

Legislative Analysis



LAW ENFORCEMENT ACCESS TO MAPS DATA ACT

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Senate Bill 1245 as reported from House committee
Senate Bill 1246 as reported from House committee
Senate Bill 1247 (S-1) as reported from House committee
Sponsor: Sen. Mike Shirkey

Analysis available at
<http://www.legislature.mi.gov>

House Committee: Health Policy
Senate Committee: Michigan Competitiveness
Complete to 12-17-18

BRIEF SUMMARY:

Senate Bill 1245 would create the Law Enforcement Access to Michigan Automated Prescription System Data Act, which would prescribe the allowable usage of prescription drug data by the Michigan Department of State Police (MSP), as well as penalties for misuse. It would allow the Department of Licensing and Regulatory Affairs (LARA) to promulgate rules to implement the proposed Act.

Senate Bills 1246 and 1247 would incorporate the proposed act into the Code of Criminal Procedure and the Public Health Code, respectively.

BACKGROUND INFORMATION:

According to the Michigan Prescription Drug and Opioid Abuse Task Force report from October 2015:

Every state except Missouri has a prescription drug-monitoring program to scrutinize the movement of controlled substances.¹ Michigan's program (the Michigan Automated Prescription System or "MAPS") is an electronic database of schedule II, III, IV, and V controlled substances dispensed in Michigan. MAPS was created by statute in 2002 as part of a nationwide effort to curb prescription drug abuse, and is housed within the Department of Licensing and Regulatory Affairs (LARA).²

HOUSE COMMITTEE ACTION:

The House Committee on Health Policy reported the Senate-passed versions of the bills without amendment.

¹ Controlled substances are classified based on risk of abuse or harm. Schedule 1 drugs include heroin, LSD, and Ecstasy, and have no currently accepted medical use. Schedule 2 drugs have the highest potential for abuse of the medically acceptable drugs and include Dilaudid, OxyContin, and fentanyl.

² https://www.michigan.gov/documents/snyder/Prescription_Drug_and_Opioid_Task_Force_Report_504140_7.pdf

DETAILED SUMMARY:

Under **Senate Bill 1245**, once the MSP had received MAPS data from LARA through the application program interface, MSP would have to do all of the following:

- Ensure that the data were used only by or on behalf of law enforcement officials and only if requested for drug-related criminal investigatory or evidentiary purposes to assist in the enforcement of state or federal drug laws or pursuant to a properly issued search warrant or subpoena.
- Establish policies and promulgate rules governing data security, including the limiting of access to MSP employees responsible for maintaining the data and responding to data requests and establishing a procedure for addressing inappropriate data use.
- Not use, sell, divulge, or repurpose the data for any purpose other than those in the proposed act.
- Provide LARA with notice of a security breach of the data within 24 hours, and provide LARA with a description of the source of the breach and its resolution within five days.

The bill would allow the attorney general or his or her designee, a prosecuting attorney, or the court, in a criminal case, to disclose MAPS data obtained under the proposed act to the defendant or the defendant's attorney.

Under the bill, MSP, all law enforcement officials, and all officers would have to consider the nature of the prescriber's and dispenser's practice and the condition being treated in their use of the data for investigative or prosecution purposes. (Before pursuing an investigation, law enforcement officials and court officers would have to consult with an appropriate clinician to establish a uniform process for considering the nature of the practice and the condition being treated.)

A person could not access, use, or disclose data obtained under the proposed act for personal use or gain or disclose data in a manner not authorized by law or rule. The first intentional violation of this provision would be a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$500, or both. A second or subsequent intentional violation would be a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both.

The data and any report containing patient information obtained from the data would not be public records or subject to disclosure under the Freedom of Information Act (FOIA).

Senate Bill 1246 would incorporate the felony offense described in SB 1245 into the sentencing guidelines in the Code of Criminal Procedure. A subsequent offense of a "Law Enforcement Access to Michigan Automated Prescription System Data Act violation" would be a Class F felony offense against the public trust punishable by a statutory maximum of four years' imprisonment.

Senate Bill 1247 would amend the Public Health Code to require the director of LARA to provide law enforcement officers employed by MSP with access to an application program interface for monitoring Schedule 2, 3, 4, and 5 controlled substances for purposes of the

act proposed by SB 1245. The interface would have to provide de-identified patient treatment information in accordance with state and federal privacy laws, but would disclose prescriber and dispenser data to the law enforcement officer.

In consultation with MSP, LARA would have to promulgate rules necessary to ensure that data provided to MSP were used only as necessary and that inappropriate use and the risk of a breach were minimized.

Senate Bill 1245 is tie-barred to SB 1247, meaning that it could not take effect unless SB 1247 were also enacted. SBs 1246 and 1247 are tie-barred to SB 1245.

FISCAL IMPACT:

Senate Bill 1245 would increase expenditures required of MSP, but would not impact departmental revenues. MSP currently estimates that there would be information technology costs of \$200,000 to integrate data extracted from MAPS between LARA and MSP. MSP would also be required to promulgate rules under the bill, but those costs would be sufficiently covered by existing departmental appropriations.

SB 1245 would have an indeterminate fiscal impact on the state and on local units of government. The number of persons who would be convicted under provisions of the bill is unknown. A first-time offender would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. Persons convicted a second or subsequent time would be guilty of a felony punishable by imprisonment for not more than four years or a fine of not more than \$2,000, or both. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2017, the average cost of prison incarceration in a state facility was roughly \$37,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,600 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affect caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

Senate Bill 1246 would amend sentencing guidelines to include the felony created under SB 1245 and would not have a direct fiscal impact on the state or on local units of government.

Senate Bill 1247 would result in an increase in costs for LARA. The department would experience costs related to the application interface for sharing MAPS information with MSP. The department anticipates a one-time cost of \$100,000 and annual support and

maintenance fees of \$75,000. Costs associated with both one-time and ongoing expenses would be recovered by LARA through an interagency agreement with MSP.

BRIEF DISCUSSION:

Supporters advanced the bills as an effort whereby law enforcement could combat the ongoing opioid crisis. Michigan's October 2015 Prescription Drug and Opioid Abuse Task Force report³ included a series of findings and recommendations for prescribers and other medical professionals, regulators, law enforcement, and others. In addition to other enforcement updates, like updating or replacing MAPS, the task force recommended “allowing broader access to MAPS for law enforcement purposes when investigating questionable business practices by subscribers.”

Critics stated that they understood the bills to be well-intentioned, but expressed concern over access by law enforcement to a patient’s mental health information and worried that the data would be used inappropriately.

Proponents argued that patient data displayed would be de-identified and would be intended to help law enforcement professionals to identify trends—for instance, to see where diversion is occurring at an earlier stage than is possible today.

POSITIONS:

Representatives of the Michigan State Police testified in support of the bills. (12-12-18)

A representative of the Mental Health Association in Michigan testified in opposition to the bills. (12-12-18)

The following organizations indicated opposition to the bills (12-12-18):

- Michigan Protection and Advocacy Service
- Michigan Psychiatric Society
- The Arc Michigan
- Michigan Disability Rights Coalition

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

³ http://www.michigan.gov/documents/snyder/Prescription_Drug_and_Opioid_Task_Force_Report_504140_7.pdf