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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Jesse Arreguín, Chair  
2025 - 2026 Regular

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**Bill No:** SB 758                      **Hearing Date:** January 13, 2026  
**Author:** Umberg  
**Version:** January 5, 2026  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** SJ

**Subject:** *Public health: kratom and nitrous oxide*

### HISTORY

**Source:** League of Cities; California Narcotic Officers Association

**Prior Legislation:** AB 1088 (Bains), not set for a hearing in Senate Health, 2025  
SB 6 (Ashby), held in Assembly Appropriations, 2025  
AB 2365 (Haney), held in Senate Appropriations, 2024  
AB 3029 (Bains), held in Senate Appropriations, 2024  
SB 1502 (Ashby), held in Assembly Public Safety, 2024  
SB 193 (Nielsen), held in Assembly Appropriations, 2019  
SB 631 (Nielsen), not set for hearing Assembly Judiciary, 2017  
AB 1735 (Hall), Ch. 458, Stats. of 2014  
AB 1015 (Torlakson), Ch. 266, Stats. of 2009

**Support:** Arcadia Police Officers' Association; Botanicals for Better Health and Wellness; Brea Police Association; Burbank Police Officers' Association; California Association of School Police Chiefs; California Coalition of School Safety Professionals; California Narcotic Officers' Association; California Reserve Peace Officers Association; Claremont Police Officers Association; Corona Police Officers Association; County of Humboldt; County of Kern; Culver City Police Officers' Association; Fullerton Police Officers' Association; Global Kratom Coalition; League of California Cities; Los Angeles School Police Management Association; Los Angeles School Police Officers Association; Murrieta Police Officers' Association; Newport Beach Police Association; Palos Verdes Police Officers Association; Placer County Deputy Sheriffs' Association; Pomona Police Officers' Association; Riverside Police Officers Association; Riverside Sheriffs' Association; San Bernardino County Sheriff's Department

**Opposition:** 7 Hope Alliance Foundation; 7ohBlack; California Public Defenders Association; California Retail and Distribution Fairness Association; Californians United for a Responsible Budget; Consumer Action for a Strong Economy; Consumer Choice Center; Doctors for Drug Reform Policy; Drug Policy Alliance; Ella Baker Center for Human Rights; End It For Good; Holistic Alternative Recovery Trust; Initiate Justice; Moms for America Action; San Francisco Public Defender; Sister Warriors Freedom Coalition; Students for Sensible Drug Policy; Taxpayers Protection Alliance; Vera California; over 40 individuals; ACLU California Action (unless amended)

## PURPOSE

***The purpose of this bill is to add 7-hydroxymitragynine to the list of Schedule I controlled substances, and to prohibit a tobacco retailer from selling nitrous oxide at a retail location.***

*Existing law* establishes the California Uniform Controlled Substances Act, which regulates controlled substances. (Health & Saf. Code, § 11000 et seq.)

*Existing law* classifies controlled substances into five schedules according to their danger and potential for abuse. Provides that 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.)

*Existing law* makes it a misdemeanor to sell, furnish, administer, distribute, give away, or offer to sell, furnish, administer, distribute, or give away a device, canister, tank, or receptacle containing nitrous oxide to a person under 18 years of age. (Pen. Code, § 381c.)

*Existing law* makes it a misdemeanor to dispense or distribute nitrous oxide to a person if the dispenser or distributor of the nitrous oxide knows or should know that the person is going to use the nitrous oxide for the purpose of intoxication, and that person proximately causes great bodily injury or death to himself, herself, or another person. (Pen. Code, § 381d.)

*Existing law* requires that a person who dispenses or distributes nitrous oxide record each transaction in a written or electronic document. (Pen. Code, § 381e.)

*Existing law* provides that the person dispensing or distributing the nitrous oxide require the purchaser to sign the document recording the transaction, provide a complete residential address, and present valid government-issued photo identification. Existing law also requires that the person dispensing or distributing the nitrous oxide sign and date the document and retain the document at the person's business address for one year from the date of the transaction for inspection. (Pen. Code, § 381e.)

*Existing law* requires that the document signed by the purchaser include all of the following:

- That inhalation of nitrous oxide outside of a clinical setting may have dangerous health effects.
- That it is a violation of state law to possess nitrous oxide with the intent to breathe, inhale, or ingest it for the purpose of intoxication.
- That it is a violation of state law to knowingly distribute or dispense nitrous oxide to a person who intends to breathe, inhale, or ingest it for the purpose of intoxication. (Pen. Code, § 381e.)

*Existing law* defines "retailer," for purposes of the Cigarette and Tobacco Products Licensing Act of 2003, as a person who engages in this state in the sale of cigarettes or tobacco products directly to the public from a retail location. Provides that retailer includes a person who operates vending machines from which cigarettes or tobacco products are sold in this state. (Bus. & Prof. Code, § 29971, subd. (r).)

*Existing law* defines “retail location” as both of the following: any building from which cigarettes or tobacco products are sold at retail; and vending machine. (Bus. & Prof. Code, § 29971, subd. (s).)

*This bill* adds 7-hydroxymitragynine to Schedule I. Specifies an exception when it naturally occurs in the plant *Mitragyna speciosa*.

*This bill* prohibits a retailer of tobacco products from selling nitrous oxide at a retail location.

## COMMENTS

### 1. Need For This Bill

According to the author:

SB 758 aims to address growing public health concerns by regulating two drugs that are readily available at gas stations, liquor stores, and tobacco shops. The first, nitrous oxide, has legitimate purposes in medicine, dental, and food preparation, such as for canned whipped cream. However, it is also inhaled recreationally by some users, causing long-term neurological effects, paralysis, or death. Allowing any retailer to sell nitrous oxide makes the drug dangerously available to recreational users. Secondly, this bill will regulate 7-hydroxymitragynine (7-OH), an alkaloid found naturally in Kratom, responsible for substantial pain relief and euphoric effects. This alkaloid is found in high potency in products sold at tobacco shops and liquor stores, causing it to be coined as “gas station heroin. Growing incidences of overdose and death related to 7-OH have moved cities to begin regulating the drug, but comprehensive legislation at the state level is needed to ensure the safety of all California residents.

### 2. Controlled Substances Schedules

Through the Controlled Substances Act of 1970, the federal government regulates the manufacture, distribution, and dispensing of controlled substances. The Act groups drugs into five schedules with decreasing potential for physical or psychological harm, based on three considerations: accepted medical use; potential for abuse; and, safety or dependency liability. California’s controlled substances schedules largely follow the federal schedules.

- Schedule I controlled substances, such as heroin, ecstasy, and LSD, have a high potential for abuse and no generally accepted medical use.
- Schedule II controlled substances have a currently accepted medical use, with significant risk to patient safety, and have a high potential for abuse and dependence. Schedule II drugs can be narcotics or non-narcotic. Examples of Schedule II controlled substances include morphine, oxycodone, codeine, and amphetamine.
- Schedule III controlled substances have a currently accepted medical use and potential for abuse leading to moderate physical dependence. Examples of Schedule III controlled substances include ketamine and anabolic steroids.

- Schedule IV controlled substances have a currently accepted medical use and low potential for abuse which may lead to limited physical dependence. Examples of Schedule IV controlled substances include benzodiazepines.
- Schedule V controlled substances have a low potential for abuse or dependence. Examples of Schedule V controlled substances include buprenorphine and narcotic drugs containing non-narcotic active medicinal ingredients.

The controlled substances schedules of the state's Uniform Controlled Substances Act is codified in Health and Safety Code sections 11054-11058.

### 3. Scheduling of Controlled Substances

California's controlled substances schedules closely mirror the federal schedules. California does not have a formal controlled substance classification procedure and largely relies on the federal controlled substance schedules to determine the appropriateness of scheduling a particular substance.

Substances can be scheduled one of two ways under the federal Controlled Substances Act—by Congress through enacting legislation or the U.S. Attorney General in conjunction with the U.S. Department of Health and Human Services (HHS) via an administrative process. (Congressional Research Service, *Legislative Scheduling of Controlled Substances* (Jun. 9, 2025) <<https://www.congress.gov/crs-product/IF12709>>.) The Attorney General generally delegates scheduling authority to the Drug Enforcement Administration (DEA).

Before initiating proceedings to control a drug or other substance or to remove a drug or other substance from the schedules, and after gathering the necessary data, the Attorney General requests from the Secretary of HHS a scientific and medical evaluation as well as the Secretary's recommendations as to whether the substance should be controlled or removed as a controlled substance. (21 U.S.C. § 811(b).) The recommendations must include a recommendation with respect to the appropriate schedule, if any, of the substance. (*Ibid.*) If the Attorney General determines based on these facts and all other relevant data that control or removal of a substance is warranted, then proceedings for control or removal will be initiated. (*Ibid.*)

The Attorney General is required to consider the following factors with respect to each drug or substance proposed to be controlled or removed from the schedules:

- Its actual or relative potential for abuse;
- Scientific evidence of its pharmacological effect, if known;
- The state of current scientific knowledge regarding the drug or other substance;
- Its history and current pattern of abuse;
- The scope, duration, and significance of abuse;
- What, if any, risk there is to the public health;
- Its psychic or physiological dependence liability; and,
- Whether the substance is an immediate precursor of a substance that is already controlled. (21 U.S.C. § 811(c).)

#### 4. 7-hydroxymitragynine

7-hydroxymitragynine (7-OH) is a naturally occurring substance in the kratom plant (*Mitragyna speciosa*), a tropical plant native to Southeast Asia. (DEA, *Drug Fact Sheet: Kratom* [hereafter Kratom Drug Fact Sheet] (Jun. 2020) <[https://www.dea.gov/sites/default/files/2020-06/Kratom-2020\\_0.pdf](https://www.dea.gov/sites/default/files/2020-06/Kratom-2020_0.pdf)>) Kratom has been used medicinally to treat headaches, diarrhea, insomnia, anxiety, and opioid use withdrawal. (U.S. Food and Drug Administration (FDA), *7-Hydroxymitragynine (7-OH): An Assessment of the Scientific Data and Toxicological Concerns Around an Emerging Opioid Threat* [hereafter 7-OH Threat Assessment] (Jul. 28, 2025), p. 5 <<https://www.fda.gov/media/187899/download?attachment>>.)

In addition to its medicinal uses, kratom is also consumed as a recreational drug. 7-OH and mitragynine are the two primary psychoactive ingredients contained in kratom leaves. The leaves can be crushed and smoked, brewed with tea, or placed into gel capsules. (DEA, *Kratom Drug Fact Sheet, supra.*) Small doses can produce stimulant effects while higher doses can produce sedative effects. (*Id.*) According to the FDA, 7-OH can cause respiratory depression, physical dependence, and withdrawal symptoms characteristic of opioids, such as morphine, fentanyl, and oxycodone. (FDA, *7-OH Threat Assessment, supra* at p. 4.) Although kratom products have gained popularity in recent years, the FDA's current position is that kratom is an unapproved new dietary ingredient, and kratom, mitragynine, or 7-OH may not be marketed as nutritional additives or dietary supplements. (*Id.* at p. 5; Congressional Research Service, *Kratom Regulation: Federal Status and State Approaches* [hereafter CRS Report] (Nov. 28, 2023), p. 2 <[https://www.congress.gov/crs\\_external\\_products/LSB/PDF/LSB11082/LSB11082.1.pdf](https://www.congress.gov/crs_external_products/LSB/PDF/LSB11082/LSB11082.1.pdf)>.) The FDA reports that the availability of concentrated 7-OH products has increased significantly in recent years. (FDA, *7-OH Threat Assessment, supra*, at p. 4.) These products are available online and over the counter, and the FDA reports that the concentrated amount of 7-OH in them indicate that the 7-OH present in the products is synthetically derived. (*Ibid.*)

##### *Federal efforts to schedule or regulate kratom or 7-OH*

Although not currently scheduled under the federal Controlled Substances Act, the DEA has identified kratom as a Drug and Chemical of Concern. (DEA, *Kratom Drug Fact Sheet, supra.*) The FDA first issued an import alert for the substance in 2012 and has since issued subsequent alerts. (FDA, *7-OH Threat Assessment, supra*, at p. 5.) The DEA and HHS considered recommending kratom, 7-OH, and mitragynine for scheduling actions in 2016 but those actions were suspended in 2018 because the data available were inadequate to support a recommendation to control the substances. (*Ibid.*; CRS Report at p. 1.)

By the summer of 2025, the FDA determined that a comprehensive assessment of available scientific and medical data on 7-OH was warranted. (FDA, *7-OH Threat Assessment, supra*, at p. 5.) Its assessment concluded:

In the current marketplace in the U.S., 7-OH is increasingly being marketed over-the-counter and online, in concentrated forms or sufficient doses to cause harms to those individuals engaging, knowingly or unknowingly, in use of 7-OH. Based on demonstrated pharmacology, repeated or prolonged use of 7-OH would lead to tolerance, physical dependence, and potentially to opioid addiction ... This public health threat is troubling and requires immediate and impactful policies to educate consumers and take regulatory action that limits access to 7-OH containing products. (*Id.* at p. 18.)

The FDA additionally announced that it was recommending a scheduling action to control certain 7-OH products. (FDA, *FDA Takes Steps to Restrict 7-OH Opioid Products Threatening American Consumers* (Jul. 29, 2025) <<https://www.fda.gov/news-events/press-announcements/fda-takes-steps-restrict-7-oh-opioid-products-threatening-american-consumers>>.) The DEA has not yet announced its intent to schedule kratom or 7-OH; however, the U.S. Department of Justice has strengthened its enforcement efforts as they relate to 7-OH. (See U.S. DOJ, *Justice Department Seizes Unlawful 7-OH Opioid Products at Three Warehouses* (Dec. 2, 2025) <<https://www.justice.gov/opa/pr/justice-department-seizes-unlawful-7-oh-products-three-warehouses>>.)

In 2023, identical bills were introduced in both houses of Congress that were designed to protect access to kratom. These bills would have directed the Secretary of Health and Human Services to gather information about kratom and limited the Secretary's authority to impose regulations on kratom; however, the bills did not advance after being referred to the respective committees. (CRS Report, *supra*, at p. 2; see also S. 3039, H.R. 5905.)

#### *State actions related to kratom and 7-OH*

There have been attempts to regulate kratom and 7-OH in the state. AB 1088 (Bains), introduced in 2025, would have added kratom products and 7-OH products to the Sherman Food, Drug, and Cosmetic Law and established several requirements and prohibitions related to retail sales, including prohibiting the sale of these products to those under 21 years of age and requiring child resistant packaging. AB 2365 (Haney) of the 2023-2024 legislative session would have established the Kratom Consumer Protection Program to provide a regulatory structure for kratom products.

The California Department of Public Health (CDPH) recently issued a warning advising consumers to avoid using kratom and 7-OH products. (CDPH, *Foods, Dietary Supplements and Medical Drugs containing Kratom and 7-OH are Dangerous and Illegal to Sell or Manufacture* (Oct. 24, 2025) <<https://www.cdph.ca.gov/Programs/OPA/Pages/NR25-016.aspx>>.) This advisory was issued in part due to six fatal overdoses linked to 7-OH in Los Angeles County over a three-month period last year. (*Ibid.*) The Los Angeles Times reported, however, that toxicology reports for the deceased individuals show that each person had at least one other substance in their body making it difficult to determine the role of 7-OH in their deaths. (Karen Garcia & Sandra McDonald, *Kratom was linked to 6 L.A. deaths and banned in the county. But the supplement's actual health risks remain a mystery* (Nov. 20, 2025) <<https://www.latimes.com/california/story/2025-11-20/kratom-linked-to-6-county-deaths-was-banned-but-its-health-risks-remain-mystery>>.) In November 2025, Los Angeles County issued a ban on kratom and 7-OH and announced that public health inspectors would begin inspections in tobacco shops and other retailers to ensure these products were not being sold. (County of Los Angeles Public Health, *Public Health Urges Retailers to Immediately Remove Illegal Kratom and 7-OH Products Amid Overdose Risk* (Nov. 7, 2025) <<https://www.publichealth.lacounty.gov/phcommon/public/media/mediapubhpdetail.cfm?prid=5179>>.)

*Considerations*

This bill adds 7-OH, except as it naturally occurs in the plant *Mitragyna speciosa*, to Schedule I. Schedule I substances are those substances that have no generally accepted medical utility and a high potential for abuse. Given that there appears to be a difference of opinion regarding the medical utility and potential abuse of 7-OH, the committee may wish to consider whether it is appropriate to schedule the substance at this time when the federal government has not yet done so.

Additionally, it is important to note that as currently drafted, this bill schedules 7-OH but does not make any other statutory changes related to the substance. By placing 7-OH on Schedule I, it cannot be prescribed, dispensed, or furnished by licensed health care professionals in the state. Because the bill creates a new subdivision within Health and Safety Code section 11054 that is not cross-referenced in the existing drug offense statutes (e.g., Health and Safety Codes sections 11350, 11351, 11352, etc.), the criminal penalties in those statutes would not attach to this scheduling action. To the extent the committee wishes to schedule 7-OH, and taking into account that the substance is not typically acquired via a prescription, the author may wish to consider amending the bill to make relevant changes to those existing drug offense statutes.

**5. Nitrous Oxide**

Nitrous oxide is a colorless, odorless to sweet-smelling gas used to manage pain and anxiety in dentistry as well as other clinical settings. (American Dental Association, *Nitrous Oxide* <<https://www.ada.org/resources/ada-library/oral-health-topics/nitrous-oxide>>.) In addition, it is used in food preparation and as an oxidizer in model rockets and motor vehicle racing.

Nitrous oxide is also misused as a recreational drug and produces short-lived euphoric and hallucinogenic effects. It is consumed in the form of whippets—balloons filled with the gas via small, pressurized canisters designed to be used in whipped cream dispensers. Nitrous oxide has become increasingly popular, particularly among teens and young adults, due to its low cost and availability online and in grocery and convenience stores, gas stations, and shops that sell vapes and other tobacco-related products. (Centers for Disease and Control, *Notes from the Field: Recreational Nitrous Oxide Misuse—Michigan, 2019-2023* (Apr. 10, 2025) <<https://www.cdc.gov/mmwr/volumes/74/wr/mm7412a3.htm>>.) Short-term side effects include slurred speech, dizziness, and headaches. (American Addiction Centers, *Nitrous Oxide (Whippet) Abuse, Side Effects, & Treatment* (Dec. 31, 2024) <<https://americanaddictioncenters.org/inhalant-abuse/nitrous-oxide-whippets>>.) Although nitrous oxide use is often perceived by those using it as safe or harmless, repeated use can cause severe neurologic, cardiovascular, and psychiatric effects, including hallucinations, delusions, organ damage, nerve damage, seizures, coma, and death. (*Id.*)

This bill prohibits a retailer of tobacco products from selling nitrous oxide at a retail location. Given that there are legitimate uses for nitrous oxide (e.g., in food production) and some tobacco retailers may also be a retailer of food products such that nitrous oxide sales could be appropriate (e.g., grocery stores, Walmart, etc.), the author may wish to consider narrowing this language if the concern is tobacco shops and similar types of retailers that arguably have no legitimate reason to sell nitrous oxide.

## 6. Argument in Support

According to the California Narcotic Officers' Association:

Nitrous Oxide is an odorless, colorless chemical that can be inhaled for legitimate purposes associated with medical or dental procedures in a clinical setting, and is legitimately used for industrial purposes and as a propellant for food products, primarily whipped cream. Unfortunately, nitrous oxide is also subject to recreational misuse and abuse, in part, because it is easy to purchase from retail vendors and relatively inexpensive.

Abusing nitrous oxide can cause serious, life-threatening dangers, including oxygen deprivation, *severe and permanent neurological damage*, and psychiatric issues. As the Yale School of Medicine noted last year, "Fueled by the fact that it is both legal and readily available, recreational nitrous oxide use has skyrocketed in popularity. And its misuse is especially prevalent among adolescents and young adults. Given the accessibility of nitrous oxide, few who use the substance recreationally are aware of how deeply dangerous it can be ... [with serious] ... *consequences, including permanent, full, or partial paralysis.*" ... While current law prohibits the sale of nitrous oxide for recreational intoxicating purposes, significant gaps in the existing statutory framework remain. SB 758 would close those gaps by prohibiting the retail sale of nitrous oxide.

7-OH is a psychoactive alkaloid found naturally in trace amounts in kratom leaves. Regrettably, some companies have synthetically concentrated 7-OH, making it extremely addictive. Synthetic, concentrated 7-OH products are currently sold in gas stations, smoke shops, and other retail and online venues throughout the state. There is no current state or federal law regulating or prohibiting the sale and distribution of 7-OH. Anyone, of any age, can purchase 7-OH in California.

High doses of concentrated synthetic 7-OH and/or co-used with alcohol or other sedatives can cause severe respiratory depression and death. As they are unregulated, many contain unknown concentrations synthetic 7-OH, increasing the risk of unintentional overdose.

Medical research has shown that 7-OH binds to the same receptors in the brain as traditional opioids, creating a risk for dependency, withdrawal, and overdose when combined with other substances. Despite being marketed as a "natural" product, concentrated synthetic 7-OH has no approved medical use and is widely recognized by public health authorities as dangerous.

In July 2025, the Food and Drug Administration (FDA) issued warning letters to firms for illegal marketing of concentrated synthetic 7-OH products. The FDA indicated that "7-OH is not lawful in dietary supplements and cannot be lawfully added to conventional foods. Additionally, there are no FDA-approved drugs containing 7-OH, and it is illegal to market any drugs containing 7-OH. *Consumers who use 7-OH products are exposing themselves to products that have not been proven safe or effective for any use.*" Just this past summer, the FDA



formally requested that the DEA designate concentrated synthetic 7-OH as Schedule 1.

The Los Angeles County Department of Public Health recently issued a news release entitled, *Multiple Fatal Overdoses Tied to Synthetic Kratom Compound in Los Angeles County* which warned its residents about the fatal dangers posed by this synthetic opioid which has resulted in at least 6 deaths.

The Los Angeles Times recently reported on these 6 deaths attributed to concentrated synthetic 7-OH and the highlighted the lack of action by the state legislature.

The CNOA has been extremely active in addressing the recent explosion of abuse of concentrated synthetic 7-OH throughout the state. We have worked with numerous cities on enacting ordinances banning the sale or distribution of this dangerous and deadly poison, as well as the counties of Orange, Riverside, Fresno, and Santa Cruz. Many more counties are preparing to take similar action in the coming weeks and months.

Our efforts throughout the state have mirrored the FDA's approach, focusing on raising awareness and leading the charge to ban concentrated synthetic 7-OH which presents a unique health risk and has been determined to have contributed to numerous deaths.

As previously noted, communities across the state have taken steps to ban concentrated synthetic 7-OH in the interest of protecting residents, especially young people, from its dangers. By enacting SB 758, all communities in our state would be protected this new opioid threat.

## 7. Argument in Opposition

Drug Policy Alliance writes:

[SB 758] is unnecessary and counterproductive to address potentially dangerous or unhealthy products through the criminal legal system rather than through regulation grounded in public health, consumer protection, and evidence-based oversight.

We would recommend that the issue of regulation be studied by the California Health and Human Services Agency and California Department of Public Health, to develop recommendations on how to prevent harm related to 7-hydroxymitragynine and nitrous oxide. Any such process should also include the voices of California consumers and families that have direct experience with the benefits and dangers of 7-hydroxymitragynine (7-OH).

Schedule I was intended to be reserved for the most dangerous drugs, and the punishment for possession for sale of most of the substances listed therein is 2, 3, or 4 years in jail or prison. The punishment for transportation or sale, the punishment is 3, 4, or 5 years in jail or prison. Since the passage of Prop 36 in 2024, the mere possession of a Schedule I controlled substance for personal use

can result in years in state prison, if a person has two or more prior convictions for possession for personal use, and “fails” court-order drug treatment. As drafted, SB 758 creates a subsection (g) that is not referenced in the Health & Safety Codes for sale, possession for sale, or possession of other controlled substances, so the penalties would not apply, unless it is the intent of the author or a future author to further amend state statutes to treat 7-hydroxymitragynine exactly as we do heroin, cocaine and fentanyl. If the bill is drafted as intended, without penalties, then it begs the question: why would it be put in Schedule I, rather than controlled through tighter civil regulation?

...

We note that in late 2025, the California Department of Public Health and the Los Angeles County Department of Public Health both issued warnings to the public about 7- hydroxymitragynine. Neither agency recommended criminalization of the substance or punishment of users or sellers.

As of now, 7-hydroxymitragynine is not scheduled in the US Controlled Substance Act. At the recommendation of appointees of President Trump, Robert F. Kennedy Jr, and Dr. Marty Makary, the US Food and Drug Administration (FDA) has recommended to the Drug Enforcement Agency (DEA) that 7-hydroxymitragynine be put on Schedule I. The DEA contemplated scheduling kratom and 7-hydroxymitragynine in 2016, but after public comment, chose not to proceed. If the DEA moves forward in 2026, it will again allow for public comment, before deciding. Ultimately, there is no requirement that the State of California rubberstamp the recommendations of Trump Administration. California has long served as a leader in developing independent, evidence-based public health policy and should continue to do so here.

A regulatory process with public comment would be appropriate in California. We recommend that the bill be amended to direct the Health and Human Services Agency and/or the California Department of Public Health to study the dangers and potential value of 7-hydroxymitragynine, with input from the public, as well as physicians, scientists, addiction medicine experts, and public health professionals.

DPA is concerned that the voices of the public have not yet been included in this debate in California, and that there may be unintended consequences of removing 7- hydroxymitragynine from the market, even temporarily. Many California citizens report that they use 7-hydroxymitragynine to curb their cravings for illegal substances, including heroin and fentanyl. A ban would likely send hundreds, if not thousands, of our neighbors and family members back into the unregulated, illegal market. The results would be more suffering and more deaths. If the bill includes criminal penalties, that will contribute to suffering for California families, as convictions and incarceration carry immediate health risks and long-term social and financial harms to both the individual and to their families.