



Kansas Bureau of Investigation

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Testimony in Opposition SB 560 and House Substitute for SB 158
Before the Senate Federal and State Affairs Committee
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Chairman Olson and Members of the Committee:

My name is Robert Jacobs and I serve as the Executive Officer of the Kansas Bureau of Investigation (KBI). Thank you for this opportunity to express the KBI's concerns with Senate Bill (SB) 560 and House Substitute for SB 158. This testimony will address the current legal status of marijuana, other medical options for tetrahydrocannabinol (THC), and the impact certain provisions of SB 560 and House Substitute for SB 158 will have on public safety in Kansas.

According to the United States Drug Enforcement Administration (DEA) website, Schedule I drugs, substances, or chemicals are defined as drugs with ***no currently accepted medical use and a high potential for abuse***. Some examples of Schedule I drugs are: heroin, lysergic acid diethylamide (LSD), **marijuana (cannabis)**, 3,4-methylenedioxymethamphetamine (ecstasy), methaqualone, and peyote. Schedule I drugs have a high potential for abuse and the potential to create severe psychological and/or physical dependence¹.

Furthermore there are other options for medical THC to include: Marinol which is a synthetic version of THC in a capsule (also referred to as dronabinol, the generic or International Nonproprietary Name given to THC), prescribed for the control of nausea and vomiting caused by chemotherapeutic agents used in the treatment of cancer and to stimulate appetite in acquired immune deficiency syndrome (AIDS) patients. Marinol is a Schedule III drug under the Controlled Substances Act.

Syndros is an oral dronabinol (THC) solution that is used for the treatment of anorexia associated with weight loss in patients who have failed to respond adequately to conventional antiemetic treatments. Syndros is a Schedule II drug under the Controlled Substances Act.

Epidoloex is an oral solution of cannabidiol (CBD) that has no more than 0.1% THC, used to treat two epilepsy conditions, Dravet syndrome and Lennox-Gestaut syndrome. Epidoloex is a Schedule V drug under the Controlled Substances Act²

The United States Food and Drug Administration (FDA) is responsible for protecting the public health by ensuring the safety, efficacy, and security of human and veterinary drugs, biological

¹ United States Drug Enforcement Administration, [Drug Scheduling \(dea.gov\)](https://www.dea.gov/drug-scheduling)

² [Drug Fact Sheet: Marijuana/Cannabis \(dea.gov\)](https://www.dea.gov/drug-fact-sheet-marijuana-cannabis)

products, and medical devices; and by ensuring the safety of our nation's food supply, cosmetics, and products that emit radiation. The FDA is responsible for advancing the public health by helping to speed innovations that make medical products more effective, safer, and more affordable and by helping the public get the accurate, science-based information they need to use medical products and foods to maintain and improve their health³.

In the interest of public safety, the KBI believes it would be appropriate for medical marijuana to follow the same established procedure other drugs follow for FDA approval.

Marijuana in Vegetative or Botanical form:

Although smoking and vaping medical marijuana is strictly prohibited in both SB 560 and in House Substitute for SB 158; both proponents and opponents of SB 560 testified that if medical marijuana is allowed in vegetative form, *medical marijuana will be smoked and vaped by people in the medical marijuana program.*

Vaping produces high concentrations of THC and creates a risk for both the users and those around them. Marijuana vaping increased 13.1% for 12th graders in 2018⁴.

A conservative approach to **medical** marijuana would be to eliminate marijuana in vegetative or botanical form.

The Dangers of THC Extraction:

Allowing medical marijuana in vegetative form will lead to the unauthorized and dangerous extraction of THC.

Marijuana concentrate is created by extracting THC from marijuana in an effort to increase the THC potency level. With medical marijuana, THC extraction will be done to increase the THC level beyond the allowable 35% as proposed in both bills.

According to the National Institute of Health, Cannabis (Marijuana) Drug Facts, smoking THC-rich resins extracted from the marijuana plant is on the rise. People call this practice *dabbing*. These extracts come in various forms, such as:

- *hash oil or honey oil*—a gooey liquid
- *wax or budder*—a soft solid with a texture like lip balm
- *shatter*—a hard, amber-colored solid

Marijuana concentrate is a highly potent THC concentrated mass that is most similar in appearance to either honey or butter, which is why it is known on the street as “honey oil” or “budder”. It can contain high THC levels (up to 80%) and can be up to four times stronger in THC content than other forms of marijuana⁵.

³ [What We Do | FDA](#)

⁴ [Vaping & Marijuana Concentrates: What is Vaping? \(dea.gov\)](#)

⁵ Ibid

Extracts can deliver extremely large amounts of THC to the body, and their use has sent some people to the emergency room. Another danger is in preparing these extracts, which usually involves either butane fuel or hexane. A number of people have caused fires and explosions and have been seriously burned from using butane to make extracts at home⁶.

Using flammable solvents, such as butane, propane, ether or alcohol, is popular because it produces high THC levels, longer-lasting effects, and it's relatively inexpensive. Using butane as a solvent produces the potent marijuana concentrate butane hash oil (BHO).

It is against federal law to manufacture BHO, and even in some states where adult use of marijuana is legal, like Colorado and California, it is illegal to make hash oil using flammable liquids. Most licensed, commercial production facilities use a safer extraction system that prevents solvents from being wasted or exposed to the open air where they could inadvertently be ignited, similar to decades-old systems used in the production of many commercial products⁷.

Exposure to high levels of THC increases the risks of physical dependence and addiction. Higher doses of THC are more likely to produce anxiety, agitation, paranoia, and psychosis⁸.

In 2019, 180 extraction laboratories were reported to the National Seizure System (NSS)⁹. Explosions at THC extractions labs have caused fatalities in both Detroit and California this year alone. THC extraction, without proper equipment, training, and safety measures is dangerous. Unauthorized THC extraction will lead to an increased number of fires and explosions, which poses a significant public safety risk.

K.S.A. 21-5701(2)(i) defines manufacturing as: "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly *or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis*¹⁰.

K.S.A. 21-5703 codifies the unlawful manufacturing of a controlled substance as a level 1 felony¹¹.

To avoid confusion with the lawful enforcement of Kansas drug laws, the KBI would request the committee consider a provision criminalizing the extraction of THC by anyone not properly licensed to perform such extraction.

THC Potency Levels:

Today's marijuana is more potent than it was in previous years. The amount of THC in marijuana has been increasing steadily over the past few decades. For a person who's new to marijuana use,

⁶ National Institute of Health, National Institute on Drug Abuse, [Cannabis \(Marijuana\) DrugFacts | National Institute on Drug Abuse \(NIDA\) \(nih.gov\)](#)

⁷ [Cannabis \(Marijuana\) Concentrates DrugFacts | National Institute on Drug Abuse \(NIDA\) \(nih.gov\)](#)

⁸ Ibid

⁹ 2020 Drug Enforcement Administration National Drug Threat Assessment, https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf

¹⁰ [Statute | Kansas State Legislature \(kslegislature.org\)](#)

¹¹ [Statute | Kansas State Legislature \(kslegislature.org\)](#)

this may mean exposure to higher THC levels with a greater chance of a harmful reaction. Higher THC levels may also explain the rise in emergency room visits involving marijuana use.

The popularity of edibles also increases the chance of harmful reactions. Edibles take longer to digest and produce a high. Therefore, people may consume more to feel the effects faster, leading to dangerous results.

Higher THC levels may also mean a greater risk for addiction if people are regularly exposing themselves to high doses¹². The average THC concentration in marijuana in 2019 was 53.6%¹³. SB 560 removes the THC content restrictions in extracts. If passed, this would in theory allow each extract to contain up to 99% THC content.

Access of Medical Marijuana by Young People:

The National Institute on Drug Abuse reports that in 2021, roughly 7.1% of 8th graders, 17.3% of 10th graders, and 30.5% of 12th graders used cannabis in the past year¹⁴. Furthermore, a study published in the Journal of Studies on Alcohol and Drugs highlighted that despite state regulations against advertising cannabis products to youth, recreational producers are creating content — promotions, discounts, health benefits, even swag like T-shirts or hats — that appeal to adolescents. Moreover, according to the study authors, many of these marketing strategies are designed to circumvent rules across social media platforms and lack oversight from the companies who created the rules in the first place¹⁵.

Access to medical marijuana by individuals (especially minors) not authorized to possess or use medical marijuana is a concern to public safety. Clear penalties should be established for distributing or possessing medical marijuana to those not authorized to possess or use medical marijuana. Distributing medical marijuana to minors, who are not registered in the medical marijuana program, should have significant criminal penalties beyond a Class A misdemeanor.

Enforcing the State Marijuana Laws:

As mentioned in previous testimony, law enforcement agencies will need a mechanism for confirming whether a person has a valid medical marijuana identification card and is *currently* registered in the medical marijuana program with the Kansas Department of Health and Environment (KDHE). Under the new Section 8(e) of House Substitute of SB 158, “The department (KDHE) **may** share information identifying a specific patient with a licensed retail dispensary or any law enforcement agency for confirming that such patient has a valid registration”. Law enforcement access to this information is paramount.

¹² [Cannabis \(Marijuana\) DrugFacts | National Institute on Drug Abuse \(NIDA\) \(nih.gov\)](#)

¹³ 2020 Drug Enforcement Administration National Drug Threat Assessment, https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf

¹⁴ [What is the scope of cannabis \(marijuana\) use in the United States? | National Institute on Drug Abuse \(NIDA\) \(nih.gov\)](#)

¹⁵ Moreno, M., Jenkins, M., Binger, K., Kelly, L., Trangenstein, P., Whitehill, J., and Hernigan, D. (Journal of Studies on Alcohol and Drugs). *A Content Analysis of Cannabis Company Adherence to Marketing Requirements in Four States.*, Jan. 2022, Vol. 83, No. 1., pp. 27-36

Law enforcement officers in Kansas will have a practical need to confirm registration of patients *and caregivers* both day and night. The KBI anticipates an interface between KDHE and the Kansas Criminal Justice Information System (KCJIS) will be necessary to allow law enforcement the ability to quickly confirm a patient or caregiver's registration status. Failing to establish KDHE access to retrieve patient and caregiver information could potentially lead to unnecessary delays during vehicle traffic stops, unintentional seizure of legitimate medical marijuana and an increased demand on already limited law enforcement resources.

Kansas law enforcement will be placed in the predicament of having to determine whether the vegetative material they are observing during a traffic stop or through an investigation is within the prescribed medical marijuana limitations as outlined in SB 560 and House Substitute for SB 158. The impact to the KBI will specifically be measured through the potential increase in submissions to our forensic science laboratory.

With both medical marijuana and illegal marijuana available in the state, it will be necessary to quantitate the levels of marijuana to determine if the evidence falls within the potency limits as established through both legislative bills. Currently, no procedure exists for quantitating vegetative marijuana, at the 35% level, or for quantitating oils, tinctures, edibles, and patches at all.

The KBI would recommend the legislature take a cautious approach to legalizing medical marijuana. Other states, to include Oklahoma, Missouri and Colorado have experienced significant unanticipated complications with the implementation, control and enforcement of medical marijuana. These complications include the prevalence of black market marijuana transported in and out of states by transnational organized drug trafficking groups.

Thank you again for the opportunity to advise the committee of specific law enforcement and public safety concerns as related to the provisions of SB 560 and House Substitute for SB 158.

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