
THIRD READING

Bill No: SB 519
Author: Wiener (D), et al.
Amended: 5/20/21
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-1, 4/6/21
AYES: Bradford, Kamlager, Skinner, Wiener
NOES: Ochoa Bogh

SENATE HEALTH COMMITTEE: 6-2, 4/14/21
AYES: Pan, Eggman, Gonzalez, Leyva, Roth, Wiener
NOES: Melendez, Grove
NO VOTE RECORDED: Hurtado, Limón, Rubio

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SUBJECT: Controlled substances: decriminalization of certain hallucinogenic substances

SOURCE: Heroic Hearts Project
Veterans Exploring Treatment Solutions

DIGEST: This bill makes lawful the possession for personal use and the social sharing of psilocybin, psilocyn, dimethyltryptamine (DMT), ibogaine, lysergic acid diethylamide (LSD), 3,4-methylenedioxymethamphetamine (MDMA), mescaline, and ketamine, by and with persons 21 years of age or older; provides penalties for possession of these substances on school grounds as well as possession by, or sharing with, persons under 21; and requires the State Department of Public Health (DPH) to convene a working group to research and make recommendations to the Legislature on the regulation and use of the substances included in this bill.

ANALYSIS:

Existing law:

- 1) Classifies controlled substances into five schedules according to their danger and potential for abuse. Schedule I controlled substances have the greatest restrictions and penalties, including prohibiting the prescribing of a Schedule I controlled substance. (Health & Saf. Code, §§ 11054-11058.)
- 2) Classifies several hallucinogenic substances including DMT, ibogaine, LSD, mescaline, psilocybin, and psilocyn as Schedule I substances. (Health & Saf. Code, § 11054, subd. (d).)
- 3) Classifies ketamine as a Schedule III substance. (Health & Saf. Code, § 11056, subd. (g).)
- 4) 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 his or her scope of practice who prescribes, furnishes, or dispenses a cannabidiol product in accordance with federal law, shall be deemed to be in compliance with state law. (Health & Saf. Code, § 11150.2, subd. (a).)
- 5) Provides that the possession of several specified controlled substances is unlawful. (Health & Saf. Code, §§ 11350, subd. (a), 11377, subd. (a).)
- 6) Makes it is unlawful to possess any device, instrument, or paraphernalia used for unlawfully injecting or smoking specified controlled substances. (Health & Saf. Code, § 11364, subd. (a).)
- 7) Makes it unlawful for any person 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 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. (Health & Saf. Code, § 11364.7.)
- 8) Provides that it is unlawful to 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. (Health & Saf. Code, § 11365, subd. (a).)

- 9) Makes it unlawful for a person to transport, import into this state, sell, furnish, administer, or give away, or offer to transport, import into this state, sell, furnish, administer, or give away, or attempt to import into this state or transport specified controlled substances. (Health & Saf. Code, § 11379.)
- 10) Makes it unlawful to possess for sale or to sell ketamine. (Health & Saf. Code, § 11379.2.)
- 11) Makes it unlawful for a person to agree, consent, or in any manner offer to unlawfully sell, furnish, transport, administer, or give specified controlled substances. (Health & Saf. Code, § 11382.)
- 12) Provides that it is unlawful to be under the influence of specified controlled substances. (Health & Saf. Code, § 11550, subd. (a).)
- 13) Makes it unlawful for a person who, with the intent to produce psilocybin or psilocyn, cultivates any spores or mycelium capable of producing mushrooms or other material which contains such a controlled substance. (Health & Saf. Code, § 11390.)
- 14) Makes it unlawful to transport, import into this state, sell, furnish, gives away, or offer to transport, import into this state, sell, furnish, or give away any spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn. (Health & Saf. Code, § 11391.)
- 15) Provides that a controlled substance analog shall be treated the same as the controlled substance. Defines “controlled substance analog” to mean either of the following: (1) a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance classified in Section 11054 or 11055; or (2) a substance that has, is represented as having, or is intended to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance classified in Section 11054 or 11055. (Health & Saf. Code, § 11401, subds. (a) & (b).)

This bill:

- 1) Removes or excludes mescaline, ketamine, DMT, ibogaine, LSD, psilocybin, psilocin, and MDMA from several of the above listed offenses.
- 2) Provides that all of the following is lawful for a natural person 21 years of age or older:
 - a) The possession, processing, obtaining, or transportation of mescaline for personal use or for social sharing.
 - b) The ingesting of mescaline.
 - c) The social sharing of mescaline.
 - d) The possession, planting, cultivating, harvesting, or processing of plants capable of producing mescaline, on property owned or controlled by a person, for personal use or social sharing by that person, and possession of any product produced by those plants.
- 3) Provides that possession of mescaline by a person 21 years of age or older on the grounds of any 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 a misdemeanor.
- 4) Provides that the punishment for a person who knowingly gives away or administers mescaline to a person who is under 18 years of age in violation of law is imprisonment in a county jail for a period of not more than six months or by a fine of not more than \$500, or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.
- 5) Provides that the punishment for a person 18 years of age or over who knowingly gives away or administers mescaline to a minor under 14 years of age in violation of law is imprisonment in the state prison for a period of 3, 5, or 7 years.
- 6) Provides that a person who knowingly gives away or administers mescaline to a person who is at least 18 years of age, but under 21 years of age is guilty of an infraction.
- 7) Provides that possession of mescaline by a person under 18 years of age is punishable as an infraction. Requires the minor to either: (1) complete four hours of drug education or counseling and up to 10 hours of community service over a period not to exceed 60 days, commencing when the drug education or

counseling services are made available to them for a first offense; or (2) complete six hours of drug education or counseling and up to 20 hours of community service over a period not to exceed 90 days, commencing when the drug education or counseling services are made available to them for a second or subsequent offense.

- 8) Provides that possession of mescaline by a person at least 18 years of age but less than 21 years of age is punishable as an infraction.
- 9) Provides that mescaline or related products involved in any way with conduct deemed lawful are not contraband nor subject to seizure. Prohibits lawful conduct from constituting the basis for detention, search, or arrest, or the basis for the seizure or forfeiture of assets.
- 10) Defines the following terms:
 - a) “Financial gain” means the receipt of money or other valuable consideration in exchange for the item being shared. Does not include reasonable fees for counseling, spiritual guidance, or related services that are provided in conjunction with administering or use of mescaline under the guidance and supervision, and on the premises, of the person providing those services.
 - b) “Personal use” means for the personal ingestion or other personal and noncommercial use by the person in possession.
 - c) “Social sharing” means the giving away or consensual administering of mescaline by a person 21 years of age or older, to another person 21 years of age or older, not for financial gain, including in the context of group counseling, spiritual guidance, community-based healing, or related services.
- 11) Provides that all of the following is lawful for a natural person 21 years of age or older: the possession, processing, obtaining, or transportation of DMT, ibogaine, LSD, psilocybin, psilocyn, ketamine, and MDMA for personal use or for social sharing; the ingesting of DMT, ibogaine, LSD, psilocybin, psilocyn, ketamine, and MDMA; the social sharing of DMT, ibogaine, LSD, psilocybin, psilocyn, ketamine, and MDMA; and the possession, planting, cultivating, harvesting, or processing of plants capable of producing of DMT, ibogaine, LSD, psilocybin, psilocyn, and ketamine, on property owned or controlled by a person, for personal use or social sharing by that person, and possession of any product produced by those plants including spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn for that purpose.

- 12) Includes all of the same criminal penalties with respect to DMT, ibogaine, LSD, psilocybin, psilocyn, ketamine, and MDMA as apply to mescaline under the provisions of this bill.
- 13) Repeals the provision of law that makes it unlawful for a person who, with the intent to produce psilocybin or psilocyn, cultivates any spores or mycelium capable of producing mushrooms or other material which contains such a controlled substance.
- 14) Repeals the provision of law that makes it unlawful to transport, import into this state, sell, furnish, give away, or offer to transport, import into this state, sell, furnish, or give away any spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn.
- 15) Provides that the analogue statute does not apply to MDMA.
- 16) Provides that, upon change in federal law permitting the prescription, furnishing, or dispensing of a psilocybin, psilocyn, DMT, ibogaine, mescaline, LSD, or MDMA product, a physician, pharmacist, or other authorized healing arts licensee acting within their scope of practice who prescribes, furnishes, or dispenses that product in accordance with federal law, shall be deemed to be in compliance with state law.
- 17) Requires DPH to convene a working group, as specified, to research and make recommendations to the Legislature regarding, among other things, the regulation and the substances made lawful by this bill, as specified.
- 18) Contains several legislative declarations and findings. Contains a severability provision. Contains technical and conforming changes.

Background

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. 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 the state's Uniform Controlled Substances Act. Schedule I substances are defined as those controlled substances having no medical utility and that have a high potential for abuse. There is research, however, that indicates that some of these substances have therapeutic benefits. (See Davis et. al, *Effects of Psilocybin-Assisted Therapy on Major Depressive Disorder*, JAMA Psychiatry (2020) available at <<https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2772630> ; Sascha Thal & Miriam Lommen, *Current Perspective on MDMA-Assisted Psychotherapy for Posttraumatic Stress Disorder*, 48 J. Contemp. Psychotherapy 109 (2018) available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5917000/> ; Fuentes et. al, *Therapeutic Use of LSD in Psychiatry: A Systematic Review of Randomized-Controlled Clinical Trials*, 10 Frontiers in Psychiatry 943 (2019) available at <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6985449/> .)

In recent years, the U.S. Federal Drug Administration (FDA) has designated psilocybin as a “breakthrough therapy” to treat severe depression. (<<https://www.livescience.com/psilocybin-depression-breakthrough-therapy.html> [as of Mar. 31, 2021].) In addition, the FDA recently granted “breakthrough therapy” status to MDMA-assisted psychotherapy to treat post-traumatic stress disorder. (<<https://www.washingtonpost.com/magazine/2020/09/21/psychedelic-medicine-will-it-be-accessible-to-all/?arc404=true> [as of Mar. 31, 2021].) 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.” (<<https://www.fda.gov/patients/fast-track-breakthrough-therapy-accelerated-approval-priority-review/breakthrough-therapy> [as of Mar. 31, 2021].)

In recent years, efforts to deprioritize the policing or prosecution of conduct related to certain hallucinogens have gained support across the country, with measures passing in Oakland, Santa Cruz, Ann Arbor, Denver, and Washington D.C, among others. 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. (<https://www.opb.org/article/2020/11/04/oregon-measure-109-psilocybin/>) 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.

(<https://www.oregon.gov/oha/PH/PREVENTIONWELLNESS/Pages/psilocybin-services-act.aspx>) During the same election, Oregon voters approved Measure 110 which reduced the penalty for 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. (<http://oregonvotes.org/irr/2020/044text.pdf>)

FISCAL EFFECT: Appropriation: No Fiscal Com.:Yes Local:Yes

According to the Senate Appropriations Committee:

- *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 II/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)
- *Incarceration savings:* Unknown, potential savings annually for individuals 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)

SUPPORT: (Verified 5/20/21)

Heroic Hearts Project (co-source)

Veterans Exploring Treatment Solutions (co-source)

California Attorneys for Criminal Justice

Chacruna Institute

City of Berkeley

City of Oakland Councilmember Noel Gallo

City of Oakland Councilmember Sheng Thao

DC Marijuana Justice

Decriminalize Nature
Dr. Bronner's
Entheogenic Research, Integration, and Education Board
Health in Justice Action Lab
Law Enforcement Action Partnership
McAllister Garfield, P.C.
Multidisciplinary Association for Psychedelic Studies
New Approach Advocacy
North Star Project
Pacific Neuroscience Institute
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
The Huichol Center for Cultural Survival and Traditional Arts
Unlimited Sciences
Veterans of War
An individual

OPPOSITION: (Verified 5/20/21)

California College and University Police Chiefs Association
California Narcotic Officers' Association
California Police Chiefs Association
California State Sheriffs' Association
Congress of Racial Equality
International Faith Based Coalition
Peace Officers' Research Association of California

Prepared by: Stephanie Jordan / PUB. S. /
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