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BILL ANALYSIS

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Senate Bills 1245 through 1247 (as introduced 11-29-18)
Sponsor: Senator Mike Shirkey
Committee: Michigan Competitiveness

Date Completed: 12-4-18

CONTENT

Senate Bill 1245 would enact the "Law Enforcement Access to Michigan Automated Prescription System Data Act" to do the following:

-- Require the Department of State Police (MSP) to establish policies and promulgate rules governing the security of the data, after receiving it from the Department of Licensing and Regulatory Affairs (LARA).
-- Require the MSP, among other things, to ensure that data were used by law enforcement officials, and to provide LARA with certain information in the event of a security breach of the data.
-- Allow the MSP to provide data obtained through the application program interface to law enforcement officials under certain circumstances.
-- Prohibit a person from accessing using, or disclosing data obtained under the Act for personal use or gain, or disclosing data in a manner that was not authorized by law or rule, and prescribe criminal penalties for a violation.

Senate Bill 1246 would amend the sentencing guidelines in the Code of Criminal Procedure to include the felony proposed under Senate Bill 1245 as a Class F crime against the public trust with a statutory maximum of four years' imprisonment.

Senate Bill 1247 would amend the Public Health Code to require the Director of LARA to provide a law enforcement officer who was employed by the MSP with access to an application program interface for monitoring controlled substances.

Senate Bills 1245 and 1247 are tie-barred. Senate Bill 1246 is tie-barred to Senate Bill 1245. Each bill would take effect 90 days after its enactment.

Senate Bills 1245 and 1247 are discussed in greater detail below.

Senate Bill 1245

Policies & Rules

After receiving data from LARA through the application program interface, the MSP would have to establish policies and promulgate rules governing the security of the data. The policies and rules would have to do all of the following: a) ensure that direct access to the application program interface was made available only to individuals employed by the MSP who were responsible for maintaining the data and who were responsible for responding to requests for data from law enforcement official; and b) establish a procedures to address inappropriate use of data by individual described in a).

"Data" would mean data submitted for purposes of the electronic system for monitoring Schedule 2, 3, 4, and 5 controlled substances.

The MSP also would have to do all of the following:

-- Ensure that data were used only by or on behalf of a law enforcement official and only for the purposes described below.
-- Not use, sell, divulge, or repurpose the data for any purpose other than those described in the Act.
-- Provide to LARA notice of a security breach of the data within 24 hours after discovering it and, within five days of discovering it, provide LARA with a written description of the source of the security breach and how the MSP resolved it.

Provision & Disclosure of Data

The MSP could provide data obtained through the application program interface to all of the following: a) a law enforcement official if the data were requested for drug-related criminal investigatory or evidentiary purposes to assist in the enforcement of State or Federal law relating to drugs; and b) to a law enforcement official who was the holder of a search warrant or subpoena properly issued for the data.

The Attorney General or his or her designee, a prosecuting attorney, or the court, in a criminal case, could disclose to the defendant or his or her attorney data pertaining to the defendant that was obtained under the Act.

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

Use of Data

The MSP, all law enforcement officials, and all officers of the court, in using the data obtained under the Act for investigative or prosecution purposes, would have to consider the nature of prescriber's and dispenser's practice and the condition for which the patient was being treated.

Prohibitions & Penalties

The bill would prohibit a person from doing any of the following:

-- Accessing using, or disclosing data obtained under the Act for personal use or gain.
-- Disclosing data obtained under the Act in a manner that was not authorized by law or rule.

A person who intentionally violated these prohibitions would be guilty of a crime as follows:

-- For a first offense, a misdemeanor punishable by imprisonment for up to 93 days' imprisonment or a fine of not more than $500, or both.
-- For a second or subsequent offense, a felony punishable by up to four years' imprisonment or a maximum fine of $2,000, or both.

Senate Bill 1247

The Code requires LARA to establish, by rule, an electronic system for monitoring Schedule 2, 3, 4, and 5 controlled substances dispensed in Michigan by veterinarians, and by pharmacists and dispensing prescribers (physicians and dentists who dispense prescription

drugs to their own patients); or dispensed to a Michigan address by a pharmacy licensed in the State. (This is known as the Michigan Automated Prescription System.) The rules must provide an electronic format for the reporting of data, including patient identifiers, the name of the controlled substance dispensed, the date of dispensing, the quantity dispensed, the prescriber, and the dispenser.

The bill specifies that notwithstanding any practitioner-patient privilege, the Director of LARA may provide data obtained to certain individuals or entities, including a State, Federal, or municipal employee or agent whose duties is to enforce State or Federal drug law; or a State, Federal, or municipal employee who was the holder of a search warrant or subpoena issued for the records. Under the bill, release of information to these individuals would be subject to the bill.

The bill would require the Director of LARA to provide a law enforcement officer who was employed by the MSP with access to an application program interface for monitoring Schedule 2, 3, 4, and 5 controlled substances for the purposes of the Law Enforcement Access to Michigan Automated Prescription System Data Act. Patient treatment information provided through the interface would have to be deidentified and the interface would have to disclose prescriber and dispenser data to the law enforcement officer.

MCL 777.11b (S.B. 1246)   Legislative Analyst: Jeff Mann
    333.7109 & 333.7333a (S.B. 1247)

FISCAL IMPACT

Senate Bill 1245

The bill would result in $200,000 in required software programing costs for the Department of State Police (MSP). The bill would require the MSP to receive Michigan Automated Prescription System (MAPS) data through an application program interface from Department of Licensing and Regulatory Affairs (LARA). The MSP then could use real time access to MAPS to, in part, monitor Schedule 2, 3, 4, and 5 controlled substance prescription activity for incidences of suspicious obtaining of prescriptions, which could require investigation.

Under the bill, the MSP could provide data obtained by it through the application program interface, under certain circumstances, to a law enforcement official, the Attorney General, a prosecuting attorney, or a court.

The MSP would be required to ensure that data obtained under the bill were only used for purposes stated under the bill, to establish policies and promulgate rules governing the security of the data, and to provide notice to LARA of a security breach of the data.

To the extent that changes in the bill lead to increased misdemeanor and felony arrests and prosecutions, the bill could increase resource demands on law enforcement, court systems, jails, and correctional facilities. However, it is unknown how many people would be prosecuted under provisions of the bill. The average cost to State government for felony probation supervision is approximately $3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately $5,315 per prisoner per year. Any increased penal fine revenue would be dedicated to public libraries.

Senate Bill 1246

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*

(in which the Court struck down portions of the sentencing guidelines law). According to one interpretation of that decision, the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

Senate Bill 1247

The bill would have a negative fiscal impact on LARA. The Department expects to create an interagency agreement with the MSP. The MSP would reimburse LARA for the costs associated with the project. The Department of Licensing and Regulatory Affairs expects an initial cost of $100,000, as well as $75,000 per year in ongoing support and maintenance costs; however, these costs could vary depending on the number of users.

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