



October 16, 2017

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

Attention: Ms. Ashley Johansson
Initiative Coordinator

Dear Attorney General Becerra:

Pursuant to Elections Code 9005, we have reviewed the proposed statutory initiative related to psilocybin (A.G. File No. 17-0024).

Background

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

State Law. Under current state law, the cultivation, possession, distribution, transportation, and sale of psilocybin—including mushrooms containing psilocybin—is generally illegal in California. Penalties for psilocybin-related activities vary depending on the offense. For example, possession of psilocybin is generally punishable as a misdemeanor and may result in up to a one year sentence in county jail and/or a fine, while selling psilocybin is a felony and may result in a jail or state prison sentence. Currently, there are very limited data specifically for psilocybin-related offenses. However, we estimate that the number of such offenders currently in state prison and county jail is very minor relative to the overall prison and jail population.

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

Proposal

The measure “exempts adults, 21 and over, from criminal penalties and decriminalizes adult use of Psilocybin.” Despite these changes to state law, activities related to the use of psilocybin would continue to be prohibited under federal law.

Fiscal Effects

There is some uncertainty about how the measure would be interpreted by the courts. For the purpose of our analysis, we assume the measure would be interpreted broadly to legalize the

cultivation, possession, distribution, transportation, and sale of psilocybin and mushrooms containing it for adults 21 years of age and over. To the extent that is not the case or the federal government exercises its discretion to enforce federal prohibitions on psilocybin-related activities otherwise permitted by this measure, the revenue and expenditure impacts discussed below could be greatly reduced.

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

Effects on State and Local Revenues. State and local governments could receive additional revenues, such as sales taxes from psilocybin sales permitted under this measure. This is because many individuals who are currently purchasing psilocybin illegally could begin purchasing it legally under state law at businesses that collect sales taxes. In addition, the measure could result in an increase in other taxable economic activity in the state, as businesses and individuals currently producing and selling psilocybin illegally could begin doing so legally under state law and pay personal income and corporation taxes. We estimate that these potential increases in tax revenues likely would not exceed a couple million dollars annually.

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

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

Sincerely,

Mac Taylor
Legislative Analyst

Michael Cohen
Director of Finance