
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 519 (Wiener) - Controlled substances: decriminalization of certain hallucinogenic substances

Version: April 15, 2021

Urgency: No

Hearing Date: May 3, 2021

Policy Vote: PUB. S. 4 - 1, HEALTH 6 - 2

Mandate: Yes

Consultant: Shaun Naidu

Bill Summary: SB 519 would decriminalize the use and possession of, and other specified activities related to, certain hallucinogenic controlled substances by a person age 21 or older, except as specified; establish a process whereby a person could get a pending or prior related criminal case resentenced and/or dismissed and sealed; and establish a working group to research and make recommendations related to substances that are the subject of this bill.

Fiscal Impact:

- Courts: Unknown, potentially-major one-time costs in the low millions of dollars to the courts to consider (and at times hold hearings for) resentencing and sealing petitions. The courts are likely to receive an influx of petitions during the initial years after enactment of this bill, then new filings likely would taper off. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Governor's proposed 2021-2022 budget would appropriate \$118.3 million from the General Fund to backfill continued reduction in fine and fee revenue for trial court operations. (General Fund*)
- Department of Public Health (DPH): To fulfill its obligations with respect to the working group (and subsequent report) that would be established by this measure, the department reports personnel costs of \$416,000 for 1.0 Health Program Specialist II, 1.0 Research Scientist I/III, and 0.5 Associate Governmental Program Analyst from FY 2022-2023 through FY 2024-2025. Additionally, DPH indicates that it would incur external contracts costing \$1.35 million in FY 2022-2023 and \$\$650,000 in FY 2023-2024. (General Fund)
- Department of Justice (DOJ): Unknown costs.
- Incarceration savings: Unknown, potential savings annually in reduced state incarceration costs for individuals whom the courts resentence to a shorter term of imprisonment and/or release from state facilities for conduct that would be made lawful by this measure and, prospectively, for those who, absent this measure, would be sentenced to a longer term of imprisonment for giving away or furnishing specified controlled substances to a minor under age 14. The proposed FY 2020-2021 per capita cost to detain a person in a state prison is \$112,691 annually, with an annual marginal rate per person of over \$13,000. Actual savings would depend on the number of individuals who are resentenced and who avoid incarceration in state prison because of this measure. Aside from marginal cost savings per

individual, however, the department would experience an institutional cost savings only if the number of persons incarcerated decreased to a level that would effectuate the closing of a prison yard or wing. (General Fund)

*Trial Court Trust Fund

Background: The state's Uniform Controlled Substances Act categorizes certain drugs and other substances as controlled substances and prohibits various actions related to those substances, including their manufacture, transportation, sale, possession, and consumption. Specifically, the act classifies controlled substances into five schedules according to their danger and potential for abuse. Schedule I controlled substances, defined as those substances that have no medical utility and have a high potential for abuse, have the greatest restrictions and penalties. Relevant to this measure, the hallucinogens dimethyltryptamine (DMT), ibogaine, lysergic acid diethylamide (LSD), mescaline, psilocybin, and psilocyn are classified as Schedule I substances under California law. Ketamine is classified as a Schedule III substance. On the federal level, 3,4-methylenedioxymethamphetamine (MDMA) is a Schedule I substance; it also is a controlled substance analog under state law.

Schedule I substances may not be prescribed; however, existing state law provides that, upon change in federal law permitting the prescription, furnishing, or dispensing of a cannabidiol product, a physician, pharmacist, or other authorized healing arts licensee acting within their scope of practice who prescribes, furnishes, or dispenses a cannabidiol product in accordance with federal law, is deemed to be in compliance with state law.

Existing law makes it a felony crime that is punishable by imprisonment in state prison for three, six, or nine years if a person age 18 or over does any of the following:

- Unlawfully sells; furnishes; administers; gives; or offers to sell, furnish, administer, or give mescaline to a minor.
- Unlawfully sells or gives away to a minor under age 14, knowing the person is a minor under age 14, any controlled substance, except as specified, in a public park, as described.
- Unlawfully furnishes, or offers or attempts to furnish, to a minor a controlled substance that is not specified in other provisions of law.

Additionally, it is unlawful under existing law, with various prescribed punishments, for a person to do any of the following:

- 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 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.
- Visit or to be in any room or place where specified controlled substances are being unlawfully smoked or used with knowledge that such activity is occurring.
- Possess of methamphetamine and other specified controlled substances.
- Transport, import into this state, sell, furnish, gives away, or offer to transport, import into this state, sell, furnish, or give away (or attempt to do so) any spores or

mycelium capable of producing mushrooms or other material which contain psilocybin or psilocin or other specified controlled substances.

- Possess for sale or to sell ketamine.
- Agree, consent, or in any manner offer to unlawfully sell, furnish, transport, administer, or give specified controlled substances.
- Be under the influence of specified controlled substances, including mescaline.
- Cultivate, transfer, or transport, as specified, any spores or mycelium capable of producing mushrooms or other material that contain psilocybin or psilocin.
- Possess, be under the influence of, sell, transport, or manufacture MDMA.

Proposed Law: This bill would allow the possession for personal use, as described, and the social sharing, as defined, of DMT, ibogaine, ketamine, LSD, MDMA, mescaline (as newly described), psilocybin, and psilocin by and with persons age 21 or older, except as follows:

- Possession by a person age 21 or over on the grounds of any elementary, vocational, junior high, or high school during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility, is guilty of a misdemeanor.
- A person who knowingly gives away or administers any of the substances described above to a person who is under age 18 in violation of law is guilty of an alternate felony-misdemeanor that is punishable by imprisonment in a county jail for up to six months and/or a base fine of up to \$500 or by imprisonment pursuant to the 2011 Realignment Legislation.
- A person age 18 or over who knowingly gives away or administers any of the substances described above to a minor under age 14 years in violation of law is guilty of a felony that is punishable by imprisonment in the state prison for three, five, or seven years.
- A person who knowingly gives away or administers a substance described above to a person who is between the ages of 18 and 20, inclusive, is guilty of an infraction.

SB 519 would provide that, except as otherwise provided, possession of any of the substances described above by a person under age 18 is an infraction and would impose a graduated punishment that includes drug education or counselling and community service, as specified. Possession by a person between the ages of 18 and 20, inclusive, would be an infraction. It would provide that any controlled substance described above or any related product involved in any way with conduct deemed lawful by this measure are not contraband nor subject to seizure, and no conduct deemed lawful by this bill is to constitute the basis for detention, search, or arrest, or the basis for the seizure or forfeiture of assets.

This bill also would:

- Describe mescaline, under Schedule I of the Uniform Controlled Substances Act, as 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 that is derived from peyote.
- Provide for the dismissal and sealing of pending and prior convictions for offenses that would be made lawful by the passage of SB 519, as specified. It would require

DOJ to identify those records and provide them to local jurisdictions to initiate the required proceedings.

- Require DPH to convene a working group, as specified, to research and make recommendations to the Legislature regarding, among other things, the regulation and use of the substances made lawful by SB 519, as specified.
- Require 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, as specified.
- Remove the misdemeanor punishment for possession of 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.
- Remove the misdemeanor punishment for the testing and analyzing of controlled substances.
- Remove mescaline from the unlawful acts and prohibitions of existing law.
- Exempt MDMA from controlled substance analogs.
- Exempt ketamine, DMT, ibogane, LSD, psilocybin, and psilocyn from the requirements of imprisonment for specified unlawful acts.
- Repeal the provision of law requiring imprisonment for unlawful acts related to psilocybin, psilocyn, and other controlled substances.

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