

**Committee Action:**  
**Do Pass** \_\_\_\_\_  
**Amend & Do Pass** \_\_\_\_\_  
**Other** \_\_\_\_\_

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**Senate Committee on Health and Human Services**

This measure may be considered for action during today's work session.

**SENATE BILL 59**

**Requires the reporting of certain information to the database of the program to monitor prescriptions for certain controlled substances. (BDR 40-386)**

**Sponsored by: Senate Committee on Health and Human Services (On Behalf of the Attorney General)**

**Date Heard: March 20, 2017**

**Fiscal Impact: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.**

Senate Bill 59 requires law enforcement officers who encounter certain situations involving prescribed controlled substances or who receive a report of a stolen prescription for a controlled substance while acting in their official capacity to report certain information to their employer. The employer of such law enforcement officers must upload this information to the State's prescription monitoring program database as soon as practicable and may postpone uploading such information if it will interfere with an active criminal investigation. Law enforcement officers who make a good faith effort to comply with these requirements are immune from civil and criminal liability for any act or omission relating to the transmission of such information.

**Amendments:**

During the hearing, Brett Kandt, Chief Deputy Attorney General, proposed the attached amendment. The amendment:

- Clarifies that the bill's provisions apply to law enforcement officers acting in their official capacity in the regular course of an investigation;
- Requires the State Board of Pharmacy to allow a coroner or medical examiner to have access to the prescription monitoring program under certain circumstances;
- Provides a coroner or medical examiner immunity from civil or criminal liability for any act or omission relating to the transmission of information pursuant to this bill; and
- Revises provisions of existing law related to the prescription monitoring program to expand the list of controlled substances addressed to include those listed in schedule V.

PROPOSED AMENDMENTS TO SB 59

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PROPOSE TO AMEND BILL AS FOLLOWS:

Amendment #1:

Amend the bill by amending Section 1 at 2, line 3 to page 3, line 33 to read as follows:

**Section 1.** Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

3 *1. If a law enforcement officer, while acting in his or her*  
4 *official capacity in the regular course of an investigation:*  
5 *(a) Encounters a situation in which the law enforcement*  
6 *officer has reasonable suspicion that a violation of this chapter*  
7 *involving a prescription for a controlled substance is occurring or*  
8 *has occurred; or*  
9 *~~(b) Encounters a person who the law enforcement officer~~*  
10 *~~believes is experiencing or, immediately before the encounter, has~~*  
11 *~~experienced an overdose as a result of using a prescribed~~*  
12 *~~controlled substance;~~*  
13 *~~(c) Encounters a deceased person who the law enforcement~~*  
14 *~~officer believes died as a result of using a prescribed controlled~~*  
15 *~~substance; or~~*  
16 *~~(d) Receives a report of a stolen prescription for a controlled~~*  
17 *~~substance,~~*  
18 *~~the law enforcement officer shall report [to his or her employer]~~*  
19 *~~the information required by [subsection 2] section 1.5 of this act.~~*  
20 *~~2. A law enforcement officer who is required to report~~*  
21 *~~information pursuant to subsection 1 shall report to his or her~~*  
22 *~~employer the following information, to the extent such~~*  
23 *~~information is available and applicable:~~*  
24 *~~(a) The name of the person who:~~*  
25 *~~(1) Is suspected of violating this chapter;~~*  
26 *~~(2) Is believed to have experienced an overdose as a result~~*  
27 *~~of using a prescribed controlled substance;~~*  
28 *~~(3) Is believed to have died as a result of using a prescribed~~*

~~29 controlled substance; or  
1 (4) Filed the report of a stolen prescription for a controlled  
2 substance.  
3 (b) The name of the person to whom the controlled substance  
4 involved in an event described in subsection 1 is prescribed.  
5 (c) If a prescription container for the controlled substance is  
6 found in the vicinity of the location of an event described in  
7 paragraph (a), (b) or (c) of subsection 1 or if a prescription for a  
8 controlled substance is reported stolen:  
9 (1) The name of the prescribing practitioner;  
10 (2) The prescription number; and  
11 (3) The name of the controlled substance as it appears on  
12 the prescription container or prescription order.  
13 3. Except as otherwise provided in subsection 4, an employer  
14 of a law enforcement officer who receives information pursuant to  
15 subsection 2 shall, as soon as practicable after receiving such  
16 information, upload to the database of the program established  
17 pursuant to NRS 453.162 notice of the occurrence of an event  
18 described in subsection 1 and the information received pursuant to  
19 subsection 2. The employer shall ensure that only a law  
20 enforcement officer who is authorized to access the database of  
21 the program pursuant to NRS 453.165 uploads such information.  
22 4. If an employer of a law enforcement officer determines  
23 that uploading any information to the database of the program  
24 pursuant to subsection 3 will interfere with an active criminal  
25 investigation, the employer may postpone uploading such  
26 information until after the conclusion of the investigation.  
27 5. Each law enforcement officer or employer of a law  
28 enforcement officer who makes a good faith effort to comply with  
29 this section, or a regulation adopted pursuant thereto, is immune  
30 from civil and criminal liability for any act or omission relating to  
31 the transmission of information pursuant to this section.  
32 6. As used in this section, "law enforcement officer" has the  
33 meaning ascribed to it in NRS 453.165.]~~

**Amendment #2:**

Amend the bill by adding a new **Section 1.3** thereto to read as follows:

**Section 1.3** Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

*A coroner or medical examiner or deputy thereof who in the regular course of an investigation pursuant to NRS 259.050 encounters a deceased person who the coroner or medical examiner or deputy thereof believes died as a*

*result of using a prescribed controlled substance shall report the information required by section 1.5 of this act.*

**Amendment #3:**

Amend the bill by adding a new **Section 1.5** thereto to read as follows:

**Section 1.5** Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

*1. A person who is required to report information pursuant to section 1 or section 1.3 of this act shall report the following information, to the extent such information is available and applicable:*

- (a) The name of the person who:
  - (1) Is suspected of violating this chapter;*
  - (2) Is believed to have experienced an overdose as a result of using a prescribed controlled substance;*
  - (3) Is believed to have died as a result of using a prescribed controlled substance; or*
  - (4) Filed the report of a stolen prescription for a controlled substance.**
- (b) The name of the person to whom the controlled substance involved in an event described in section 1 or section 1.3 of this act is prescribed.*
- (c) If a prescription container for the controlled substance is found in the vicinity of the location of an event described in section 1 or section 1.3 of this act or if a prescription for a controlled substance is reported stolen:
  - (1) The name of the prescribing practitioner;*
  - (2) The prescription number; and*
  - (3) The name of the controlled substance as it appears on the prescription container or prescription order.**

*2. Except as otherwise provided in subsection 3, any law enforcement agency, coroner or medical examiner who receives information pursuant to subsection 1 shall, as soon as practicable after receiving such information, upload to the database of the program established pursuant to NRS 453.162 notice of the occurrence of an event described in section 1 or section 1.3 of this act and the information received pursuant to subsection 2. Only a person who is authorized to access the database of the program pursuant to NRS 453.165 or section 1.7 of this act shall upload such information.*

*3. If a law enforcement agency determines that uploading any information to the database of the program pursuant to subsection 2 will interfere with an active criminal investigation, the employer may postpone uploading such information until after the conclusion of the investigation.*

*4. Each person who makes a good faith effort to comply with this section, section 1 or section 1.3 of this act, or a regulation adopted pursuant thereto,*

*is immune from civil and criminal liability for any act or omission relating to the transmission of information pursuant to this act.*

**Amendment #4:**

Amend the bill by adding a new **Section 1.7** thereto to read as follows:

**Section 1.7** Chapter 453 of NRS is hereby amended by adding thereto a new section to read as follows:

*Access to database for coroner or medical examiner; certification; requirements for access; access for unauthorized purpose prohibited; monitoring; authority of Board or Division to terminate access.*

*1. Except as otherwise provided in this section, the Board shall allow a coroner or medical examiner or deputy thereof to have Internet access to the database of the computerized program developed pursuant to NRS 453.162 for the purposes set forth in section 1.5 of this act if:*

*(a) For any deputy of a coroner or medical examiner, the deputy has been approved by his or her employer to have such access by submission of the certification required pursuant to subsection 2 to the Board; and*

*(b) The coroner or medical examiner or deputy thereof has completed the course of training developed pursuant to subsection 4 of NRS 453.164; and*

*2. Before any deputy of a coroner or medical examiner may be given access to the database pursuant to subsection 1, the employer of the deputy must certify to the Board that the deputy has been approved to be given such access and meets the requirements of subsection 1. Such certification must be made on a form provided by the Board and renewed annually.*

*3. When a coroner or medical examiner or deputy thereof accesses the database of the computerized program pursuant to this section, that person must enter a unique user name assigned to the person and the case number corresponding to the investigation being conducted by the person.*

*4. A coroner or medical examiner or deputy thereof who is given access to the database of the computerized program pursuant to subsection 1 may access the database to investigate a death pursuant to NRS 259.050 and for no other purpose.*

*5. The Board or the Division may suspend or terminate access to the database of the computerized program pursuant to this section if a coroner or medical examiner or deputy thereof violates any provision of this section.*

**Purpose of amendment nos. 1-4:** To better effectuate the goals of the bill and ensure that law enforcement agencies, coroners and medical examiners can all effectively report to the Prescription Monitoring Program (PMP) controlled-substance violations, prescription drug-related overdoses or deaths, and reports of stolen prescription drugs.

## Amendment #5:

Amend the bill by adding a new section thereto to read as follows:

NRS 453.162 is hereby amended to read as follows:

1. The Board and the Division shall cooperatively develop a computerized program to track each prescription for a controlled substance listed in schedule II, III, ~~IV~~ *or V* that is filled by a pharmacy that is registered with the Board or that is dispensed by a practitioner who is registered with the Board. The program must:

(a) Be designed to provide information regarding:

(1) The inappropriate use by a patient of controlled substances listed in schedules II, III, ~~and IV~~ *and V* to pharmacies, practitioners and appropriate state and local governmental agencies, including, without limitation, law enforcement agencies and occupational licensing boards, to prevent the improper or illegal use of those controlled substances; and

(2) Statistical data relating to the use of those controlled substances that is not specific to a particular patient.

(b) Be administered by the Board, the Investigation Division, the Division of Public and Behavioral Health of the Department and various practitioners, representatives of professional associations for practitioners, representatives of occupational licensing boards and prosecuting attorneys selected by the Board and the Investigation Division.

(c) Not infringe on the legal use of a controlled substance for the management of severe or intractable pain.

(d) Include the contact information of each person who is required to access the database of the program pursuant to NRS 453.164, including, without limitation:

(1) The name of the person;

(2) The physical address of the person;

(3) The telephone number of the person; and

(4) If the person maintains an electronic mail address, the electronic mail address of the person.

(e) To the extent that money is available, include:

(1) A means by which a practitioner may designate in the database of the program that he or she suspects that a patient is seeking a prescription for a controlled substance for an improper or illegal purpose. If the Board reviews the designation and determines that such a designation is warranted, the Board shall inform pharmacies, practitioners and appropriate state agencies that the patient is seeking a prescription for a controlled substance for an improper or illegal purpose as described in subparagraph (1) of paragraph (a).

(2) The ability to integrate the records of patients in the database of the program with the electronic health records of practitioners.

2. The Board, the Division and each employee thereof are immune from civil and criminal liability for any action relating to the collection, maintenance and

transmission of information pursuant to this section and NRS 453.163 and 453.164 if a good faith effort is made to comply with applicable laws and regulations.

3. The Board and the Division may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

**Amendment #6:**

Amend the bill by adding a new section thereto to read as follows:

NRS 453.163 is hereby amended to read as follows:

1. Except as otherwise provided in this subsection, each person registered pursuant to this chapter to dispense a controlled substance listed in schedule II, III, ~~and~~ IV *and V* shall, not later than the end of the next business day after dispensing a controlled substance, upload to the database of the program established pursuant to NRS 453.162 the information described in paragraph (d) of subsection 1 of NRS 453.162. The requirements of this subsection do not apply if the controlled substance is administered directly by a practitioner to a patient in a health care facility, as defined in NRS 439.960, a child who is a resident in a child care facility, as defined in NRS 432A.024, or a prisoner, as defined in NRS 208.085. The Board shall establish by regulation and impose administrative penalties for the failure to upload information pursuant to this subsection.

2. The Board and the Division may cooperatively enter into a written agreement with an agency of any other state to provide, receive or exchange information obtained by the program with a program established in that state which is substantially similar to the program established pursuant to NRS 453.162, including, without limitation, providing such state access to the database of the program or transmitting information to and receiving information from such state. Any information provided, received or exchanged as part of an agreement made pursuant to this section may only be used in accordance with the provisions of this chapter.

3. A practitioner who is authorized to write prescriptions for and each person who is authorized to dispense controlled substances listed in schedule II, III, ~~and~~ IV *and V* who makes a good faith effort to comply with applicable laws and regulations when transmitting to the Board or the Division a report or information required by this section or NRS 453.162 or 453.164, or a regulation adopted pursuant thereto, is immune from civil and criminal liability relating to such action.

**Amendment #7:**

Amend the bill by adding a new section thereto to read as follows:

NRS 453.164 is hereby amended to read as follows:

1. The Board shall provide Internet access to the database of the program established pursuant to NRS 453.162 to an occupational licensing board that licenses any practitioner who is authorized to write prescriptions for controlled substances listed in schedule II, III, ~~and~~ IV *and V*.

2. The Board and the Division must have access to the program established pursuant to NRS 453.162 to identify any suspected fraudulent or illegal activity related to the dispensing of controlled substances.

3. The Board or the Division shall report any activity it reasonably suspects may:

(a) Be fraudulent or illegal to the appropriate law enforcement agency or occupational licensing board and provide the law enforcement agency or occupational licensing board with the relevant information obtained from the program for further investigation.

(b) Indicate the inappropriate use by a patient of a controlled substance to the occupational licensing board of each practitioner who has prescribed the controlled substance to the patient. The occupational licensing board may access the database of the program established pursuant to NRS 453.162 to determine which practitioners are prescribing the controlled substance to the patient. The occupational licensing board may use this information for any purpose it deems necessary, including, without limitation, alerting a practitioner that a patient may be fraudulently obtaining a controlled substance or determining whether a practitioner is engaged in unlawful or unprofessional conduct. This paragraph shall not be construed to require an occupational licensing board to conduct an investigation or take any action against a practitioner upon receiving information from the Board or the Division.

4. The Board and the Division shall cooperatively develop a course of training for persons who are required to receive access to the database of the program pursuant to subsection 6 and require each such person to complete the course of training before the person is provided with Internet access to the database.

5. Each practitioner who is authorized to write prescriptions for and each person who is authorized to dispense controlled substances listed in schedule II, III, ~~and~~ IV *and V* shall complete the course of instruction described in subsection 4. The Board shall provide Internet access to the database to each such practitioner or other person who completes the course of instruction.

6. Each practitioner who is authorized to write prescriptions for controlled substances listed in schedule II, III, ~~and~~ IV *and V* shall, to the extent the program allows, access the database of the program established pursuant to NRS 453.162 at least once each 6 months to:

(a) Review the information concerning the practitioner that is listed in the database and notify the Board if any such information is not correct; and

(b) Verify to the Board that he or she continues to have access to and has accessed the database as required by this subsection.

7. Information obtained from the program relating to a practitioner or a patient is confidential and, except as otherwise provided by this section and NRS

239.0115, 453.162 and 453.163, must not be disclosed to any person. That information must be disclosed:

(a) *To* ~~[Upon the request of]~~ a person about whom the information requested concerns, *or to the attorney of that person,* upon ~~[the]~~ request *using a notarized authorization form that shall be provided by the Board* ~~[, or to that person's attorney on behalf of that person by his or her attorney];~~ or

(b) Upon the lawful order of a court of competent jurisdiction.

8. If the Board, the Division or a law enforcement agency determines that the database of the program has been intentionally accessed by a person or for a purpose not authorized pursuant to NRS 453.162 to 453.165, inclusive, the Board, Division or law enforcement agency, as applicable, must notify any person whose information was accessed by an unauthorized person or for an unauthorized purpose.

### **Amendment #8:**

Amend the bill by adding a new section thereto to read as follows:

NRS 639.23507 is hereby amended to read as follows:

1. A practitioner shall, before initiating a prescription for a controlled substance listed in schedule II, III, ~~[and]~~ IV *and V*, obtain a patient utilization report regarding the patient from the computerized program established by the Board and the Investigation Division of the Department of Public Safety pursuant to NRS 453.162 if:

(a) The patient is a new patient of the practitioner; or

(b) The prescription is for more than 7 days and is part of a new course of treatment for the patient.

The practitioner shall review the patient utilization report to assess whether the prescription for the controlled substance is medically necessary.

2. If a practitioner who attempts to obtain a patient utilization report as required by subsection 1 fails to do so because the computerized program is unresponsive or otherwise unavailable, the practitioner:

(a) Shall be deemed to have complied with subsection 1 if the practitioner documents the attempt and failure in the medical record of the patient.

(b) Is not liable for the failure.

3. The Board shall adopt regulations to provide alternative methods of compliance with subsection 1 for a physician while he or she is providing service in a hospital emergency department. The regulations must include, without limitation, provisions that allow a hospital to designate members of hospital staff to act as delegates for the purposes of accessing the database of the computerized program and obtaining patient utilization reports from the computerized program on behalf of such a physician.

4. A practitioner who violates subsection 1:

(a) Is not guilty of a misdemeanor.

(b) May be subject to professional discipline if the appropriate professional licensing board determines that the practitioner's violation was intentional.

5. As used in this section, "initiating a prescription" means originating a new prescription for a new patient of a practitioner or originating a new prescription to begin a new course of treatment for an existing patient of a practitioner. The term does not include any act concerning an ongoing prescription that is written to continue a course of treatment for an existing patient of a practitioner.

**Purpose of amendment nos. 5-8:** Expand the provisions of NRS 463.162 to schedule V drugs since abuse may lead to limited physical or psychological dependence. Also, to clarify the law to indicate that the PMP can release confidential PMP reports only to a patient or his/her attorney on the patient's behalf, unless the requester has a court order.