



Access to Natural Psychedelic Substances

Placed on the ballot by citizen initiative • Passes with a majority vote

Proposition 122 proposes amending Colorado statutes to:

- by late 2024, allow the supervised use of psychedelic mushrooms by individuals aged 21 and over at licensed facilities and require the state to create a regulatory structure for the operation of these licensed facilities;
- allow the state to expand the types of substances that may be used in licensed facilities to include the use of additional plant-based psychedelic substances — dimethyltryptamine (DMT), ibogaine, or mescaline — starting in 2026;
- decriminalize the personal possession, growing, sharing, and use, but not the sale, of five natural psychedelic substances by individuals aged 21 and over, including two substances found in psychedelic mushrooms — psilocybin and psilocin — and three plant-based psychedelic substances — dimethyltryptamine, ibogaine, and mescaline;
- allow local governments to regulate the time, place, and manner of operation of these facilities, while prohibiting local governments from banning licensed facilities, services, and use of natural psychedelic substances; and
- establish penalties for individuals under the age of 21 for possessing, using, or transporting natural psychedelic substances and for individuals aged 21 and over who allow underage access to these substances.

What Your Vote Means

YES A “yes” vote on Proposition 122 requires the state to establish a regulated system for accessing psychedelic mushrooms and, if approved by the regulating state agency, additional plant-based psychedelic substances and decriminalizes the possession and use of psychedelic mushrooms and certain plant-based psychedelic substances in Colorado law for individuals aged 21 and over.

NO A “no” vote on Proposition 122 means that the possession and use of psychedelic mushrooms and other plant-based psychedelic substances will remain illegal under state law.

Summary and Analysis for Proposition 122

What does the measure do?

This measure allows individuals aged 21 and older to use five specific types of natural psychedelic substances. Specifically, the measure covers two chemicals found in psychedelic mushrooms — psilocybin and psilocin — and three other plant-based psychedelic substances — ibogaine, mescaline, and dimethyltryptamine, also known as DMT. Psychedelic substances can alter a person’s consciousness, mood, and awareness of their surroundings.

Personal use. Upon passage of the measure, psychedelic mushrooms and the other plant-based psychedelic substances will be decriminalized in state law, and individuals aged 21 and older will be able to grow, possess, share, and use them. Personal use does not allow for the sale of psychedelic mushrooms and other plant-based psychedelic substances.

Licensed facilities. The measure also requires the state to establish a regulated system for licensed facilities to offer supervised use of psychedelic mushrooms for individuals aged 21 and older, starting in 2024. Starting in 2026, the state may choose to expand the type of substances that may be used at these facilities to include additional plant-based psychedelic substances.

How are these substances currently treated under state and federal law?

All the substances listed in the measure are Schedule I controlled substances under federal and state law. Schedule I controlled substances are defined as drugs with no currently accepted medical use and a high potential for abuse. If the measure is approved, the state will no longer treat these substances as illegal drugs for the purposes of state criminal law. However, they will remain illegal under federal law.

The measure does not decriminalize the possession or use of peyote, a type of mescaline. Federal law already permits the use of peyote by certain Native American tribes for ceremonial purposes.

Do these substances have medical uses?

Currently, research is being done on the potential medical uses of psychedelic mushrooms and other plant-based psychedelic substances for treating depression, post-traumatic stress disorder, substance use disorders, and other mental health disorders. The U.S. Food and Drug Administration (FDA) has designated psychedelic mushrooms as a Breakthrough Therapy for treating depression. Breakthrough Therapy designation is used to speed up the research, development, and review of a drug when it may offer substantial improvements over existing treatments. The other plant-based psychedelic substances permitted for personal use under the measure have been the subject of research on their potential benefits; however, the FDA has not approved them for any specific medical use.

How will these substances be regulated?

The Department of Regulatory Agencies (DORA) is the state agency charged with regulating activities involving psychedelic mushrooms and other plant-based psychedelic substances for individuals aged 21 and older. Specifically, it will manage the licensing and registration for facilities where supervised use will occur, as well as people who are licensed to facilitate the use of them at licensed facilities. DORA will also regulate related businesses, such as cultivators and product manufacturers. Additionally, DORA is tasked with protecting consumers, developing public education campaigns, making recommendations to the state legislature regarding the potential for off-site use of natural psychedelic substances received at regulated facilities, and providing data on the implementation and outcomes of the program. Licensed facilities and related businesses will be required to pay a licensing fee to cover the cost of regulating these businesses.

Under the measure, local governments can regulate the time, place, and manner of operation of licensed facilities. Local governments cannot ban or prohibit licensed facilities, or ban or prohibit the personal use of psychedelic mushrooms or other plant-based psychedelic substances in their communities.

The measure also establishes a 15-member advisory board appointed by the Governor. The board is charged with making regulatory and policy recommendations to DORA, other affected state agencies, and the state legislature.

What restrictions does the measure place on the use of substances?

The measure states that it is not intended to:

- allow the sale of psychedelic mushrooms or other plant-based psychedelic substances for personal use;
- allow driving under the influence of these substances;
- permit use in a school, public building, or public place;
- permit underage access; or
- require an employer to permit the use of these substances in the workplace.

What are the criminal penalties and legal protections under the measure?

The measure impacts criminal penalties in several ways. First, it establishes specific penalties for individuals under the age of 21 who possess or use natural psychedelic substances, as well as penalties for people who allow underage access when cultivating these substances. Penalties range from requiring drug counseling to a \$250 fine.

In addition, the measure states that the removal and reduction of criminal penalties apply retroactively to someone who has already been convicted of an offense that would be decriminalized under the measure. Individuals who have completed their sentence may file a petition to the courts to have their criminal record sealed at no cost. Selling natural psychedelic substances outside of the licensed supervised use facilities will remain illegal.

The measure also offers protections for people who use psychedelic mushrooms and other plant-based psychedelic substances, including, but not limited to, protections from professional discipline, loss of a professional license, or denial of eligibility for public benefits unless required by federal law.

For information on those issue committees that support or oppose the measures on the ballot at the November 8, 2022 election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<https://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

Arguments For Proposition 122

- 1) The measure provides a potentially valuable tool for meeting the mental health needs of Coloradans. Studies have shown that psychedelic mushrooms and other plant-based psychedelic substances, combined with counseling, may provide effective treatment for severe depression, anxiety, and post-traumatic stress disorder. The FDA has specifically found psychedelic mushrooms may offer substantial improvement in treating depression more successfully than existing therapies. Increasing access to psychedelic mushrooms and other plant-based psychedelic substances may help people who are struggling to find effective mental health treatment.
- 2) Putting people in the criminal justice system for using naturally occurring substances that have potential mental health benefits does not benefit society and costs taxpayers money. Possession and use of these substances are nonviolent offenses that do not pose a public safety risk. Studies have shown that psychedelic mushrooms are not addictive and that long-term adverse health impacts are rare, unlike tobacco use, which is legal. Individuals who are aged 21 or older should be allowed to access these naturally occurring substances without fear of criminal penalties.

Arguments Against Proposition 122

- 1) There are currently no approved therapies that use psychedelic mushrooms or other plant-based psychedelic substances, and the effects of them can vary widely from person to person, depending on the dose, frequency of use, and type of substance. Breakthrough Therapy designation does not mean that the use of psychedelic mushrooms is safe or recommended. Further, DMT, ibogaine, and mescaline have not received a similar designation, and, specifically, ibogaine may cause life-threatening heart conditions. Proposing a regulatory framework for the use of these substances suggests that they offer legitimate treatment before they have received federal approval, potentially putting people's health and public safety at risk.
- 2) Under the guise of health care, Proposition 122 legalizes drugs that have been illegal for over 50 years and forces local communities to allow use of these substances. It also provides broad protections for criminals by allowing convictions to be wiped from their records. By decriminalizing personal use, the black market for these drugs may expand and provide access to youth or expose people to psychedelic substances that are tainted with other drugs. This may create additional burdens on local governments which, under the measure, have limited say on what is allowed in their communities.

Fiscal Impact for Proposition 122

Proposition 122 will increase state revenue and spending, and potentially impacts local government spending, as described below. The state's budget year runs from July 1 through June 30.

State revenue. Under Proposition 122, state revenue will increase by about \$5.2 million per year in budget year 2024-25, \$5.6 million in 2025-26, and \$4.5 million per year in future years. This revenue is from facility and facilitator licensing fees; it is expected that fees will be set at a level needed to cover the costs of the program when fully implemented. In the first two years, additional fee revenue will be necessary to pay back the anticipated loan of state funds used to pay for initial start-up costs. The increase in revenue will depend on fee amounts and the number of license applications submitted. Revenue from licensing fees is subject to the state's TABOR limit.

State spending. Proposition 122 will increase costs in the Department of Regulatory Agencies (DORA) by an estimated \$0.7 million in budget year 2022-23 and \$2.2 million in budget year 2023-24 to establish program rules, support the advisory board, and issue initial licenses prior to the start of the new regulatory program created by the measure. The measure requires a loan from the state General Fund be used to cover these start-up costs for the program, which will be paid back in subsequent years.

Once regulation begins, DORA will have costs of approximately \$5.2 million in budget year 2024-25 and \$5.6 million in budget year 2025-26 to regulate the manufacture, cultivation, testing, storage, transfer, transport, delivery, sale, use, and purchase of psychedelic mushrooms by licensed facilities. Actual expenditures will depend on the number of regulated entities participating in this industry. Estimated spending in budget years 2024-25 and 2025-26 also includes the repayment of state money used to cover costs in the first two years.

To the extent that Proposition 122 reduces the number of people convicted of crimes related to controlled substances that become regulated under the measure, costs in the criminal justice system will be reduced.

Local government impact. Local government workload and spending will increase to the extent local governments issue additional regulations on the operation of licensed facilities in their jurisdiction. County jail costs may be reduced to the extent fewer people are held in jails for offenses relating to controlled substances that become decriminalized and regulated under the measure.