



November 12, 2019

Hon. Xavier Becerra
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code 9005, we have reviewed the proposed statutory initiative related to psilocybin (A.G. File No. 19-0016, Amendment #1).

Background

Psilocybin. Psilocybin is a naturally occurring hallucinogen found in certain species of mushrooms that are often referred to as psychedelic or “magic” mushrooms. When an individual uses psilocybin—typically by ingesting mushrooms containing it—the user temporarily experiences hallucinations as well as changes in thoughts and emotions.

State Law. Under current state law, the cultivation, possession, distribution, transportation, and sale of psilocybin—including mushrooms containing psilocybin—is generally illegal in California. Penalties for adults for psilocybin-related activities vary depending on the offense. For example, possession of psilocybin is generally punishable as a misdemeanor and may result in up to a one year sentence in county jail and/or a fine, while selling psilocybin is a felony and may result in a jail or state prison sentence. Currently, there are very limited data specifically for psilocybin-related offenses. However, we estimate that the number of such offenders currently in state prison and county jail is very minor relative to the overall prison and jail population. There is also limited data on penalties received by juveniles for psilocybin-related offenses, but the available data indicate that custodial placements are very rare. This suggests that juveniles are instead generally placed in diversion programs or on informal probation for these offenses.

Federal Law. Federal laws classify psilocybin as an illegal substance and provide criminal penalties for various activities relating to its use. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

Proposal

The measure would eliminate penalties under state law for various activities related to psilocybin. However, psilocybin would remain an illegal substance under the measure if (1) cultivated, possessed, or distributed by minors under the age of 18; (2) distributed “in greater than personal possession amounts for profit;” or (3) distributed by adults to minors. In these circumstances, existing penalties for psilocybin-related offenses would still apply. However, the measure limits the maximum punishment for minors found in possession of psilocybin to a mandatory drug education program. Activities related to the use of psilocybin would continue to be prohibited under federal law.

Fiscal Effects

There is some uncertainty about how the measure’s prohibition on the distribution of psilocybin “in greater than personal possession amounts for profit” would be interpreted. For the purpose of our analysis, we assume it would be interpreted to legalize the sale of psilocybin in some cases, such as by nonprofits. To the extent this is not the case, the effect on criminal justice costs and tax revenue discussed below could be greatly reduced. Moreover, the tax revenue impacts discussed below could be greatly reduced to the extent that the federal government exercises its discretion to enforce federal prohibitions on psilocybin-related activities otherwise permitted by this measure.

Reduction in Various State and Local Costs. The measure would reduce costs to the state and local governments by reducing the number of psilocybin offenders incarcerated in state prison and county jail, as well as the number placed under community supervision (such as county probation). In addition, the measure would result in a reduction in state and local costs for the enforcement of psilocybin-related offenses and the handling of related criminal cases in the state court system. In total, the reduction in costs would likely not exceed a few million dollars annually. In many cases, however, these resources would likely be redirected to other law enforcement and court activities.

In addition, there could be minor costs associated with the development and operation of a drug education program for minors found in possession of psilocybin. To the extent that the measure’s limitation on punishment for minors does not change existing practice, the ongoing costs of implementing the drug education program would not be significantly different than current costs. To the extent the measure does change how minors are punished in practice, we estimate that the associated change in costs would be minor.

Effects on State and Local Revenues. To the extent individuals who are currently purchasing psilocybin illegally begin purchasing it from entities that collect sales taxes, state and local governments could receive additional revenues related to sale of psilocybin. In addition, the measure could result in an increase in other taxable economic activity in the state, as individuals currently producing and selling psilocybin illegally could begin doing so legally under state law and pay personal income taxes. We estimate that these potential increases in tax revenues likely would not exceed a couple million dollars annually.

Summary of Fiscal Impact. We estimate that this measure would have the following fiscal effects:

- Reduced costs, not likely to exceed a few million dollars annually, to state and local governments related to enforcing psilocybin-related offenses; handling the related criminal cases in the court system; and incarcerating and supervising certain psilocybin offenders.
- Potential increase in state and local tax revenues, not likely to exceed a couple million dollars annually, related to the production and sale of psilocybin.

Sincerely,

Gabriel Petek
Legislative Analyst

Keely Martin Bosler
Director of Finance