
SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

BILL NO: SB 519
AUTHOR: Wiener
VERSION: March 25, 2021
HEARING DATE: April 14, 2021
CONSULTANT: Reyes Diaz

SUBJECT: Controlled substances: decriminalization of certain hallucinogenic substances

SUMMARY: Makes it lawful for a person 21 years of age or older to possess, obtain, ingest, and socially share specified controlled substances classified as hallucinogens. Makes it unlawful for persons under the age of 21 to do such acts related to those hallucinogens, as specified. Requires the California Department of Public Health to convene a working group to study specified hallucinogens and make recommendations to the Legislature regarding the statewide regulation of those hallucinogens and other controlled substances.

Existing law:

- 1) Requires every person who possesses any controlled substance in Schedule I, II, or III of the Uniform Controlled Substances Act, that includes opiates, opium derivatives, depressants, cocaine base, mescaline, peyote, tetrahydrocannabinol, and certain hallucinogenic substances (including mescaline), or any controlled substance in Schedule III, IV, or V that is a narcotic drug, unless by a written prescription of a licensed physician, dentist, podiatrist, or veterinarian, to be punished by imprisonment in a county jail for not more than one year, or punished by a term of imprisonment in a county jail or state prison for 16 months, or for two or three years for one or more prior convictions, as specified. [HSC §11350]
- 2) Makes it unlawful to possess an opium pipe or any device, as specified, for unlawfully injecting or smoking those substances in 1) of existing law above, including mescaline. [HSC §11364]
- 3) Makes it a misdemeanor for any person, except as authorized by law, to deliver, furnish, or transfer; possess with intent to deliver, furnish, or transfer; or, manufacture with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, as specified. [HSC §11364.7]
- 4) Makes it unlawful to visit or to be in any room or place where any controlled substances specified in 1) of existing law above, including mescaline, are being unlawfully smoked or used with knowledge that such activity is occurring, as specified. [HSC §11365]
- 5) Requires every person who possesses any controlled substance classified in Schedule III, IV, or V that is not a narcotic drug; hallucinogenic substances in Schedule I, except cannabis, mescaline, peyote, and tetrahydrocannabinols; gamma hydroxybutyric acid, a depressant in Schedule III; fenethylamine and N-Ethylamphetamine of Schedule I; and, stimulants, depressants, and immediate precursors of amphetamine, methamphetamine, and phencyclidine in Schedule II, unless upon a prescription, as specified, to be punished by imprisonment in a county jail for a period of not more than one year, as specified. [HSC §11377]

- 6) Requires, except as specified, every person who transports, imports, sells, furnishes, administers, or gives away, or offers to do or attempts such actions, any controlled substance in 5) of existing law above, but also excluding ethylamine, pyrrolidine, and thiophene analogs of phencyclidine, which are hallucinogenic substances in Schedule I, and depressant phencyclidines and the immediate precursors of phenylacetone of Schedule II, unless upon a prescription, as specified, to be punished by imprisonment for a period of two, three, or four years, as specified. [HSC §11379]
- 7) Requires, except as specified, every person who possesses for sale or sells specified controlled substances to be punished by imprisonment in county jail for a period of not more than one year or in the state prison. [HSC §11379.2]
- 8) Requires, except as specified, every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance specified in 5) of existing law above to any person, as specified, to be punished by imprisonment in county jail for not more than one year, as specified. [HSC §11382]
- 9) Requires every person, except as otherwise authorized by law, who, with intent to produce psilocybin or psilocin in Schedule I, cultivates any spores or mycelium capable of producing mushrooms, or other material that contains such a controlled substance to be punished by imprisonment in county jail for a period of not more than one year or in state prison. [HSC §11390]
- 10) Requires “controlled substance analogs,” as defined, be treated the same as the controlled substances classified in Schedules I or II, and synthetic cannabinoid compounds, which are analogs, as specified. Defines “controlled substance analog” as a substance with the chemical structure that is substantially similar to the chemical structure of a controlled substance, and a substance that has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect of a controlled substance, as specified. [HSC §11401]
- 11) Prohibits a person from using or being under the influence of specified controlled substances, including mescaline, except when administered by or under the direction of a person licensed to dispense, prescribe, or administer controlled substances. [HSC §11550]
- 12) Makes Legislative finding and declarations about various drug and alcohol related programs that provide education, prevention, intervention, treatment, or enforcement; about the unlawful possession, purchase, or use of alcohol by persons under the age of 21; and, the unlawfulness of public and private agencies providing mixed messages about drugs and alcohol. [HSC §11999]

This bill:

- 1) Makes it lawful for a person 21 years of age or older to do the following:
 - a) Possess, process, obtain, or transport mescaline, 3,4-methylenedioxyamphetamine (MDMA), dimethyltryptamine (DMT), ibogaine, lysergic acid diethylamide (LSD), psilocybin, psilocyn, and ketamine for personal use or for “social sharing,” defined as the giving away or consensual administering of those substances by a person 21 or older to another person 21 or older, as specified;
 - b) Ingest mescaline, MDMA, DMT, ibogaine, LSD, psilocybin, psilocyn, and ketamine;

- c) Socially share mescaline, MDMA, DMT, ibogaine, LSD, psilocybin, psilocy, and ketamine; and,
 - d) Possess, plant, cultivate, harvest, or process plants capable of producing mescaline, DMT, ibogaine, LSD, psilocybin, psilocyn or ketamine, except as specified, on property owned or controlled by a person for personal use or social sharing by that person, and possess any product produced by those plants, as specified.
- 2) Makes it a misdemeanor for a person 21 or over to possess any hallucinogenic drugs specified under this bill on the grounds of any public or private elementary, vocational, junior high, or high school, as specified.
 - 3) Requires a person who knowingly gives away or administers any hallucinogenic drugs specified under this bill to a person under 14 to be punished by imprisonment in county jail or state prison for varying periods of time ranging from not more than six months or by a fine not more than \$500 to up to three, five, or seven years, as specified.
 - 4) Makes possession of any hallucinogenic drugs specified under this bill by a person under 18 and a person at least 18 but less than 21 an infraction with varying requirements, including drug education or counseling and community service for first and subsequent offenses for those under 18.
 - 5) Requires a physician, pharmacist, or other authorized healing arts licensee to be deemed in compliance with state law for prescribing, furnishing, or dispensing psilocybin, psilocyn, DMT, ibogaine, mescaline, LSD, or MDMA if any of those substances is excluded from Schedule I of the federal Controlled Substances Act and placed on another schedule, or if a product composed of one of these substances is approved by the federal Food and Drug Administration (FDA), as specified.
 - 6) Exempts from being a misdemeanor any paraphernalia that is intended to be used to plant, cultivate, grow, harvest, compound, convert, produce, process, prepare, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body any hallucinogenic drugs specified under this bill. Removes the testing and analyzing of controlled substances from being a misdemeanor.
 - 7) Removes mescaline from the unlawful acts and prohibitions of existing law.
 - 8) Clarifies that mescaline includes such substances derived from plants presently classified botanically in the Echinopsis or Trichocereus genus of cacti, including, without limitation, the Bolivian Torch Cactus, San Pedro Cactus, or Peruvian Torch Cactus, but not including mescaline derived from all parts of the plant presently classified botanically as Lophophora williamsii Lemaire, which produces peyote.
 - 9) Exempts MDMA from controlled substance analogs.
 - 10) Exempts ketamine, DMT, ibogane, LSD, psilocybin, and psilocyn from the requirements of imprisonment for unlawful acts.
 - 11) Repeals the provision requiring imprisonment for unlawful acts related to psilocybin, psilocyn, and other controlled substances.

- 12) Repeals the Legislative findings and declarations in 12) of existing law above.
- 13) Permits a person currently serving a sentence for a conviction for unlawful acts or prohibitions related to any hallucinogenic drugs specified under this bill, including specified juvenile delinquency adjudications and dispositions, who would not have been guilty had the provisions in this bill been in effect at the time of the offense, to petition for a recall or dismissal of sentence through specified means.
- 14) Requires, on or before July 1, 2022, the California Department of Justice to review the records in the state summary criminal history information database and identify past convictions that are potentially eligible for recall or dismissal, as specified. Permits the prosecution to challenge the resentencing or dismissal, as specified.
- 15) Requires the California Department of Public Health (CDPH) to convene a working group to study and make recommendations regarding possible regulatory systems that California could adopt to promote safe and equitable access to certain substances, as specified, and recommending options caregiving and compassionate use of the hallucinogenic drugs specified under this bill.
- 16) Requires the State Public Health Officer or their designee to chair the working group, which is required to include persons with expertise in psychedelic therapy, medicine and public health, drug policy, harm reduction, and traditional indigenous use of psychedelic substances, as specified.
- 17) Requires the working group to study such things as:
 - a) Available research on the safety and efficacy of using controlled substances in a therapeutic setting for treating depression, anxiety, addiction, and other mental health conditions;
 - b) Available research on the public health and public safety implications of decriminalizing the hallucinogenic drugs specified under this bill; and,
 - c) Regulated use models for the hallucinogenic drugs specified under this bill from other jurisdictions.
- 18) Requires the working group to develop policy recommendations regarding such things as:
 - a) The authorization of various controlled substances for regulated use;
 - b) The appropriate regulation of the therapeutic use of controlled substances, as specified;
 - c) The regulation of the hallucinogenic drugs specified under this bill for nontherapeutic use, including responsible marketing; and,
 - d) Policies for minimizing use-related risks related to product safety, appropriate use, and impacts of detrimental substance abuse.
- 19) Requires the commission to report to the Legislature by no later than January 1, 2024, detailing their findings.
- 20) Repeals the working group and reporting provisions of this bill on January 1, 2025.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) *Author's statement.* According to the author, this bill decriminalizes the possession and personal use of certain psychedelic drugs (hallucinogens), specifically, psilocybin, psilocyn, MDMA, LSD, ketamine, DMT, mescaline, and ibogaine, for people 21 years and older. Growing scientific evidence shows that these substances have medical benefits. Criminalizing people for the possession or use of controlled substances is a failed policy approach, as it does not improve public safety, deter use, or help people who may be experiencing substance use disorder. In recent years, various cities have decriminalized psychedelics, and last November, Oregon voters decriminalized them. With mental health issues on the rise, it is time that California take an incremental and measured step to dismantle failed war on drug policies by ending the criminalization of people that possess and use substances with immense healing potential. This bill will also expunge any criminal records for people convicted of possession and personal use of these substances. In light of ongoing clinical trials and research, this bill will establish a working group to provide recommendations for the Legislature on how California can regulate the legal use of these substances.
- 2) *Hallucinogens and potential benefits.* Hallucinogens are a diverse group of drugs that alter a person's perception or awareness of their surroundings. Some hallucinogens are found in plants and fungi and some are synthetically produced. According to the National Institute on Drug Abuse (NIDA), hallucinogens are commonly split into two categories: classic hallucinogens and dissociative drugs. Both types can cause hallucinations, and dissociative drugs can cause the user to feel disconnected from their body or environment. Hallucinogens can be consumed in a variety of ways, including swallowed as tablets, pills, or liquid, consumed raw or dried, snorted, injected, inhaled, vaporized, smoked, or absorbed through the lining of the mouth using drug-soaked pieces of paper. Common hallucinogens include LSD, DMT, psilocybin, peyote, mescaline, and ketamine. Many hallucinogenic substances, including LSD, DMT, mescaline, and psilocybin are classified as Schedule I substances under California's Uniform Controlled Substances Act. Schedule I controlled substances are defined as having no medical utility and a high potential for abuse. There is research, however, that indicates that many of these substances have therapeutic benefits. In recent years, the FDA has designated psilocybin as a "breakthrough therapy" to treat severe depression. The "breakthrough therapy" designation is a process designed to expedite the development and review of drugs that are intended to treat a serious condition, and preliminary clinical evidence indicates that the drug may demonstrate substantial improvement over available therapy on a clinically significant endpoint. According to NIDA, ketamine was approved many years ago as an anesthetic for painful medical procedures, and in March 2019, the FDA approved the medicine esketamine as a treatment for severe depression in patients that do not respond to other treatments. It is limited to administration in medical facilities as a nasal spray, however, because of its potential for abuse. Psilocybin is also being studied in clinical trials for its potential to treat severe depression.
- 3) *Reform efforts related to hallucinogens.* Efforts to deprioritize the policing or prosecution of conduct related to certain hallucinogens and to acknowledge the therapeutic value of hallucinogens have gained support in recent years. In 2019, voters in Denver approved a measure to make the personal use and possession of psilocybin by adults 21 years of age and older the lowest law enforcement priority and to prohibit the city from spending resources to impose criminal penalties related to such conduct. The same year, the Oakland City Council passed a resolution prohibiting the use of city funding to assist in the enforcement of laws imposing criminal penalties for the use and possession of entheogenic ("psychedelic") plants by adults, and requires investigating people for growing, buying, distributing or possessing those substances to be amongst the lowest law enforcement priority for the City of Oakland.

A resolution passed by the Santa Cruz City Council in 2020 also made the personal possession and use of entheogenic plants and fungi a low priority for law enforcement. A similar measure was passed by the Ann Arbor City Council in September 2020. Initiative 81, the Entheogenic Plant and Fungus Policy Act of 2020, recently went into effect in Washington D.C. The measure makes the investigation and arrest of persons 18 years of age or older, for non-commercial planting, cultivating, purchasing, transporting, distributing, engaging in practices with, and/or possessing entheogenic plants and fungi among the lowest enforcement priorities for the local police department. In 2020, Oregon voters approved Measure 109, the Psilocybin Services Act, which directs the Oregon Health Authority to create a state-licensed, psilocybin-assisted therapy program over the next two years. In doing so, the state will determine how to regulate the manufacturing, transportation, delivery, sale and purchase of psilocybin products, as well as the provision of psilocybin services. During the same election, Oregon voters approved Measure 110, which reduces the personal noncommercial possession of small amounts of a Schedule I-IV controlled substance, including several hallucinogens, from a criminal offense to a civil violation resulting in a maximum fine of \$100.

- 4) *Double referral.* This bill was heard in the Senate Committee on Public Safety on April 6, 2021, and passed by a vote of 4-1.
- 5) *Support.* Heroic Hearts Project, a sponsor of this bill, states it has been working with veterans for four years, most of whom sought help after having tried everything the Department of Veterans Affairs had to offer with little to no success. Psychedelic treatment options provided these veterans with a level of relief and healing that many had come to believe was no longer possible. Heroic Hearts has more than 500 veteran candidates on the waiting list. Heroic Hearts and Veterans Exploring Treatment Solutions, another sponsor of this bill, as well as other supporters who advocate for the use of hallucinogens for therapeutic purposes argue stigma behind psychedelic substances often overshadows its legitimate medicinal value and promise. In the 1960s, researchers were conducting promising studies on the effectiveness of psychedelic substances to treat ailments such as depression and PTSD, until the War on Drugs halted this work. Modern research clearly demonstrates that these psychedelic substances can be a tool for healing and have a promising future for mental health treatment. The sponsors also state that beyond halting this promising research, the War on Drugs also enacted the policy of criminalizing people for the possession or personal use of controlled substances. Today, we know this is a failed policy approach as it does not improve public safety, deter personal use, or help people who may be experiencing substance use disorder. The sponsors argue it is time that California stop criminalizing people that possess and use substances that have immense medicinal potential and look towards how California should thoughtfully regulate legal use to these substances.
- 6) *Opposition.* Opponents of this bill, largely law enforcement entities, state that this bill will have the tragic and unintended consequence of increasing the current problem of fentanyl tragedies, and that social sharing is essentially unregulated sharing where there is no assurance that the drugs that are shared will not contain fatal amounts of fentanyl. The California Narcotics Officers Association states that the more prudent approach is the creation of reliable paths to treatment that will provide tangible treatment programs to assist in breaking the chemical bondage that characterizes these substances. Opponents believe that communities will be forced to combat widespread proliferation, and individuals will be at an increased risk for abuse and overuse of these substances. The Peace Officers' Research Association of California believes many of the penalties related to controlled substances

work as a deterrent or a reason for individuals to get the treatment they need to turn their lives around, and this bill will cause an increase in the selling and personal use of drugs, which will lead to greater crime and arrests in our communities.

- 7) *Oppose unless amended.* Three individuals representing Native American populations oppose this bill unless it is amended to remove mescaline and synthetic mescaline. These individuals argue that while peyote is excluded from this bill, mescaline and peyote are inextricably linked, and including mescaline could have detrimental effects to Native American communities because of declining populations of peyote.

- 8) *Technical amendment.* The author may wish to amend this bill to correct a reference to “commission” to “the working group” regarding CDPH.

SUPPORT AND OPPOSITION:

Support: Heroic Hearts Project, Inc. (co-sponsor)
Veterans Exploring Treatment Solutions, Inc. (co-sponsor)
California Association of Social Rehabilitation Agencies
California Attorneys for Criminal Justice
Chacruna Institute
DC Marijuana Justice
Decriminalize Nature
Dr. Bonner’s
Entheogenic Research, Integration, and Education
Health in Justice Action Lab
Huichol Center for Cultural Survival and Traditional Arts
Law Enforcement Action Partnership
McAllister Garfield, P.C.
Mendocino Women’s Political Coalition
Multidisciplinary Association for Psychedelic Studies
New Approach Advocacy
North Star Project
Oakland City Council Member Noel Gallo
Oakland City Council President Pro Tempore Sheng Thao
Sacred Garden Community Church
San Francisco Bay Area Hispanic Chamber of Commerce
San Francisco Psychedelic Society
San Francisco Public Defender
Students for Sensible Drug Policy, UC Berkeley Chapter
Unlimited Sciences
Veterans of War
One individual

Oppose: California College and University Police Chiefs Association
California Narcotic Officers’ Association
California Police Chiefs Association
California State Sheriffs’ Association
Congress of Racial Equality
Peace Officers’ Research Association of California
Three individuals (unless amended)