



December 24, 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. 19-0027, 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. Psilocybin is currently being studied to assess its potential therapeutic benefits for treating various conditions including depression and addiction.

State Law. Under current state law, the cultivation, possession, distribution, transportation, and sale of psilocybin outside of an approved research setting 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 outside of an approved research setting. These laws are enforced by federal agencies that may act independently or in cooperation with state and local law enforcement agencies.

Proposal

This measure would make various changes to state law related to psilocybin, including removing certain criminal penalties and requiring regulation of its cultivation and sale. However, federal restrictions on psilocybin would still be in effect. We describe key provisions of the measure below.

Legalizes Psilocybin-Related Activities Under State Law for Adults. The measure eliminates existing penalties under state law for adults for psilocybin-related activities including, possession, distribution, transportation, and sale of psilocybin. The measure also allows adults to cultivate psilocybin mushrooms subject to certain limitations, such as requiring the mushrooms to not be publicly visible. These activities would generally remain illegal for minors under the age of 18. However, the measure limits the maximum punishment for minors to a mandatory drug education program. Activities related to the use of psilocybin would continue to be prohibited under federal law.

Requires Destruction of Criminal Records and Resentencing. The measure generally requires the destruction—within two years—of criminal records of individuals arrested for or convicted of psilocybin-related offenses. This would apply both to past records of psilocybin-related offenses since 1970 and future records related to activities that would remain illegal under the measure, such as juvenile psilocybin offenses.

Individuals serving sentences for activities that are made legal or are subject to lesser penalties under the measure would be eligible for resentencing. For example, individuals serving jail or prison terms for selling psilocybin could have their sentence reduced. A court, however, would not be required to resentence someone if it determined that doing so would pose an unreasonable risk to public safety. Qualifying individuals would be resentenced to whatever punishment they would have received under the measure. Individuals who have completed sentences for crimes that are affected by the measure could apply to the courts to have their criminal records changed if they are not already destroyed under the measure.

Requires Development of Psilocybin Cultivation and Sales Regulations. The measure requires that psilocybin mushroom businesses be regulated “as closely as practicable to the cultivation, production, distribution, and sales of non-psychoactive agriculturally produced mushrooms with the exceptions of sales to minors and testing for potency of active ingredients.” The measure requires the California Department of Food and Agriculture to issue licenses under the measure beginning no later than September 20, 2021. Regulatory agencies would be prohibited from imposing fines or fees in excess of the amount charged for comparable non-psilocybin mushroom-related businesses.

Under the measure, a city or county could ban or limit the number of psilocybin mushroom businesses within its boundaries if approved by the voters within that jurisdiction at a statewide election held in November.

Specifies Use of Psilocybin for Treatment Purposes. The measure specifies that health care practitioners may use psilocybin for treatment purposes subject to certain limits, such as requiring practitioners to have a license. In addition, the measure requires the California Department of Public Health (CDPH) to work with research and education organizations in

developing psychological harm reduction protocols for healthcare workers engaged in psilocybin therapy or management of psilocybin intoxication.

Limits Taxation of Psilocybin. The measure exempts psilocybin sold for religious, therapeutic, or medical purposes from sales taxes. Psilocybin sold for other purposes would be subject to state and local sales taxes.

Fiscal Effects

Below, we discuss various fiscal effects of the measure. We estimate that, on net, the measure would result in temporary increased costs to state and local governments. The net effect on state and local governments in the long run is unknown.

Increased Costs for Criminal Record Destruction and Resentencing. The measure would result in one-time state and local court and law enforcement costs to destroy arrest and conviction records for psilocybin-related crimes and process applications from individuals seeking to be resentenced or have their criminal records changed. In total, we estimate that these costs could be in the tens of millions of dollars, spread over a few years. The bulk of this cost would be associated with criminal record destruction, which would likely require manual review of court documents for a significant number of drug cases that have occurred since 1970 to identify individual cases involving psilocybin. The actual cost of this workload would depend primarily on the number of drug cases that must be reviewed and amount of time required to process each case. We note that there could be minor costs to destroy records on an ongoing basis, such as for juveniles who commit psilocybin-related offenses.

Reduced Psilocybin Enforcement Costs. The measure would reduce ongoing 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.

Increased Regulatory Costs. State costs to regulate psilocybin mushroom businesses would depend on (1) the specific regulatory structure that the state ultimately implements pursuant to the measure, (2) the extent to which the federal government exercises its discretion to enforce federal prohibitions on psilocybin-related activities, and (3) how individuals and businesses respond to these two factors. Accordingly, costs could range from minimal to tens of millions of dollars annually. These regulatory costs could eventually be partially or fully offset by fee revenue. To the extent that fee revenues are not sufficient to fully support such costs, some of the costs could require support from other fund sources (such as the state General Fund).

Increased State and Local Tax Revenues. To the extent individuals who are currently purchasing psilocybin illegally begin purchasing it from entities that collect sales taxes, state and local governments would receive additional revenues related to the sale of psilocybin. The amount of sales tax revenue collected would depend on the portion of sales that are not for religious, therapeutic, or medical purposes, which would be exempt from sales tax under the

measure. 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. However, this revenue could be greatly reduced to the extent that the federal government exercises its discretion to enforce federal prohibitions on psilocybin-related activities.

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

- One-time state and local court and law enforcement costs in the tens of millions of dollars primarily related to the identification and destruction of arrest and conviction records for psilocybin-related crimes.
- 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 psilocybin offenders.
- Annual state costs to regulate psilocybin businesses, ranging from minimal to the tens of millions of dollars. Some or all of these costs could eventually be partially or fully offset by fee revenue.
- Potential increase in state and local tax revenues, not likely to exceed a couple million dollars annually.

Sincerely,

Gabriel Petek
Legislative Analyst

Keely Martin Bosler
Director of Finance