

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.

**Initiative Measure to Be Submitted Directly to the Voters**

The Attorney General of California has prepared the following circulating title and summary of the chief purpose and points of the proposed measure:

**(19-0027A1.) DECRIMINALIZES PSILOCYBIN MUSHROOMS. AUTHORIZES DISMISSAL OF PRIOR PSILOCYBIN-RELATED CONVICTIONS. INITIATIVE STATUTE.**

**Decriminalizes under state law the cultivation, manufacture, processing, production of edible products and extracts, distribution, transportation, possession, storage, consumption, and retail sale of psilocybin mushrooms and the hallucinogenic chemical compounds contained in them. Applies to individuals at least 18 years of age, and to individuals under 18 years of age as prescribed by a doctor. Authorizes dismissal, resentencing, and destruction of records for prior psilocybin-related arrests and convictions. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments: 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.**

**NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK. THE PROPONENTS OF THIS PROPOSED INITIATIVE MEASURE HAVE THE RIGHT TO WITHDRAW THIS PETITION AT ANY TIME BEFORE THE MEASURE QUALIFIES FOR THE BALLOT.**

All signers of this petition must be registered to vote in \_\_\_\_\_ County

This column for official use only

**REGISTERED VOTERS ONLY**

1. Print Your Name: _____ Sign As Registered To Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
2. Print Your Name: _____ Sign As Registered To Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
3. Print Your Name: _____ Sign As Registered To Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
4. Print Your Name: _____ Sign As Registered To Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
5. Print Your Name: _____ Sign As Registered To Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	
6. Print Your Name: _____ Sign As Registered To Vote: _____	Residence Address ONLY: _____ City: _____ Zip: _____	

**DECLARATION OF CIRCULATOR (to be completed after signatures have been obtained)**

I, \_\_\_\_\_, am 18 years of age or older. My residence address is \_\_\_\_\_ (print full name) \_\_\_\_\_ (address, city, state, zip). I circulated this section of the petition and witnessed each of the appended signatures being written. Each signature on this petition is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. All signatures on this document were obtained between the dates of \_\_\_\_\_ and \_\_\_\_\_. I certify under penalty of perjury under the laws of the State of California (month, day, year) (month, day, year) that the foregoing is true and correct. Executed on \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_, California. Signature of Circulator: \_\_\_\_\_ (month, day) (year) (place of signing)

The Attorney General of California has prepared the following circulating title and summary of the chief purpose and points of the proposed measure:

## (19-0027A1) DECRIMINALIZES PSILOCYBIN MUSHROOMS. AUTHORIZES DISMISSAL OF PRIOR PSILOCYBIN-RELATED CONVICTIONS. INITIATIVE STATE.

Decriminalizes under state law the cultivation, production, processing, manufacture, production of edible products and extracts, distribution, transportation, possession, storage, consumption, and retail sale of psilocybin

mushrooms and the hallucinogenic chemical compounds contained in them. Applies to individuals at least 18 years of age, and to individuals under 18 years of age as prescribed by a doctor. Authorizes dismissal,

resentencing, and destruction of records for prior psilocybin-related arrests and convictions. Summary of

estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local governments:

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.

To the Honorable Secretary of State of California

We, the undersigned, qualified voters of California, residents of the County (or City and County)

referenced on the signature page of this petition, hereby propose amendments to the Health and Safety Code, relating

to psilocybin mushrooms, and petition the Secretary of State to submit the voters of California for their

adoption or rejection at the next succeeding general election or at any special statewide election held prior to that

general election or as otherwise provided by law. The proposed statutory amendments read as follows:

### 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

(f) Denver and Oakland have decriminalized Magic Mushrooms.

(g) Magic Mushrooms are much safer than caffeine, nicotine, and alcohol. A 2010

analysis 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.

### 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

(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

(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, Baecocystin, Norbaecocystin, 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

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

secured 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.

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-psychotrope

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 license 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

judicial 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

transportation of or possession of 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

used for 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.

(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

apply to any persons 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,