

# Initiative 58: Access to Hallucinogenic Substances

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

## 1 Proposition ? proposes amending Colorado statutes to:

- 2 • allow persons aged 21 and over to cultivate, share, and use hallucinogenic  
3 mushrooms (psilocybin and psilocin) and other hallucinogenic substances  
4 derived from plants (dimethyltryptamine, ibogaine, and mescaline) for  
5 personal use;
- 6 • by late 2024, allow the supervised use of hallucinogenic mushrooms by  
7 persons aged 21 and over at designated facilities and:
  - 8 • require the state to create a regulatory structure for the operation of  
9 these designated facilities; and
  - 10 • allow the state to expand the substances that may be used at  
11 designated facilities to include dimethyltryptamine, ibogaine, or  
12 mescaline;
- 13 • prohibit local governments from banning the distribution and use of  
14 hallucinogenic mushrooms or other substances, or the operation of  
15 designated facilities for the supervised use of hallucinogens, in their areas;  
16 and
- 17 • establish penalties for individuals under the age of 21 for possessing, using,  
18 or transporting hallucinogenic mushrooms or other approved hallucinogenic  
19 substances or for individuals aged 21 and over for not securing these  
20 substances.

## 21 What Your Vote Means

### YES

22 A “yes” vote on  
23 Proposition ? will

24 decriminalize the possession and use of  
25 hallucinogenic mushrooms and other  
26 hallucinogenic substances in Colorado law  
27 and will require the state to regulate the  
28 supervised use of these designated  
29 substances.

### NO

A “no” vote on Proposition ?  
means that the possession and  
use of hallucinogenic mushrooms and  
other hallucinogenic substances will  
remain a crime under state law.

1 **Summary and Analysis for Proposition ?**

2 **What does the measure do?**

3 This measure allows persons aged 21 and older to access and use  
4 hallucinogenic mushrooms (psilocybin and psilocin) and certain other  
5 hallucinogenic substances (ibogaine, mescaline, and dimethyltryptamine, also  
6 known as DMT). The measure defines these substances as “natural medicine”  
7 under state law and creates two ways for adults to access them – personal use  
8 and designated facilities regulated by the state.

9 **Personal use.** Upon passage of the measure, hallucinogenic mushrooms and  
10 the other listed substances will be decriminalized in state law and individuals  
11 aged 21 and older will be able to cultivate, possess, share, and use these  
12 substances. Personal use does not allow for the sale of these substances.

13 **Designated facilities.** The measure also establishes a regulatory system for  
14 designated facilities to offer supervised use of hallucinogenic mushrooms for  
15 adults aged 21 and older, starting in 2024. These designated facilities referred to  
16 in the measure would be regulated by the state government. Starting June 1,  
17 2026, the state may choose to expand the type of drugs that may be use at these  
18 facilities to include other hallucinogenic substances - ibogaine, mescaline, and  
19 DMT.

20 **What are the hallucinogenic substances allowed by the measure?**

21 Hallucinogens alter a person’s awareness of their surroundings and can cause  
22 sensations and images that seem real even though they are not. The measure  
23 allows the use of several types of hallucinogenic substances, including  
24 psilocybin, psilocin, ibogaine, mescaline, and DMT, which are derived from  
25 mushroom and other types of plants. Peyote, a type of cactus, is not a permitted  
26 source of mescaline under the measure. Peyote is used by certain Native  
27 American tribes for ceremonial purposes and federal law allows this type of use  
28 for tribal members.

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

30 All the substances listed in the measure are Schedule 1 controlled substances  
31 under federal and state law. Schedule 1 controlled substances are defined as  
32 drugs with no currently accepted medical use and a high potential for abuse. If  
33 the measure is approved, the state will no longer treat these substances as  
34 Schedule 1 substances for the purposes of state criminal law. However, they will  
35 remain controlled substances at the federal level.

36 **Do these substances have medical uses?**

37 Currently, research is being done on the potential medical uses of hallucinogens  
38 for treating depression, post-traumatic stress, substance use disorders, and other  
39 mental health disorders. However, the U.S. Food and Drug Administration (FDA)  
40 has not approved any of the substances under this measure for any specific  
41 medical use. The FDA has designated hallucinogenic mushrooms as a  
42 Breakthrough Therapy for treating depression. Breakthrough Therapy  
43 designation is used to speed up the research, development, and review of a drug

1 when it may offer substantial improvements over existing treatments. The other  
2 substances permitted by the measure (ibogaine, mescaline, and DMT) have not  
3 received Breakthrough Therapy designation.

4 **How will these substances be regulated?**

5 The Department of Regulatory Agencies (DORA) is the state agency charged  
6 with regulating the supervised use of hallucinogenic substances. Specifically, it  
7 will manage the licensing and registration for facilities where supervised use of  
8 hallucinogens will occur, as well as other related businesses such as cultivators  
9 and product manufacturers. DORA is also tasked with protecting consumers,  
10 developing public education campaigns, making recommendations to the state  
11 legislature regarding regulations for off-site use, and providing data on the  
12 implementation and outcomes of the program. Designated facilities and related  
13 businesses will be required to pay a licensing fee to cover the cost of regulating  
14 these businesses. DORA will not regulate hallucinogenic substances for  
15 personal use outside of designated facilities.

16 Under the measure, local governments can regulate certain aspects of  
17 designated facilities, but may not ban or prohibit them, or ban or prohibit the  
18 personal use of hallucinogenic substances in their communities.

19 The measure also establishes a 15 public member advisory board appointed by  
20 the Governor. The board is charged with making regulatory recommendations to  
21 the state legislature, DORA, and other relevant state agencies.

22 **What restrictions does the measure place on the use of hallucinogenic**  
23 **substances?**

24 The measure states it is not intended to:

- 25 • allow driving under the influence;
- 26 • permit use in a school or other public building;
- 27 • permit underage access; or
- 28 • require an employer to permit the use of designated substances in the  
29 workplace.

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

31 The measure impacts criminal penalties in several ways. First, it establishes  
32 penalties for individuals under the age of 21 who possess or use hallucinogenic  
33 substances and for individuals aged 21 years or older who do not responsibly  
34 store their substances. Penalties range from requiring drug counseling to a  
35 \$250 fine. In addition, the measure states that the removal and reduction of  
36 criminal penalties apply retroactively to someone who has already been  
37 convicted of an offense that would be decriminalized under the measure.  
38 Individuals who have completed their sentence may file a petition to the courts to  
39 have their criminal record sealed at no cost.

1 The measure also offers protections for individuals who use designated  
2 substances, including, but not limited to, protections from professional discipline,  
3 loss of a professional license, or denial of eligibility for public benefits unless  
4 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:*

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

## 5 **Arguments For Proposition ?**

- 6 1) Allowing access to hallucinogenic mushrooms provides an important solution  
7 to address Colorado's mental health care crisis. Studies have shown that  
8 psilocybin and psilocin, combined with counseling, can provide effective  
9 treatment for severe depression and anxiety. The FDA has found psilocybin  
10 and psilocin may demonstrate substantial improvement in treating depression  
11 more successfully than existing therapies. Increasing access to these  
12 substances may help people who are struggling to find effective mental  
13 health treatment.
- 14 2) Putting individuals in the criminal justice system for using naturally occurring  
15 substances that have potential mental health benefits does not benefit society  
16 and costs taxpayers money. These are non-violent offenses that do not pose  
17 a public safety risk. In addition, studies have shown long-term adverse health  
18 impacts of hallucinogenic mushrooms are rare, unlike tobacco use, which is  
19 legal. Individuals who are 21 years or older should be allowed to take these  
20 naturally occurring substances without fear of criminal penalties.

## 21 **Arguments Against Proposition ?**

- 22 1) There are currently no approved therapies that contain these substances and  
23 the effects of them can vary widely from person to person, depending on the  
24 dose and the type of hallucinogenic used. Breakthrough therapy designation  
25 does not mean that the use of psilocybin and psilocin is safe or  
26 recommended. Further, DMT, ibogaine, and mescaline have not received a  
27 similar designation. Proposing a regulatory framework for the use of these  
28 substances suggests that they are a legitimate alternative treatment before  
29 they have received federal approval, putting people's health and public safety  
30 at risk.
- 31 2) Decriminalizing hallucinogenic mushrooms, the use of which is illegal under  
32 federal and Colorado law, delivers a public message that these drugs are  
33 safe for anyone to use. The measure goes too far in allowing personal use  
34 without any guardrails and includes DMT, ibogaine, and mescaline, which  
35 have not undergone many clinical studies and could pose health risks. Under  
36 the measure people will be allowed to grow and use the drugs without

1 consulting a doctor, undergoing therapy, or using one of the newly created  
2 supervised facilities.

### 3 **Fiscal Impact for Proposition ?**

4 Proposition ? will increase state revenue and spending, and potentially impacts  
5 local government spending, as described below. The state’s budget year runs  
6 from July 1 through June 30.

7 **State revenue.** Under Proposition ?, state revenue will increase by about  
8 \$5.2 million per year in budget year 2024-25, \$5.6 million in 2025-26, and  
9 \$4.5 million per year in future years. This revenue is from licensing fees charged  
10 to provider facilities and facilitators that dispense, and provide services relating  
11 to, psilocybin and other substances allowed under the measure. It is expected  
12 that fees will be set at a level needed to cover the costs of the program when  
13 fully implemented. In the first two years, additional fee revenue will also be  
14 necessary to pay back the anticipated loan of state funds used to pay for initial  
15 start-up costs. The exact increase in revenue will depend on fee amounts and  
16 the number of license applications submitted.

17 **State spending.** Proposition ? will increase costs in the Department of  
18 Regulatory Agencies (DORA) by an estimated \$0.7 million in budget year  
19 2022-23 and \$2.2 million in budget year 2023-24 to establish program rules,  
20 support the Natural Medicine Advisory Board, and issue initial licenses prior to  
21 the start of the new regulatory program created by the measure. The measure  
22 requires a loan from the state General Fund be used to cover these start-up  
23 costs for the program, which will be paid back in subsequent years.

24 Once regulation begins, DORA will have costs of approximately \$5.2 million in  
25 budget year 2024-25 and \$5.6 million in budget year 2025-26 to regulate the  
26 cultivation, manufacture, testing, storage, transfer, sale, use, and provision of  
27 services related to psilocybin and psilocyn. Actual expenditures will depend on  
28 the number of regulated entities participating in this industry. Estimated  
29 spending in budget years 2024-25 and 2025-26 also includes the repayment of  
30 state money used to cover costs in the first two years.

31 Lastly, to the extent that Proposition ? reduces the number of persons convicted  
32 of crimes related to controlled substances that become regulated under the  
33 measure, costs in the criminal justice system will be reduced.

34 **Local government impact.** Local government workload and spending will  
35 increase to the extent local governments issue additional regulations on the  
36 operation of healing centers in their jurisdiction. County jail costs may be  
37 reduced to the extent fewer persons are held in jails for offenses relating to  
38 controlled substances that become decriminalized and regulated under the  
39 measure.