

PRIVATE SECURITY TRANSPORT OFFICERS FOR INVOLUNTARY MENTAL HEALTH SERVICES

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Senate Bill 101 as enacted
Public Act 146 of 2022
Sponsor: Sen. Ed McBroom

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

House Bill 4414 as enacted
Public Act 214 of 2022
Sponsor: Rep. Beau Matthew LaFave

House Committee: Health Policy
Senate Committee: Health Policy and Human Services
Complete to 12-16-22

BRIEF SUMMARY: Senate Bill 101 amends 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 extends to a security transport officer the same immunity from criminal and civil liability available to peace officers. The bill also creates the Mental Health Transportation Fund. House Bill 4414 corrects a typographical error in a provision added by Senate Bill 101.

FISCAL IMPACT: The bills would have no direct fiscal impact on the state or local units of government. Senate Bill 101 would allow 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 was 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 BILLS:

Senate Bill 101 adds 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 creates the Mental Health Transportation Fund and revises 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 requires 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 means an officer employed by a private security company under contract with a county as described below.

Private security company providing security transport officers

Under the bill, a private security company that enters into a contract will 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 will 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 will 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 does not constitute an arrest of the individual. A security transport officer has the authority to maintain custody of an individual taken into protective custody by a peace officer under a court order. However, this authority applies 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 must be taken prior to transporting the individual to a preadmission screening unit or a hospital.

Transport by a security transport officer

Prior to the bill's enactment, only a peace officer was 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 allows a CMHSP to arrange for a security transport officer to transport an individual from a preadmission screening unit to a hospital. The bill also amends 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 instead require, after the individual or minor is taken into protective custody, that either the peace officer or a security transport officer transfers the individual or minor to the appropriate facility or program.

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.

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.

Transport for involuntary substance use disorder treatment

Under certain circumstances, the code authorizes a court to order an individual to undergo involuntary treatment for a substance use disorder and also may order the individual to be transported by a peace officer to a program for treatment. The bill requires 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. The bill applied the previous requirement for transportation costs to be included in the costs of the substance use disorder treatment to transport by a security transport officer.

Criminal and civil liability

The bill extends to a peace officer or a security transport officer who is acting under the code the same immunity provided for a governmental employee under section 7 of the governmental immunity act.²

Previously, a peace officer who acted in compliance with the Mental Health Code was considered to be acting in the course of their official duty and was not civilly liable for the action taken. Additionally, the civil liability did not apply to a peace officer who, while acting in compliance with the code, engaged in behavior involving gross negligence or willful and wanton misconduct. The bill eliminates both of these provisions.

The bill also provides that neither a county nor a county mental health transportation panel is civilly liable for an act or omission of a security transport officer or a private security company contracted with a county under the bill.

Further, the bill retains and extends to a security transport officer a provision that provides that a peace officer, member of the emergency service unit, or staff member of an approved service program or an emergency medical service who acts in compliance with sections 276 to 286 is acting in the course of their official duty and is not criminally or civilly liable as a result. (Sections 276 to 286 pertain to substance use disorder services.)

Similarly, the code retains and extends to security transport officers a provision that provides immunity from criminal and civil liability to approved service programs and their staffs, emergency medical services and their staffs, peace officers, and emergency service units for the subsequent actions of an apparently incapacitated individual who leaves the approved service program or emergency medical service.

(The bill does not contain a provision extending immunity against civil or criminal liability to a private security company.)

² Section 7 of 1964 PA 170, known as the governmental immunity act, provides that an employee of a governmental agency 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.)

Mental Health Transportation Fund

The bill creates the Mental Health Transportation Fund in the state treasury. The state treasurer may receive money or other assets from any source for deposit into the fund and is required 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 must remain in the fund and not lapse to the general fund. DHHS is designated as the administrator of the fund for auditing purposes. DHHS is authorized to expend money from the fund, upon appropriation, only to carry out provisions of the new section 170 created by the bill (described above under “County mental health transportation panel” and “Private security company providing security transport officers”).

MCL 330.1100d et seq. and proposed MCL 330.1170 and 330.1172

House Bill 4414 amends the Mental Health Code to correct a provision that referred to section 179 of the code instead of section 170. (The code does not contain a section 179.) In addition, the bill amends the same sections of the code that were amended by SB 101 (2022 PA 146) to make numerous revisions of an editorial nature.

MCL 330.1100d et seq.

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

Senate Bill 101’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 does 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 may be a viable option in providing safe and secure transport services to those in need.

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

Against:

Certain concerns were raised about SB 101 as enrolled. For instance, concerns were expressed 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 are required to undergo will 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.

Additionally, although the code requires the possessions of an individual under a court order for substance use disorder treatment to be inventoried, kept in a secure place, and returned upon the individual's release, for the most part the bill is silent as to what happens to an individual's personal possessions when transported by a security transport officer instead of a peace officer. The bill is also silent 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 electronic devices, and provide protection for other possessions, when they are in a vulnerable state and transported by a security transport officer.

Further, although one company reports successfully transporting Michigan patients for mental health care, those patients were all individuals who were voluntarily submitting for treatment. SB 101 allows 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.

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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.