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Senate Bill 101 (Substitute S-3)  
Sponsor: Senator Ed McBroom  
Committee: Health Policy and Human Services

Date Completed: 10-7-21

### **CONTENT**

**The bill would amend the Mental Health Code to do the following:**

- **Allow a county board of commission 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 transportation of an individual when required under the Code, and prescribe the membership of the panel.**
- **Allow the panel to recommend a contract with a private security company to hire security transport officers to transport individuals for involuntary hospitalization or screening under the Code, and allow a county board of commissioners to enter into that contract only upon that recommendation.**
- **Require a private security company to meet certain requirements in order to enter into a contract with a county board of commissioners, including maintaining certain insurance coverage.**
- **Create the Mental Health Transportation Fund within the State Treasury.**
- **Modify various provisions to allow a court to order a security transport officer to transport an individual for involuntary hospitalization or screening under the Code.**
- **Specify that a private security company, or a security transport officer, would not be an employee, officer, or agent of the county or the community mental health transportation panel.**

#### County Mental Health Transportation Panel

The bill would create Section 170 to allow a county board of commissioners to establish a county mental health transportation panel. The purpose of the panel would be to establish a transportation mechanism to serve as an alternative to a peace officer's transporting an individual when required under the Code. The members of the panel would have to include all of the following:

- A county administrator or an individual who had similar responsibilities within the county as a county administrator.
- A judge of a court having jurisdiction in the county.
- A peace officer who worked at a law enforcement agency or Michigan State Police post within the county.
- A mental health professional who was an employee of a community mental health services program (CMHSP) located within the county.

The panel could recommend a contract with a private security company to hire security transport officers to transport individuals for involuntary hospitalization or screening under the Code and, only upon that recommendation, the county board of commissioners could enter into that contract. "Security transport officer" would mean an officer employed by a private security company under contract with a county under Section 170 of the Code.

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

- Provide to security transport officers 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, which would have to be approved by the Department.
- Maintain a dispatch system that was available 24 hours a day, seven days a week to receive transport orders and deploy security transport officers.
- Deploy two security officers for every transport order, and deployment would have to be gender appropriate for the situation.
- Establish a well-maintained company vehicle fleet appropriately equipped for recipient and security transport officer travel and safety.
- Use the level of force authorized for peace officers under Section 427a.
- 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 of peace officers under Chapter 4 (Civil Admission and Discharge Procedures: Mental Illness).
- Maintain hospital emergency room policies and procedures in the same manner as required of peace officers under Chapter 4.
- Provide security transport officers with a defensive driving course.
- Maintain transport vehicle requirements and care and transport vehicle inspection procedures.
- Maintain roadside emergency procedures and policies, including basic first aid and courses in cardiopulmonary resuscitation.

Additionally, a private security company would have to maintain insurance coverage on file with the Department that satisfied the following:

- As to motor vehicle coverage, a policy of insurance issued by an insurer authorized to do business in the State that provided the coverage required by Chapter 31 (Motor Vehicle Personal and Property Protection) of the Insurance Code, including personal protection insurance in the amount stated in the Code.
- As to motor vehicle residual liability coverage relative to a vehicle or vehicle operator used to transport an individual for voluntary psychiatric hospitalization or screening, a policy of insurance issued by an insurer authorized to do business in the State that provided a limit of at least \$2.0 million for bodily injury to or death of one or more people in an accident.
- As to liability, other than for a motor vehicle, a policy of insurance issued by an insurer authorized to do business in the State that named the private security company, the county, and the county mental health transportation panel as co-insureds in the amount of \$25,000 per occurrence, for property damages, and \$2.0 million per occurrence for injury to or death of one or more people arising out of the operation of the licensed activity.
- As to coverage required above, the insurer of the private security company was primary to any insurer, or coverage provider, of the county or the county mental health transportation panel, including any self-insurance or group self-insurance.

## Mental Health Transportation Fund

The bill would create the Mental Health Transportation Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct investment of the Fund. The State Treasurer would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and would not lapse to the General Fund. The DHHS would be the administrator of the Mental Health Transportation Fund for auditing purposes. The DHHS would have to spend money from the Fund, upon appropriation, only to carry out the provisions of Section 170.

## Transportation to Substance Use Disorder (SUD) Services Program

Under Section 281c of the Code, following an examination by a health professional under Section 281b (concerning the respondent's possible need for involuntary treatment) and a certification by that health professional that the requirements of Section 281a(1) (i.e., the individual has a SUD, presents an imminent danger to self or others, and can reasonably benefit from treatment) are met, a court may order a respondent held for treatment for a period not to exceed 72 hours if the court finds by clear and convincing evidence that the person presents an imminent danger or imminent threat of danger to self, family, or others as a result of a SUD. If the hearing to be held under Section 281b will not be held within that 72-hour period, the court may order the respondent held for treatment until the hearing.

If a court is authorized to issue an order that the respondent be transported to a program, the court may issue a summons. If the respondent fails to attend an examination scheduled before the hearing, the court must issue a summons. The court must direct a summons issued to the respondent and must command the respondent to appear at a time and place specified in the summons.

If the respondent fails to appear at the program or the examination, the court may order a peace officer to transport the respondent to a program on the list for treatment. The peace officer must transport the respondent to the program. The transportation costs of the peace officer must be included in the costs of treatment for SUD to be paid.

Under the bill, the court could order a peace officer to take the respondent into *protective custody*. After the respondent was taken into protective custody a peace officer or security transport officer would have to transport the respondent to a program on the list for treatment. The security transport officer would have to transport the respondent to the program. The transportation costs of the security transport officer would have to be included in the costs of treatment for SUD to be paid.

Section 282 specifies that a peace officer, a 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 his or her official duty and is not criminally or civilly liable as a result. This immunity does not apply to a law enforcement officer, member of the emergency service unit, or staff member of an approved service program or an emergency medical service who, while acting in compliance with Sections 276 to 286, engages in behavior involving gross negligence or willful or wanton misconduct.

Approved service programs, staff of approved service programs, emergency medical services, staff of emergency medical services, peace officers, and emergency service units are not criminally or civilly liable for the subsequent actions of the apparently incapacitated individual who leaves the approved service program or emergency medical service.

Under the bill, these provisions also would apply to security transport officers.

### Returning a Patient to a Hospital

Under Section 408 of the Code, an individual is subject to being returned to a hospital if both of the following circumstances exist:

- The individual was admitted to the hospital by judicial order.
- The individual has left the hospital without authorization or has refused a lawful request to return to the hospital while on an authorized leave or other authorized absence from the hospital.

The hospital director may notify peace officers that an individual is subject to being returned to the hospital. Upon notification by the hospital director, a peace officer must take the individual into protective custody and return the individual to the hospital unless contrary directions have been given by the hospital director.

Under the bill, the hospital director also could notify a security transport officer that an individual was subject to being returned to the hospital. Additionally, the hospital director could arrange for a security transport officer to transport the individual to the hospital.

### Preadmission Screening Units

Section 409 of the Code requires each CMHSP to establish one or more preadmission screening units with 24-hour availability to provide assessment and screening services for individuals being considered for admission into hospitals or assisted outpatient programs. Each CMHSP must provide the address and telephone number of its preadmission screening unit or units to law enforcement agencies, the department, the court, and hospital emergency rooms. Under the bill, each CMHSP also 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.

In addition, Section 409 requires a preadmission screening unit to assess and examine, or refer to a hospital for examination, an individual who is brought to the unit by a peace officer or ordered by a court to be examined. Under the bill, this provision also would apply to an individual who was brought to the unit by a security transport officer.

Section 429 specifies that if a preadmission screening unit provides an examination, it must be conducted as soon as possible after the individual arrives at the preadmission screening site, and the examination must be completed within two hours, unless there are documented medical reasons why the examination cannot be completed within that time frame or other arrangements are agreed upon by a peace officer and the preadmission screening unit. The bill also would refer to arrangement agreed upon by a security transport officer and the preadmission screening unit.

### Protective Custody

Section 426 of the Code specifies that upon delivery to a peace officer of a petition and a physician's or licensed psychologist's clinical certificate, the peace officer must take the individual named in the petition into protective custody and transport the individual immediately to the preadmission screening unit or hospital designated by the CMHSP for hospitalization. If the individual taken to a preadmission screening unit meets the requirements for hospitalization, then unless the CMHSP makes other transportation arrangements, the peace officer must take the individual to a hospital designated by the CMHSP. Under the bill, the CMHSP could arrange for a security transport officer to transport the individual to the hospital.

Under Section 427a, if a peace officer is taking an individual into protective custody, the peace officer may use that kind and degree of force that would be lawful if the peace officer were effecting an arrest for a misdemeanor without a warrant. In taking the individual into custody, a peace officer may take reasonable steps for self-protection. The bill also would allow, in transporting an individual, a security transport officer to take reasonable steps for self-protection.

Section 427a also specifies that the protective steps may include a pat down search of the individual in the individual's immediate surroundings, but only to the extent necessary to discover and seize a dangerous weapon that may be used against the officer or other persons present. The protective steps must be taken by the peace officer before the individual is transported to a preadmission screening unit or a hospital designated by the CMHSP. Under the bill, these provisions also would apply to a security transport officer.

### Governmental Immunity

Section 427b of the Code specifies that a peace officer who acts in compliance with the Code is acting in the course of official duty and is not civilly liable for the action taken. This provision does not apply to a peace officer who, while acting in compliance with this act, engages in behavior involving gross negligence or willful and wanton misconduct. The bill would delete these provisions.

Instead, under the bill, a peace officer or security transport officer acting under the Code would have the same immunity provided for a governmental employee under Section 7 of Public Act 170 of 1964. Also, neither a county nor a county mental health transportation would be civilly liable for an act or omission of a security transport officer or a private security company contract with a county.

### Court-Ordered Examination

Under Section 436 of the Code, if it appears to the court that an individual will not comply with an order of examination, the court may order a peace officer to take the individual into protective custody and transport him or her to a preadmission screening unit or hospital designated by the CMHSP or to another suitable place for the ordered examination or examinations. Under the bill, after the individual was taken into protective custody, a peace officer or security transport officer would have to transport him or her to the admission screening unit or hospital designated by the CMHSP or other suitable place for the ordered examination or examinations.

Section 436 also specifies that a court order for a peace officer to take an individual into protective custody and transport the individual must be executed within 10 days after the court enters the order. If the order is not executed within 10 days after the court enters it, the law enforcement agency must report to the court the reason the order was not executed within the prescribed time period.

Following the filing of a petition for assisted outpatient treatment, if it comes to the court's attention that the individual will not make himself or herself available for an evaluation, the court may order law enforcement to transport the individual for the mental health evaluation and to take the individual to the designated preadmission screening unit or hospital. The court must be satisfied that reasonable effort was made to secure an examination before the court orders a peace officer to transport the individual for an evaluation. Instead, under the bill, following the filing of a petition for assisted outpatient treatment, if it came to the court's attention that the individual would not make himself or herself available for an evaluation, the court could order a peace officer to take the individual into protective custody. After the individual was taken into protective custody, a peace officer or security transport officer would have to transport the individual to the designated preadmission screening unit or hospital.

The court would have to be satisfied that reasonable effort was made to secure an examination before the court ordered an individual to be taken into protective custody and transported.

#### Order of Hospitalization

Under Section 438 of the Code, if it appears to the court that an individual requires immediate assessment because he or she presents a substantial risk of significant physical or mental harm to himself or herself in the near future or presents a substantial risk of significant physical harm to others in the near future, the court may order the individual hospitalized and may order a peace officer to take the individual into protective custody and transport the individual to a preadmission screening unit designated by the CMHSP. The bill also would allow a court to order a security transport officer to transport the individual to a preadmission screening unit designated by the CMHSP after the individual was taken into protective custody by a peace officer.

Section 438 specifies that if the preadmission screening unit authorizes hospitalization, the peace officer must transport the individual to a hospital designated by the CMHSP, unless other arrangements are provided by the preadmission screening unit. Under the bill, this provision also would apply to a security transport officer.

#### Alternatives to Hospitalization

Under Section 469a of the Code, except for a petition filed that does not seek hospitalization but only requests that the subject of the petition receive assisted outpatient treatment, before ordering a course of treatment for an individual found to be a person requiring treatment, the court must review a report on alternatives to hospitalization that was prepared not more than 15 days before the court issues the order.

If the court determines that there is a treatment program that is an alternative to hospitalization that is adequate to meet the individual's treatment needs and prevent harm that the individual may inflict upon himself or herself or upon others within the near future and that an agency or mental health professional is available to supervise the program, the court must issue an order for assisted outpatient treatment or combined hospitalization and assisted outpatient treatment. The order may provide that if an individual refuses to comply with a psychiatrist's order to return to the hospital, a peace officer must take the individual into protective custody and transport the individual to the hospital selected. The bill would allow the court to order a peace officer or security transport officer to take the individual to the hospital selected *after the individual was taken into protective custody by a peace officer.*

#### Minors

Section 498k of the Code specifies that if a minor has left a hospital without the knowledge and permission of the appropriate hospital staff or has refused a request to return to the hospital while on an authorized absence from the hospital, and the hospital director believes that the minor should be returned to the hospital, the hospital director must request that the minor's parent, guardian, or person in loco parentis transport the minor to the hospital. If the parent, guardian, or person in loco parentis is unable, after reasonable effort, to transport the minor, a request may be submitted to the court for an order to transport the minor. If the court is satisfied that a reasonable effort was made to transport the minor, the court must order a peace officer to take the minor into protective custody for the purpose of returning the minor to the hospital.

The bill also would allow the court to order a security transport officer to transport the minor to the hospital *after the minor was taken into protective custody.*

Under Section 498t, if a person who requests hospitalization of a minor is unable, after reasonable efforts, to transport the minor for the evaluation, a request may be submitted to the court for an order to transport the minor. If the court is satisfied that a reasonable effort was made by the person requesting hospitalization to transport the minor for evaluation, the court must order a peace officer to take the minor into protective custody for the purpose of transporting the minor immediately to the evaluation site, and if necessary, from the evaluation site to the hospital for admission.

The bill would allow the court to order a security transport officer to transport the minor to the evaluation site or from the evaluation site to the hospital after the minor was taken into protective custody.

### Intellectual Disabilities

Section 516 of the Code allows any person found suitable by the court to file with the court a petition that asserts that an individual meets the criteria for treatment specified in Section 515 (if the individual has an intellectual disability and certain conditions apply).

If it appears to the court that the individual will not comply with an order of examination, the court may order a peace officer to take the individual into protective custody and transport him or her immediately to a facility recommended by or designated by the CMHSP for up to 48 hours for the ordered examination. Under the bill *after the individual was taken into protective custody*, a peace officer or security transport officer to transport him or her to a facility recommended by the CMHSP or other suitable place designated by the CMHSP for up to 48 hours.

### Findings & Disposition

Under the Section 518 of the Code, if an individual is found to meet the criteria for treatment, the court must do one or a combination of the following:

- Order the individual to be admitted to a facility designated by the DHHS and recommended by the CMHSP.
- Order the individual to be admitted to a licensed hospital at the request of the individual or his or her family member, if private funds are to be utilized and the private facility complies with all of the admission, continuing care, and discharge duties and requirements described in Chapter 9 (Civil Admission and Discharge Procedures: Developmental Disabilities) for facilities.
- Order the individual to undergo an outpatient program for one year of care and treatment recommended by the CMHSP as an alternative to being admitted to a facility.

Before making an order of disposition, the court must consider ordering a course of care and treatment that is an alternative to admission to a facility. If the court finds that a program of care and treatment other than admission to a facility is adequate to meet the individual's care and treatment needs and is sufficient to prevent harm or injury that the individual may inflict upon himself, herself, or others, the court must order the individual to receive whatever care and treatment is appropriate. If at the end of one year it is believed that the individual continues to meet the criteria for treatment, a new petition may be filed.

If at any time during the one-year period it comes to the attention of the court either that an individual ordered to undergo a program of alternative care and treatment is not complying with the order or that the alternative care and treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself, herself, or others, the court may, without a hearing and based upon the record and other available information, do either of the following:

- Consider other alternatives to admission to a facility, modify its original order, and direct the individual to undergo another outpatient program of alternative care and treatment for the remainder of the one-year period.
- Enter a new order directing that the individual be admitted to a facility recommended by the CMHSP.

If the individual refuses to comply with this order, the court may direct a peace officer to take the individual into protective custody and transport him or her to the facility recommended by the CMHSP. The bill would allow the court to direct a security transport officer to transport the individual to the facility recommended by the CMHSP.

#### Return to a Facility

Section 537 of the Code specifies that an individual is subject to being returned to a facility if both of the following are true:

- The individual was admitted to a facility on an application executed by someone other than himself or herself or by judicial order.
- The individual has left the facility without authorization or has refused a lawful request to return to the facility while on an authorized leave or other authorized absence from the facility.

The facility may notify a peace officer that an individual is subject to being returned to the facility. Upon notification, a peace officer must take the individual into protective custody and return him or her to the facility unless contrary directions have been given by the facility or the responsible CMHSP.

Under the bill, *after the individual was taken into protective custody*, a peace officer or security transport officer would have to return him or her to the facility unless contrary directions had been given by the facility or the responsible CMHSP.

#### Miscellaneous Provisions

The bill specifies that transportation by a security transport officer would be an arrest of an individual. A security transport officer would have the authority to maintain custody of an individual who was taken into protective custody by a peace officer under a court order; however, this authority would apply only if the individual were being transported to or from a hospital, a mental health screening unit, or other mental health treatment center under a court order.

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

MCL 330.1100d et al.

Legislative Analyst: Stephen Jackson

#### **FISCAL IMPACT**

The bill would have an indeterminate negative fiscal impact on the Department of Health and Human Services. Costs to the State would increase if there were an appropriation to the Mental Health Transportation Fund, although the magnitude of that cost would depend on the amount and type of funds appropriated.

Additionally, the bill would have an indeterminate negative fiscal impact on local units of government. Because the bill would allow, but would not mandate, counties to establish



contracts with private security firms for mental health transportation, it would be left to the individual county to determine its level of investment. A county could incur costs as a co-insured under the bill's nonmotor vehicle liability insurance requirements. The magnitude of these costs would be determined by the price of the policy in question and on the terms of any contract developed between a county and a private security company. If property damage, personal injuries, or death occurred and resulted in claims against the county, the county could incur unknown costs related to legal expenditures. These costs could be partially offset by expenditures from the Mental Health Transportation Fund, which the bill would establish. The ability to offset county costs would depend on the amount of revenue within the Fund and any appropriations by the Legislature.

The bill would have no fiscal impact on the Department of Treasury. Based on the level of estimated revenue within the Fund, the ongoing costs associated with administering and investing the Fund would be less than \$100 and would be within current appropriations.

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