



# Kansas Bureau of Investigation

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Chairman Thompson and Members of the Committee:

My name is Tony Mattivi and I serve as the Director of the Kansas Bureau of Investigation (KBI). Thank you for the opportunity to provide testimony today in opposition of SB 135, which proposes to create the Medical Cannabis Regulation Act and legalize the use of marijuana for certain medical conditions.

This testimony will focus on the impact medical marijuana will have on the KBI Forensic Science Laboratory, the agency's concern for public safety, and the difficulty Kansas law enforcement will have with enforcing the state's drugs laws should medical marijuana be legalized in Kansas.

## *KBI Forensic Science Laboratory*

The KBI Forensic Science Laboratory is an accredited laboratory whose mission is to provide timely forensic science services to the Kansas criminal justice system. SB 135 Section 23 discusses the use of a private laboratory for the purpose of conducting compliance and quality assurance testing of licensed cultivators, laboratories, and processors to provide public safety and ensure that quality medical cannabis, medical cannabis concentrate, and medical cannabis products are available to registered patients and caregivers (pg. 19 lines 40 to 43 and pg. 20 lines 1 and 2).

Under this section, the contracted laboratory will be accessible and ***utilized for any medical cannabis testing*** needs by any regulatory agency within the state to include the Kansas Department of Health and Environment, Department of Agriculture, the Kansas Bureau of Investigation, and any other state and local law enforcement agency and the State Fire Marshal's Office (pg. 20 line 19 to 23).

While the KBI offers forensic testing of evidence to our law enforcement partners at no cost; we question who will be responsible for "any medical cannabis testing" provided to law enforcement by a private laboratory. Moreover, will that cost be passed down to local law enforcement?

## *THC Content*

Section 30 of SB 135 outlines the forms in which medical cannabis will be allowed. These forms include: oils, tinctures, plant material, edibles, patches, and any other form approved by the secretary of revenue under section 31. Additionally, the content of tetrahydrocannabinol (THC) in said products is authorized at: 35% for plant material, 60% for tinctures, oils, and concentrates, 3.5 grams for edibles, and 10 milligrams for patches (pg. 26 lines 5 to 25).

According to KBI forensic scientists who specialize in chemistry, 35% THC is generally the highest amount of THC found in plant material. Of more concern however, is the 3.5 grams of THC allowed in edibles. As written, SB 135 permits up to 3.5 grams of THC in a single edible, such as one candy bar. Three and one half grams (3.5) of THC in a single edible is the equivalent of 3500 milligrams, which is 350 times higher than the amount of THC allowed in patches, under this same bill. ***Three and one half grams of THC in a single edible is equivalent to the same amount of THC in approximately 17.5 joints<sup>1</sup>.***

As witnessed in other states who have previously legalized marijuana in one form or another; ***high THC content in edibles has posed a considerable risk to pediatric overdoses.***

### *Quantifying THC*

Currently, the KBI Forensic Science Laboratory has developed a method for quantitating the concentration of THC in vegetative material to 0.3%, as allowed through the Commercial Industrial Hemp Act, K.S.A. 2-3901<sup>2</sup>. The laboratory does have the capability of testing up to approximately 2% THC, but cannot quantitate THC anywhere close to 35% as proposed in SB 135. Furthermore, the KBI does not currently have a method for testing oils, tinctures, edibles or patches.

Although methods for quantitating oils, tinctures, and edibles could be developed; the laboratory will face on-going challenges as the method (process) of quantitating edibles is different based on the material of the edible itself. In other words, methods for quantitating the THC level in edibles will have to be created for potentially every different edible type (i.e. Liquids to include: water, soda, and energy drinks - Candy to include: gummies and hard candy – Chocolates, etc.).

Beyond creating the quantitation methods, edibles pose a more significant issue for the laboratory as they cause excessive wear on the instruments. The sugar inside edibles is very damaging to the scientific instruments. The Liquid Chromatography Mass Spectrometry (LC-MS) instrument is used to quantitate the THC level in marijuana products. The increased wear on the LC-MS instruments caused by the sugars in edibles would result in additional maintenance and more timely replacement of LC-MS instruments. This will potentially pose a long-term ongoing fiscal need for the KBI.

### *Enforcement Challenges*

The KBI is concerned about the difficulty law enforcement will have with the enforcement of the Medical Cannabis Regulation Act.

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<sup>1</sup> Given 200 milligrams of THC per 1g joint

<sup>2</sup> [Statute | Kansas State Legislature \(kslegislature.org\)](http://kslegislature.org)

First, it should be noted that SB 135 states that the smoking, combustion, or vaporization of medical cannabis is prohibited (pg.26 lines 14-15)

As a reminder, although smoking and vaping medical marijuana was also strictly prohibited in the previous legislative bills SB 560 and 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. A 2021 study in the *Journal of American Medical Association Pediatrics* found that the prevalence of cannabis vaping in adolescents doubled between 2013 and 2020. The findings from the study indicated “that the prevalence of cannabis vaping in adolescents is on a strong upward trajectory in the United States and Canada. Because cannabis oil contains a greater level of THC than cannabis flower products, intervention and prevention measures are urgently needed...”<sup>3</sup>

Marijuana in vegetative or botanical form also increases the risk of individuals performing unauthorized and dangerous THC extraction to increase the potency beyond the allowed 35% THC concentration.

As mentioned in previous testimony to this committee, 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 marijuana<sup>4</sup>.

The process of extracting THC is done with flammable material that poses a public safety concern. Multiple THC extraction laboratories have exploded and caused injuries and deaths in recent years.

**A conservative approach to *medical* marijuana would be to eliminate vegetative or botanical marijuana from the medical cannabis program.**

*Kansas Criminal Justice Information System (KCJIS)*

Section 38 of SB 135 outlines the requirement for the State Board of Pharmacy to share patient and caregiver information from the prescription monitoring program database to law enforcement

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<sup>3</sup> [https://jamanetwork.com/journals/jamapediatrics/fullarticle/2785376?guestAccessKey=4df985fe-e703-49cc-a46f-da461093574e&utm\\_source=For The Media&utm\\_medium=referral&utm\\_campaign=ftm\\_links&utm\\_content=tf1&utm\\_term=102521](https://jamanetwork.com/journals/jamapediatrics/fullarticle/2785376?guestAccessKey=4df985fe-e703-49cc-a46f-da461093574e&utm_source=For%20The%20Media&utm_medium=referral&utm_campaign=ftm_links&utm_content=tf1&utm_term=102521)

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

through the Kansas Criminal Justice Information System (KCJIS) operated and maintained by the Kansas Bureau of Investigation (pg. 31 lines 18 to 21). The Kansas Board of Pharmacy has previously testified its concern with allowing law enforcement unfettered access to the prescription monitoring program.

Law enforcement officers will need a mechanism to confirm an individual's participation in the medical cannabis program as well as determine the date and quantity of the most recent purchase of medical cannabis. A link between KCJIS and KDHE will allow officers to confirm whether a person is currently registered in the medical cannabis program. A separate link between KCJIS and the Board of Pharmacy will be necessary to allow law enforcement officers limited access to the prescription monitoring program for information related only to those patients and caregivers participating in the medical cannabis program. This limited access should include the most recent date and quantity of medical cannabis purchased by the individual.

Similarly, section 9 of SB 135, states that each patient or caregiver shall promptly deliver such patient's or caregiver's registration identification card upon demand of any officer of a court of competent jurisdiction, any law enforcement officer or any employee or agent of the secretary of health and environment (pg. 9 lines 38 to 42).

However, the bill falls short of requiring a patient or caregiver to have the identification card on their person at any time he or she is in possession of medical cannabis. Rather, SB 135 allows an exception for the patient and caregiver by stating, "...when the identification card is in such patients or caregivers immediate possession at the time of the demand" (pg. 9 lines 42 to 43). To **help avoid any improper enforcement** of the medical cannabis program; patients and caregivers should be required to have a copy of their identification card on their person at all times when they are in possession of medical cannabis.

#### *Fingerprint Criminal History Record Checks*

Additionally, SB 135 requires fingerprint criminal history record checks be completed for any individual who holds a license as a cultivator, laboratory, processor, distributor, or retail dispensary. Section 45 (pg. 40 lines 16 to 20) requires each owner with 20% or more ownership interest to be fingerprinted and submit to a state and national criminal history record check. The exemption of anyone with less than 20% interest creates a potential gap in oversight of the program and could potentially allow a person who has less than 20% interest in multiple medical cannabis businesses to avoid the fingerprint criminal history record check altogether. The KBI believes that anyone who has a financial or ownership interest in a license associated with a cultivator, laboratory, processor, distributor, or retail dispensary regardless of percentage of ownership, should be subject to a fingerprint criminal history record check.

#### *Grants*

SB 135 creates the state medical cannabis enforcement fund. According to section 66 (pg. 50 lines 29 to 40) the KBI shall administer the state medical cannabis enforcement fund. Moneys in the state medical cannabis enforcement fund shall be expended for the purpose of investigating and prosecuting criminal offenses involving the cultivation, manufacture, transportation, distribution, sale and use of medical cannabis in violation of the medical cannabis regulation act.

While the KBI supports the idea of a state medical cannabis enforcement fund to subsidize law enforcement efforts with the investigation and prosecution of criminal violations that will occur once medical cannabis is legalized, an additional FTE would be needed to establish and manage this grant program. However, as is done with other law enforcement grants, the Kansas Attorney General's Office would be better suited to administer the state medical cannabis enforcement fund.

### *Decriminalizing Marijuana*

This agency does not understand why those who drafted SB 135 would include the below described provision under section 71. Section 71 (pg. 59 lines 18 to 21 and lines 34 to 39) states: If the substance involved is marijuana, as designated in K.S.A. 65-4105(d) and amendments thereto, or tetrahydrocannabinols, as designated in K.S.A. 65-4105(h) and amendments thereto, violation of subsection (b) is a:

“nonperson misdemeanor, punishable by a fine of not to exceed \$400 if that *person is not a registered patient or caregiver under the medical cannabis regulation act*, section 1 et seq. and amendments thereto, is found in possession of not more than 1.5 ounces of marijuana and provides a statement from such person's physician recommending the use of medical cannabis to treat such person's symptoms”.

If the intent of this bill is to establish a medical cannabis program, the language in the bill should pertain only to those patients or caregivers registered in the medical cannabis program. Section 71 outlines penalties for people who are “not a registered patient or caregiver”. This language should be removed from this bill.

This provision is in essence attempting to **decriminalize marijuana possession** in Kansas. This is an overt attempt to reduce the penalties for individuals who are in possession of marijuana but NOT enrolled in the medical cannabis program. Furthermore, it allows those who are in possession of marijuana to provide a statement from the individual's physician recommending the use of medical cannabis.

If an individual simply has to provide a statement from his or her physician recommending the use of medical cannabis, why would he or she need to register in the medical cannabis program? Additionally, if they are not registered in the medical cannabis program, how was the medical cannabis legally purchased or obtained without an identification card?

### *Medicine*

Finally, as mentioned in previous testimony, the United States Food and Drug Administration (FDA) is responsible for protecting public health and assuring the safety, efficacy, and security of human and veterinary drugs, biological products, medical devices, and our nation's food supply<sup>5</sup>. The FDA approval process is science-based. Products, such as new drugs and complex medical devices must be proven safe and effective before companies can put them on the market<sup>6</sup>.

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<sup>5</sup> [What We Do | FDA](#)

<sup>6</sup> [About FDA Product Approval | FDA](#)

To be clear, marijuana (cannabis) is classified as a Schedule I drug with the United States Drug Enforcement Agency (DEA). **Schedule I drugs have no currently accepted medical use and a high potential for abuse**<sup>7</sup>. Other Schedule I drugs include: heroin, lysergic acid diethylamide (LSD), and 3,4-methylenedioxymethamphetamine (ecstasy).

Authorizing a drug *legislatively*, which has not been through the long established FDA approval process, is improper and clearly assumes risk on behalf of the state.

Thank you again for the opportunity to provide this testimony which outlines the KBI's concerns and opposition to SB 135. We strongly encourage the committee to oppose the passage of this bill.

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<sup>7</sup> [Drug Scheduling \(dea.gov\)](https://www.dea.gov/drug-scheduling)