivision (b) or (c) of Section 243 of the Penal Code. A person  
24 charged with violating this section by being under the influence  
25 of any controlled substance which is specified in paragraph (21),  
26 (22), or (23) of subdivision (d) of Section 11054 or in paragraph  
27 (3) of subdivision (e) of Section 11055 and with violating either  
28 subdivision (b) or (c) of Section 243 of the Penal Code or with a  
29 violation of subdivision (e) shall be ineligible for deferred entry  
30 of judgment or a preguilty plea drug court program.

31 *SEC. 21. Section 11999 of the Health and Safety Code is*  
32 *repealed.*

33 ~~11999. The Legislature finds and declares all of the following:~~

34 ~~(a) The Legislature has established various drug- and~~  
35 ~~alcohol-related programs which provide for education, prevention,~~  
36 ~~intervention, treatment, or enforcement.~~

37 ~~(b) The Legislature has classified certain substances as~~  
38 ~~controlled substances and has defined the lawful and unlawful use~~  
39 ~~of controlled substances which are commonly referred to as, but~~  
40 ~~not limited to, anabolic steroids, marijuana, and cocaine.~~



1 ~~(e) The Legislature has classified certain substances as imitation~~  
2 ~~controlled substances which are commonly referred to as, but not~~  
3 ~~limited to, designer drugs.~~

4 ~~(d) The Legislature has determined that the possession with~~  
5 ~~the intent to be under the influence, or being under the influence~~  
6 ~~of toluene, or any substance or material containing toluene, or any~~  
7 ~~substance with similar toxic qualities, is unlawful. Some substances~~  
8 ~~or materials containing toluene, or substances with similar toxic~~  
9 ~~qualities are commonly referred to, but not limited to, inhalants~~  
10 ~~such as cement, glue, and paint thinner.~~

11 ~~(e) The Legislature has determined that the purchase,~~  
12 ~~possession, or use of alcohol by persons under 21 years of age is~~  
13 ~~unlawful.~~

14 ~~(f) Public and private agencies that provide information~~  
15 ~~pertaining to the drug and alcohol-related programs provide mixed~~  
16 ~~messages and misinformation relating to the unlawful use of drugs~~  
17 ~~and alcohol. It is the intent of the Legislature that the messages~~  
18 ~~and information provided by the drug and alcohol programs~~  
19 ~~promote no unlawful use of any drugs or alcohol. Mixed messages~~  
20 ~~mean communications discussing how to use or when to use~~  
21 ~~unlawful drugs or alcohol.~~

22 ~~(g) Any material, curricula, teachings, or promotion of~~  
23 ~~responsible use, if the use is unlawful, of drugs or alcohol is~~  
24 ~~inconsistent with the law.~~

25 ~~(h) The “no unlawful use” message applies to all drug and~~  
26 ~~alcohol programs for the people of the State of California. These~~  
27 ~~materials are to teach and promote that any unlawful use of drugs~~  
28 ~~and alcohol is illegal and dangerous.~~

29 ~~SEC. 19.~~

30 *SEC. 22.* Section 131065 is added to the Health and Safety  
31 Code, to read:

32 131065. (a) The State Department of Public Health shall  
33 convene a working group to study and make recommendations  
34 regarding the decriminalization, regulation, and safe therapeutic  
35 *and legal possible regulatory systems that California could adopt*  
36 *to promote safe and equitable access to certain substances in*  
37 *permitted legal contexts, including facilitated group use of*  
38 *substances and spiritual use of substances in groups, and*  
39 *recommending options for caregiving including facilitated services,*  
40 *therapy, end-of-life care, and compassionate use of those controlled*

1 substance specified in paragraph (10), (11), (12), (14), (18), or  
2 (19) of subdivision (d) of Section 11054, or in subdivision (g) of  
3 Section 11056, and of 3,4-methylenedioxymethamphetamine.

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

6 (c) The working group shall include, without limitation, persons  
7 with expertise in psychedelic therapy, medicine and public health,  
8 drug policy, *harm reduction*, and traditional indigenous use of  
9 psychedelic substances, including representatives from the National  
10 Council of the Native American Church and Indian tribes in  
11 California.

12 (d) The working group is authorized to contract with outside  
13 entities, including public or private universities for research  
14 assistance.

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

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

21 (2) The available research on the public health and public safety  
22 implications of decriminalizing controlled substances specified in  
23 subdivision (a).

24 (3) The available research on the safe use of controlled  
25 substances specified in subdivision (a) for ~~nontherapeutic~~ *other*  
26 uses including as part of religious, spiritual, or creative experiences.

27 (4) ~~Decriminalization and therapeutic~~ *Regulated* use models for  
28 the controlled substances specified in subdivision (a) from other  
29 jurisdictions.

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

32 (1) The authorization of various controlled substances for  
33 ~~therapeutic and personal~~ *regulated* uses.

34 (2) The appropriate regulation of the therapeutic use of  
35 controlled substances, including qualifications, training, and  
36 licensing of therapists or facilitators.

37 (3) The regulation of controlled substances specified in  
38 subdivision (a) for nontherapeutic use, including responsible  
39 marketing.

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

3 (5) Policies for minimizing use-related risks related to product  
4 safety, appropriate use, and impacts of ~~addiction~~ and *detrimental*  
5 substance abuse.

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

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

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

12 ~~SEC. 20.~~

13 *SEC. 23.* No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution for certain  
15 costs that may be incurred by a local agency or school district  
16 because, in that regard, this act creates a new crime or infraction,  
17 eliminates a crime or infraction, or changes the penalty for a crime  
18 or infraction, within the meaning of Section 17556 of the  
19 Government Code, or changes the definition of a crime within the  
20 meaning of Section 6 of Article XIII B of the California  
21 Constitution.

22 However, if the Commission on State Mandates determines that  
23 this act contains other costs mandated by the state, reimbursement  
24 to local agencies and school districts for those costs shall be made  
25 pursuant to Part 7 (commencing with Section 17500) of Division  
26 4 of Title 2 of the Government Code.

27 *SEC. 24.* *The provisions of this act are severable. If any*  
28 *provision of this act or its application is held invalid, that invalidity*  
29 *shall not affect other provisions or applications that can be given*  
30 *effect without the invalid provision or application.*