

**SENATE . . . . . No. 1081**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Susan L. Moran*

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act improving access to fentanyl test strips and other drug checking equipment.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Susan L. Moran</i>	<i>Plymouth and Barnstable</i>	
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/6/2023</i>

**SENATE . . . . . No. 1081**

By Ms. Moran, a petition (accompanied by bill, Senate, No. 1081) of Susan L. Moran and Joanne M. Comerford for legislation to improve access to fentanyl test strips and other drug checking equipment. The Judiciary.

**The Commonwealth of Massachusetts**

**In the One Hundred and Ninety-Third General Court  
(2023-2024)**

An Act improving access to fentanyl test strips and other drug checking equipment.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of chapter 94C of the General Laws, as appearing in the 2020  
2 Official Edition, is hereby amended by inserting, after the word “Formulary”, in line 94, the  
3 following words:- , official Veterinary Medicine Compendium.

4 SECTION 2. Said section 1 of chapter 94C of the General Laws, as so appearing, is  
5 hereby further amended by inserting, in line 102, the following 3 definitions:-

6 “Drug checking”, the process of identifying, analyzing, or detecting the composition of a  
7 drug or the presence or composition of an unexpected substance within the drug.

8 “Drug checking equipment”, all equipment, products or materials used, designed for use  
9 or intended for use to perform drug checking, including, but not limited to, fentanyl test strips,  
10 other immunoassay drug testing strips, colorimetric reagents, spectrometers, equipment that uses  
11 high-performance liquid chromatography, gas chromatography, mass spectrometry and nuclear  
12 magnetic resonance techniques and other materials and items used by persons operating the

13 equipment or products to store, measure, or process samples for analysis. Drug checking  
14 equipment does not include the substances being analyzed, drug packaging or drug supplies.

15 “Drug packaging”, the materials or items used by persons selling, buying or ingesting  
16 drugs to store, contain, cover, or transport small amounts of one or more controlled substances or  
17 controlled substance analogues. Drug packaging includes, but is not limited to, plastic bags,  
18 plastic wraps, foil wraps, plastic vials, glass vials and wax paper bindles.

19 SECTION 3. Section 1 of chapter 94C of the General Laws, as so appearing, is hereby  
20 amended by striking from the definition of “Drug paraphernalia”, the words:- “, testing,  
21 analyzing” and “ containing,”.

22 SECTION 4. Said section 1 of chapter 94C of the General Laws, as so appearing, is  
23 hereby further amended by striking out clause (4), in lines 121 to 123, inclusive.

24 SECTION 5. Said section 1 of chapter 94C of the General Laws, as so appearing, is  
25 hereby further amended by inserting after the word “item”, the second time it appears, in line  
26 188, the following sentence:- . Notwithstanding the definition above, drug paraphernalia does not  
27 include drug checking equipment.

28 SECTION 6. Said section 1 of chapter 94C of the General Laws, as so appearing, is  
29 hereby further amended by inserting, in line 188, the following definition:-

30 “Drug supplies”, hypodermic needles, syringes, preparation containers, cotton, filters,  
31 alcohol wipes, water, saline, tourniquets, disposal containers, wound care items, pipes, bubbles,  
32 snorting straws, pipe covers and other items used in the consumption of drugs.

33 SECTION 7. Said section 1 of chapter 94C of the General Laws, as so appearing, is  
34 hereby further amended by inserting, in line 203, the following definition:-

35 “Eligible activities”, purchasing, obtaining, providing, transporting, distributing, using, or  
36 evaluating the use of drug checking equipment; training, both initial and ongoing, about drug  
37 checking equipment, the process of drug checking, and the purpose of drug checking; technical  
38 assistance concerning drug checking equipment, the process of drug checking, and the purpose  
39 of drug checking; and data collection and reporting as described in Section 50.

40 SECTION 8. Said section 1 of chapter 94C of the General Laws, as so appearing, is  
41 hereby further amended by inserting, in line 203, the following definition:-

42 “Harm reduction”, a program, service, support or resource that attempts to reduce the  
43 adverse consequences of substance use among people who use substances. Harm reduction  
44 addresses conditions that give rise to substance use, as well as the substance use itself, and may  
45 include, but is not limited to, drug checking, syringe service programs, naloxone distribution, and  
46 education about Good Samaritan laws.

47 SECTION 9. Said section 1 of chapter 94C of the General Laws, as so appearing, is  
48 hereby further amended by inserting, in line 267, the following definition:-

49 “Nominal amount”, not more than 10 milligrams of a substance containing or suspected  
50 to contain one or more controlled substances or controlled substance analogues.

51 SECTION 10. Chapter 94C of the General Laws is hereby amended by inserting after  
52 section 49 the following section:-

53           Section 50. (a) For the purposes of this section, “person” shall mean any individual,  
54 corporation, partnership, association, cooperative, limited liability company, trust, joint venture,  
55 government, political subdivision or any other legal, commercial or informal entity or group.

56           (b) Notwithstanding any other law or regulation to the contrary, any person may:

57           (1) Obtain, possess, purchase, sell, provide, transport, distribute, use or request another  
58 person to use drug checking equipment;

59           (2) Possess, transport, deliver or provide drug supplies, drug packaging or a nominal  
60 amount of one or more controlled substances or controlled substance analogues for, or during,  
61 analysis by drug checking equipment; or

62           (3) Possess, provide or communicate the results of the drug checking analysis in paper,  
63 electronic or verbal form.

64           (c) The department, in consultation with the bureau of substance use addiction services,  
65 shall promulgate regulations for the administration of this section, including but not limited to  
66 regulations that identify (1) how a person may carry out any of the actions under this section; (2)  
67 potential funding sources for a person seeking to obtain, possess, purchase, sell, provide,  
68 transport, distribute, use or request another person to use drug checking equipment; and (3) a  
69 process by which a person can obtain additional resources to learn about drug checking.

70           (d) Any person may use state funds, including, but not limited to, funds in the Opioid  
71 Recovery and Remediation Trust Fund, for eligible activities.

72 (e) No person may prohibit another person from using federal funds for eligible activities,  
73 so long as the use of the federal funds is consistent with federal law and any rules governing use  
74 of the funds.

75 (f) No person may be arrested; charged; prosecuted; subject to revocation of probation,  
76 parole, or pre-trial release; subject to civil, disciplinary, or administrative action; subject to the  
77 loss of one or more dependents; subject to the loss of housing; or penalized in any other way for  
78 any actions authorized by this Act.

79 (g) The fact that a person engages in any action authorized under this section may not:

80 (1) Serve as the basis, in whole or in part, for a determination by a law enforcement  
81 officer or any court, of probable cause or reasonable suspicion to stop, search, seize, or arrest the  
82 person or the person's property;

83 (2) Be used as evidence in a criminal case or administrative action against the person; or

84 (3) Result in:

85 (i) Revocation of the person's probation, parole or pre-trial release;

86 (ii) Administrative action taken against the person; or

87 (iii) Any other punitive action or penalty taken against the person.

88 (h) Results from a drug checking analysis may not be used by any person for a treatment  
89 or other clinical decision, in any criminal investigation, or as evidence in a criminal case or  
90 administrative action.

91 (i) Any person using, providing, or distributing drug checking equipment may collect the  
92 following information and provide it to the department, in a form and manner set out by the  
93 department by rule:

94 (1) The amount and type(s) of drug checking equipment used, provided, or distributed by  
95 the person;

96 (2) The county(ies) and ZIP code(s) where the person used, provided, or distributed drug  
97 checking equipment;

98 (3) The number of encounters with individuals seeking drug checking services where a  
99 person used, provided, or distributed drug checking equipment;

100 (4) For each encounter with an individual seeking drug checking services where a person  
101 used drug checking equipment to analyze one or more substances:

102 (i) The number of samples analyzed;

103 (ii) The identity of the drug(s) detected within each sample;

104 (iii) The mass, volume, concentration, or relative amount of each drug detected; and

105 (iv) What drug(s) the submitting individual believed the analyzed substance to contain, at  
106 the time the individual acquired the substance;

107 (5) Whether or not the individual seeking drug checking services changed or plans to  
108 change drug use behavior based on either information provided by the person using the drug  
109 checking equipment or from receipt of the drug checking results;

110 (6) Demographic information regarding the individual seeking drug checking services  
111 including, but not limited to, age, gender, race, ethnicity, general area of residence, types of  
112 drugs used, methods of drug use, length of drug use, frequency of drug use, and date of first  
113 seeking drug checking services;

114 (7) Information about any encounter with law enforcement where the individual seeking  
115 drug checking services faced arrest, criminal charge, or prosecution for possession of a  
116 controlled substance or other illicit drug due to the use of drug checking services or traveling to  
117 or from such service; and

118 (8) Any other data identified by the department by rule.

119 (b) All data collected and provided to the department pursuant to subsection (a) shall be  
120 de-identified and shall not be subject to subpoena in any civil, criminal, or administrative  
121 proceeding.

122 (c) 12 months after the effective date of this Act, and every 12 months thereafter, the  
123 department shall publish a report on its public website that describes and explains the aggregate  
124 data received pursuant to this section.