

California Psilocybin Decriminalization Initiative 2020

SECTION 1. Title.

This measure shall be known and may be cited as the “California Psilocybin Decriminalization Initiative”.

SEC. 2. Findings and Declarations.

- (a) No one should be in prison for using Magic Mushrooms.
- (b) No families should be separated for using Magic Mushrooms.
- (c) Magic Mushrooms have been safely used for thousands of years for spiritual and religious purposes.
- (d) Taxing Magic Mushrooms will generate money for the State.
- (e) Regulating the sale of Magic Mushrooms will take money away from gangs and drug cartels.
- (f) Denver and Oakland have decriminalized Magic Mushrooms.
- (g) Magic Mushrooms are much safer than caffeine, nicotine, and alcohol. A 2010 analysis of the harms associated with the war on drugs found Mushrooms to be the safest of all twenty drugs studied.
- (h) The FDA designated Psilocybin (the main component of Magic Mushrooms) as a Breakthrough Therapy for treatment-resistant depression and major depressive disorder.
- (i) Research conducted by the Beckley Foundation has found Magic Mushrooms to be a safe and effective treatment for severe and treatment-resistant depression, anxiety in terminally ill patients, and nicotine addiction.

SEC. 3. Section 11395.100 to 11395.250 are added to the Health and Safety Code, to read:

§ 11395.100 Purposes.

This Act advances cognitive liberty and implements a comprehensive, statewide scheme authorizing and regulating the cultivation, processing and distribution of Psilocybin Mushrooms and the chemical compounds contained therein for personal, spiritual, religious, dietary, therapeutic, and medical use. The subjects addressed by this Act are a matter of statewide concern. It is the intent of the People in enacting this Act to accomplish all of the following:

- (a) Prevent the distribution of Psilocybin Mushrooms to minors, except in appropriate cases when they have been recommended by a physician or psychologist;
- (b) Prevent the profits from the sale of Psilocybin Mushrooms from going to criminal enterprises, gangs, and cartels;
- (c) Prevent driving while impaired by Psilocybin Mushrooms and other adverse public health consequences associated with Psilocybin Mushrooms;
- (d) Enact legislation allowing non-violent prisoners who were convicted of buying, selling, growing, manufacturing or possessing Psilocybin Mushrooms to have their sentences reviewed and criminal records expunged;
- (e) Ensure that local jurisdictions may not define as a nuisance, per se, any action or conduct authorized by this Act; rather, a showing of an actual nuisance shall be required;
- (f) Support the therapeutic and medical research of Psilocybin Mushrooms and their extracts.

§ 11395.110 Definitions.

“Adult” means an individual eighteen (18) years of age or older.

“Psilocybin Mushrooms” means Mushrooms, Spores, Truffles, Sclerotia, Mycelium, or any of the aforementioned in extracted form, containing Psilocybin, Psilocin, Ibotenic Acid, Muscimol, Baeocystin, Norbaeocystin, and other related substances.

“Psilocybin Mushroom Business” is a for profit or nonprofit entity that cultivates, wholesales, or retails Psilocybin Mushrooms, and includes, but is not limited to, Psilocybin Mushroom manufacturers, Psilocybin Mushroom distributors, Psilocybin Mushroom retailers, analytical Psilocybin Mushroom laboratories, and medical Psilocybin Mushroom organizations.

“Endanger others” does not mean and shall not include lawfully using, ingesting, possessing and/or cultivating Psilocybin Mushrooms within the same residence or adjoining outhouses and rooms or in a commercial building of any type, unless additional conduct is demonstrated by clear and convincing evidence that such acts have in fact become imminently dangerous to human safety, in addition to mere lawful use, ingestion, possession or cultivation.

“Excessive” means any requirement or fee that exceeds a normal, usual, or reasonable requirement based on expenses incurred or required fee.

“Impaired” in reference to Psilocybin Mushroom impairment, refers to significantly diminished physical or mental capabilities to the extent a person cannot safely operate a motor vehicle.

“Individual” means a natural person as defined in Revenue and Taxation Code Section 17005.

“Minor” means an individual under the age of 18.

"Indoors" means within a fully enclosed and secure structure which can only be entered through a locked door that requires a key or combination to open and which is secure against unauthorized entry.

"Outdoors" means any location that is not "indoors" as defined herein.

§ 11395.120 Psilocybin Mushrooms.

The personal, spiritual, religious, dietary, therapeutic, and medical use of Psilocybin Mushrooms by adults, including but not limited to the cultivation, manufacture, processing, production of edible products and extracts (with or without solvents) derived from Psilocybin Mushrooms, distribution, transportation, possession, storage, consumption, social consumption, on-site consumption, public events, farmers’ markets, and retail sale, whether or not for profit, shall be lawful in this state and is a matter of statewide concern.

§ 11395.130 Personal Protections.

It shall be lawful and not a violation of California law for an adult:

- (a) To use Psilocybin Mushrooms in one’s home or on any privately owned property in a manner that does not endanger others or violate this division;
- (b) To be under the influence of Psilocybin Mushrooms, except as provided in this Act and as provided in subdivision (f) of section 647 of the Penal Code; and
- (c) To cultivate Psilocybin Mushrooms indoors, or outdoors on private property to which access is restricted by fencing where such cultivation is not visible from outside such property, and with the consent of the owner of such property. Cultivation must comply with any local or State nuisance regulations, provided the nuisance regulation is not based solely on the presence and/or

cultivation of Psilocybin Mushrooms, nor crafted to primarily target Psilocybin Mushroom cultivation and/or possession. No local regulation may be so excessive or burdensome as to make it functionally impractical for adults to cultivate Psilocybin Mushrooms as otherwise authorized in this section.

§ 11395.140 Reasonable Regulation.

- (a) Implementation of this Act shall be the responsibility of the California Department of Food and Agriculture.
- (b) No license, fee, fine, or tax, on a Psilocybin Mushroom business shall exceed the amount charged or assessed for comparable non-Psilocybin Mushroom related businesses.
- (c) Psilocybin Mushroom Businesses shall 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, provided that no regulation may be so excessive or burdensome as to make it impractical for Psilocybin Mushroom Businesses to operate and earn a profit unless otherwise authorized herein.
- (d) The State of California and its agencies and employees shall not disclose and shall protect the identities of all persons, individuals, and corporate entities engaged in Psilocybin Mushroom commerce or use, unless there is a court order or search warrant expressly authorizing the release of such information on a case by case basis.
- (e) Any Psilocybin Mushroom products or extracts packaged for retail sale must provide a list of active substances.

§ 11395.150 Therapeutic and Medical Research and Treatment.

- (a) The State of California and its agencies shall allow pre-clinical and clinical research into the therapeutic applications of Psilocybin and Psilocybin Mushrooms.
- (b) Licensed healthcare practitioners may use Psilocybin Mushrooms for research and treatment purposes.
- (c) Psilocybin Mushroom-assisted psychotherapy may be delivered by qualified and licensed practitioners. Therapy may be provided by mental health professionals who have obtained specialized training in psychedelic-assisted therapy and a licence to administer Psilocybin for specific indications.
- (d) The California Department of Public Health shall work with research and education organizations who have experience with psychedelic harm reduction to develop non-binding protocols for healthcare workers engaged in Psilocybin Mushroom therapy and management of Psilocybin Mushroom intoxication.

§ 11395.160 Implementation.

The California Department of Food and Agriculture shall begin issuing licenses under this Act not later than September 20, 2021.

§ 11395.170 Penalties.

Violations of any statute or regulation enacted or promulgated to implement this Act shall not constitute a felony and shall not be punished by incarceration or imprisonment.

§ 11395.180 Local Control.

A city and or county may ban or limit the number of Psilocybin Mushroom Businesses within its boundaries, if such restriction has been placed on the ballot by petition in accordance with the procedures for an initiative, or by the city council or board of supervisors, and approved by the voters within that jurisdiction at a statewide election held in November.

§ 11395.190 Discrimination Prohibited.

This section shall not apply to employers or employees in safety-sensitive occupations covered by U.S. Department of Transportation regulations (49 CFR Part 40). Except as provided in this division, no person shall refuse to provide services or benefits or increase the charge for services or benefits, based on the lawful use, cultivation, possession, storage, or sales of Psilocybin Mushrooms including but not limited to the following: (a) A license, permit, or other entitlement for use including all business, professional, trade, and land use licenses and permits, and all other entitlements for use, and all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises; (b) Utility services.

§ 11395.200 Minors.

- (a) Unless the health or wellbeing of a minor is in danger as a result of the cultivation of Psilocybin Mushrooms in compliance with this division, the mere presence of one or more minors in a household shall not render such cultivation unlawful, per se, nor shall such cultivation be used to make a jurisdictional determination of risk of harm to a child in the state of California, nor shall such cultivation diminish parental rights or justify the removal of a child from the home even temporarily.
- (b) 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.

§ 11395.210 Taxes.

The applicable sales and use taxes shall apply to sales of Psilocybin Mushrooms not used for religious, therapeutic or medical purposes. Psilocybin Mushrooms that are sold or grown for religious, therapeutic or medical purposes shall not be subject to any sales, use, or excise tax.

§ 11395.220 Lawful Conduct.

No conduct deemed lawful by this initiative shall constitute the basis for detention, search, or arrest. Psilocybin Mushrooms involved in any way with conduct deemed lawful by this initiative are not contraband nor subject to seizure.

§ 11395.230 Federal Prosecution Assistance.

Unless pursuant to a court order, no information required to be provided to any State or local governmental agency by this division or in connection with any activity regulated by this division may be

released to an agency or agent of the Federal government in connection with a Federal investigation or prosecution of a person for any activity that is permitted by this division.

§ 11395.240 Destruction of arrest and conviction records; Procedure; Exceptions.

- (a) Records of any court of this State, any public or private agency that provides services upon referral under Section 1000.2 of the Penal Code, or of any State agency pertaining to the arrest or conviction of any person for a violation related to Psilocybin Mushrooms, or pertaining to the arrest or conviction of any person under the age of 18 for a violation of any provision of this Act, shall not be kept beyond two years from the date of the conviction, or from the date of the arrest if there was no conviction, with exception in respect to any other violation by a person under the age of 18 occurring upon the grounds of, or within, any school providing instruction in kindergarten or any of Grades 1 through 12 during the hours the school is open for classes or school-related programs, the records shall be retained until the offender attains the age of 18 years at which time the records shall be destroyed as provided in this section. Any court or agency having custody of the records, including the statewide criminal databases, shall provide for the timely destruction of the records, and such records must also be purged from the statewide criminal databases. As used in this subdivision, “records pertaining to the arrest or conviction” shall include records of arrests resulting in the criminal proceeding and records relating to other offenses charged in the accusatory pleading, whether defendant was acquitted or charges were dismissed. The two-year period beyond which records shall not be kept pursuant to this subdivision shall not apply to any person who is, at the time at which this subdivision would otherwise require record destruction, incarcerated for an offense subject to this subdivision. For such persons, the two-year period shall begin to run from the date the person is released from custody. The requirements of this subdivision do not apply to records of any convictions occurring prior to October 27, 1970, or records of any arrest not followed by a conviction occurring prior to that date, or records of any arrest for an offense specified in subdivision (c) of Section 1192.7, or subdivision (c) of Section 667.5 of the Penal Code.
- (b) A person currently serving a sentence for a conviction, whether by trial or by open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the California Psilocybin Decriminalization Initiative had that Act been in effect at the time of the offense, may petition for a recall or dismissal of sentence before the trial court that entered the judgment of conviction in their case to request resentencing or dismissal.
- (c) Upon receiving a petition under subdivision (b), the court shall presume the petitioner satisfies the criteria in subdivision (b) unless the party opposing the petition proves by clear and convincing evidence that the petitioner does not satisfy the criteria. If the petitioner satisfies the criteria in subdivision (b), the court shall grant the petition to recall the sentence or dismiss the sentence because it is legally invalid unless the court determines that granting the petition would pose an unreasonable risk of danger to public safety.
 - (1) In exercising its discretion, the court may consider, but shall not be limited to, evidence provided for in subdivision (b) of Section 1170.18 of the Penal Code.
 - (2) As used in this section, “unreasonable risk of danger to public safety” has the same meaning as provided in subdivision (c) of Section 1170.18 of the Penal Code.

- (d) A person who is serving a sentence and resentenced pursuant to subdivision (c) shall be given credit for any time already served and shall be subject to supervision for one year following completion of their time in custody or shall be subject to whatever supervision time they would have otherwise been subject to after release, whichever is shorter, unless the court, in its discretion, as part of its resentencing order, releases the person from supervision. Such person is subject to parole supervision under Penal Code Section 3000.08 or post-release community supervision under subdivision (b) of Section 3451 of the Penal Code by the designated agency and the jurisdiction of the court in the county in which the offender is released or resides, or in which an alleged violation of supervision has occurred, for the purpose of hearing petitions to revoke supervision and impose a term of custody.
- (e) A person who has completed their sentence for a conviction related to Psilocybin Mushrooms, whether by trial or open or negotiated plea, who would not have been guilty of an offense or who would have been guilty of a lesser offense under the California Psilocybin Decriminalization Initiative had that Act been in effect at the time of the offense, may file an application before the trial court that entered the judgment of conviction in their case to have the conviction dismissed and sealed because the prior conviction is now legally invalid or redesignated as a misdemeanor or infraction.
- (f) The court shall presume the petitioner satisfies the criteria in subdivision (e) unless the party opposing the application proves by clear and convincing evidence that the petitioner does not satisfy the criteria in subdivision (e). Once the applicant satisfies the criteria in subdivision (e), the court shall redesignate the conviction as a misdemeanor or infraction or dismiss and seal the conviction as legally invalid as now established under the California Psilocybin Decriminalization Initiative.
- (g) Unless requested by the applicant, no hearing is necessary to grant or deny an application filed under subdivision (e).
- (h) Any felony conviction that is recalled and resentenced under subdivision (c) or designated as a misdemeanor or infraction under subdivision (f) shall be considered a misdemeanor or infraction for all purposes. Any misdemeanor conviction that is recalled and resentenced under subdivision (c) or designated as an infraction under subdivision (f) shall be considered an infraction for all purposes.
- (i) If the court that originally sentenced the petitioner is not available, the presiding judge shall designate another judge to rule on the petition or application.
- (j) Nothing in this section is intended to diminish or abrogate any rights or remedies otherwise available to the petitioner or applicant.
- (k) Nothing in this and related sections is intended to diminish or abrogate the finality of judgments in any case not falling within the purview of the California Psilocybin Decriminalization Initiative.
- (l) A resentencing hearing ordered under this Act shall constitute a “post-conviction release proceeding” under paragraph (7) of subdivision (b) of Section 28 of Article I of the California Constitution (Marsy’s Law).
- (m) The provisions of this section shall apply equally to juvenile delinquency adjudications and dispositions under Section 602 of the Welfare and Institutions Code if the juvenile would not

have been guilty of an offense or would have been guilty of a lesser offense under the California Psilocybin Decriminalization Initiative.

- (n) The Judicial Council shall promulgate and make available all necessary forms to enable the filing of the petitions and applications provided in this section.
- (o) Under no circumstances may resentencing under this section result in the imposition of a term longer than the original sentence, or the reinstatement of charges dismissed pursuant to a negotiated plea agreement.

§ 11395.250 Out of State Distribution and Transport.

This Act shall not be construed to authorize or permit the transportation or distribution, or cause to be transported or distributed, Psilocybin Mushrooms or Psilocybin Mushroom products outside the state and country, unless authorized by Federal law.

SEC. 4. Liberal Construction.

This Act shall be liberally construed to effectuate its purposes.

SEC. 5. Severability.

The provisions of this Act are severable. If any provision of this Act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 6. Conflicting Measures.

In the event that this measure and another measure or measures concerning Psilocybin Mushrooms 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.

SEC. 7. Sections 11390 and 11391 of the Health and Safety Code are hereby repealed.

SEC. 8. Amendment.

The provisions of this Act may be amended by the Legislature to further the purposes of this Act by a statute passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring. Any implementation legislation enacted pursuant to this Act shall require only a majority vote in each house.

SEC. 9. Legal Defense by the Attorney General.

The California Attorney General shall protect and defend this Act from any and all challenges in the courts of any jurisdiction to final judgment.