

PRIVATE SECURITY TRANSPORT OFFICERS FOR INVOLUNTARY MENTAL HEALTH SERVICES

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Senate Bill 101 (H-2) as reported from House committee

Sponsor: Sen. Ed McBroom

House Committee: Health Policy

Senate Committee: Health Policy and Human Services

Complete to 6-30-22

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

(Enacted as Public Act 146 of 2022)

BRIEF SUMMARY: Senate Bill 101 would amend the Mental Health Code to allow a county to contract with a private security company to transport a person, after the person has first been taken into protective custody by a peace officer, to a facility for mental health screening or, under a court order, to transport the person to a facility for mental health treatment. The bill would extend to a security transport officer the same immunity from criminal and civil liability available to peace officers. The bill also would create the Mental Health Transportation Fund.

FISCAL IMPACT: The bill would have no direct fiscal impact on the state or local units of government. The bill would permit a county to contract with a private security company if the county mental health transportation panel recommends the use of a private security company.

THE APPARENT PROBLEM:

A shortage of psychiatric hospitals and mental health professionals exists across the United States, and is most acute in rural areas, at a time when the nation is experiencing an increase in the numbers of those who pose a risk to themselves or others, or are experiencing suicidal ideation, due to a mental illness. Under Michigan's Mental Health Code, a person experiencing a mental health crisis can be taken into protective custody by a peace officer and taken to a facility for mental health screening. A person considered to pose a threat of harm to self or others may be ordered by a court to undergo in-person or outpatient mental health treatment, or a combination of both, if the person does not consent to seek treatment voluntarily.

Whether a person is to be transported to a mental health facility for initial screening or transported for treatment under a court order, at least two officers and a squad car must be dedicated to the transport. For rural areas, such as counties in the Upper Peninsula where mental health beds are hard to come by, "transport" may entail driving a person hundreds of miles downstate, meals, gas, overnight lodging for the officers, and overtime, in addition to the impact to the community of being down two officers during the time it takes for the round trip.

Recently, at least one private security company has begun training its officers to transport people who are voluntarily seeking mental health treatment. It has been suggested that the Mental Health Code be amended to allow counties to decide whether using a private company to transport those needing mental health screening or treatment on an involuntary, emergency basis, or under a court order for involuntary treatment, would be a safe and cost-efficient alternative to transport by peace officers.

THE CONTENT OF THE BILL:

Senate Bill 101 would add a new section to the Mental Health Code to allow a county board of commissioners to establish a county mental health transportation panel for the purpose of establishing a transportation mechanism to serve as an alternative to a peace officer's transporting an individual when required under the code. The bill also would create the Mental Health Transportation Fund and revise several provisions that now provide for transport of individuals only by a peace officer to apply also to a security transport officer.

County mental health transportation panel

The bill would require that a county mental health transportation panel include a county administrator, a judge of a court with jurisdiction in the county, a peace officer at a law enforcement agency or state police post in the county, and a mental health professional employed by a community mental health services program (CMHSP) in the county. A panel could recommend a contract with a private security company to hire *security transport officers* to transport individuals for involuntary psychiatric hospitalization or screening. The county board of commissioners could enter into a contract only upon the panel's recommendation.

Security transport officer would mean an officer employed by a private security company under contract with a county as described below.

Private security company providing security transport officers

A private security company that entered into a contract would be an independent contractor and not an employee, officer, or agent of the county or the county mental health transportation panel. Similarly, a security transport officer would not be an employee, officer, agent, or independent contractor of the county or the county mental health transportation panel.

To enter into a contract with a county board of commissioners, a private security company would have to meet the following requirements:

- Maintain a specified level of insurance coverage on file with the Department of Health and Human Services (DHHS) regarding motor vehicle coverage (including personal injury protection), motor vehicle residual liability coverage, and liability other than for a motor vehicle. The insurer of the private security company would be primary to any insurer or coverage provider of the county or the county mental health transportation panel.
- Provide a specialized training program for best practices when working with and transporting an individual with severe mental illness or a person requiring treatment safely and effectively. The program would have to be approved by DHHS and include training on recipient rights.
- Maintain a dispatch service system available at all times to receive transport orders and deploy security transport officers.
- Deploy two officers for every transport order who are gender-appropriate for the situation.
- Establish a well-maintained company vehicle fleet equipped for recipient and security transport officer travel and safety.

- Use the level of force authorized for peace officers under the code.¹
- Protect and respect recipient regulations under the federal Health Insurance Portability and Accountability Act (HIPAA) and recipient rights under section 7 of the code. If this requirement were not met, the local CMHSP could investigate and recommend remedial action.
- Maintain transport security officer duties, protocols, and procedures.
- Maintain transport service policies and procedures.
- Maintain protocols and procedures for transportation emergencies, recipient safety and transport care, de-escalation techniques, crisis intervention and prevention, and recipient and customer relations.
- Maintain mental health facility policies and procedures in the same manner as required under the code for peace officers.
- Provide security transport officers with a defensive driving course.
- Maintain transport vehicle requirements, care, and inspection procedures.
- Maintain roadside emergency procedures and policies, including basic first aid and courses in cardiopulmonary resuscitation (CPR).

Transportation by a security transport officer would not constitute an arrest of the individual. A security transport officer would have the authority to maintain custody of an individual taken into protective custody by a peace officer under a court order. However, this authority would apply only when transporting the individual to or from a hospital, a mental health screening unit, or another mental health treatment center under a court order.

In transporting an individual, a security transport officer could take reasonable steps for self-protection. The protective steps authorized under the code may include a pat-down search to the extent necessary to discover and seize a dangerous weapon. Protective steps would have to be taken prior to transporting the individual to a preadmission screening unit or a hospital.

Transport by a security transport officer

Currently, only a peace officer is authorized under the code to take certain individuals into protective custody and transport them to an appropriate facility for mental health screening or to a program for treatment under a court order.

The bill would allow a CMHSP to arrange for a security transport officer to transport an individual from a preadmission screening unit to a hospital. The bill also would amend several provisions requiring a peace officer to transport an individual or a minor from one setting to another for the purpose of screening, examination, or treatment to require, after a peace officer takes the individual or minor into protective custody, either the peace officer or a security transport officer to transfer the individual or minor to the appropriate facility or program.

A CMHSP would have to provide the address and telephone number of its preadmission screening unit or units to private security companies under contract with a county.

Under certain circumstances, a court may order an individual to undergo involuntary treatment for a substance use disorder and also may order the individual to be transported by a peace

¹ Section 427a of the code allows a peace officer, when taking an individual into protective custody, to use the kind and degree of force lawful when effecting an arrest for a misdemeanor without a warrant.

officer to a program for treatment. The bill would require either a peace officer or a security officer to transport an individual to a program after the individual is taken into protective custody by a peace officer. Currently, the transportation costs are included in the costs of the substance use disorder treatment. The bill would also apply this requirement to transport by a security transport officer.

Criminal and civil liability

Neither a county nor a county mental health transportation panel would be civilly liable for an act or omission of a security transport officer or a private security company contracted with a county under the bills.

The bill would apply to a security transport officer the same level of immunity against criminal or civil liability as afforded to a peace officer, member of the emergency service unit, or staff member of an approved service program or emergency medical service acting in the course of their official duties, and security transport officers would have the same immunity as provided to a governmental employee under the governmental immunity act when acting under the bill's provisions.² The bill does not contain a provision extending immunity against civil or criminal liability to a private security company.

(The bill would eliminate a current provision in the Mental Health Code that excludes a peace officer who engaged in conduct involving gross negligence or willful and wanton misconduct from enjoying immunity from being sued. However, the governmental immunity act provides a similar exclusion from civil liability for an injury to a person or damage to property caused by an employee while in the course of employment or service if certain conditions are met.)

Mental Health Transportation Fund

The bill would create the Mental Health Transportation Fund in the state treasury. The state treasurer could receive money or other assets from any source for deposit into the fund and would have to direct fund investments and credit to the fund interest and earnings from them. Money in the fund at the close of a fiscal year would remain in the fund and not lapse to the general fund. DHHS would be the administrator of the fund for auditing purposes. DHHS could expend money from the fund, upon appropriation, only to carry out provisions of the new section 170 proposed by the bill (described above under "County mental health transportation panel" and "Private security company providing security transport officers").

MCL 330.1100d et seq.

HOUSE COMMITTEE ACTION:

The House Health Policy committee reported an H-2 substitute that corrected typographical errors.

² Section 7 of 1964 PA 170, known as the governmental immunity act, provides that an employee of a governmental agency, among others, is immune from tort liability for an injury to a person or damage to property caused by the employee while in the course of employment or service while acting on behalf of a governmental agency if all of the following are met: the employee is acting or reasonably believes they are acting within the scope of their authority; the governmental agency is engaged in the exercise or discharge of a governmental function; and, the employee's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. "Gross negligence" is defined as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

BACKGROUND INFORMATION:

Senate Bill 101 (H-2) is identical to House Bill 4414 (H-2) as reported from the House Health Policy committee.

ARGUMENTS:

For:

Law enforcement officers are trained to enforce state and local laws and to arrest those who break those laws. They are not necessarily trained in how to apprehend a person who is in the midst of a psychotic episode or is intent on doing self-harm. They are not mental health experts and may not be skilled in medication or other needs of a person needing treatment for a long drive to an appropriate facility. The current system strains resources when long trips mean fewer officers to patrol the roads and respond to calls and necessitate fuel expenses plus overtime, lodging, and meals for officers. For that reason, some feel that a security transport officer trained to safely transport a person experiencing a mental health crisis may be the better choice to safely transport the person to a hospital or other facility for screening or treatment and that this option could reduce liability to the state and local governments. According to a media report, one private company operating in Michigan says that it successfully transported over 100 voluntary patients in one year, that its costs are less than what it would cost a law enforcement agency to provide those services, and that its officers “undergo extensive training for certifications and licensing to work with mental health patients.”³

The bill’s provisions are permissive, not mandatory. There may be times when it would be more appropriate to use peace officers for a transport. The bill creates the mechanism for a county to study the issue and determine whether using security transport officers would be a safer and more cost-effective way to provide transport, but the bill would not preclude transports being done by peace officers. The bill also establishes requirements to be met, such as carrying certain levels of insurance and using a DHHS-approved training program. Use of a private company may not work for all counties, but for those with limited resources and a lack of mental health facilities, the bill could be a viable option in providing safe and secure transport services to those in need.

Against:

Certain concerns were raised about the bill as currently written. For instance, some expressed concern over the risk of escape when transporting a person to a facility hundreds of miles away. Another concern was that the bill would authorize an employee of a private company to use the same level of force that law enforcement officers are trained to use when arresting a person for a misdemeanor crime without a warrant. However, the training the private transport officers would undergo would be approved by the MDHHS, not developed by the Michigan State Police or in accordance with the Michigan Commission on Law Enforcement Standards (MCOLES) Act. Although it was said during House committee testimony that a security transport officer would be MCOLES-certified, there is nothing in the bill to specifically require such training or certification or to indicate whether, if MCOLES-certified, transport officers would be authorized to carry and use firearms when transporting a person for mental health screening or treatment.

³ See <https://news.jrn.msu.edu/2021/10/police-officers-forced-to-drive-mental-health-patients-downstate/>

The bill also is silent as to what happens to a person's personal possessions when transported by a security transport officer instead of a peace officer, and as to the rights of the person and liability of the private company if jewelry, electronics, phones, etc., come up missing. Peace officers also are prohibited from unreasonable searches without a warrant, including looking through a person's phone or other electronics. Some felt that the bill should similarly restrict access to and protect a person's possessions when they are in a vulnerable state.

Further, although one company reports successfully transporting Michigan patients for mental health care, those patients were all individuals who were voluntarily submitting for treatment. The bill would allow for the private transport of people who are resisting treatment or who, due to their mental illness, are not capable of choosing or accepting assistance. Transporting agitated individuals—particularly those with schizophrenia, bipolar disorder, or other psychiatric disorders—could increase the risk of injury for transport officers and those they are transporting. It is not clear whether transport officers would also be required to be licensed (e.g., as a paramedic or licensed emergency medical services personnel) to administer medications or to provide medical assistance as needed to ensure safe transport for their charges and themselves.

POSITIONS:

The following entities indicated support for the bill:

- Michigan Association of Counties (6-16-22)
- Michigan Municipal League (6-16-22)
- Michigan Sheriffs' Association (6-9-22)

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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.