

AMENDED IN SENATE MARCH 1, 2023

SENATE BILL

No. 58

Introduced by Senator Wiener

(Principal coauthor: Assembly Member Kalra)

**(Coauthors: Senators ~~Newman~~ *Becker, Bradford, Newman, Skinner,*
and *Smallwood-Cuevas*)**

(Coauthors: Assembly Members ~~Haney, Lee, Low, and Wicks~~) *Bryan,
Haney, Jackson, Lee, Low, Lowenthal, Wicks, and Wilson*)

December 16, 2022

An act to amend Sections 11054, 11350, 11364, 11364.7, 11365, 11377, 11379, 11382, and 11550 of, to add Sections 11350.1 and 11377.1 to, 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 58, 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, preparation, obtaining, transfer, as specified, or transportation of, specified quantities of psilocybin, psilocyn, dimethyltryptamine (DMT), ibogaine, and mescaline, for personal use or facilitated or supported use, as defined, 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 transferring to, persons under 21 years of age.

(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 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.

(4) 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.

(5) 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.

(6) 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) For over fifty years, the War on Drugs has caused
4 overwhelming financial and societal costs. The current United
5 States drug control scheme does not reflect a modern understanding
6 of the incentives, economics, or impacts of substance use, nor does
7 it accurately reflect the risks or potential therapeutic benefits of
8 many presently illicit substances.

1 (b) Drug prohibition has failed to deter drug use, and *it* has
2 increased its danger. Criminalization of drug use has created an
3 underground market in which difficult-to-verify dosages and the
4 presence of adulterants increase the risks of illicit drugs.

5 (c) Lack of honest, evidence-based drug education has paved
6 the way for decades of stigma and misinformation, which have
7 contributed to increasing the dangers of drug use.

8 (d) Encouraging access to harm reduction tools like fentanyl
9 test strips, drug-checking kits, gas chromatography mass
10 spectrometry machines, and milligram scales increases public
11 health and safety by allowing users to make more accurate
12 decisions about their personal use.

13 (e) Clinical research demonstrates the potential use of some
14 psychedelic compounds, in conjunction with therapy, for the
15 treatment of mental health, such as end-of-life anxiety, depression,
16 post-traumatic stress, and substance use disorders. Observational
17 evidence and traditional uses of psychedelic plants and fungi
18 demonstrate how ceremony and community are utilized to enhance
19 the outcomes and increase the safety of spiritual practice, emotional
20 healing, and responsible personal growth.

21 (f) Proposition 122 in Colorado, which passed in November
22 2022, with a 53 percent vote of the state population, will
23 decriminalize the noncommercial, personal possession of
24 psychedelic plants and fungi and establish a regulated therapy
25 system to provide people with therapeutic access to psychedelic
26 plants and fungi.

27 (g) Measure 109 in Oregon, which passed in November 2020,
28 with a 56 percent vote of the state population, will establish a
29 regulated psilocybin therapy system in Oregon to provide people
30 therapeutic access to psilocybin.

31 (h) Measure 110 in Oregon, which passed in November 2020,
32 with a 58 percent vote of the state population, decriminalized the
33 personal possession of all drugs, and almost 20 countries around
34 the world including Portugal, the Czech Republic, and Spain, have
35 expressly or effectively decriminalized the personal use of illicit
36 substances.

37 (i) The City Councils of The City of Oakland, and the City of
38 Santa Cruz, and the Board of Supervisors of the City and County
39 of San Francisco have all passed resolutions deprioritizing the
40 enforcement of the possession, use, and propagation of psychedelic

1 plants and fungi, effectively decriminalizing in those cities. Since
2 June 2019, the City of Ann Arbor, Michigan, and the Cities of
3 Somerville and Cambridge, Massachusetts have all decriminalized
4 the possession, use, and propagation of psychedelic plants and
5 fungi at the local level. In 2020, Washington, D.C., passed Initiative
6 81 to decriminalize and deprioritize the possession and use of
7 psychedelic plants and fungi with 76 percent voter approval.

8 (j) This act will decriminalize the noncommercial, personal use
9 of specified controlled substances, including for the purposes of
10 group counseling and community-based healing, or other related
11 services, including risk reduction, and lay the groundwork for
12 California to develop a regulated therapeutic access program for
13 psychedelic plants and fungi.

14 (k) These changes in law will not affect any restrictions on the
15 driving or operation of a vehicle while impaired, or an employer's
16 ability to restrict the use of controlled substances by its employees,
17 or affect the legal standard for negligence.

18 (l) Peyote is specifically excluded from the list of substances
19 to be decriminalized, and any cultivation, harvest, extraction,
20 tincture or other product manufactured or derived therefrom,
21 because of the nearly endangered status of the peyote plant and
22 the special significance peyote holds in Native American
23 spirituality. Section 11363 of the Health and Safety Code, which
24 makes it a crime in California to cultivate, harvest, dry, or process
25 any plant of the genus *Lophophora*, also known as Peyote, is not
26 amended or repealed.

27 (m) The State of California fully respects and supports the
28 continued Native American possession and use of peyote under
29 federal law, Section 1996a of Title 42 of the United States Code,
30 understanding that Native Americans in the United States were
31 persecuted and prosecuted for their ceremonial practices and use
32 of peyote for more than a century and had to fight numerous legal
33 and political battles to achieve the current protected status, and
34 the enactment of this legislation does not intend to undermine
35 explicitly or implicitly that status.

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

38 11054. (a) The controlled substances listed in this section are
39 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) Levophenacymorphan.

(29) Morpheridine.

(30) Noracymethadol.

(31) Norlevorphanol.

(32) Normethadone.

(33) Norpipanone.

- 1 (34) Phenadoxone.
- 2 (35) Phenampromide.
- 3 (36) Phenomorphan.
- 4 (37) Phenoperidine.
- 5 (38) Piritramide.
- 6 (39) Proheptazine.
- 7 (40) Properidine.
- 8 (41) Propiram.
- 9 (42) Racemoramide.
- 10 (43) Tilidine.
- 11 (44) Trimeperidine.
- 12 (45) Any substance which contains any quantity of
- 13 acetylfentanyl (N-[1-phenethyl-4-piperidiny] acetanilide) or a
- 14 derivative thereof.
- 15 (46) Any substance which contains any quantity of the thiophene
- 16 analog of acetylfentanyl (N-[1-[2-(2-thienyl)ethyl]-4-piperidiny] acetanilide) or a derivative thereof.
- 17 (47) 1-Methyl-4-Phenyl-4-Propionoxypiperidine (MPPP).
- 18 (48) 1-(2-Phenethyl)-4-Phenyl-4-Acetyloxypiperidine (PEPAP).
- 19 (c) Opium derivatives. Unless specifically excepted or unless
- 20 listed in another schedule, any of the following opium derivatives,
- 21 its salts, isomers, and salts of isomers whenever the existence of
- 22 those salts, isomers, and salts of isomers is possible within the
- 23 specific chemical designation:
- 24 (1) Acetorphine.
- 25 (2) Acetyldihydrocodeine.
- 26 (3) Benzylmorphine.
- 27 (4) Codeine methylbromide.
- 28 (5) Codeine-N-Oxide.
- 29 (6) Cyprenorphine.
- 30 (7) Desomorphine.
- 31 (8) Dihydromorphine.
- 32 (9) Drotebanol.
- 33 (10) Etorphine (except hydrochloride salt).
- 34 (11) Heroin.
- 35 (12) Hydromorphenol.
- 36 (13) Methyldesorphine.
- 37 (14) Methyldihydromorphine.
- 38 (15) Morphine methylbromide.
- 39 (16) Morphine methylsulfonate.
- 40

(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.

1 (12) Lysergic acid diethylamide.

2 (13) Cannabis.

3 (14) Mescaline, derived from plants presently classified
4 botanically in the *Echinopsis* or *Trichocereus* genus of cacti,
5 including, without limitation, the Bolivian Torch Cactus, San Pedro
6 Cactus, or Peruvian Torch Cactus, but not including mescaline
7 derived from any plant described in paragraph (15).

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

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

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

16 (18) Psilocybin.

17 (19) Psilocyn.

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

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

29 (21) Ethylamine analog of phencyclidine—Some trade or other
30 names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl)
31 ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine,
32 PCE.

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

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

38 (e) Depressants. Unless specifically excepted or unless listed
39 in another schedule, any material, compound, mixture, or
40 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) Fenethylline, including its salts.

(3) N-Ethylamphetamine, including its salts.

SEC. 3. 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 (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 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 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

1 offense requiring registration pursuant to subdivision (c) of Section
2 290 of the Penal Code.

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

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

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

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

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

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

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

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

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

37 SEC. 4. Section 11350.1 is added to the Health and Safety
38 Code, to read:

39 11350.1. (a) Except as otherwise provided in subdivisions (b),
40 (c), (d), and (e) of this section and notwithstanding any other law,

1 all of the following shall be lawful for a natural person 21 years
2 of age or older and shall not be a violation of state or local law:

3 (1) The possession, preparation, obtaining, or transportation, of
4 no more than the allowable amount of mescaline, as described in
5 paragraph (14) of subdivision (d) of Section 11054, for personal
6 use or for facilitated or supported use.

7 (2) The ingesting of mescaline.

8 (3) The possession, planting, cultivating, harvesting, or
9 preparation of plants capable of producing mescaline, except for
10 the plant presently classified botanically as *Lophophora williamsii*
11 Lemaire, on property owned or controlled by a person, for the
12 purposes described in this subdivision by that person, and
13 possession of any product produced by those plants.

14 (4) The assisting of another person, 21 years of age or older,
15 with any act described in paragraphs (1) to (3), inclusive, of this
16 subdivision.

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

22 (c) (1) A person who knowingly gives away or administers
23 mescaline to a person who is under 18 years of age in violation of
24 law shall be punished by imprisonment in a county jail for a period
25 of not more than six months or by a fine of not more than five
26 hundred dollars (\$500), or by both that fine and imprisonment, or
27 by imprisonment pursuant to subdivision (h) of Section 1170 of
28 the Penal Code.

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

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

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

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

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

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

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

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

(1) “Allowable amount” means four grams per person or, in the context of facilitated or supported use involving multiple persons, the aggregate of allowable amounts per participant. “Allowable amount” does not include the weight of any material of which the substance is a part or to which the substance is added, dissolved, held in solution, or suspended, or any ingredient or material combined with the substance specified in this subdivision to prepare a topical or oral administration, food, drink, or other product, including, but not limited to, a brew or tea.

(2) “Facilitated or supported use” means the supervised or assisted personal use of mescaline by an individual or group of persons 21 years of age or older, or the assisting or supervising of such persons in such use, within the context of counseling, spiritual guidance, community-based healing, or related services.

(3) “Financial gain” means the receipt of money or other valuable consideration in exchange for the item being transferred. “Financial gain” does not include reasonable fees for counseling, spiritual guidance, or related services that are provided in conjunction with facilitated or supported use of mescaline under

1 the guidance and supervision, and on the premises, of the person
2 providing those services.

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

5 (5) “Preparation” means processing or otherwise preparing for
6 use.

7 (h) The transfer of a substance described in paragraph (1) of
8 subdivision (a), without financial gain, between persons 21 years
9 of age and older, and in the context of facilitated or supported use,
10 shall not be a violation of Section 11352 or any other state or local
11 law.

12 SEC. 5. Section 11364 of the Health and Safety Code is
13 amended to read:

14 11364. (a) It is unlawful to possess an opium pipe or any
15 device, contrivance, instrument, or paraphernalia used for
16 unlawfully injecting or smoking (1) a controlled substance specified
17 in subdivision (b), (c), or (e) or paragraph (1) of subdivision (f) of
18 Section 11054, specified in paragraph (15) or (20) of subdivision
19 (d) of Section 11054, specified in subdivision (b) or (c) of Section
20 11055, or specified in paragraph (2) of subdivision (d) of Section
21 11055, or (2) a controlled substance that is a narcotic drug
22 classified in Schedule III, IV, or V.

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

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

34 SEC. 6. Section 11364.7 of the Health and Safety Code is
35 amended to read:

36 11364.7. (a) (1) Except as authorized by law, any person who
37 delivers, furnishes, or transfers, possesses with intent to deliver,
38 furnish, or transfer, or manufactures with the intent to deliver,
39 furnish, or transfer, drug paraphernalia, knowing, or under
40 circumstances where one reasonably should know, that it will be

1 used to plant, propagate, cultivate, grow, harvest, compound,
2 convert, produce, process, prepare, pack, repack, store, contain,
3 conceal, inject, ingest, inhale, or otherwise introduce into the
4 human body a controlled substance, except as provided in
5 subdivision (b), in violation of this division, is guilty of a
6 misdemeanor.

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

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

20 (A) Dimethyltryptamine (DMT).

21 (B) Ibogaine.

22 (C) Mescaline.

23 (D) Psilocybin.

24 (E) Psilocyn.

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

35 (c) Except as authorized by law, any person, 18 years of age or
36 over, who violates subdivision (a) by delivering, furnishing, or
37 transferring drug paraphernalia to a person under 18 years of age
38 who is at least three years younger, or who, upon the grounds of
39 a public or private elementary, vocational, junior high, or high
40 school, possesses a hypodermic needle, as defined in paragraph

(7) of subdivision (a) of Section 11014.5, with the intent to deliver, furnish, or transfer the hypodermic needle, knowing, or under circumstances where one reasonably should know, that it will be used by a person under 18 years of age to inject into the human body a controlled substance, is guilty of a misdemeanor and shall be punished by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

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

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

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

SEC. 7. Section 11365 of the Health and Safety Code is amended to read:

11365. (a) It is unlawful to visit or to be in any room or place where any controlled substances which are specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (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 are narcotic drugs classified in Schedule III, IV, or V, are being unlawfully smoked or used with knowledge that such 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. 8. Section 11377 of the Health and Safety Code is amended to read:

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

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

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

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

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

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

SEC. 9. Section 11377.1 is added to the Health and Safety Code, to read:

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

(1) The possession, preparation, obtaining, or transportation, of no more than the allowable amount of any of the following substances for personal use or facilitated or supported use:

(A) The controlled substance specified in paragraph (10) of subdivision (d) of Section 11054.

(B) The controlled substance specified in paragraph (11) of subdivision (d) of Section 11054.

(C) The controlled substance specified in paragraph (18) of subdivision (d) of Section 11054.

(D) The controlled substance specified in paragraph (19) of subdivision (d) of Section 11054.

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

(3) The possession, planting, cultivating, harvesting, or preparation of plants capable of producing a substance described in paragraph (1), on property owned or controlled by a person, for the uses described in this subdivision by that person, and possession of any product produced by those plants including spores or mycelium capable of producing mushrooms or other material which contain a controlled substance specified in paragraph (18) or (19) of subdivision (d) of Section 11054, for that purpose.

(4) The assisting of another person, 21 years of age or older, with any act described in paragraphs (1) to (3), inclusive, of this subdivision.

(b) Possession of a controlled substance specified in paragraph (1) of subdivision (a) by a person 21 years of age or over, on the grounds of any public or private elementary, vocational, junior high, or high school, during hours that the school is open for classes or school-related programs, or at any time when minors are using the facility is punishable as a misdemeanor.

(c) (1) A person who knowingly gives away or administers a controlled substance specified in paragraph (1) of subdivision (a) to a person who is under 18 years of age in violation of law shall be punished by imprisonment in a county jail for a period of not more than six months or by a fine of not more than five hundred

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

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

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

12 (d) Except as otherwise provided, possession of a controlled
13 substance specified in paragraph (1) of subdivision (a) by a person
14 under 18 years of age is punishable as an infraction and shall
15 require:

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

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

26 (e) Except as otherwise provided, possession of a controlled
27 substance specified in paragraph (1) of subdivision (a) by a person
28 at least 18 years of age but less than 21 years of age is punishable
29 as an infraction.

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

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

38 (1) "Allowable amount" means the following quantities of a
39 substance per person or, in the context of facilitated or supported
40 use involving multiple persons, the aggregate of allowable amounts

per participant. “Allowable amount” does not include the weight of any material of which the substance is a part or to which the substance is added, dissolved, held in solution, or suspended, or any ingredient or material combined with the substance specified in this subdivision to prepare a topical or oral administration, food, drink, or other product, including, but not limited to, a brew or tea:

(A) Two grams of dimethyltryptamine, otherwise known as DMT.

(B) Fifteen grams of ibogaine.

(C) Two grams of psilocybin or four ounces of a plant or fungi containing psilocybin.

(D) Two grams of psilocyn or four ounces of a plant or fungi containing psilocyn.

(2) “Facilitated or supported use” means the supervised or assisted personal use of a substance described in this section by an individual or group of persons 21 years of age or older, or the assisting or supervising of such persons in such use, within the context of counseling, spiritual guidance, community-based healing, or related services.

(3) “Financial gain” means the receipt of money or other valuable consideration in exchange for the item being transferred. “Financial gain” does not include reasonable fees for counseling, spiritual guidance, or related services that are provided in conjunction with facilitated or supported use of a controlled substance described in this section under the guidance and supervision, and on the premises, of the person providing those services.

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

(5) “Preparation” means processing or otherwise preparing for use.

(h) The transfer of a substance described in paragraph (1) of subdivision (a), without financial gain, between persons 21 years of age and older, and in the context of facilitated or supported use, shall not be a violation of Section 11352 or any other state or local law.

SEC. 10. Section 11379 of the Health and Safety Code is amended to read:

11379. (a) Except as otherwise provided in subdivision (b), in Section 11377.1, and in Article 7 (commencing with Section

4211) of Chapter 9 of Division 2 of the Business and Professions Code, every 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 any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) 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) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) 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 two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any 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) Nothing in this section is intended to preclude or limit prosecution under an aiding and abetting theory, accessory theory, or a conspiracy theory.

SEC. 11. Section 11382 of the Health and Safety Code is amended to read:

11382. Except as otherwise provided in Section 11377.1, every person who agrees, consents, or in any manner offers to unlawfully sell, furnish, transport, administer, or give any controlled substance which is (a) classified in Schedule III, IV, or V and which 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

1 substance unlawfully sold, delivered, transported, furnished,
2 administered, or given to any person and then sells, delivers,
3 furnishes, transports, administers, or gives, or offers, or arranges,
4 or negotiates to have sold, delivered, transported, furnished,
5 administered, or given to any person any other liquid, substance,
6 or material in lieu of that controlled substance shall be punished
7 by imprisonment in the county jail for not more than one year, or
8 pursuant to subdivision (h) of Section 1170 of the Penal Code.

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

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

13 11550. (a) A person shall not use, or be under the influence
14 of any controlled substance that is (1) specified in subdivision (b),
15 (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,
16 specified in paragraph (15), (21), (22), or (23) of subdivision (d)
17 of Section 11054, specified in subdivision (b) or (c) of Section
18 11055, or specified in paragraph (1) or (2) of subdivision (d) or in
19 paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic
20 drug classified in Schedule III, IV, or V, except when administered
21 by or under the direction of a person licensed by the state to
22 dispense, prescribe, or administer controlled substances. It shall
23 be the burden of the defense to show that it comes within the
24 exception. A person convicted of violating this subdivision is guilty
25 of a misdemeanor and shall be sentenced to serve a term of not
26 more than one year in a county jail. The court may also place a
27 person convicted under this subdivision on probation for a period
28 not to exceed five years.

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

1 Part 2 of the Penal Code unless the person is charged with violating
2 subdivision (b) or (c) of Section 243 of the Penal Code. A person
3 charged with violating this section by being under the influence
4 of any controlled substance which is specified in paragraph (21),
5 (22), or (23) of subdivision (d) of Section 11054 or in paragraph
6 (3) of subdivision (e) of Section 11055 and with violating either
7 subdivision (b) or (c) of Section 243 of the Penal Code or with a
8 violation of subdivision (e) shall be ineligible for deferred entry
9 of judgment or a preguilty plea drug court program.

10 SEC. 14. Section 11999 of the Health and Safety Code is
11 repealed.

12 SEC. 15. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution for certain
14 costs that may be incurred by a local agency or school district
15 because, in that regard, this act creates a new crime or infraction,
16 eliminates a crime or infraction, or changes the penalty for a crime
17 or infraction, within the meaning of Section 17556 of the
18 Government Code, or changes the definition of a crime within the
19 meaning of Section 6 of Article XIII B of the California
20 Constitution.

21 However, if the Commission on State Mandates determines that
22 this act contains other costs mandated by the state, reimbursement
23 to local agencies and school districts for those costs shall be made
24 pursuant to Part 7 (commencing with Section 17500) of Division
25 4 of Title 2 of the Government Code.

26 SEC. 16. The provisions of this act are severable. If any
27 provision of this act or its application is held invalid, that invalidity
28 shall not affect other provisions or applications that can be given
29 effect without the invalid provision or application.