

September 20, 2019

Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

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SEP 20 2019

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Attention: Initiative Coordinator

RE: Submission of Statewide Initiative Measure Requesting Title and Summary - California Psilocybin Decriminalization Initiative 2020 ("Decriminalize California")

Dear Initiative Coordinator,

My name is Ryan Munevar and I am the Campaign Director representing the California Psilocybin Decriminalization Initiative 2020 ("Decriminalize California").

On behalf of the campaign I am formally requesting a Title and Summary.

Enclosed are the following documents:

1. The initiative language amending California Health and Safety Codes in Black & White.
2. A color coded version showing the strikethroughs and additions made to the California Health and Safety Codes.
3. A signed authorization form from the proponent.
4. \$2,000 in cash for the submission fee.

Sincerely,



Ryan Munevar - Campaign Director

ryan@decrimca.org

949.702.1637

TO THE HONORABLE SECRETARY OF STATE OF CALIFORNIA

We, the undersigned, registered, qualified voters of California, residents of the City and County of Los Angeles, hereby propose amendments to the Health and Safety Code and the Penal Code relating to controlled substances, and petition the Secretary of State to submit the same to the voters of California for their adoption or rejection at the next succeeding general election or at any special statewide election held prior to that general election or as otherwise provided by law. The proposed statutory amendments read as follows:

SECTION 1. TITLE.

This measure shall be known as the California Psilocybin Decriminalization Initiative 2020 (“Decriminalize California”).

SEC 2. FINDINGS AND DECLARATIONS.

- (a) Portugal Decriminalized all Drugs on July, 2001.
- (b) The Netherlands, and Amsterdam Decriminalized Psychedelic Truffles October 2007.
- (c) FDA Grants Breakthrough Therapy Designation for Psilocybin Therapy for Treatment-Resistant Depression in 2018.
- (d) Denver, Colorado Decriminalized the personal use, possession, storage, and cultivation of Psychedelic Mushrooms on May 7, 2019.
- (e) The City of Oakland, California Decriminalized all Entheogenic Plants and Psychedelic Mushrooms on June 4th, 2019.
- (f) According to the journal of Psychopharmacology, experience with psilocybin is associated with decreased risk of opioid abuse and dependence.
- (g) According to the journal of Psychopharmacology, psilocybin use was associated with reduced odds of past year theft, past year assault, past year arrest for a property crime, and past year arrest for a violent crime, and, in contrast, lifetime illicit

use of other drugs was, by and large, associated with an increased odds of these outcomes.

(h) According to the US National Library of Medicine - National Institutes of Health, psilocybin use is associated with reduced psychological distress and suicidality in the United States population.

(i) According to the Global Drug Survey 2017, psilocybin is the safest of all illicit drugs in terms of needing to seek emergency medical treatment.

(j) According to the Public Library of Science One Journal, psilocybin is not known to cause brain damage, is regarded as non-addictive, and is not an independent risk factor for mental health problems:

SEC. 3. PURPOSE AND INTENT.

The purpose of this article is to decriminalize the personal possession, storage, use, cultivation, manufacturing, distribution in personal possession amounts without profit, transport, and consumption of psilocybin mushrooms and the chemical compounds contained in them for any person over the age of 18, or for any person younger than 18 with parental or guardian consent by amending California Health and Safety Codes HSC § 11 390 & 11391.

Sections (3) (4), and (5), of this Initiative are to be added to California Health and Safety Code Division 10. Uniform Controlled Substances Act [11000 - 11651]. Chapter 6. Offenses and Penalties [11350 - 11392]. Article 7. Mushrooms [11390 - 11392].

SEC. 4. DEFINED TERMS.

As used in this article, the following words and phrases shall have the meanings given to them in this section except where the context clearly indicates and requires a different meaning:

- (1) Adult means an individual that is eighteen (18) years of age or older.
- (2) Psilocybin Mushrooms shall mean fungal matter containing psilocybin, psilocyn, baeocystin, or nor-baeocystin, including spores.

- (3) Personal possession shall mean the possession, storage, use, cultivation, manufacturing, distribution in personal possession amounts without profit, transport, and consumption of psilocybin mushrooms and the chemical compounds contained in them specifically psilocybin by adults over 18 years of age; where the psilocybin mushrooms are not used or displayed in public; and public intoxication is not permitted.

SEC. 5. USE OF PSILOCYBIN AND PSILOCYN BY MINORS.

If a minor is found to be cultivating, extracting, manufacturing, distributing, transporting, in possession of or consuming psilocybin mushrooms, the maximum penalty for such offense shall be no greater than a mandatory drug education program, and no conviction shall remain on the permanent record of such a minor.

SEC. 6. DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT. CHAPTER 2. STANDARDS AND SCHEDULES. [11053 - 11058].

Section 11054 of the Health and Safety Code is Amended to read:

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

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

- (1) Acetylmethadol.
- (2) Allylprodine.
- (3) Alphacetylmethadol (except levoalphacetylmethadol, also known as levo-alpha- acetylmethadol, levomethadyl acetate, or LAAM).
- (4) Alphameprodine.
- (5) Alphamethadol.
- (6) Benzethidine.
- (7) Betacetylmethadol.
- (8) Betameprodine.
- (9) Betamethadol.
- (10) Betaprodine.
- (11) Clonitazene.
- (12) Dextromoramide.
- (13) Diampromide.
- (14) Diethylthiambutene.

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

the specific chemical designation:

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

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

(1) 4-bromo-2,5-dimethoxy-amphetamine—Some trade or other names:
4-bromo-2,5-dimethoxy-alpha-methylphenethylamine; 4-bromo-2,5-DMA.

(2) 2,5-dimethoxyamphetamine—Some trade or other names:
2,5-dimethoxy-alpha-methylphenethylamine; 2,5-DMA.

(3) 4-methoxyamphetamine—Some trade or other names:
4-methoxy-alpha-methylphenethylamine, paramethoxyamphetamine, PMA.

(4) 5-methoxy-3,4-methylenedioxy-amphetamine.

(5) 4-methyl-2,5-dimethoxy-amphetamine—Some trade or other names:

4-methyl-2,5-dimethoxy-alpha-methylphenethylamine; “DOM”; and “STP.”

(6) 3,4-methylenedioxy amphetamine.

(7) 3,4,5-trimethoxy amphetamine.

(8) Bufotenine—Some trade or other names:

3-(beta-dimethylaminoethyl)-5-hydroxyindole; 3-(2-dimethylaminoethyl)-5 indolol;

N,N-dimethylserolonin, 5-hydroxy-N,N-dimethyltryptamine; mappine.

(9) Diethyltryptamine—Some trade or other names: N,N-Diethyltryptamine; DET.

(10) Dimethyltryptamine—Some trade or other names: DMT.

(11) Ibogaine—Some trade or other names: 7-Ethyl-6,6beta,

7,8,9,10,12,13-octahydro-2-methoxy-6,9-methano-5H-pyrido [1',2':1,2] azepino [5,4-b] indole; Tabernantheiboga.

(12) Lysergic acid diethylamide.

(13) Cannabis.

(14) Mescaline.

(15) Peyote—Meaning all parts of the plant presently classified botanically as *Lophophora williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of the plant, and every compound, manufacture, salts, derivative, mixture, or preparation of the plant, its seeds or extracts (interprets 21 U.S.C. Sec. 812(c), Schedule 1(c)(12)).

(16) N-ethyl-3-piperidyl benzilate.

(17) N-methyl-3-piperidyl benzilate.

(18) ~~Psilocybin.~~ Psilocybin, but only as applied to minors under the age of 18 years old, and to the distribution of psilocybin in greater than personal possession amounts for profit, and with regard to the distribution of psilocybin to minors by adults with or without profit.

(19) ~~Psilocyn.~~ Psilocyn, but only as applied to minors under the age of 18 years old, and to the distribution of psilocyn containing psilocyn in greater than personal possession amounts for profit, and with regard to the distribution of psilocyn to minors by adults with or without profit.

(20) Tetrahydrocannabinols. Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following: delta 1 cis or trans tetrahydrocannabinol, and their optical isomers; delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; delta 3,4 cis or trans tetrahydrocannabinol, and its optical isomers.

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

(21) Ethylamine analog of phencyclidine—Some trade or other names:

N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.

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

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

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

(1) Mecloqualone.

(2) Methaqualone.

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

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

(1) Cocaine base.

(2) Fenethylamine, including its salts.

(3) N-Ethylamphetamine, including its salts.

SEC 7. DIVISION 10. UNIFORM CONTROLLED SUBSTANCES ACT. CHAPTER 6. OFFENSES AND PENALTIES. [11350 - 11392].

SECTION 11350 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11350. (a) Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which that is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in a county jail for not more

than one year, except that such the person shall instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

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

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

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

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

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

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

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

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

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

SEC. 8. SECTION 11351 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11351. Except as otherwise provided in this division, ~~every a~~ person who possesses for sale or purchases for purposes of sale (1) ~~any a~~ controlled substance specified in subdivision (b), (c), or (e) of Section 11054, specified in paragraph (14),

(15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which that is a narcotic drug, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.

SEC. 9. SECTION 11352 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11352. (a) Except as otherwise provided in this division, every a person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which that is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for three, four, or five years.

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

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

(d) This section does not preclude or limit the prosecution of an individual for aiding and abetting the commission of, or conspiring to commit, or acting as an accessory to, any act prohibited by this section.

SEC. 10. SECTION 11353 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11353. Every A person 18 years of age or over, (a) who in any voluntary manner solicits, induces, encourages, or intimidates any a minor with the intent that the minor shall violate any provision of this chapter or Section 11550 with respect to either (1) a controlled substance which that is specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance

classified in Schedule III, IV, or V ~~which that~~ is a narcotic drug, (b) who hires, employs, or uses a minor to unlawfully transport, carry, sell, give away, prepare for sale, or peddle ~~any such that~~ controlled substance, or (c) who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, ~~any such the~~ controlled substance to a minor, shall be punished by imprisonment in the state prison for a period of three, six, or nine years.

SEC. 11. SECTION 11354 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11354 (a) ~~Every A~~ person under ~~the age of~~ 18 years ~~who of age who~~, in ~~any a~~ voluntary ~~manner manner~~, solicits, induces, encourages, or intimidates ~~any a~~ minor with the intent that the minor shall violate any provision of this chapter or Section 11550, who hires, employs, or uses a minor to unlawfully transport, carry, sell, give away, prepare for sale, or peddle (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), ~~or~~ (20) ~~of~~ subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V ~~which that~~ is a narcotic drug, or who unlawfully sells, furnishes, administers, gives, or offers to sell, furnish, administer, or give, ~~any such the~~ controlled substance to a minor shall be punished by imprisonment in the state prison.

(b) This section ~~is does~~ not ~~intended to~~ affect the jurisdiction of the juvenile court.

SEC. 12. SECTION 11355 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11355. ~~Every A~~ person who agrees, consents, or in any manner ~~offers offers~~, to unlawfully sell, furnish, transport, administer, or give (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), ~~or~~ (20) ~~of~~ subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V ~~which that~~ is a narcotic drug to any person, or who offers, arranges, or negotiates to have ~~any such the~~ controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and who then sells, delivers, furnishes, transports, administers, or gives, or offers, arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of ~~any such the~~ controlled substance shall be punished by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h)

of Section 1170 of the Penal Code.

SEC. 13. SECTION 11356.5 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11356.5 (a) ~~Any~~A person convicted of a violation of Section 11351, 11352, 11379.5, or 11379.6 insofar as the latter section relates to phencyclidine or any of its analogs which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055, who, as part of the transaction for which ~~he or she~~the person was convicted, has induced another to violate Section 11351, 11352, 11379.5, or 11379.6 insofar as the latter section relates to phencyclidine or its analogs, shall be punished as follows:

(1) By an additional one year in prison if the value of the controlled substance involved in the transaction for which the person was convicted exceeds five hundred thousand dollars (\$500,000).

(2) By an additional two years in prison if the value of the controlled substance involved in the transaction for which the person was convicted exceeds two million dollars (\$2,000,000).

(3) By an additional three years in prison if the value of the controlled substance involved in the transaction for which the person was convicted exceeds five million dollars (\$5,000,000).

(b) For purposes of this section, "value of the controlled substance" means the retail price to the user.

SEC. 14. SECTION 11364 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15); or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance that is a narcotic drug classified in Schedule III, IV, or V.

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

(c) Until January 1, 2021, as a public health measure intended to prevent the transmission of HIV, viral hepatitis, and other bloodborne diseases among persons who use syringes and hypodermic needles, and to prevent subsequent infection of sexual partners, newborn children, or other persons, this section ~~shall~~does not apply to the

possession solely for personal use of hypodermic needles or syringes if acquired from a physician, pharmacist, hypodermic needle and syringe exchange program, or any other source that is authorized by law to provide sterile syringes or hypodermic needles without a prescription.

SEC. 15. SECTION 11365 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11365. (a) It is unlawful to visit or to be in ~~any a~~ room or place where any controlled substances ~~which that~~ are specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) or paragraph (2) of subdivision (d) of Section 11055, or ~~which that~~ are narcotic drugs classified in Schedule III, IV, or V, are being unlawfully smoked or used with knowledge that ~~such the~~ activity is occurring.

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

SEC. 16. SECTION 11366 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11366. ~~Every A~~ person who opens or maintains ~~any a~~ place for the purpose of unlawfully selling, giving away, or using any controlled substance ~~which that~~ is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), paragraph (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of Section 11055, or (2) ~~which that~~ is a narcotic drug classified in Schedule III, IV, or V, shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

SEC. 17. SECTION 11370 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11370 (a) ~~Any A~~ person convicted of violating Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360, 11361, 11363, 11366, or 11368, or of committing any offense referred to in those sections, shall not, in any case, be granted probation by the trial court or have the execution of the sentence imposed ~~upon him or her~~ suspended by the court, if ~~he or she~~ the person has been previously convicted of any offense described in subdivision (c).

(b) ~~Any A~~ person who was 18 years of age or over at the time of the commission

of the offense and is convicted for the first time of selling, furnishing, administering, or giving a controlled substance ~~which that~~ is (1) specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), ~~or~~ (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or (2) ~~which that~~ is a narcotic drug classified in Schedule III, IV, or V, to a minor or inducing a minor to use ~~such a the~~ controlled substance in violation of law shall not, in any case, be granted probation by the trial court or have the execution of the sentence imposed ~~upon him or her~~ suspended by the court.

(c) Any previous conviction of any of the following offenses, or of an offense under the laws of another state or of the United States which, if committed in this state, would have been punishable as such an offense, shall render a person ineligible for probation or suspension of sentence pursuant to subdivision (a) of this section:

(1) Any felony offense described in this division involving a controlled substance specified in subdivision (b), (c), (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), ~~or~~ (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055.

(2) Any felony offense described in this division involving a narcotic drug classified in Schedule III, IV, or V.

(d) The existence of any previous conviction or fact ~~which that~~ would make a person ineligible for suspension of sentence or probation under this section shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of ~~guilt guilt~~, or by the court where guilt is established by a plea of guilty or nolo ~~contendere~~ contendere, or by trial by the court sitting without a jury.

SEC. 18. SECTION 11377 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11377 (a) Except as authorized by law and as otherwise provided in subdivision (b) or Section 11375, or in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses any controlled substance ~~which that~~ is (1) classified in Schedule III, IV, or V, and ~~which that~~ is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and ~~(20)~~ of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in a county jail for a period of not more than one year, except that ~~such the~~ person may instead be punished pursuant to subdivision (h) of Section 1170 of the Penal Code if that person has one or more prior

convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 of the Penal Code or for an offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

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

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

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

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

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

SEC. 19. SECTION 11378 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11378. Except as otherwise provided in Article 7 (commencing with Section 4110) of Chapter 9 of Division 2 of the Business and Professions Code, a person who possesses for sale a controlled substance that meets any of the following criteria shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code:

(1) The substance is classified in Schedule III, IV, or V and is not a narcotic drug, except the substance specified in subdivision (g) of Section 11056.

(2) The substance is specified in subdivision (d) of Section 11054, except paragraphs (13), (14), ~~(15)~~, (20), (21), (22), and (23) of subdivision (d).

(3) The substance is specified in paragraph (11) of subdivision (c) of Section 11056.

(4) The substance is specified in paragraph (2) or (3) of subdivision (f) of Section 11054.

(5) The substance is specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055.

SEC. 20. SECTION 11379.5 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11379.5 (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, ~~every a~~ person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport phencyclidine or any of its analogs which is specified in paragraph (19), (20), or (21) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055, or its precursors as specified in subparagraph (A) or (B) of paragraph (2) of subdivision (f) of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for a period of three, four, or five years.

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

(c) For purposes of this section, "transport" means to transport for sale.

(d) This section does not preclude or limit prosecution for any aiding and abetting or conspiracy offenses.

SEC. 21. SECTION 11379.8 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11379.8 (a) ~~Any A~~ person convicted of a violation of subdivision (a) of Section 11379.6, or of a conspiracy to violate subdivision (a) of Section 11379.6, with respect to any substance containing a controlled substance which is specified in paragraph (19), (20), or (21) of subdivision (d) of Section 11054, or in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) or in paragraph (2) of subdivision (f) of Section 11055 shall receive an additional term as follows:

(1) ~~Where if~~ the substance exceeds three gallons of liquid by volume or one pound of solid substances by weight, the person shall receive an additional term of three years.

(2) ~~Where if~~ the substance exceeds 10 gallons of liquid by volume or three pounds of solid substance by weight, the person shall receive an additional term of five years.

(3) ~~Where if~~ the substance exceeds 25 gallons of liquid by volume or 10 pounds of solid substance by weight, the person shall receive an additional term of 10 years.

(4) ~~Where~~if the substance exceeds 105 gallons of liquid by volume or 44 pounds of solid substance by weight, the person shall receive an additional term of 15 years.

In computing the quantities involved in this subdivision, plant or vegetable material seized shall not be included.

(b) The additional terms provided in this section shall not be imposed unless the allegation that the controlled substance exceeds the amounts provided in this section is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(c) The additional terms provided in this section shall be in addition to any other punishment provided by law.

(d) Notwithstanding any other ~~provision of~~ law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(e) The conspiracy enhancements provided for in this section shall not be imposed unless the trier of fact finds that the defendant conspirator was substantially involved in the direction or supervision of, or in a significant portion of the financing of, the underlying offense.

SEC. 22. SECTION 11380 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11380. (a) ~~Every~~A person 18 years of age or over who violates any provision of this chapter involving controlled substances ~~which that~~ are (1) classified in Schedule III, IV, or V and ~~which that~~ are not narcotic drugs or (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, specified in paragraph (2) or (3) or subdivision (f) of Section 11054, or specified in subdivision (d), (e), or (f) of Section 11055, by the use of a minor as agent, who solicits, induces, encourages, or intimidates ~~any a~~ minor with the intent that the minor shall violate any provision of this article involving those controlled substances or who unlawfully furnishes, offers to furnish, or attempts to furnish those controlled ~~substances substances~~, to a minor shall be punished by imprisonment in the state prison for a period of three, six, or nine years.

(b) ~~Nothing in this section applies~~ This section does not apply to a registered pharmacist furnishing controlled substances pursuant to a prescription.

SEC. 23. SECTION 11382 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11382. ~~Every~~A person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance ~~which~~

~~that~~ is (a) classified in Schedule III, IV, or V and ~~which~~ ~~that~~ is not a narcotic drug, or (b) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, or specified in subdivision (d), (e), or (f) of Section 11055, to any person, or offers, arranges, or negotiates to have that controlled substance unlawfully sold, delivered, transported, furnished, administered, or given to any person and then sells, delivers, furnishes, transports, administers, or gives, or offers, or arranges, or negotiates to have sold, delivered, transported, furnished, administered, or given to any person any other liquid, substance, or material in lieu of that controlled substance shall be punished by imprisonment in the county jail for not more than one year, or pursuant to subdivision (h) of Section 1170 of the Penal Code.

SEC. 24. SECTION 11470 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11470 The following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, or acquired in violation of this division.

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this division.

(c) All property except real property or a boat, airplane, or any vehicle which is used, or intended for use, as a container for property described in subdivision (a) or (b).

(d) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this division.

(e) The interest of any registered owner of a boat, airplane, or any vehicle other than an implement of husbandry, as defined in Section 36000 of the Vehicle Code, which has been used as an instrument to facilitate the manufacture of, or possession for sale or sale of 14.25 grams or more of heroin, or a substance containing 14.25 grams or more of heroin, or 14.25 grams or more of a substance containing heroin, or 28.5 grams or more of Schedule I controlled substances except cannabis, peyote, or psilocybin; 40 pounds dry weight or more of cannabis, peyote, or psilocybin; or 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or methamphetamine; or a substance containing 28.5 grams or more of cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or methamphetamine; or 57 grams or more of a substance containing cocaine, as specified in paragraph (6) of subdivision (b) of Section 11055, cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, or

methamphetamine; or 28.5 grams or more of Schedule II controlled substances. An interest in a vehicle ~~which that~~ may be lawfully driven on the highway with a class C, class M1, or class M2 license, as prescribed in Section 12804.9 of the Vehicle Code, shall not be forfeited under this subdivision if there is a community property interest in the vehicle by a person other than the defendant and the vehicle is the sole class C, class M1, or class M2 vehicle available to the defendant's immediate family.

(f) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, or securities used or intended to be used to facilitate any violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves manufacture, sale, possession for sale, offer for sale, or offer to manufacture, or conspiracy to commit at least one of those offenses, if the exchange, violation, or other conduct which is the basis for the forfeiture occurred within five years of the seizure of the property, or the filing of a petition under this chapter, or the issuance of an order of forfeiture of the property, whichever comes first.

(g) The real property of any property owner who is convicted of violating Section 11366, 11366.5, or 11366.6 with respect to that property. However, property ~~which that~~ is used as a family residence or for other lawful purposes, or ~~which that~~ is owned by two or more persons, one of whom had no knowledge of its unlawful use, shall not be subject to forfeiture.

(h) (1) Subject to the requirements of Section 11488.5 and except as further limited by this subdivision to protect innocent parties who claim a property interest acquired from a defendant, all right, title, and interest in any personal property described in this section shall vest in the state upon commission of the act giving rise to forfeiture under this chapter, if the state or local governmental entity proves a violation of Section 11351, 11351.5, 11352, 11355, 11359, 11360, 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11382, or 11383 of this code, or Section 182 of the Penal Code, or a felony violation of Section 11366.8 of this code, insofar as the offense involves the manufacture, sale, possession for sale, offer for sale, offer to manufacture, or conspiracy to commit at least one of those offenses, in accordance with the burden of proof set forth in paragraph (1) of subdivision (i) of Section 11488.4 or, in the case of cash or negotiable instruments in excess of twenty-five thousand dollars (\$25,000), paragraph (4) of subdivision (i) of Section 11488.4.

(2) The operation of the special vesting rule established by this subdivision shall be limited to circumstances where its application will not defeat the claim of any person, including a bona fide purchaser or encumbrancer who, pursuant to Section 11488.5,

11488.6, or 11489, claims an interest in the property seized, notwithstanding that the interest in the property being claimed was acquired from a defendant whose property interest would otherwise have been subject to divestment pursuant to this subdivision.

SEC. 25. SECTION 11550 OF THE HEALTH AND SAFETY CODE IS AMENDED TO READ:

11550. (a) A person shall not use, or be under the influence of any controlled substance that is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within the exception. A person convicted of violating this subdivision is guilty of a misdemeanor and shall be sentenced to serve a term of not more than one year in a county jail. The court may also place a person convicted under this subdivision on probation for a period not to exceed five years.

(b) (1) A person who is convicted of violating subdivision (a) when the offense occurred within seven years of that person being convicted of two or more separate violations of that subdivision, and refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subdivision (c), shall be punished by imprisonment in a county jail for not less than 180 days nor more than one year. ~~In no event does the court have the power to~~ The court shall not absolve a person convicted of a violation of subdivision (a) who is punishable under this subdivision from the obligation of spending at least 180 days in confinement in a county jail unless there are no licensed drug rehabilitation programs reasonably available.

(2) For the purpose of this section, a drug rehabilitation program is not reasonably available unless the person is not required to pay more than the court determines that ~~he or she~~ the person is reasonably able to pay in order to participate in the program.

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

(2) In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subdivision, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in

their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

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

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

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

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

(g) This section does not prevent deferred entry of judgment or a defendant's participation in a preguilty plea drug court program under Chapter 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the Penal Code unless the person is charged with violating subdivision (b) or (c) of Section 243 of the Penal Code. A person charged with violating this section by being under the influence of any controlled substance ~~which~~that is specified in paragraph (19), (20), or (21) of subdivision (d) of Section 11054 or in paragraph (3) of subdivision (e) of Section 11055 and with violating either subdivision (b) or (c) of Section 243 of the Penal Code or with a violation of subdivision (e) shall be ineligible for deferred entry of judgment or a preguilty plea drug court program.

SEC. 26. AMENDMENT.

The provisions of this act may be amended by a majority vote of both houses of the Legislature so long as the amendments are consistent with and further the purposes of this act.

SEC. 27. CONSTRUCTION AND INTERPRETATION.

The provisions of this Act shall be liberally construed to effectuate the purpose and intent of the California Psilocybin Decriminalization Initiative 2020; provided, however, no provision or provisions of this Act shall be interpreted or construed in a manner to create a positive conflict with federal Controlled Substances Act, such that the provision or provisions of this Act and federal law cannot consistently stand

together.

SEC. 28. SEVERABILITY.

If any provision in this Act, or part thereof, or the application of any provision or part to any person or circumstance is held for any reason to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions of this Act are severable.

SEC. 29. CONFLICTING INITIATIVES.

In the event that this measure and another measure or measures concerning psilocybin or psilocyn appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure shall be null and void.