

AMENDED IN SENATE APRIL 15, 2021

AMENDED IN SENATE MARCH 25, 2021

SENATE BILL

No. 519

Introduced by Senator Wiener
(Coauthors: Senators Kamlager and Newman)
(Coauthors: Assembly Members Low and Quirk)

February 17, 2021

An act to amend Sections 11054, 11150.2, 11350, 11364, 11364.7, 11365, 11377, 11379, 11379.2, 11382, and 11550 of, to add Sections 11350.1, 11356.8, 11356.9, 11377.1, 11382.8, 11382.9, and 11402 to, to add and repeal Section 131065 of, to repeal Section 11999 of, and to repeal Article 7 (commencing with Section 11390) of Chapter 6 of Division 10 of, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 519, as amended, Wiener. Controlled substances: decriminalization of certain hallucinogenic substances.

(1) Existing law categorizes certain drugs and other substances as controlled substances and prohibits various actions related to those substances, including their manufacture, transportation, sale, possession, and ingestion.

This bill would make lawful the possession for personal use, as described, and the social sharing, as defined, of psilocybin, psilocyn, dimethyltryptamine (DMT), ibogaine, mescaline, lysergic acid diethylamide (LSD), ketamine, and 3,4-methylenedioxymethamphetamine (MDMA), by and with persons 21 years of age or older. The bill would provide penalties for possession

of these substance on school grounds, or possession by, or sharing with, persons under 21 years of age.

The bill would also provide for the dismissal and sealing of pending and prior convictions for offenses that would be made lawful by the passage of this bill, as specified. The bill would require the Department of Justice to identify those records and provide them to local jurisdictions to initiate the required proceedings.

(2) Existing law prohibits the cultivation, transfer, or transportation, as specified, of any spores or mycelium capable of producing mushrooms or other material which contain psilocybin or psilocyn.

This bill would repeal those provisions.

(3) Existing law, contingent upon specified changes in federal law regarding the federally controlled substance cannabidiol, would deem a physician, pharmacist, or other healing arts licensee who prescribes, furnishes, or dispenses a product composed of cannabidiol in accordance with that federal law, to be in compliance with state law governing those acts, as specified.

This bill would make those provisions also applicable to the controlled substances made lawful by this bill.

(4) Existing law creates a Research Advisory Panel, as specified, to conduct hearings on, and in other ways study, research projects concerning cannabis or hallucinogenic drugs.

This bill would require the State Department of Public Health 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 this bill, as specified.

(5) Existing law prohibits the possession of drug paraphernalia, as defined.

This bill would exempt from this prohibition, paraphernalia related, as specified, to these specific substances. The bill would also exempt from the prohibition items used for the testing and analysis of controlled substances.

(6) Existing law states the intent of the Legislature that the messages and information provided by various state drug and alcohol programs promote no unlawful use of any drugs or alcohol.

This bill would repeal those provisions.

(7) By eliminating and changing the elements of existing crimes and creating new offenses, and by requiring new duties of local prosecutors, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(8) This bill would state that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The War on Drugs has entailed overwhelming financial and
4 societal costs, and the policy behind it does not reflect a modern
5 understanding of substance use nor does it accurately reflect the
6 potential therapeutic benefits or harms of various substances.

7 (b) Criminalization has not deterred drug use, and has instead
8 made drug use less safe. It has created an unregulated underground
9 market in which difficult-to-verify dosages and the presence of
10 adulterants, including fentanyl, make the illicit drug supply
11 dangerous.

12 (c) Lack of honest drug education has laid the groundwork for
13 decades of misinformation, stigma, and cultural appropriation,
14 which have all contributed to increasing the dangers of drug use.

15 (d) Harm reduction tools including drug-checking kits, gas
16 chromatography mass spectrometry machines, milligram scales,
17 and capsules allow users to make more accurate, safer,
18 evidence-based decisions about their personal use. Allowing such
19 paraphernalia can increase public health and safety.

20 (e) Research is advancing to support the use of psychedelic
21 compounds with psychotherapy to treat mental health disorders,
22 such as anxiety, depression, post-traumatic stress disorder and
23 substance use disorder.

24 (f) Measure 109 in Oregon, which passed in November 2020
25 with a 56 percent vote of the state population, will establish a

1 regulated psilocybin therapy system in Oregon to provide people
2 therapeutic access to psilocybin.

3 (g) Measure 110 in Oregon, which passed in November 2020
4 with a 58 percent vote of the state population, decriminalized the
5 personal possession of all drugs, and almost 20 countries around
6 the world including Portugal, Czech Republic, and Spain have
7 expressly or effectively decriminalized the personal use of all
8 substances.

9 (h) The City of Oakland and the City of Santa Cruz have both
10 passed resolutions decriminalizing and deprioritizing the
11 enforcement of the possession, use, and propagation of psychedelic
12 plants and fungi. Since June 2019, the Cities of Ann Arbor,
13 Michigan; Somerville, Massachusetts; and Cambridge,
14 Massachusetts; have all decriminalized the possession, use, and
15 propagation of psychedelic plants and fungi at the local level. Also,
16 in 2020, Washington, D.C., passed Initiative 81 to decriminalize
17 and deprioritize the possession and use of psychedelic plants and
18 fungi with 76 percent voter approval.

19 (i) To responsibly transition away from criminalization, protect
20 people who use or may use drugs, and avoid negative
21 environmental or cultural impacts, it is necessary to review the
22 full legal context in which these changes to the law are made,
23 incorporate evidence-based policy, consult with experts, and
24 maintain open discourse based in harm reduction, reciprocity, and
25 human rights into the process of developing alternative regulatory
26 systems.

27 (j) This act will allow for the noncommercial, personal use and
28 sharing of specified controlled substances, including for the
29 purposes of group counseling and community-based healing, or
30 other related services.

31 (k) These changes in law will not affect any restrictions on the
32 driving or operating a vehicle while impaired or an employer's
33 ability to restrict the use of controlled substance by its employees,
34 or affect the legal standard for negligence.

35 (l) Peyote is specifically excluded from the list of substances
36 to be decriminalized, and any cultivation, harvest, extraction,
37 tincture or other product manufactured or derived therefrom,
38 because of the nearly endangered status of the peyote plant and
39 the special significance peyote holds in Native American
40 spirituality. Section 11363 of the Health and Safety Code, which

1 makes it a crime in California to cultivate, harvest, dry, or process
2 any plant of the genus *Lophophora*, also known as Peyote, is not
3 amended or repealed.

4 (m) The State of California fully respects and supports the
5 continued Native American possession and use of peyote under
6 federal law, 42 U.S.C. 1996a, understanding that Native Americans
7 in the United States were persecuted and prosecuted for their
8 ceremonial practices and use of peyote for more than a century
9 and had to fight numerous legal and political battles to achieve the
10 current protected status, and the enactment of this legislation does
11 not intend to undermine explicitly or implicitly that status.

12 SEC. 2. Section 11054 of the Health and Safety Code is
13 amended to read:

14 11054. (a) The controlled substances listed in this section are
15 included in Schedule I.

16 (b) Opiates. Unless specifically excepted or unless listed in
17 another schedule, any of the following opiates, including their
18 isomers, esters, ethers, salts, and salts of isomers, esters, and ethers
19 whenever the existence of those isomers, esters, ethers, and salts
20 is possible within the specific chemical designation:

- 21 (1) Acetylmethadol.
- 22 (2) Allylprodine.
- 23 (3) Alphacetylmethadol (except levoalphacetylmethadol, also
24 known as levo-alpha-acetylmethadol, levomethadyl acetate, or
25 LAAM).
- 26 (4) Alphameprodine.
- 27 (5) Alphamethadol.
- 28 (6) Benzethidine.
- 29 (7) Betacetylmethadol.
- 30 (8) Betameprodine.
- 31 (9) Betamethadol.
- 32 (10) Betaprodine.
- 33 (11) Clonitazene.
- 34 (12) Dextromoramide.
- 35 (13) Diampromide.
- 36 (14) Diethylthiambutene.
- 37 (15) Difenoxin.
- 38 (16) Dimenoxadol.
- 39 (17) Dimepheptanol.
- 40 (18) Dimethylthiambutene.

- 1 (19) Dioxaphetyl butyrate.
- 2 (20) Dipipanone.
- 3 (21) Ethylmethylthiambutene.
- 4 (22) Etonitazene.
- 5 (23) Etoxeridine.
- 6 (24) Furethidine.
- 7 (25) Hydroxypethidine.
- 8 (26) Ketobemidone.
- 9 (27) Levomoramide.
- 10 (28) Levophenacylmorphan.
- 11 (29) Morpheridine.
- 12 (30) Noracymethadol.
- 13 (31) Norlevorphanol.
- 14 (32) Normethadone.
- 15 (33) Norpipanone.
- 16 (34) Phenadoxone.
- 17 (35) Phenampromide.
- 18 (36) Phenomorphan.
- 19 (37) Phenoperidine.
- 20 (38) Piriramide.
- 21 (39) Proheptazine.
- 22 (40) Properidine.
- 23 (41) Propiram.
- 24 (42) Racemoramide.
- 25 (43) Tilidine.
- 26 (44) Trimeperidine.
- 27 (45) Any substance which contains any quantity of
- 28 acetylfentanyl (N-[1-phenethyl-4-piperidinyl] acetanilide) or a
- 29 derivative thereof.
- 30 (46) Any substance which contains any quantity of the thiophene
- 31 analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidinyl]
- 32 acetanilide) or a derivative thereof.
- 33 (47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
- 34 (48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
- 35 (c) Opium derivatives. Unless specifically excepted or unless
- 36 listed in another schedule, any of the following opium derivatives,
- 37 its salts, isomers, and salts of isomers whenever the existence of
- 38 those salts, isomers, and salts of isomers is possible within the
- 39 specific chemical designation:
- 40 (1) Acetorphine.

- 1 (2) Acetyldihydrocodeine.
- 2 (3) Benzylmorphine.
- 3 (4) Codeine methylbromide.
- 4 (5) Codeine-N-Oxide.
- 5 (6) Cyprenorphine.
- 6 (7) Desomorphine.
- 7 (8) Dihydromorphine.
- 8 (9) Drotebanol.
- 9 (10) Etorphine (except hydrochloride salt).
- 10 (11) Heroin.
- 11 (12) Hydromorphanol.
- 12 (13) Methyldesorphine.
- 13 (14) Methyldihydromorphine.
- 14 (15) Morphine methylbromide.
- 15 (16) Morphine methylsulfonate.
- 16 (17) Morphine-N-Oxide.
- 17 (18) Myrophine.
- 18 (19) Nicocodeine.
- 19 (20) Nicomorphine.
- 20 (21) Normorphine.
- 21 (22) Pholcodine.
- 22 (23) Thebacon.

23 (d) Hallucinogenic substances. Unless specifically excepted or
24 unless listed in another schedule, any material, compound, mixture,
25 or preparation, which contains any quantity of the following
26 hallucinogenic substances, or which contains any of its salts,
27 isomers, and salts of isomers whenever the existence of those salts,
28 isomers, and salts of isomers is possible within the specific
29 chemical designation (for purposes of this subdivision only, the
30 term “isomer” includes the optical, position, and geometric
31 isomers):

- 32 (1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other
33 names: 4-bromo-2,5-dimethoxy-alpha-methylphenethylamine;
34 4-bromo-2,5-DMA.
- 35 (2) 2,5-dimethoxyamphetamine—Some trade or other names:
36 2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.
- 37 (3) 4-methoxyamphetamine—Some trade or other names:
38 4 - m e t h o x y - a l p h a - m e t h y l p h e n e t h y l a m i n e ,
39 paramethoxyamphetamine, PMA.
- 40 (4) 5-methoxy-3,4-methylenedioxy-amphetamine.

- 1 (5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other
2 names: 4-methyl-2,5-dimethoxy-alpha-methylphenethylamine;
3 “DOM”; and “STP.”
- 4 (6) 3,4-methylenedioxy amphetamine.
- 5 (7) 3,4,5-trimethoxy amphetamine.
- 6 (8) Bufotenine—Some trade or other names:
7 3-(beta-dimethylaminoethyl)-5-hydroxyindole;
8 3-(2-dimethylaminoethyl)-5 indolol; N,N-dimethylserolonin,
9 5-hydroxy-N,N-dimethyltryptamine; mappine.
- 10 (9) Diethyltryptamine—Some trade or other names:
11 N,N-Diethyltryptamine; DET.
- 12 (10) Dimethyltryptamine—Some trade or other names: DMT.
- 13 (11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta,
14 7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido
15 [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.
- 16 (12) Lysergic acid diethylamide.
- 17 (13) Cannabis.
- 18 (14) Mescaline, derived from plants presently classified
19 botanically in the Echinopsis or Trichocereus genus of cacti,
20 including, without limitation, the Bolivian Torch Cactus, San Pedro
21 Cactus, or Peruvian Torch Cactus, but not including mescaline
22 derived from any plant described in paragraph (15).
- 23 (15) Peyote—Meaning all parts of the plant presently classified
24 botanically as *Lophophora williamsii* Lemaire, whether growing
25 or not, the seeds thereof, any extract from any part of the plant,
26 and every compound, manufacture, salts, derivative, mixture, or
27 preparation of the plant, its seeds or extracts (interprets 21 U.S.C.
28 Sec. 812(c), Schedule 1(c)(12)).
- 29 (16) N-ethyl-3-piperidyl benzilate.
- 30 (17) N-methyl-3-piperidyl benzilate.
- 31 (18) Psilocybin.
- 32 (19) Psilocyn.
- 33 (20) Tetrahydrocannabinols. Synthetic equivalents of the
34 substances contained in the plant, or in the resinous extractives of
35 Cannabis, sp. and/or synthetic substances, derivatives, and their
36 isomers with similar chemical structure and pharmacological
37 activity such as the following: delta 1 cis or trans
38 tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans
39 tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or
40 trans tetrahydrocannabinol, and its optical isomers.

1 Because nomenclature of these substances is not internationally
2 standardized, compounds of these structures, regardless of
3 numerical designation of atomic positions covered.

4 (21) Ethylamine analog of phencyclidine—Some trade or other
5 names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)
6 ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine,
7 PCE.

8 (22) Pyrrolidine analog of phencyclidine—Some trade or other
9 names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCP, PHP.

10 (23) Thiophene analog of phencyclidine—Some trade or other
11 names: 1-[1-(2 thienyl)-cyclohexyl]-piperidine, 2-thienyl analog
12 of phencyclidine, TPCP, TCP.

13 (e) Depressants. Unless specifically excepted or unless listed
14 in another schedule, any material, compound, mixture, or
15 preparation which contains any quantity of the following substances
16 having a depressant effect on the central nervous system, including
17 its salts, isomers, and salts of isomers whenever the existence of
18 those salts, isomers, and salts of isomers is possible within the
19 specific chemical designation:

20 (1) Mecloqualone.

21 (2) Methaqualone.

22 (3) Gamma hydroxybutyric acid (also known by other names
23 such as GHB; gamma hydroxy butyrate; 4-hydroxybutyrate;
24 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate),
25 including its immediate precursors, isomers, esters, ethers, salts,
26 and salts of isomers, esters, and ethers, including, but not limited
27 to, gammabutyrolactone, for which an application has not been
28 approved under Section 505 of the Federal Food, Drug, and
29 Cosmetic Act (21 U.S.C. Sec. 355).

30 (f) Unless specifically excepted or unless listed in another
31 schedule, any material, compound, mixture, or preparation which
32 contains any quantity of the following substances having a
33 stimulant effect on the central nervous system, including its
34 isomers:

35 (1) Cocaine base.

36 (2) Fenethylamine, including its salts.

37 (3) N-Ethylamphetamine, including its salts.

38 SEC. 3. Section 11150.2 of the Health and Safety Code is
39 amended to read:

1 11150.2. (a) Notwithstanding any other law, if cannabidiol is
2 excluded from Schedule I of the federal Controlled Substances
3 Act and placed on a schedule of the act other than Schedule I, or
4 if a product composed of cannabidiol is approved by the federal
5 Food and Drug Administration and either placed on a schedule of
6 the act other than Schedule I, or exempted from one or more
7 provisions of the act, so as to permit a physician, pharmacist, or
8 other authorized healing arts licensee acting within their scope of
9 practice, to prescribe, furnish, or dispense that product, the
10 physician, pharmacist, or other authorized healing arts licensee
11 who prescribes, furnishes, or dispenses that product in accordance
12 with federal law shall be deemed to be in compliance with state
13 law governing those acts.

14 (b) Notwithstanding any other law, if psilocybin, psilocyn,
15 dimethyltryptamine, ibogaine, mescaline, lysergic acid
16 diethylamide, or 3,4-methylenedioxymethamphetamine is excluded
17 from Schedule I of the federal Controlled Substances Act and
18 placed on a schedule of the act other than Schedule I, or if a product
19 composed of one of these substances is approved by the federal
20 Food and Drug Administration and either placed on a schedule of
21 the act other than Schedule I, or exempted from one or more
22 provisions of the act, so as to permit a physician, pharmacist, or
23 other authorized healing arts licensee acting within their scope of
24 practice, to prescribe, furnish, or dispense that product, the
25 physician, pharmacist, or other authorized healing arts licensee
26 who prescribes, furnishes, or dispenses that product in accordance
27 with federal law shall be deemed to be in compliance with state
28 law governing those acts.

29 (c) For purposes of this chapter, upon the effective date of any
30 of the changes in federal law described in subdivision (a) or (b),
31 notwithstanding any other state law, a product composed of the
32 excluded substance may be prescribed, furnished, dispensed,
33 transferred, transported, possessed, or used in accordance with
34 federal law and is authorized pursuant to state law.

35 (d) This section does not apply to any product containing
36 cannabidiol that is made or derived from industrial hemp, as
37 defined in Section 11018.5 and regulated pursuant to that section.

38 SEC. 4. Section 11350 of the Health and Safety Code is
39 amended to read:

1 11350. (a) Except as otherwise provided in this division, every
2 person who possesses (1) any controlled substance specified in
3 subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of
4 Section 11054, specified in paragraph (15) or (20) of subdivision
5 (d) of Section 11054, or specified in subdivision (b) or (c) of
6 Section 11055, or specified in subdivision (h) of Section 11056,
7 or (2) any controlled substance classified in Schedule III, IV, or
8 V which is a narcotic drug, unless upon the written prescription
9 of a physician, dentist, podiatrist, or veterinarian licensed to
10 practice in this state, shall be punished by imprisonment in a county
11 jail for not more than one year, except that such person shall instead
12 be punished pursuant to subdivision (h) of Section 1170 of the
13 Penal Code if that person has one or more prior convictions for an
14 offense specified in clause (iv) of subparagraph (C) of paragraph
15 (2) of subdivision (e) of Section 667 of the Penal Code or for an
16 offense requiring registration pursuant to subdivision (c) of Section
17 290 of the Penal Code.

18 (b) Except as otherwise provided in this division, whenever a
19 person who possesses any of the controlled substances specified
20 in subdivision (a), the judge may, in addition to any punishment
21 provided for pursuant to subdivision (a), assess against that person
22 a fine not to exceed seventy dollars (\$70) with proceeds of this
23 fine to be used in accordance with Section 1463.23 of the Penal
24 Code. The court shall, however, take into consideration the
25 defendant's ability to pay, and no defendant shall be denied
26 probation because of their inability to pay the fine permitted under
27 this subdivision.

28 (c) Except in unusual cases in which it would not serve the
29 interest of justice to do so, whenever a court grants probation
30 pursuant to a felony conviction under this section, in addition to
31 any other conditions of probation which may be imposed, the
32 following conditions of probation shall be ordered:

33 (1) For a first offense under this section, a fine of at least one
34 thousand dollars (\$1,000) or community service.

35 (2) For a second or subsequent offense under this section, a
36 fine of at least two thousand dollars (\$2,000) or community service.

37 (3) If a defendant does not have the ability to pay the minimum
38 fines specified in paragraphs (1) and (2), community service shall
39 be ordered in lieu of the fine.

1 (d) It is not unlawful for a person other than the prescription
2 holder to possess a controlled substance described in subdivision
3 (a) if both of the following apply:

4 (1) The possession of the controlled substance is at the direction
5 or with the express authorization of the prescription holder.

6 (2) The sole intent of the possessor is to deliver the prescription
7 to the prescription holder for its prescribed use or to discard the
8 substance in a lawful manner.

9 (e) This section does not permit the use of a controlled substance
10 by a person other than the prescription holder or permit the
11 distribution or sale of a controlled substance that is otherwise
12 inconsistent with the prescription.

13 SEC. 5. Section 11350.1 is added to the Health and Safety
14 Code, to read:

15 11350.1. (a) Except as otherwise provided in subdivisions (b),
16 (c), (d), and (e) of this section and notwithstanding any other law,
17 all of the following shall be lawful for a natural person 21 years
18 of age or older and shall not be a violation of state or local law:

19 (1) The possession, processing, obtaining, or transportation of
20 mescaline, as described in paragraph (14) of subdivision (d) of
21 Section 11054, for personal use or for social sharing.

22 (2) The ingesting of mescaline.

23 (3) The social sharing of mescaline.

24 (4) The possession, planting, cultivating, harvesting, or
25 processing of plants capable of producing mescaline, except for
26 the plant presently classified botanically as *Lophophora williamsii*
27 Lemaire, on property owned or controlled by a person, for personal
28 use or social sharing by that person, and possession of any product
29 produced by those plants.

30 (b) Possession of mescaline by a person 21 years of age or over
31 on the grounds of any public or private elementary, vocational,
32 junior high, or high school, during hours that the school is open
33 for classes or school-related programs, or at any time when minors
34 are using the facility is punishable as a misdemeanor.

35 (c) (1) A person who knowingly gives away or administers
36 mescaline to a person who is under 18 years of age in violation of
37 law shall be punished by imprisonment in a county jail for a period
38 of not more than six months or by a fine of not more than five
39 hundred dollars (\$500), or by both that fine and imprisonment, or

1 by imprisonment pursuant to subdivision (h) of Section 1170 of
2 the Penal Code.

3 (2) Notwithstanding paragraph (1), a person 18 years of age or
4 over who knowingly gives away or administers mescaline to a
5 minor under 14 years of age in violation of law shall be punished
6 by imprisonment in the state prison for a period of three, five, or
7 seven years.

8 (3) A person who knowingly gives away or administers
9 mescaline to a person who is at least 18 years of age, but under 21
10 years of age is guilty of an infraction.

11 (d) Except as otherwise provided, possession of mescaline by
12 a person under 18 years of age is punishable as an infraction and
13 shall require:

14 (1) Upon a finding that a first offense has been committed, four
15 hours of drug education or counseling and up to 10 hours of
16 community service over a period not to exceed 60 days,
17 commencing when the drug education or counseling services are
18 made available to them.

19 (2) Upon a finding that a second offense or subsequent offense
20 has been committed, six hours of drug education or counseling
21 and up to 20 hours of community service over a period not to
22 exceed 90 days, commencing when the drug education or
23 counseling services are made available to them.

24 (e) Except as otherwise provided, possession of mescaline by
25 a person at least 18 years of age but less than 21 years of age is
26 punishable as an infraction.

27 (f) Mescaline or related products involved in any way with
28 conduct deemed lawful by this section are not contraband nor
29 subject to seizure, and no conduct deemed lawful by this section
30 shall constitute the basis for detention, search, or arrest, or the
31 basis for the seizure or forfeiture of assets.

32 (g) As used in this section, the following terms are defined as
33 follows:

34 (1) “Financial gain” means the receipt of money or other
35 valuable consideration in exchange for the item being shared.
36 “Financial gain” does not include reasonable fees for counseling,
37 spiritual guidance, or related services that are provided in
38 conjunction with administering or use of mescaline under the
39 guidance and supervision, and on the premises, of the person
40 providing those services.

1 (2) “Personal use” means for the personal ingestion or other
2 personal and noncommercial use by the person in possession.

3 (3) “Social sharing” means the giving away or consensual
4 administering of mescaline by a person 21 years of age or older,
5 to another person 21 years of age or older, not for financial gain,
6 including in the context of group counseling, spiritual guidance,
7 community-based healing, or related services.

8 SEC. 6. Section 11356.8 is added to the Health and Safety
9 Code, to read:

10 11356.8. (a) A person currently serving a sentence for a
11 conviction, whether by trial or by open or negotiated plea, who
12 would not have been guilty under Section 11350.1 or 11402 had
13 those sections been in effect at the time of the offense may petition
14 for a recall or dismissal of sentence before the trial court that
15 entered the judgment of conviction in the case to request
16 resentencing or dismissal in accordance with those sections.

17 (b) Upon receiving a petition under subdivision (a), the court
18 shall presume the petitioner satisfies the criteria in subdivision (a)
19 unless the party opposing the petition proves by clear and
20 convincing evidence that the petitioner does not satisfy the criteria.
21 If the petitioner satisfies the criteria in subdivision (a), the court
22 shall grant the petition to recall the sentence or dismiss the sentence
23 because it is legally invalid unless the court determines that
24 granting the petition would pose an unreasonable risk of danger
25 to public safety.

26 (1) In exercising its discretion, the court may consider, but shall
27 not be limited to evidence provided for in subdivision (b) of Section
28 1170.18 of the Penal Code.

29 (2) As used in this section, “unreasonable risk of danger to
30 public safety” has the same meaning as provided in subdivision
31 (c) of Section 1170.18 of the Penal Code.

32 (c) A person who is serving a sentence and is resentenced
33 pursuant to subdivision (b) shall be given credit for any time
34 already served and shall be subject to supervision for one year
35 following completion of their time in custody or shall be subject
36 to whatever supervision time they would have otherwise been
37 subject to after release, whichever is shorter, unless the court, in
38 its discretion, as part of its resentencing order, releases the person
39 from supervision. In that case, the person is subject to parole
40 supervision under Section 3000.08 of the Penal Code or postrelease

1 community supervision under subdivision (a) of Section 3451 of
2 the Penal Code by the designated agency and the jurisdiction of
3 the court in the county in which the offender is released or resides,
4 or in which an alleged violation of supervision has occurred, for
5 the purpose of hearing petitions to revoke supervision and impose
6 a term of custody.

7 (d) Under no circumstances may resentencing under this section
8 result in the imposition of a term longer than the original sentence,
9 or the reinstatement of charges dismissed pursuant to a negotiated
10 plea agreement.

11 (e) A person who has completed their sentence for a conviction
12 under this article or Chapter 6.5 (commencing with Section 11400),
13 whether by trial or open or negotiated plea, who would not have
14 been guilty of an offense or who would have been guilty of a lesser
15 offense under Section 11350.1 or 11402 had those sections been
16 in effect at the time of the offense, may file an application before
17 the trial court that entered the judgment of conviction in their case
18 to have the conviction dismissed and sealed because the prior
19 conviction is now legally invalid.

20 (f) The court shall presume the petitioner satisfies the criteria
21 in subdivision (e) unless the party opposing the application proves
22 by clear and convincing evidence that the petitioner does not satisfy
23 the criteria in subdivision (e). Once the applicant satisfies the
24 criteria in subdivision (e), the court shall redesignate the conviction
25 as a misdemeanor or infraction or dismiss and seal the conviction
26 as legally invalid as established under Sections 11350.1 and 11402.

27 (g) Unless requested by the applicant, no hearing is necessary
28 to grant or deny an application filed under subdivision (e).

29 (h) If the court that originally sentenced the petitioner is not
30 available, the presiding judge shall designate another judge to rule
31 on the petition or application.

32 (i) Nothing in this section is intended to diminish or abrogate
33 any rights or remedies otherwise available to the petitioner or
34 applicant.

35 (j) Nothing in this and related sections is intended to diminish
36 or abrogate the finality of judgments in any case not falling within
37 the purview of Section 11350.1 or 11402.

38 (k) A resentencing hearing ordered under this section shall
39 constitute a “postconviction release proceeding” under paragraph

1 (7) of subdivision (b) of Section 28 of Article I of the California
2 Constitution (Marsy’s Law).

3 (l) The provisions of this section shall apply equally to juvenile
4 delinquency adjudications and dispositions under Section 602 of
5 the Welfare and Institutions Code if the juvenile would not have
6 been guilty of an offense under Section 11350.1 or 11402.

7 (m) The Judicial Council shall promulgate and make available
8 all necessary forms to enable the filing of the petitions and
9 applications provided in this section.

10 SEC. 7. Section 11356.9 is added to the Health and Safety
11 Code, to read:

12 11356.9. (a) On or before July 1, 2022, the Department of
13 Justice shall review the records in the state summary criminal
14 history information database and shall identify past convictions
15 that are potentially eligible for recall or dismissal of sentence or
16 dismissal and sealing, pursuant to Section 11356.8. The department
17 shall notify the prosecution of all cases in their jurisdiction that
18 are eligible for recall or dismissal of sentence or dismissal and
19 sealing.

20 (b) The prosecution shall have until July 1, 2023, to review all
21 cases and determine whether to challenge the recall or dismissal
22 of sentence or dismissal and sealing.

23 (c) (1) The prosecution may challenge the resentencing of a
24 person pursuant to this section when the person does not meet the
25 criteria established in Section 11356.8 or presents an unreasonable
26 risk to public safety.

27 (2) The prosecution may challenge the dismissal and sealing of
28 a person pursuant to this section who has completed their sentence
29 for a conviction when the person does not meet the criteria
30 established in Section 11356.8.

31 (3) On or before July 1, 2023, the prosecution shall inform the
32 court and the public defender’s office in their county when they
33 are challenging a particular recall or dismissal of sentence or
34 dismissal and sealing. The prosecution shall inform the court when
35 they are not challenging a particular recall or dismissal of sentence
36 or dismissal and sealing.

37 (4) The public defender’s office, upon receiving notice from
38 the prosecution pursuant to paragraph (3), shall make a reasonable
39 effort to notify the person whose resentencing or dismissal is being
40 challenged.

1 (d) If the prosecution does not challenge the recall or dismissal
2 of sentence or dismissal and sealing by July 1, 2023, the court shall
3 reduce or dismiss the conviction pursuant to Section 11356.8.

4 (e) The court shall notify the department of the recall or
5 dismissal of sentence or dismissal and sealing and the department
6 shall modify the state summary criminal history information
7 database accordingly.

8 (f) The department shall post general information on its internet
9 website about the recall or dismissal of sentences or dismissal and
10 sealing authorized in this section.

11 (g) It is the intent of the Legislature that persons who are
12 currently serving a sentence or who proactively petition for a recall
13 or dismissal of sentence or dismissal and sealing pursuant to
14 Section 11356.8 be prioritized for review.

15 SEC. 8. Section 11364 of the Health and Safety Code is
16 amended to read:

17 11364. (a) It is unlawful to possess an opium pipe or any
18 device, contrivance, instrument, or paraphernalia used for
19 unlawfully injecting or smoking (1) a controlled substance specified
20 in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of
21 Section 11054, specified in paragraph (15) or (20) of subdivision
22 (d) of Section 11054, specified in subdivision (b) or (c) of Section
23 11055, or specified in paragraph (2) of subdivision (d) of Section
24 11055, or (2) a controlled substance that is a narcotic drug
25 classified in Schedule III, IV, or V.

26 (b) This section shall not apply to hypodermic needles or
27 syringes that have been containerized for safe disposal in a
28 container that meets state and federal standards for disposal of
29 sharps waste.

30 (c) Until January 1, 2026, as a public health measure intended
31 to prevent the transmission of HIV, viral hepatitis, and other
32 bloodborne diseases among persons who use syringes and
33 hypodermic needles, and to prevent subsequent infection of sexual
34 partners, newborn children, or other persons, this section shall not
35 apply to the possession solely for personal use of hypodermic
36 needles or syringes.

37 SEC. 9. Section 11364.7 of the Health and Safety Code is
38 amended to read:

39 11364.7. (a) (1) Except as authorized by law, any person who
40 delivers, furnishes, or transfers, possesses with intent to deliver,

1 furnish, or transfer, or manufactures with the intent to deliver,
2 furnish, or transfer, drug paraphernalia, knowing, or under
3 circumstances where one reasonably should know, that it will be
4 used to plant, propagate, cultivate, grow, harvest, compound,
5 convert, produce, process, prepare, pack, repack, store, contain,
6 conceal, inject, ingest, inhale, or otherwise introduce into the
7 human body a controlled substance, except as provided in
8 subdivision (b), in violation of this division, is guilty of a
9 misdemeanor.

10 (2) A public entity, its agents, or employees shall not be subject
11 to criminal prosecution for distribution of hypodermic needles or
12 syringes or any materials deemed by a local or state health
13 department to be necessary to prevent the spread of communicable
14 diseases, or to prevent drug overdose, injury, or disability to
15 participants in clean needle and syringe exchange projects
16 authorized by the public entity pursuant to Chapter 18
17 (commencing with Section 121349) of Part 4 of Division 105.

18 (3) This subdivision does not apply to any paraphernalia that is
19 intended to be used to plant, propagate, cultivate, grow, harvest,
20 compound, convert, produce, process, prepare, pack, repack, store,
21 contain, conceal, inject, ingest, inhale, or otherwise introduce into
22 the human body, any of the following substances:

- 23 (A) Dimethyltryptamine (DMT).
- 24 (B) Ibogaine.
- 25 (C) Lysergic acid diethylamide (LSD).
- 26 (D) Mescaline.
- 27 (E) Psilocybin.
- 28 (F) Psilocyn.
- 29 (G) Ketamine.
- 30 (H) 3,4-methylenedioxymethamphetamine (MDMA).

31 (b) Except as authorized by law, any person who manufactures
32 with intent to deliver, furnish, or transfer drug paraphernalia
33 knowing, or under circumstances where one reasonably should
34 know, that it will be used to plant, propagate, cultivate, grow,
35 harvest, manufacture, compound, convert, produce, process,
36 prepare, test, analyze, pack, repack, store, contain, conceal, inject,
37 ingest, inhale, or otherwise introduce into the human body cocaine,
38 cocaine base, heroin, phencyclidine, or methamphetamine in
39 violation of this division shall be punished by imprisonment in a
40 county jail for not more than one year, or in the state prison.

1 (c) Except as authorized by law, any person, 18 years of age or
2 over, who violates subdivision (a) by delivering, furnishing, or
3 transferring drug paraphernalia to a person under 18 years of age
4 who is at least three years younger, or who, upon the grounds of
5 a public or private elementary, vocational, junior high, or high
6 school, possesses a hypodermic needle, as defined in paragraph
7 (7) of subdivision (a) of Section 11014.5, with the intent to deliver,
8 furnish, or transfer the hypodermic needle, knowing, or under
9 circumstances where one reasonably should know, that it will be
10 used by a person under 18 years of age to inject into the human
11 body a controlled substance, is guilty of a misdemeanor and shall
12 be punished by imprisonment in a county jail for not more than
13 one year, by a fine of not more than one thousand dollars (\$1,000),
14 or by both that imprisonment and fine.

15 (d) The violation, or the causing or the permitting of a violation,
16 of subdivision (a), (b), or (c) by a holder of a business or liquor
17 license issued by a city, county, or city and county, or by the State
18 of California, and in the course of the licensee's business shall be
19 grounds for the revocation of that license.

20 (e) All drug paraphernalia defined in Section 11014.5 is subject
21 to forfeiture and may be seized by any peace officer pursuant to
22 Section 11471 unless its distribution has been authorized pursuant
23 to subdivision (a).

24 (f) If any provision of this section or the application thereof to
25 any person or circumstance is held invalid, it is the intent of the
26 Legislature that the invalidity shall not affect other provisions or
27 applications of this section which can be given effect without the
28 invalid provision or application and to this end the provisions of
29 this section are severable.

30 SEC. 10. Section 11365 of the Health and Safety Code is
31 amended to read:

32 11365. (a) It is unlawful to visit or to be in any room or place
33 where any controlled substances which are specified in subdivision
34 (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
35 specified in paragraph (15) or (20) of subdivision (d) of Section
36 11054, or specified in subdivision (b) or (c) or paragraph (2) of
37 subdivision (d) of Section 11055, or which are narcotic drugs
38 classified in Schedule III, IV, or V, are being unlawfully smoked
39 or used with knowledge that such activity is occurring.

1 (b) This section shall apply only where the defendant aids,
2 assists, or abets the perpetration of the unlawful smoking or use
3 of a controlled substance specified in subdivision (a). This
4 subdivision is declaratory of existing law as expressed in *People*
5 *v. Cressey* (1970) 2 Cal. 3d 836.

6 SEC. 11. Section 11377 of the Health and Safety Code is
7 amended to read:

8 11377. (a) Except as authorized by law and as otherwise
9 provided in subdivision (b) or Section 11375, or in Article 7
10 (commencing with Section 4211) of Chapter 9 of Division 2 of
11 the Business and Professions Code, every person who possesses
12 any controlled substance which is (1) classified in Schedule III,
13 IV, or V, and which is not a narcotic drug, except the substance
14 specified in subdivision (g) of Section 11056, (2) specified in
15 subdivision (d) of Section 11054, except paragraphs (10), (11),
16 (12), (13), (14), (15), (18), (19), and (20) of subdivision (d), (3)
17 specified in paragraph (11) of subdivision (c) of Section 11056,
18 (4) specified in paragraph (2) or (3) of subdivision (f) of Section
19 11054, or (5) specified in subdivision (d), (e), or (f) of Section
20 11055, unless upon the prescription of a physician, dentist,
21 podiatrist, or veterinarian, licensed to practice in this state, shall
22 be punished by imprisonment in a county jail for a period of not
23 more than one year, except that such person may instead be
24 punished pursuant to subdivision (h) of Section 1170 of the Penal
25 Code if that person has one or more prior convictions for an offense
26 specified in clause (iv) of subparagraph (C) of paragraph (2) of
27 subdivision (e) of Section 667 of the Penal Code or for an offense
28 requiring registration pursuant to subdivision (c) of Section 290
29 of the Penal Code.

30 (b) The judge may assess a fine not to exceed seventy dollars
31 (\$70) against any person who violates subdivision (a), with the
32 proceeds of this fine to be used in accordance with Section 1463.23
33 of the Penal Code. The court shall, however, take into consideration
34 the defendant's ability to pay, and no defendant shall be denied
35 probation because of their inability to pay the fine permitted under
36 this subdivision.

37 (c) It is not unlawful for a person other than the prescription
38 holder to possess a controlled substance described in subdivision
39 (a) if both of the following apply:

1 (1) The possession of the controlled substance is at the direction
2 or with the express authorization of the prescription holder.

3 (2) The sole intent of the possessor is to deliver the prescription
4 to the prescription holder for its prescribed use or to discard the
5 substance in a lawful manner.

6 (d) This section does not permit the use of a controlled substance
7 by a person other than the prescription holder or permit the
8 distribution or sale of a controlled substance that is otherwise
9 inconsistent with the prescription.

10 SEC. 12. Section 11377.1 is added to the Health and Safety
11 Code, to read:

12 11377.1. (a) Except as otherwise provided in Sections 11377.5
13 and subdivisions (b), (c), (d), and (e) of this section, and
14 notwithstanding any other law, all of the following shall be lawful
15 for a natural person 21 years of age or older and shall not be a
16 violation of state or local law:

17 (1) The possession, processing, obtaining, or transportation of
18 a controlled substance specified in paragraph (10), (11), (12), (18),
19 or (19) of subdivision (d) of Section 11054, or in subdivision (g)
20 of Section 11056, for personal use or for social sharing.

21 (2) The ingesting of a substance described in paragraph (1).

22 (3) The social sharing of a substance described in paragraph
23 (1).

24 (4) The possession, planting, cultivating, harvesting, or
25 processing of plants capable of producing a substance described
26 in paragraph (1), on property owned or controlled by a person, for
27 personal use or social sharing by that person, and possession of
28 any product produced by those plants including spores or mycelium
29 capable of producing mushrooms or other material which contain
30 a controlled substance specified in paragraph (18) or (19) of
31 subdivision (d) of Section 11054, for that purpose.

32 (b) Possession of a controlled substance specified in paragraph
33 (10), (11), (12), (18), or (19) of subdivision (d) of Section 11054,
34 or in subdivision (g) of Section 11056, by a person 21 years of age
35 or over, on the grounds of any public or private elementary,
36 vocational, junior high, or high school, during hours that the school
37 is open for classes or school-related programs, or at any time when
38 minors are using the facility is punishable as a misdemeanor.

39 (c) (1) A person who knowingly gives away or administers a
40 controlled substance specified in paragraph (10), (11), (12), (18),

1 or (19) of subdivision (d) of Section 11054, or in subdivision (g)
2 of Section 11056, to a person who is under 18 years of age in
3 violation of law shall be punished by imprisonment in a county
4 jail for a period of not more than six months or by a fine of not
5 more than five hundred dollars (\$500), or by both that fine and
6 imprisonment, or by imprisonment pursuant to subdivision (h) of
7 Section 1170 of the Penal Code.

8 (2) Notwithstanding paragraph (1), a person 18 years of age or
9 over who knowingly gives away or administers a substance
10 described in paragraph (1) to a minor under 14 years of age in
11 violation of law shall be punished by imprisonment in the state
12 prison for a period of three, five, or seven years.

13 (3) A person who knowingly gives away or administers a
14 substance described in paragraph (1) to a person who is at least 18
15 years of age, but under 21 years of age is guilty of an infraction.

16 (d) Except as otherwise provided, possession of a controlled
17 substance specified in paragraph (10), (11), (12), (18), or (19) of
18 subdivision (d) of Section 11054, or in subdivision (g) of Section
19 11056, by a person under 18 years of age is punishable as an
20 infraction and shall require:

21 (1) Upon a finding that a first offense has been committed, four
22 hours of drug education or counseling and up to 10 hours of
23 community service over a period not to exceed 60 days,
24 commencing when the drug education or counseling services are
25 made available to them.

26 (2) Upon a finding that a second offense or subsequent offense
27 has been committed, six hours of drug education or counseling
28 and up to 20 hours of community service over a period not to
29 exceed 90 days, commencing when the drug education or
30 counseling services are made available to them.

31 (e) Except as otherwise provided, possession of a controlled
32 substance specified in paragraph (10), (11), (12), (18), or (19) of
33 subdivision (d) of Section 11054, or in subdivision (g) of Section
34 11056, by a person at least 18 years of age but less than 21 years
35 of age is punishable as an infraction.

36 (f) A controlled substance described in this section or any related
37 product involved in any way with conduct deemed lawful by this
38 section are not contraband nor subject to seizure, and no conduct
39 deemed lawful by this section shall constitute the basis for

1 detention, search, or arrest, or the basis for the seizure or forfeiture
2 of assets.

3 (g) As used in this section, the following terms are defined as
4 follows:

5 (1) “Financial gain” means the receipt of money or other
6 valuable consideration in exchange for the item being shared.
7 “Financial gain” does not include reasonable fees for counseling,
8 spiritual guidance, or related services that are provided in
9 conjunction with administering or use of a controlled substance
10 described in this section under the guidance and supervision, and
11 on the premises, of the person providing those services.

12 (2) “Personal use” means for the personal ingestion or other
13 personal and noncommercial use by the person in possession.

14 (3) “Social sharing” means the giving away or consensual
15 administering of a controlled substance described in this section
16 by a person 21 years of age or older, to another person 21 years
17 of age or older, not for financial gain, including in the context of
18 group counseling, spiritual guidance, community-based healing,
19 or related services.

20 SEC. 13. Section 11379 of the Health and Safety Code is
21 amended to read:

22 11379. (a) Except as otherwise provided in subdivision (b),
23 in Section 11377.1, and in Article 7 (commencing with Section
24 4211) of Chapter 9 of Division 2 of the Business and Professions
25 Code, every person who transports, imports into this state, sells,
26 furnishes, administers, or gives away, or offers to transport, import
27 into this state, sell, furnish, administer, or give away, or attempts
28 to import into this state or transport any controlled substance which
29 is (1) classified in Schedule III, IV, or V and which is not a narcotic
30 drug, except subdivision (g) of Section 11056, (2) specified in
31 subdivision (d) of Section 11054, except paragraphs (13), (14),
32 (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in
33 paragraph (11) of subdivision (c) of Section 11056, (4) specified
34 in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5)
35 specified in subdivision (d) or (e), except paragraph (3) of
36 subdivision (e), or specified in subparagraph (A) of paragraph (1)
37 of subdivision (f), of Section 11055, unless upon the prescription
38 of a physician, dentist, podiatrist, or veterinarian, licensed to
39 practice in this state, shall be punished by imprisonment pursuant

1 to subdivision (h) of Section 1170 of the Penal Code for a period
2 of two, three, or four years.

3 (b) Notwithstanding the penalty provisions of subdivision (a),
4 any person who transports any controlled substances specified in
5 subdivision (a) within this state from one county to another
6 noncontiguous county shall be punished by imprisonment pursuant
7 to subdivision (h) of Section 1170 of the Penal Code for three, six,
8 or nine years.

9 (c) For purposes of this section, “transports” means to transport
10 for sale.

11 (d) Nothing in this section is intended to preclude or limit
12 prosecution under an aiding and abetting theory, accessory theory,
13 or a conspiracy theory.

14 SEC. 14. Section 11379.2 of the Health and Safety Code is
15 amended to read:

16 11379.2. Except as otherwise provided in Section 11377.1 and
17 in Article 7 (commencing with Section 4211) of Chapter 9 of
18 Division 2 of the Business and Professions Code, every person
19 who possesses for sale or sells any controlled substance specified
20 in subdivision (g) of Section 11056 shall be punished by
21 imprisonment in the county jail for a period of not more than one
22 year or in the state prison.

23 SEC. 15. Section 11382 of the Health and Safety Code is
24 amended to read:

25 11382. Except as otherwise provided in Section 11377.1, every
26 person who agrees, consents, or in any manner offers to unlawfully
27 sell, furnish, transport, administer, or give any controlled substance
28 which is (a) classified in Schedule III, IV, or V and which is not
29 a narcotic drug, or (b) specified in subdivision (d) of Section 11054,
30 except paragraphs (13), (14), (15), and (20) of subdivision (d),
31 specified in paragraph (11) of subdivision (c) of Section 11056,
32 or specified in subdivision (d), (e), or (f) of Section 11055, to any
33 person, or offers, arranges, or negotiates to have that controlled
34 substance unlawfully sold, delivered, transported, furnished,
35 administered, or given to any person and then sells, delivers,
36 furnishes, transports, administers, or gives, or offers, or arranges,
37 or negotiates to have sold, delivered, transported, furnished,
38 administered, or given to any person any other liquid, substance,
39 or material in lieu of that controlled substance shall be punished

1 by imprisonment in the county jail for not more than one year, or
2 pursuant to subdivision (h) of Section 1170 of the Penal Code.

3 SEC. 16. Section 11382.8 is added to the Health and Safety
4 Code, to read:

5 11382.8. (a) A person currently serving a sentence for a
6 conviction, whether by trial or by open or negotiated plea, who
7 would not have been guilty under Section 11377.1, had those
8 sections been in effect at the time of the offense may petition for
9 a recall or dismissal of sentence before the trial court that entered
10 the judgment of conviction in the case to request resentencing or
11 dismissal in accordance with those sections.

12 (b) Upon receiving a petition under subdivision (a), the court
13 shall presume the petitioner satisfies the criteria in subdivision (a)
14 unless the party opposing the petition proves by clear and
15 convincing evidence that the petitioner does not satisfy the criteria.
16 If the petitioner satisfies the criteria in subdivision (a), the court
17 shall grant the petition to recall the sentence or dismiss the sentence
18 because it is legally invalid unless the court determines that
19 granting the petition would pose an unreasonable risk of danger
20 to public safety.

21 (1) In exercising its discretion, the court may consider, but shall
22 not be limited to evidence provided for in subdivision (b) of Section
23 1170.18 of the Penal Code.

24 (2) As used in this section, “unreasonable risk of danger to
25 public safety” has the same meaning as provided in subdivision
26 (c) of Section 1170.18 of the Penal Code.

27 (c) A person who is serving a sentence and is resentenced
28 pursuant to subdivision (b) shall be given credit for any time
29 already served and shall be subject to supervision for one year
30 following completion of their time in custody or shall be subject
31 to whatever supervision time they would have otherwise been
32 subject to after release, whichever is shorter, unless the court, in
33 its discretion, as part of its resentencing order, releases the person
34 from supervision. In that case, the person is subject to parole
35 supervision under Section 3000.08 of the Penal Code or postrelease
36 community supervision under subdivision (a) of Section 3451 of
37 the Penal Code by the designated agency and the jurisdiction of
38 the court in the county in which the offender is released or resides,
39 or in which an alleged violation of supervision has occurred, for

1 the purpose of hearing petitions to revoke supervision and impose
2 a term of custody.

3 (d) Under no circumstances may resentencing under this section
4 result in the imposition of a term longer than the original sentence,
5 or the reinstatement of charges dismissed pursuant to a negotiated
6 plea agreement.

7 (e) A person who has completed their sentence for a conviction
8 under this article or former Article 7 (commencing with Section
9 11390), whether by trial or open or negotiated plea, who would
10 not have been guilty of an offense or who would have been guilty
11 of a lesser offense under Section 11377.1, had those sections been
12 in effect at the time of the offense, may file an application before
13 the trial court that entered the judgment of conviction in their case
14 to have the conviction dismissed and sealed because the prior
15 conviction is now legally invalid.

16 (f) The court shall presume the petitioner satisfies the criteria
17 in subdivision (e) unless the party opposing the application proves
18 by clear and convincing evidence that the petitioner does not satisfy
19 the criteria in subdivision (e). Once the applicant satisfies the
20 criteria in subdivision (e), the court shall redesignate the conviction
21 as a misdemeanor or infraction or dismiss and seal the conviction
22 as legally invalid as now established under Section 11377.1.

23 (g) Unless requested by the applicant, no hearing is necessary
24 to grant or deny an application filed under subdivision (e).

25 (h) If the court that originally sentenced the petitioner is not
26 available, the presiding judge shall designate another judge to rule
27 on the petition or application.

28 (i) Nothing in this section is intended to diminish or abrogate
29 any rights or remedies otherwise available to the petitioner or
30 applicant.

31 (j) Nothing in this and related sections is intended to diminish
32 or abrogate the finality of judgments in any case not falling within
33 the purview of Section 11377.1.

34 (k) A resentencing hearing ordered under this section shall
35 constitute a “postconviction release proceeding” under paragraph
36 (7) of subdivision (b) of Section 28 of Article I of the California
37 Constitution (Marsy’s Law).

38 (l) The provisions of this section shall apply equally to juvenile
39 delinquency adjudications and dispositions under Section 602 of

1 the Welfare and Institutions Code if the juvenile would not have
2 been guilty of an offense under Section 11377.1.

3 (m) The Judicial Council shall promulgate and make available
4 all necessary forms to enable the filing of the petitions and
5 applications provided in this section.

6 SEC. 17. Section 11382.9 is added to the Health and Safety
7 Code, to read:

8 11382.9. (a) On or before July 1, 2022, the Department of
9 Justice shall review the records in the state summary criminal
10 history information database and shall identify past convictions
11 that are potentially eligible for recall or dismissal of sentence or
12 dismissal and sealing, pursuant to Section 11382.8. The department
13 shall notify the prosecution of all cases in their jurisdiction that
14 are eligible for recall or dismissal of sentence or dismissal and
15 sealing.

16 (b) The prosecution shall have until July 1, 2023, to review all
17 cases and determine whether to challenge the recall or dismissal
18 of sentence or dismissal and sealing.

19 (c) (1) The prosecution may challenge the resentencing of a
20 person pursuant to this section when the person does not meet the
21 criteria established in Section 11382.8 or presents an unreasonable
22 risk to public safety.

23 (2) The prosecution may challenge the dismissal and sealing of
24 a person pursuant to this section who has completed their sentence
25 for a conviction when the person does not meet the criteria
26 established in Section 11382.8.

27 (3) On or before July 1, 2023, the prosecution shall inform the
28 court and the public defender's office in their county when they
29 are challenging a particular recall or dismissal of sentence or
30 dismissal and sealing. The prosecution shall inform the court when
31 they are not challenging a particular recall or dismissal of sentence
32 or dismissal and sealing.

33 (4) The public defender's office, upon receiving notice from
34 the prosecution pursuant to paragraph (3), shall make a reasonable
35 effort to notify the person whose resentencing or dismissal is being
36 challenged.

37 (d) If the prosecution does not challenge the recall or dismissal
38 of sentence or dismissal and sealing by July 1, 2023, the court shall
39 reduce or dismiss the conviction pursuant to Section 11382.8.

1 (e) The court shall notify the department of the recall or
2 dismissal of sentence or dismissal and sealing and the department
3 shall modify the state summary criminal history information
4 database accordingly.

5 (f) The department shall post general information on its internet
6 website about the recall or dismissal of sentences or dismissal and
7 sealing authorized in this section.

8 (g) It is the intent of the Legislature that persons who are
9 currently serving a sentence or who proactively petition for a recall
10 or dismissal of sentence or dismissal and sealing pursuant to
11 Section 11382.8 be prioritized for review.

12 SEC. 18. Article 7 (commencing with Section 11390) of
13 Chapter 6 of Division 10 of the Health and Safety Code is repealed.

14 SEC. 19. Section 11402 is added to the Health and Safety Code,
15 to read:

16 11402. (a) As provided in this section, this chapter does not
17 apply to 3,4-methylenedioxymethamphetamine, otherwise known
18 as MDMA.

19 (b) Except as otherwise provided in this section, ~~and~~
20 ~~notwithstanding any other law~~, all of the following shall be lawful
21 for a natural person 21 years of age or older and shall not be a
22 violation of state or local law:

23 (1) The possession, processing, obtaining, or transportation of
24 ~~a controlled substance described in subdivision (a)~~ *MDMA* for
25 personal use or for social sharing.

26 (2) The ingesting of ~~a substance described in subdivision (a)~~.
27 *MDMA*.

28 (3) The social sharing of ~~a substance described in subdivision~~
29 ~~(a)~~. *MDMA*.

30 (c) Possession of ~~a controlled substance described in subdivision~~
31 ~~(a)~~ *MDMA* by a person 21 years of age or over, on the grounds of
32 any public or private elementary, vocational, junior high, or high
33 school, during hours that the school is open for classes or
34 school-related programs, or at any time when minors are using the
35 facility is punishable as a misdemeanor.

36 (d) (1) A person who knowingly gives away or administers ~~a~~
37 ~~controlled substance described in subdivision (a)~~ *MDMA* to a
38 person who is under 18 years of age in violation of law shall be
39 punished by imprisonment in a county jail for a period of not more
40 than six months or by a fine of not more than five hundred dollars

1 (\$500), or by both such fine and imprisonment, or by imprisonment
2 pursuant to subdivision (h) of Section 1170 of the Penal Code.

3 (2) Notwithstanding paragraph (1), a person 18 years of age or
4 over who knowingly gives away or administers ~~a substance~~
5 ~~described in subdivision (a) MDMA~~ to a minor under 14 years of
6 age in violation of law shall be punished by imprisonment in the
7 state prison for a period of three, five, or seven years.

8 (3) A person who knowingly gives away or administers ~~a~~
9 ~~substance described in subdivision (a) MDMA~~ to a person who is
10 at least 18 years of age, but under 21 years of age is guilty of an
11 infraction.

12 (e) Except as otherwise provided, possession of ~~a controlled~~
13 ~~substance described in subdivision (a) MDMA~~ by a person under
14 18 years of age is punishable as an infraction and shall require:

15 (1) Upon a finding that a first offense has been committed, four
16 hours of drug education or counseling and up to 10 hours of
17 community service over a period not to exceed 60 days,
18 commencing when the drug education or counseling services are
19 made available to them.

20 (2) Upon a finding that a second offense or subsequent offense
21 has been committed, six hours of drug education or counseling
22 and up to 20 hours of community service over a period not to
23 exceed 90 days, commencing when the drug education or
24 counseling services are made available to them.

25 (f) Except as otherwise provided, possession of ~~a controlled~~
26 ~~substance described in subdivision (a) MDMA~~ by a person at least
27 18 years of age but less than 21 years of age is punishable as an
28 infraction.

29 (g) ~~A controlled substance described in subdivision (a) MDMA~~
30 or any related product involved in any way with conduct deemed
31 lawful by this section are not contraband nor subject to seizure,
32 and no conduct deemed lawful by this section shall constitute the
33 basis for detention, search, or arrest, or the basis for the seizure or
34 forfeiture of assets.

35 (h) As used in this section, the following terms are defined as
36 follows:

37 (1) “Financial gain” means the receipt of money or other
38 valuable consideration in exchange for the item being shared.
39 “Financial gain” does not include reasonable fees for counseling,
40 spiritual guidance, or related services that are provided in

1 conjunction with administering or use of ~~a controlled substance~~
2 ~~described in subdivision (a) MDMA~~ under the guidance and
3 supervision, and on the premises, of the person providing those
4 services.

5 (2) “Personal use” means for the personal ingestion or other
6 personal and noncommercial use by the person in possession.

7 (3) “Social sharing” means the giving away or consensual
8 administering of ~~a controlled substance described in subdivision~~
9 ~~(a) MDMA~~ by a person 21 years of age or older, to another person
10 21 years of age or older, not for financial gain, including in the
11 context of group counseling, spiritual guidance, community-based
12 healing, or related services.

13 SEC. 20. Section 11550 of the Health and Safety Code is
14 amended to read:

15 11550. (a) A person shall not use, or be under the influence
16 of any controlled substance that is (1) specified in subdivision (b),
17 (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
18 specified in paragraph (15), (21), (22), or (23) of subdivision (d)
19 of Section 11054, specified in subdivision (b) or (c) of Section
20 11055, or specified in paragraph (1) or (2) of subdivision (d) or in
21 paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic
22 drug classified in Schedule III, IV, or V, except when administered
23 by or under the direction of a person licensed by the state to
24 dispense, prescribe, or administer controlled substances. It shall
25 be the burden of the defense to show that it comes within the
26 exception. A person convicted of violating this subdivision is guilty
27 of a misdemeanor and shall be sentenced to serve a term of not
28 more than one year in a county jail. The court may also place a
29 person convicted under this subdivision on probation for a period
30 not to exceed five years.

31 (b) (1) A person who is convicted of violating subdivision (a)
32 when the offense occurred within seven years of that person being
33 convicted of two or more separate violations of that subdivision,
34 and refuses to complete a licensed drug rehabilitation program
35 offered by the court pursuant to subdivision (c), shall be punished
36 by imprisonment in a county jail for not less than 180 days nor
37 more than one year. In no event does the court have the power to
38 absolve a person convicted of a violation of subdivision (a) who
39 is punishable under this subdivision from the obligation of spending

1 at least 180 days in confinement in a county jail unless there are
2 no licensed drug rehabilitation programs reasonably available.

3 (2) For the purpose of this section, a drug rehabilitation program
4 is not reasonably available unless the person is not required to pay
5 more than the court determines that they are reasonably able to
6 pay in order to participate in the program.

7 (c) (1) The court may, when it would be in the interest of
8 justice, permit a person convicted of a violation of subdivision (a)
9 punishable under subdivision (a) or (b) to complete a licensed drug
10 rehabilitation program in lieu of part or all of the imprisonment in
11 a county jail. As a condition of sentencing, the court may require
12 the offender to pay all or a portion of the drug rehabilitation
13 program.

14 (2) In order to alleviate jail overcrowding and to provide
15 recidivist offenders with a reasonable opportunity to seek
16 rehabilitation pursuant to this subdivision, counties are encouraged
17 to include provisions to augment licensed drug rehabilitation
18 programs in their substance abuse proposals and applications
19 submitted to the state for federal and state drug abuse funds.

20 (d) In addition to any fine assessed under this section, the judge
21 may assess a fine not to exceed seventy dollars (\$70) against a
22 person who violates this section, with the proceeds of this fine to
23 be used in accordance with Section 1463.23 of the Penal Code.
24 The court shall, however, take into consideration the defendant's
25 ability to pay, and a defendant shall not be denied probation
26 because of their inability to pay the fine permitted under this
27 subdivision.

28 (e) (1) Notwithstanding subdivisions (a) and (b) or any other
29 law, a person who is unlawfully under the influence of cocaine,
30 cocaine base, heroin, methamphetamine, or phencyclidine while
31 in the immediate personal possession of a loaded, operable firearm
32 is guilty of a public offense punishable by imprisonment in a
33 county jail for not exceeding one year or in state prison.

34 (2) As used in this subdivision "immediate personal possession"
35 includes, but is not limited to, the interior passenger compartment
36 of a motor vehicle.

37 (f) Every person who violates subdivision (e) is punishable
38 upon the second and each subsequent conviction by imprisonment
39 in the state prison for two, three, or four years.

1 (g) This section does not prevent deferred entry of judgment
2 or a defendant's participation in a preguilty plea drug court program
3 under Chapter 2.5 (commencing with Section 1000) of Title 6 of
4 Part 2 of the Penal Code unless the person is charged with violating
5 subdivision (b) or (c) of Section 243 of the Penal Code. A person
6 charged with violating this section by being under the influence
7 of any controlled substance which is specified in paragraph (21),
8 (22), or (23) of subdivision (d) of Section 11054 or in paragraph
9 (3) of subdivision (e) of Section 11055 and with violating either
10 subdivision (b) or (c) of Section 243 of the Penal Code or with a
11 violation of subdivision (e) shall be ineligible for deferred entry
12 of judgment or a preguilty plea drug court program.

13 SEC. 21. Section 11999 of the Health and Safety Code is
14 repealed.

15 SEC. 22. Section 131065 is added to the Health and Safety
16 Code, to read:

17 131065. (a) The State Department of Public Health shall
18 convene a working group to study and make recommendations
19 regarding possible regulatory systems that California could adopt
20 to promote safe and equitable access to certain substances in
21 permitted legal contexts, including facilitated group use of
22 substances and spiritual use of substances in groups, and
23 recommending options for caregiving including facilitated services,
24 therapy, end-of-life care, and compassionate use of those controlled
25 substance specified in paragraph (10), (11), (12), (14), (18), or
26 (19) of subdivision (d) of Section 11054, or in subdivision (g) of
27 Section 11056, and of 3,4-methylenedioxymethamphetamine.

28 (b) The State Public Health Officer or their designee shall chair
29 the working group.

30 (c) The working group shall include, without limitation, persons
31 with expertise in psychedelic therapy, medicine and public health,
32 drug policy, harm reduction, and traditional indigenous use of
33 psychedelic substances, including representatives from the National
34 Council of the Native American Church and Indian tribes in
35 California.

36 (d) The working group is authorized to contract with outside
37 entities, including public or private universities for research
38 assistance.

39 (e) The working group shall study, without limitation, all of the
40 following:

1 (1) The available research on the safety and efficacy of using
2 controlled substances specified in subdivision (a) in a therapeutic
3 setting for treating depression, anxiety, addiction, and other mental
4 health conditions.

5 (2) The available research on the public health and public safety
6 implications of decriminalizing controlled substances specified in
7 subdivision (a).

8 (3) The available research on the safe use of controlled
9 substances specified in subdivision (a) for other uses including as
10 part of religious, spiritual, or creative experiences.

11 (4) Regulated use models for the controlled substances specified
12 in subdivision (a) from other jurisdictions.

13 (f) The working group shall develop policy recommendation
14 regarding, without limitation, all of the following:

15 (1) The authorization of various controlled substances for
16 regulated uses.

17 (2) The appropriate regulation of the therapeutic use of
18 controlled substances, including qualifications, training, and
19 licensing of therapists or facilitators.

20 (3) The regulation of controlled substances specified in
21 subdivision (a) for nontherapeutic use, including responsible
22 marketing.

23 (4) Safe and equitable access, use, and delivery of the controlled
24 substances specified in subdivision (a).

25 (5) Policies for minimizing use-related risks related to product
26 safety, appropriate use, and impacts of detrimental substance abuse.

27 (g) ~~The commission~~ *working group* shall, by no later than
28 January 1, 2024, submit a report to the Legislature, detailing their
29 findings.

30 (h) The report required by subdivision (g) shall be submitted in
31 compliance with Section 9795 of the Government Code.

32 (i) This section shall remain in effect only until January 1, 2025,
33 and as of that date is repealed.

34 SEC. 23. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution for certain
36 costs that may be incurred by a local agency or school district
37 because, in that regard, this act creates a new crime or infraction,
38 eliminates a crime or infraction, or changes the penalty for a crime
39 or infraction, within the meaning of Section 17556 of the
40 Government Code, or changes the definition of a crime within the

1 meaning of Section 6 of Article XIII B of the California
2 Constitution.

3 However, if the Commission on State Mandates determines that
4 this act contains other costs mandated by the state, reimbursement
5 to local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.

8 SEC. 24. The provisions of this act are severable. If any
9 provision of this act or its application is held invalid, that invalidity
10 shall not affect other provisions or applications that can be given
11 effect without the invalid provision or application.