



Senate Fiscal Agency
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BILL ANALYSIS



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House Bill 5971 (Substitute H-2 as passed by the Senate)
Sponsor: Representative Ruth Johnson
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-14-04

RATIONALE

The governmental immunity Act generally provides protection from civil liability to governmental entities, to their agents, employees, and officials when they are acting in the course of employment or service, and to volunteers acting solely on behalf of a governmental agency. The Act does not grant immunity, however, with respect to the provision of medical care or treatment to a patient, except when it is provided in a hospital owned or operated by the Department of Community Health (DCH) or the Department of Corrections (DOC).

Over the last few decades, specially trained tactical teams (often known as SWAT teams) have become important participants in law enforcement agencies' responses to ongoing violent conduct or incidents such as hostage-takings, bank robberies, or drug raids. In recent years, it has become fairly common for medical professionals to be a part of these tactical teams in case medical assistance is needed. Many medical professionals, including doctors, nurses, and emergency medical technicians, participate with tactical teams on a volunteer basis. It has been pointed out that these medical volunteers could be exposing themselves to civil claims for actions taken in tactical operations. Some people believe that the governmental immunity Act should provide liability protection to them as it does to other governmental employees and agents.

CONTENT

The bill would amend the governmental immunity Act to extend governmental immunity to care or treatment provided

by an uncompensated "tactical operation medical assistant".

"Tactical operation" would be defined as a coordinated, planned action by a special operations, weapons, or response team of a law enforcement agency that either was taken to deal with imminent violence, a riot, an act of terrorism, or a similar civic emergency; or an entry into a building or area to seize evidence, or to arrest an individual for a felony, under the authority of a warrant issued by a court.

"Tactical operation medical assistant" would mean an individual licensed to practice one or more of the following, acting within the scope of the license, and assisting law enforcement officers while they are engaged in a tactical operation:

- Medicine, osteopathic medicine and surgery, or as a registered professional nurse, under Article 15 of the Public Health Code.
- As an emergency medical technician, emergency medical technician specialist, or paramedic under Part 209 of the Public Health Code.

MCL 961.1407

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Tactical teams, which typically are deployed under high-risk circumstances, may be

exposed to a level of violence and potential injury comparable to that experienced by troops on a battlefield. Placing medical teams closer to the battlefield reportedly has resulted in an increased survival rate of military personnel injured in combat. The same strategy of making medical assistance readily available is being used by law enforcement tactical teams. Integrating medical personnel into the teams has become more common, and the American College of Emergency Physicians has even recognized this area of medicine as a subsection within the emergency medicine specialty.

Medical personnel participating with tactical teams typically are volunteers and their exposure to liability is significant. Although they work with governmental entities in these endeavors, medical professionals are not covered by the governmental immunity Act unless they provide treatment in a hospital owned or operated by the DCH or the DOC. In addition, while the Good Samaritan law protects certain medical professionals from civil liability when providing uncompensated medical aid in emergency situations, it does not cover a medical professional who volunteers with a tactical team on a regular basis and who has an existing relationship with the members of that team.

By extending governmental immunity to treatment provided by an uncompensated tactical operation medical assistant, the bill would recognize the importance of the work done by medical professionals assisting tactical teams. It would offer those individuals legal protection that would allow them to assist the wounded quickly, in a difficult setting, without fear of exposure to medical malpractice claims.

In addition, extending governmental immunity to tactical operation medical assistants could increase the number of medical professionals willing to volunteer their services to assist tactical operations teams.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and local units of

government to the extent that it would limit potential future liability.

Fiscal Analyst: Bill Bowerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.