
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anna Caballero, Chair
2025 - 2026 Regular Session

SB 758 (Umberg) - Public health: kratom and nitrous oxide

Version: January 15, 2026

Urgency: No

Hearing Date: January 20, 2026

Policy Vote: PUB. S. 5 - 0

Mandate: Yes

Consultant: Liah Burnley

Bill Summary: SB 758 would prohibit retailers from selling nitrous oxide and make it a misdemeanor to sell or distribute 7-hydroxymitragynine (7-OH), as specified.

Fiscal Impact:

- Unknown, potentially significant costs to the state funded trial court system (Trial Court Trust Fund, General Fund) to adjudicate the newly created criminal penalties in this bill. Defendants are constitutionally guaranteed certain rights during criminal proceedings, including the right to a jury trial and the right to counsel (at public expense if the defendants are unable to afford the costs of representation). Creating new crimes leads to lengthier and more complex court proceedings with attendant workload and resource costs to the court. The fiscal impact of this bill to the courts will depend on many unknowns, including the numbers of people charged with an offense and the factors unique to each case. An eight-hour court day costs approximately \$10,500 in staff in workload. This is a conservative estimate, based on the hourly rate of court personnel including at minimum the judge, clerk, bailiff, court reporter, jury administrator, administrative staff, and jury per-diems. If court days exceed 10, costs to the trial courts could reach hundreds of thousands of dollars. While the 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 fund additional staff and resources and to increase the amount appropriated to backfill for trial court operations.
- Unknown, potentially significant costs (local funds, General Fund) to the counties to incarcerate people for the crime created by this bill. The average annual cost to incarcerate one person in county jail varies by county, but likely ranges from \$70,000 to \$90,000 per year. For example, in 2021, Los Angeles County budgeted \$1.3 billion for jail spending, including \$89,580 per incarcerated person. Actual incarceration costs to counties will depend on the number of convictions and the length of each sentence. Generally, county incarceration costs are not reimbursable state mandates pursuant to Proposition 30 (2012).

Background:

- Nitrous oxide: It is 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. It is also a misdemeanor to dispense or distribute nitrous oxide to a person if the dispenser or distributor 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. Additionally, any person who dispenses or distributes nitrous oxide must record each transaction in a written or electronic document. The person dispensing or distributing the nitrous oxide must 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. The document signed by the purchaser includes 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; and 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.

- Kratom/7-hydroxymitragynine: Kratom (*Mitragyna speciosa*) is a tropical evergreen native to Southeast Asia. Its leaves contain psychoactive compounds mitragynine and 7-hydroxymitragynine (7-OH), which have been consumed for hundreds of years for its medicinal effects. Kratom could potentially be used for the treatment of opioid withdrawal and pain, but more insight is needed into its abuse potential.¹ The substance is not approved by the FDA and product safety and strength is not regulated and vary widely.

Proposed Law:

- Prohibits retailers, except a grocery store or a general retail merchandise store with a grocery department, from selling nitrous oxide.
- Makes it a misdemeanor to sell or distribute any product containing 7-hydroxymitragynine, except as it naturally occurs in the plant *Mitragyna speciosa*.

Related Legislation: AB 1088 (Bains), of the 2025-2026 Legislative Session, would have added kratom products and products containing 7-OH to the Sherman Food, Drug, and Cosmetic Law and prohibits the sale of kratom products and 7-OH products to persons under 21 years of age, among other things. AB 1088 was not heard by Senate Health Committee.

-- END --

¹ Behnood-Rod, A., Chellian, R., Wilson, R., Hiranita, T., Sharma, A., Leon, F., McCurdy, C. R., McMahon, L. R., & Bruijnzeel, A. W. (2020). Evaluation of the rewarding effects of mitragynine and 7-hydroxymitragynine in an intracranial self-stimulation procedure in male and female rats. *Drug and alcohol dependence*, 215.