

Bill increasing Utah police access to drug database advances after heated debate

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SALT LAKE CITY — A bill allowing certain law enforcement officers access to the state's Controlled Substance Database without a warrant narrowly passed a Senate committee hearing following nearly an hour of heated debate.

HB260 was recommended by the Senate Business and Labor Committee by a 4-3 vote despite Sen. Todd Weiler's numerous criticisms of the bill that it was unconstitutional and hostile to people's Fourth Amendment rights.

The proposed law would let a police officer assigned specifically to drug diversion cases to request prescribing data from the state Division of Professional Licensing after the officer and their superior have completed an eight-hour training course regarding the rules for using the database.

The division would then send the approved information to the officer, meaning no officer would have their own login access to the database itself, said HB260's sponsor, Rep. Ray Ward, R-Bountiful.

Ward said the bill is designed to allow police to better target prescribers who have perpetuated large-scale distribution of opioids through an inordinate number of prescriptions and those patients who distribute the substances.

Ward characterized the bill as a critical piece in the fight against opioid addiction and as a reasonable middle ground between the freewheeling way the database used to be accessed and the tightened restrictions put in place in 2015.

"A single prescriber that does this can wreak huge havoc throughout their community," Ward told the committee. "Figuring out when that's going on and stopping it earlier is a high priority for me and should be for all of us."

In 2013, police in Cottonwood Heights searched 480 names of Unified Fire Authority firefighters in an effort to investigate a case involving opioids missing from ambulances.



The investigation led to a paramedic and a fire official being charged with prescription drug fraud crimes — the allegations were later dropped. After the criminal cases were dismissed, the two men filed a lawsuit against the city of Cottonwood Heights, saying police had unconstitutionally broad access to the state Controlled Substances Database that allowed them to go on fishing expeditions.

That inspired a 2015 law requiring officers to get a search warrant before checking the database, which passed the Legislature with broad support. Weiler was the sponsor of that bill. HB260, Weiler said Thursday, would allow law enforcement to violate the U.S. Constitution just as they did prior to his bill.

"Your bill basically says if you jump through these hoops, then law enforcement can disregard the Fourth Amendment and just look at people's private information," Weiler said.

Weiler pursued a tense line of questioning with not only Ward, but Bountiful Police Chief Tom Ross, who was there supporting the bill for the Utah Chiefs of Police Association, and former Weber County Attorney Reed Richards, who also supported it.

"So you're confident that an eight-hour course by an officer who's been through POST is enough to not violate someone's constitutional rights? Weiler asked Ross.

The senator later added that "the difference between those officers" who abused the database prior to 2015 and officers who could access the database without a warrant, "is an eight-hour training course."

Ross pushed back, saying the required training course was not the only difference.

"Under this legislation, we will not have direct access," he told the committee, but instead must request the information from the Division of Professional Licensing. "We will not be doing searches through the database."

Ross also said there is a misunderstanding about how prohibitive the warrant process is.

"There's a belief by many that this is a 10-minute process and that's just not the case," he said.

"A detective that's going through 40, 50 cases may not even make the effort to go through that because it does take a few hours."

The police chief said state law enforcement agencies' capacity to target the data of suspected pill mill doctors has diminished to less than 10 percent of what it used to be prior to Weiler's 2015 bill.

Weiler also got into a pointed debate with Brian Besser, the Drug Enforcement Administration district agent in charge in Utah, about whether a successful DEA case against the state regarding the Controlled Substance Database was relevant to the objectives in Ward's bill.

Besser told the committee that "I see behind the scenes, I see the carnage going on right now" with opioid-induced deaths in Utah, and that both state and federal law enforcement agencies need "any and all tools that are able to (assist and expedite) these investigations so that we can save lives."

Libertarian think tank Libertas Institute and the American Civil Liberties Union each testified against the bill, saying it would violate Utahns' privacy by allowing warrantless access to what is essentially their electronic medicine cabinet.

Jeremy Robertson, a firefighter who said he was one of the fire employees whose medical data was indiscriminately searched, said police arguing for the bill were doing so on the faulty grounds that police don't already have reasonable access.

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"The word access has been thrown around quite a few times in almost every testimony," Robertson said. "Law enforcement already has access. ...We're talking about convenience. ... Access is available, but it's not convenient, and it shouldn't be convenient."

Bramble, Sen. Don Ipson, R-St. George, Sen. Karen Mayne, D-Salt Lake City, and Sen. Jerry Stevenson, R-Layton, voted for sending the bill to the full Senate. Weiler, Sen. Dan Hemmert, R-Orem, and Sen. Gene Davis, D-Salt Lake City, voted no.

HB260 passed the House, 39 to 32, earlier this week.