

# Legislative Analysis

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## **GOVERNMENTAL IMMUNITY: INCLUDE TACTICAL OPERATION MEDICAL ASSISTANTS**

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**House Bill 5971 (Substitute H-2)**

**Sponsor: Rep. Ruth Johnson**

**Committee: Judiciary**

**First Analysis (6-29-04)**

**BRIEF SUMMARY:** The bill would extend governmental immunity from civil liability to certain medical professionals who assisted, as volunteers, SWAT teams.

**FISCAL IMPACT:** The bill would have no fiscal impact.

### **THE APPARENT PROBLEM:**

Over the last few decades, specially trained tactical teams have become a part of most law enforcement agencies. These teams are used in situations that require more specialized training, equipment, and weaponry than can be provided by the average beat cop; for instance, in raids on suspected drug houses where the occupants may be heavily armed. Whether called in because weapons had already been fired (e.g., a robbery attempt) or to aid in a hostage situation, the nature of the incidents tactical teams respond to require them to have medical professionals on hand ready to tend to the wounded, whether those be police officers, bystanders, or suspects.

Reportedly, the majority of medical professionals (doctors, nurses, paramedics, and emergency medical technicians) that participate in tactical team operations do so as unpaid volunteers. Besides putting their lives on the line for no pay in order to help others, they may not be protected under current law from being sued by an injured person they aided.

Public Act 170 of 1964, generally known as the governmental immunity act, grants immunity to the state and local units of government from civil liability when engaged in the exercise or discharge of a governmental function. The act extends this immunity to governmental officers and employees for an injury to a person or damage to property caused by the individual while in the course of employment or service and to a volunteer while acting solely on behalf of a governmental agency. However, the immunity from civil liability applies only under certain specified conditions; for instance, that the conduct did not amount to gross negligence that was the proximate cause of the injury or damage. The act defines "gross negligence" as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury resulted.

Specifically, the act does not grant immunity to a governmental agency or its employee or agent with respect to providing medical care or treatment to a patient, although an exception is made for medical care and treatment provided in hospitals owned or

operated by the Department of Community Health (DCH) or the Department of Corrections (DOC). Therefore, a loophole in the law may mean that medical personnel assisting tactical teams could be sued.

Earlier this year, the House considered the question of immunity from civil liability for rendering medical care as it related to volunteers of the Michigan Citizen Corps. (For more information, see the House Fiscal Agency Legislative Analysis Section's analysis on House Bill 5416.) Established at the federal level in the wake of the terrorist events of September 11, 2001, the Citizens Corps is a national initiative to coordinate local responses when emergencies occur. The Michigan Citizen Corps helps communities coordinate volunteers to assist law enforcement, fire fighters, and medical personnel during local emergencies. Responsibilities as a corps volunteer include rendering emergency first aid to injured persons.

In a memorandum dated January 10, 2003, an assistant attorney general wrote that though it would seem that the governmental immunity statute would extend to Citizen Corps volunteers, the exclusion for rendering medical care and treatment for all but employees of the DCH and DOC who treat patients is troublesome and may leave corps volunteers open to lawsuits.

The corps volunteers, like the volunteer medical professionals attached to tactical teams, are not volunteers with either of those two state departments, nor are they treating patients. The memorandum author wrote "research has not disclosed Michigan court cases where volunteers performing emergency medical first aid under a government sponsored program have been either granted or denied immunity from tort liability". The author looked at several other statutes that grant immunity from civil liability in specific situations, but those also did not seem to apply to corps volunteers. They also do not appear to apply to the medical volunteers working with tactical teams.

For instance, the Good Samaritan Law protects certain medical personnel (physicians, registered professional nurses, and licensed practical nurses) from civil liability when providing uncompensated medical aid in emergency situations when a patient-physician relationship did not previously exist and protects paramedical persons who respond to a life threatening emergency within a hospital or licensed medical care facility. Obviously, even these provisions of the Good Samaritan Law would leave gaps as the paramedical persons would be rendering the emergency care in the field and not in a hospital or health facility. As to this law protecting physicians and nurses from civil liability, the spirit of the law was meant to encourage medical personnel who came upon accident scenes or who were bystanders at events where a participant or other bystander needed medical care to step forward and tend to the injured or ill without fear of a lawsuit. Medical personnel who volunteer on a regular basis with tactical teams would not appear to fit within the spirit of the law and, conceivably, some could argue that because of the regularity of being a volunteer, a prior patient relationship existed with the members of the tactical team.

In short, it would appear that the existing laws pertaining to extending immunity from civil liability to medical personnel aiding the injured in emergency situations would not give adequate protection to those who serve as volunteers with tactical teams. Legislation has therefore been offered to close this loophole.

### ***THE CONTENT OF THE BILL:***

Currently, immunity from civil liability under the governmental immunity act, Public Act 170 of 1964, does not extend to a governmental agency or an employee or an agent of a governmental agency with respect to providing medical care or treatment to a patient, although an exemption is provided for those rendering medical care or treatment to a patient in a hospital owned or operated by the Department of Community Health or Department of Corrections.

House Bill 5971 would amend the governmental immunity act to provide an exemption for the care or treatment provided by an uncompensated tactical operation medical assistant.

A “tactical operation medical assistant” would be defined as an individual licensed to practice one or more of the following, when acting within the scope of that license and when assisting law enforcement officers while they were engaged in a tactical operation:

- Medicine (M.D.), osteopathic medicine and surgery (D.O.), or as a registered professional nurse (RPN);
- as an emergency medical technician (EMT), emergency medical technician specialist, or paramedic.

A “tactical operation” would be defined as the action of a law enforcement agency that was either 1) taken to deal with imminent violence, a riot, an act of terrorism, or a similar civic emergency; or 2) the entry into a building or area to seize evidence of or arrest an individual for a violation of Part 74 of the Public Health Code, which pertains to violations involving controlled substances.

MCL 691.1407

### ***ARGUMENTS:***

#### ***For:***

Tactical teams (i.e., SWAT teams) may be exposed to a level of violence and potential injury from automatic weapons or explosive devices that are similar to those experienced by troops on a battlefield. During warfare, one of the biggest threats to life is uncontrolled bleeding. By placing trained medical personnel closer to the battlefield, the survival rate of injured soldiers has increased dramatically. The same holds true for SWAT team members, bystanders, and criminal suspects who are injured by gunfire, bombs, fire, or knife attacks. It is crucial that trained medical personnel be on the scene to render emergency care.

The majority of medical personnel who assist SWAT teams do so as volunteers, meaning that they do not receive pay for their services. They work under dangerous conditions, including being in the line of fire. They must quickly stabilize the injured person and get the injured to a place of safety where more comprehensive treatment can be given. Obviously, decisions are made and care rendered under less than optimal conditions. Yet, the quick treatment provided to the injured can make all the difference between survival and death.

One drawback to medical professionals volunteering with tactical operations teams, other than the inherent danger, is the risk of being sued by one of the treated parties. Reportedly, malpractice insurance does not cover medical professionals when assisting SWAT teams. Even if a lawsuit were determined to be without merit and subsequently dismissed, a health professional could incur substantial legal fees.

As discussed earlier, volunteers with governmental agencies usually enjoy the same immunity from civil actions as governmental employees. However, as written, the laws granting immunity to governmental volunteers and medical professionals who render uncompensated emergency care to nonpatients still appear to fall short of providing clear protection to those medical professionals who volunteer with SWAT teams.

The bill, therefore, is needed so as to ensure that appropriately trained medical professionals will continue to volunteer their time with SWAT teams and risk their own lives to aid the wounded. It is important to note that the bill would not protect these volunteers from lawsuits based on grossly negligent conduct that was the proximate cause of a person's injuries, or from medical care rendered that was outside the scope or practice of an individual's license. The bill will protect doctors, nurses, and paramedics from frivolous lawsuits, and thus will eliminate a disincentive to serve and assist tactical officers in potentially dangerous operations.

***Response:***

The may not provide enough protection for innocent bystanders who were caught in the crossfire; the should be permitted to sue for injuries sustained as a result of the treatment rendered by a tactical operation medical assistant.

***Rebuttal:***

The bill would primarily put a stop to frivolous lawsuits brought by a suspect or a bystander. If a tactical operation medical assistant acted in a grossly negligent manner and caused injury to a person, or performed a medical procedure that was outside the limits of his or her professional license and caused harm, he or she could still be sued. However, it must be remembered that the care being provided by these health professionals is out in the field, may be rendered in the line of fire or while under fire, and without all the bells and whistles of a well-equipped emergency room or operating room. The bill does not create an "anything goes" sanction, but a nurse, physician, paramedic, or emergency medical technician should not be subjected to the fear of a lawsuit for treatment given under fire.

***Against:***

Some believe that the bill should extend immunity from civil liability to pharmacists who assist in national, state, or local emergencies. For example, pharmacists would play a crucial role in the event of a bioterrorism attack such as the use of biological agents, poisoning the water supply, or release of nerve agents (i.e., sarin gas). Pharmacists should not have to worry that the chaos and need for quick action associated with disasters such as these may lead to a subsequent lawsuit. If a pharmacist was guilty of gross negligence, even in the midst of a disaster, he or she would not be protected by the immunity extended under the bill; including pharmacists in the bill would, however, protect them from frivolous suits.

***POSITIONS:***

A representative of the Michigan Association of Ambulance Services indicated support for the bill. (6-24-04)

The Michigan Pharmacists Association is generally supportive of the bill, but would like an amendment to include pharmacists. (6-24-04)

A representative of the Department of Community Health indicated a neutral position on the bill. (6-24-04)

The Michigan Trial Lawyers Association does not support the bill. (6-28-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.