**Amended Mock-up for 2021-2022 SB-519 (Wiener (S))**

**Mock-up based on Version Number 95 - Amended Assembly 7/1/21**

**Submitted by: Judith Babcock, Health Committee**

**The people of the State of California do enact as follows:**

**SECTION 1.** The Legislature finds and declares all of the following:

(a) The War on Drugs has entailed overwhelming financial and societal costs, and the policy behind it does not reflect a modern understanding of substance use nor does it accurately reflect the potential therapeutic benefits or harms of various substances.

(b) Criminalization has not deterred drug use, and has instead made drug use less safe. It has created an unregulated underground market in which difficult-to-verify dosages and the presence of adulterants, including fentanyl, make the illicit drug supply dangerous.

(c) Lack of honest drug education has laid the groundwork for decades of misinformation, stigma, and cultural appropriation, which have all contributed to increasing the dangers of drug use.

(d) Harm reduction tools including drug-checking kits, gas chromatography mass spectrometry machines, milligram scales, and capsules allow users to make more accurate, safer, evidence-based decisions about their personal use. Allowing such paraphernalia can increase public health and safety.

(e) Research is advancing to support the use of psychedelic compounds with psychotherapy to treat mental health disorders, such as anxiety, depression, post-traumatic stress disorder and substance use disorder.

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

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

(h) The City of Oakland and the City of Santa Cruz have both passed resolutions decriminalizing and deprioritizing the enforcement of the possession, use, and propagation of psychedelic plants and fungi. Since June 2019, the Cities of Ann Arbor, Michigan; Somerville, Massachusetts; and Cambridge, Massachusetts; have all decriminalized the possession, use, and propagation of psychedelic plants and fungi at the local level. Also, in 2020, Washington, D.C., passed Initiative 81 to decriminalize and deprioritize the possession and use of psychedelic plants and fungi with 76 percent voter approval.

(i) To responsibly transition away from criminalization, protect people who use or may use drugs, and avoid negative environmental or cultural impacts, it is necessary to review the full legal context in which these changes to the law are made, incorporate evidence-based policy, consult with experts, and maintain open discourse based in harm reduction, reciprocity, and human rights into the process of developing alternative regulatory systems.

(j) This act will allow for the noncommercial, personal use and sharing of specified controlled substances, including for the purposes of group counseling and community-based healing, or other related services.

(k) These changes in law will not affect any restrictions on the driving or operating a vehicle while impaired or an employer’s ability to restrict the use of controlled substance by its employees, or affect the legal standard for negligence.

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

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

**SEC. 2.** 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) Levophenacylmorphan.

(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) Hydromorphinol.

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

(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.

(19) Psilocyn.

(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) Fenethylline, including its salts.

(3) N-Ethylamphetamine, including its salts.

**SEC. 3.** Section 11150.2 of the Health and Safety Code is amended to read:

**11150.2.** (a) Notwithstanding any other law, if cannabidiol is excluded from Schedule I of the federal Controlled Substances Act and placed on a schedule of the act other than Schedule I, or if a product composed of cannabidiol is approved by the federal Food and Drug Administration and either placed on a schedule of the act other than Schedule I, or exempted from one or more provisions of the act, so as to permit a physician, pharmacist, or other authorized healing arts licensee acting within their scope of practice, to prescribe, furnish, or dispense that product, the physician, pharmacist, or other authorized healing arts licensee who prescribes, furnishes, or dispenses that product in accordance with federal law shall be deemed to be in compliance with state law governing those acts.

(b) Notwithstanding any other law, if psilocybin, psilocyn, dimethyltryptamine, ibogaine, mescaline, lysergic acid diethylamide, or 3,4-methylenedioxymethamphetamine is excluded from Schedule I of the federal Controlled Substances Act and placed on a schedule of the act other than Schedule I, or if a product composed of one of these substances is approved by the federal Food and Drug Administration and either placed on a schedule of the act other than Schedule I, or exempted from one or more provisions of the act, so as to permit a physician, pharmacist, or other authorized healing arts licensee acting within their scope of practice, to prescribe, furnish, or dispense that product, the physician, pharmacist, or other authorized healing arts licensee who prescribes, furnishes, or dispenses that product in accordance with federal law shall be deemed to be in compliance with state law governing those acts.

(c) For purposes of this chapter, upon the effective date of any of the changes in federal law described in subdivision (a) or (b), notwithstanding any other state law, a product composed of the excluded substance may be prescribed, furnished, dispensed, transferred, transported, possessed, or used in accordance with federal law and is authorized pursuant to state law.

(d) This section does not apply to any product containing cannabidiol that is made or derived from industrial hemp, as defined in Section 11018.5 and regulated pursuant to that section.

**SEC. 4.** 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 offense requiring registration pursuant to subdivision (c) of Section 290 of the Penal Code.

(b) Except as otherwise provided in this division, whenever 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) with 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 no defendant shall be denied probation because of their 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 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. 5.** Section 11350.1 is added to the Health and Safety Code, to read:

**11350.1.** (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, processing, obtaining, **giving away without financial gain,** or transportation of **not more than the allowable amount of** mescaline, as described in paragraph (14) of subdivision (d) of Section 11054, for personal use or for ~~social sharing~~ **facilitated or supported use.**

(2) The ingesting of mescaline.

~~(3) The social sharing of mescaline.~~

**(3)**~~(4)~~ The possession, planting, cultivating, harvesting, or processing of plants capable of producing mescaline, except for the plant presently classified botanically as Lophophora williamsii Lemaire, on property owned or controlled by a person, for personal use or **facilitated or supported use** by that person, and possession of any product produced by those plants.

**(4) Assisting another person or persons who are 21 years of age or older with any of the acts described in paragraphs (1) through (3) of this subsection.**

(b) Possession of mescaline 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 mescaline 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 dollars ($500), or by both that fine and imprisonment, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code.

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

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

(d) Except as otherwise provided, possession of mescaline by a person under 18 years of age is punishable as an infraction and 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 4 grams person of the controlled substance specified in paragraph (14) of subdivision (d) of Section 11054. “Allowable amount” includes the aggregate allowable amounts per person for use in the context of facilitated or support use. “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 substances specified in this subdivision to prepare topical or oral administrations, food, drink, or other product, including, but not limited to, in a brew or tea.**

**(2)**~~(1)~~ “Financial gain” means the receipt of money or other valuable consideration in exchange for the item being shared. “Financial gain” does not include reasonable fees for counseling, spiritual guidance, or related services that are provided in conjunction with administering or use of mescaline under the guidance and supervision, and on the premises, of the person providing those services.

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

**(4)**~~(3)~~ ~~“Social sharing”~~ **Facilitated or supportive use means assisting a person or persons 21 years of age or older with the personal use or use by multiple persons as part of a group, of mescaline as specified in paragraph 14 of subdivision (d) of Section 11054** ~~means the giving away or consensual administering~~ of mescaline ~~by a person 21 years of age or older, to another person 21 years of age or older, not for financial gain,~~ including **giving away and possessing aggregate amount of mescaline for use by multiple person as part of a group including** in the context of ~~group~~ counseling, spiritual guidance, community-based healing, or related services.

**SEC. 6.** 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 (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 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, 2026, 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 not apply to the possession solely for personal use of hypodermic needles or syringes.

**SEC. 7.** Section 11364.7 of the Health and Safety Code is amended to read:

**11364.7.** (a) (1) Except as authorized by law, any person who delivers, furnishes, or transfers, possesses with intent to deliver, furnish, or transfer, or manufactures with the intent to deliver, furnish, or transfer, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, except as provided in subdivision (b), in violation of this division, is guilty of a misdemeanor.

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

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

(A) Dimethyltryptamine (DMT).

(B) Ibogaine.

(C) Lysergic acid diethylamide (LSD).

(D) Mescaline.

(E) Psilocybin.

(F) Psilocyn.

(G) 3,4-methylenedioxymethamphetamine (MDMA).

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

(c) Except as authorized by law, any person, 18 years of age or over, who violates subdivision (a) by delivering, furnishing, or transferring drug paraphernalia to a person under 18 years of age who is at least three years younger, or who, upon the grounds of a public or private elementary, vocational, junior high, or high 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. 8.** 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. 9.** 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 is (1) classified in Schedule III, IV, or V, and which is not a narcotic drug, (2) specified in subdivision (d) of Section 11054, except paragraphs (10), (11), (12), (13), (14), (15), (18), (19), 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 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, take into consideration the defendant’s ability to pay, and no defendant shall be denied probation because of their 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. 10.** 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, processing, obtaining, **giving away without financial gain,** or transportation of **not more than the allowable amount of** any of the following substances for personal use or for **facilitated or support 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 (12) of subdivision (d) of Section 11054.

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

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

(F) 3,4-methylenedioxymethamphetamine, otherwise known as MDMA, an analog of the controlled substance specified in paragraph (6) of subdivision (d) of Section 11054.

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

~~(3) The social sharing of a substance described in paragraph (1).~~

**(3)** ~~(4)~~ The possession, planting, cultivating, harvesting, or processing of plants **or fungi** capable of producing a substance described in paragraph (1), on property owned or controlled by a person, for personal use or ~~social sharing~~ **facilitated or supported use**  ~~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) Assisting another person or persons who are 21 years of age or older with any of the acts described in paragraphs (1) through (3) of this subsection.**

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

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

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

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

(f) A controlled substance described in this section or any related product 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 the following quantities per person:**

**(A) 2 grams of the controlled substance specified in paragraph (10) of subdivision (d) of Section 11054.**

**(B) 15 grams of the controlled substance specified in paragraph (11) of subdivision (d) of Section 11054.**

**(C) 0.01 grams of the controlled substance specified in paragraph (12) of subdivision (d) of Section 11054.**

**(D) 2 grams of the controlled substance specified in paragraph (18) of subdivision (d) of Section 11054 or 4 ounces of a plant or fungi containing the controlled substance specified in paragraph (18) of subdivision (d) of Section 11054.**

**(E) 2 grams of the controlled substance specified in paragraph (19) of subdivision (d) of Section 11054 or 4 ounces of a plant or fungi containing the controlled substance specified in paragraph (19) of subdivision (d) of Section 11054.**

**(F) 4 grams of** 3,4-methylenedioxymethamphetamine, otherwise known as MDMA, an analog of the controlled substance specified in + paragraph (6) of subdivision (d) of Section 11054.

**“Allowable amount” includes the aggregate allowable amounts per person for use in the context of facilitated or supported use. “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 substances specified in this subdivision to prepare topical or oral administrations, food, drink, or other product, including, but not limited to, DMT or psilocybin brews or teas.**

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

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

**(4)** ~~(3)~~ ~~“Social sharing”~~ **Facilitated or supported use** means **assisting a person or persons 21 years of age or older with the personal use or use by multiple persons as part of a group** ~~the giving away or consensual administering~~ of a controlled substance **specified in paragraph (1) of subdivision (a~~)~~**  ~~described in this section by a person 21 years of age or older, to another person 21 years of age or older, not for financial gain,~~ including **giving away and possessing aggregate amount of the substances specified in paragraph (1) of subdivision (a) for use by multiplepersons as part of a group, including** in the context of group counseling, spiritual guidance, community-based healing, or related services.

**SEC. 11.** 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. 12.** 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 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. 13.** Article 7 (commencing with Section 11390) of Chapter 6 of Division 10 of the Health and Safety Code is repealed.

**SEC. 14.** 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 (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 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 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 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 is specified in paragraph (21), (22), or (23) 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. 15.** Section 11999 of the Health and Safety Code is repealed.

**SEC. 16.** Section 131065 is added to the Health and Safety Code, to read:

**131065.** (a) The State Department of Public Health shall convene a working group to study and make recommendations regarding **1) public education, public health, and harm reduction; and, 2)** possible regulatory systems that California could adopt to promote safe and equitable access to certain substances in permitted legal contexts, including facilitated group use of substances and spiritual use of substances in groups, and recommending options for caregiving including facilitated services, therapy, end-of-life care, and compassionate use of those controlled substance specified in paragraph (10), (11), (12), (14), (18), or (19) of subdivision (d) of Section 11054, and of 3,4-methylenedioxymethamphetamine.

(b) The State Public Health Officer or their designee shall chair the working group.

(c) The working group shall include, without limitation, persons with expertise in psychedelic therapy, medicine and public health, drug policy, harm reduction, **and youth drug education; law enforcement and other first responders** and **people with experience with the** traditional indigenous use of psychedelic substances, including representatives from the National Council of the Native American Church and Indian tribes in California.

(d) The working group is authorized to contract with outside entities, including public or private universities for research assistance.

(e) The working group shall study, without limitation, all of the following:

**(1) Educational campaigns that provide accurate information about substances specified in subdivion (a), their effects, strategies for safer use, and peer support, including but not limited to public service announcemens and curricula; and public health approaches for crisis prevention and response, including appropriate crisis training for first responders including law enforcement, EMD, fire service snad unarmed co-responder units.**

**(2) The available research on the public health and public safety implications of decriminalizing controlled substances specified in subdivision (a).**

**(3)** ~~(1)~~ The available research on the safety and efficacy of using controlled substances specified in subdivision (a) in a therapeutic setting for treating **Post Traumatic Stress Disorder,** depression, anxiety, addiction, and other mental health conditions.

**(4)**~~(2)~~ The available research on the public health and public safety implications of decriminalizing controlled substances specified in subdivision (a).

**(5)**~~(3)~~ The available research on the safe use of controlled substances specified in subdivision (a) for other uses including as part of religious, spiritual, or creative experiences.

(6) ~~(4)~~ Regulated use models for the controlled substances specified in subdivision (a) from other jurisdictions.

(f) The working group shall develop policy recommendation regarding, without limitation, all of the following:

**(1) The content and scope of educational campaigns and accurate public health approaches regarding use, effect, and risk reduction for the substances specified in subdivision (a), including but not limited to Public Service Announcements, educational curricula, and appropriate crisis response, and appropriate training for first-and multi-responders including law enforcement, EMS, fire services, and unarmed co-responder units.**

**(2) Policies for minimizing use-related risks including information related to appropriate use, and impacts of, detrimental substance use.**

**(3)** ~~(1)~~ The authorization of various controlled substances for regulated uses.

**(4)** ~~(2)~~ The appropriate regulation of the therapeutic use of controlled substances, including qualifications, training, and licensing of therapists or facilitators.

**(5)** ~~(3)~~ The regulation of controlled substances specified in subdivision (a) for nontherapeutic use, including responsible marketing**, product safety, and cultural responsibility**.

**(6)** ~~(4)~~ Safe and equitable **production,** access, use, and delivery of the controlled substances specified in subdivision (a).

~~(6) Policies for minimizing use-related risks related to product safety, appropriate use, and impacts of detrimental substance abuse.~~

(g) The working group shall, by no later than January 1, ~~2024~~**2023** , submit a report to the Legislature, detailing their findings **and recommendations referenced in subdivision (e)(1), (e)(2), (f)(1), and (f)(2) of this section. The working group shall,no later than January 1, 2024, submit a report to the Legislature, detailing their findings and recommendations referenced in the remaining subdivisions of this section.**

(h) The report required by subdivision (g) shall be submitted in compliance with Section 9795 of the Government Code.

(i) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

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

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

**SEC. 18.** 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.