

RM

V E T O # 9

CHAPTER _____

LAWS OF 20 05

SENATE BILL _____

ASSEMBLY BILL 1685

STATE OF NEW YORK

1685

2005-2006 Regular Sessions

IN ASSEMBLY

January 21, 2005

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to certain persons designated as peace officers

S 501 Nozzolio

DATE RECEIVED BY GOVERNOR:

JUN 30 2005

ACTION MUST BE TAKEN BY:

JUL 12 2005

DATE GOVERNOR'S ACTION TAKEN:

JUL 12 2005

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SENATE VOTE ___ Y ___ N

HOME RULE MESSAGE ___ Y ___ N

DATE _____

ASSEMBLY VOTE ___ Y ___ N

DATE _____

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STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

TO THE ASSEMBLY

I am returning herewith, without my approval, the following bill:

Assembly Bill Number 1685, entitled:

JUL 12 2005

V E T O # 9

“AN ACT to amend the criminal procedure law, in relation to certain persons designated as peace officers”

NOT APPROVED

The bill would amend the Criminal Procedure Law to extend peace officer status to all security hospital treatment assistants (SHTAs) employed by the Office of Mental Health (OMH). SHTAs are direct care workers in OMH's secure treatment environments who are responsible for a wide range of patient care activities, including aiding clinical staff in the administration of medications, assisting patients in daily living activities and leading other therapeutic and rehabilitative activities. In extending peace officer status to all SHTAs, the bill would eliminate the current statutory discretion of the OMH Commissioner to designate SHTAs as peace officers when they are transporting convicted criminals to court, a mental health facility or a correctional facility. This bill would take effect on November 1, 2005.

This bill would confer broad law enforcement powers, including the authority to make warrantless arrests, use physical and deadly force where justified, carry licensed firearms, and execute warrantless searches, that go well beyond the traditional scope of the duties performed by SHTAs. In urging disapproval of the bill, the Office of Mental Health, the New York State Commission on Quality Care and Advocacy for Persons with Disabilities, and the New York State Chapter of the National Alliance for the Mentally Ill have all expressed concern that the effect of the bill would be to diminish the treatment aspect of these jobs and shift the emphasis of SHTAs to that of security and law enforcement. Furthermore, it is important to note that uniformed peace officers are currently assigned at OMH's facilities to ensure safety and security.

I disapproved an identical bill in 2003, noting then, as I do again now, that I have not been persuaded that the broad grant of law enforcement authority that would be conferred by this bill is necessary to the performance of their duties. See: Veto No. 167 of 2003. Therefore, while I appreciate the difficult and demanding work that SHTAs perform in our secure hospital facilities, in the absence of any new compelling facts or circumstances, I am constrained to again disapprove the bill.

The bill is disapproved.

**NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)**

BILL NUMBER: A1685

SPONSOR: Gunther

TITLE OF BILL: An act to amend the criminal procedure law, in relation to persons designated as peace officers

PURPOSE OR GENERAL IDEA OF BILL: To designate security hospital treatment assistants as peace officers.

SUMMARY OF SPECIFIC PROVISIONS: Section one amends subdivision 52 of Section 2.10 of the criminal procedure law to designate security hospital treatment assistants as peace officers while performing duties in or arising out of the course of their employment. An appropriate license must still be issued pursuant to section 400.00 of the penal law for such person to carry, possess, repair or dispose of a firearm.

Section two states the effective date.

JUSTIFICATION: Currently, section 7.25 of the mental hygiene law specifies that the commissioner and the directors of the in-patient facilities in the office of mental health may designate safety officers to act as special policemen whose duty is to preserve peace and good order in these facilities. These designated officers acting as special policemen possess all the powers of peace officers. SHTA's, as front line staff members in the mental health system, deal with the criminally insane on a day-to-day basis. This legislation would designate security hospital treatment assistants as peace officers and insure that the front line staff is guaranteed a safe and secure working environment with training appropriate to the clientele and nature of the job.

LEGISLATIVE HISTORY:

2001-02 - A.6153 - Died in Codes Committee
99-2000 A.1068/S.739 Died in Rules
A.6527A/S.3741A of 1997-1998 Died in Mental Health Committee
A.11140 - 06/21/04 - Referred to Rules.

FISCAL IMPLICATIONS:

None to the state.

EFFECTIVE DATE: This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

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B-201

BUDGET REPORT ON BILLS

Session Year 2005

SENATE:
No. 501

Introduced by:
Assemblymember Gunther

ASSEMBLY:
No. 1685

Law: Criminal Procedure Law

Section: 2.10

Division of the Budget recommendation on the above bill:

Approve: _____ Veto: X No Objection: _____ No Recommendation: _____

1. Subject and Purpose:

This bill designates security hospital treatment assistants (SHTAs) working in the Office of Mental Health's (OMH) forensic facilities as peace officers.

2. Summary of Provisions:

Effective on the first day of November following enactment, this bill will designate SHTAs as peace officers, granting them the authority to use force (beyond what they are currently allowed in restraining clients) and perform warrantless arrests. SHTAs, represented by the New York State Correctional Officer and Police Benevolent Association (NYSCOPBA), are responsible for providing active treatment and safety and security for patients with mental illness. There are currently 700 of these titles located at four State-operated forensic inpatient facilities including: Kirby Forensic, Central New York and Mid Hudson Psychiatric Centers, as well as the forensic unit at Rochester Psychiatric Center.

3. Legislative History:

Since 1998, there have been numerous versions of this bill. In 2003, it passed both Houses, but was subsequently vetoed by the Governor. In 2004 the bill died in Rules (S. 7119/A. 11140).

4. Arguments in Support:

Unions might argue that designating SHTAs as peace officers would ensure a more safe and secure working environment through enhanced training for these employees. Moreover, because an assault by a patient against a peace officer is a felony, this bill may act as a deterrent to reduce instances of assault by patients on staff and other patients.

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5. Arguments in Opposition:

- a) This bill would present a significant, unfunded fiscal impact to the State. It is estimated that the first year costs for training the current SHTAs for peace officer responsibilities, including administration, materials and instruction, and overtime expenses necessary to cover shifts and vacation leaves, would be approximately \$3.4 million. In addition, should this bill lead to the need for uniforms, there will be ongoing costs involved as well because the State currently pays \$500 per uniformed employee each year, which would equate to approximately \$350,000 annually. Funding for these costs is not provided for in this bill.
- b) Furthermore, to the extent that designating SHTAs as peace officers will require additional training and expertise and fundamentally alter the description of duties, the title's bargaining unit (i.e., NYSCOPBA) may push to reallocate the title to a higher salary grade. Salary enhancements for the approximately 700 SHTAs would drive a significant fiscal impact. For instance, a two grade salary increase for SHTAs would drive a \$5,000 cost per employee or \$3.5 million annually. Moreover, this bill may also set a precedent leading other titles to push for enhanced security credentials.
- c) It could be argued that the bill is unnecessary because OMH already has uniformed Safety and Security Officers, with peace officer status, working in forensic psychiatric centers. Moreover, this bill could generate confusion among staff related to security roles and patient care responsibilities.
- d) Designating SHTAs as peace officers could also diminish the treatment responsibilities of this position and shift the emphasis to security. SHTAs are direct care workers in secure care treatment environments, and the position is responsible for a range of patient care functions, including aiding clinical staff in administering medications, assisting patients in personal hygiene and daily living activities, and leading other therapeutic and rehabilitative activities. OMH has worked for years to ensure a proper balance between security and patient care concerns and has made concerted efforts to integrate SHTAs into treatment teams to achieve positive treatment outcomes. It is likely that the designation of these direct care positions as peace officers would obscure the distinction between treatment and security environments in forensic psychiatric centers.
- e) While it is true that assaulting a peace officer would constitute a felony, the same act under the same circumstances involving a nurse, social worker or other non-peace officer staff is only a misdemeanor, and there is no reason to differentiate the SHTA staff from the other treatment team members who likewise have direct contact with patients, since their dominant function is to provide treatment.
- f) This bill could also negatively impact hospital accreditation and the ability to claim reimbursement for patient care activities should the SHTA position's direct care functions diminish as a result of this bill. New York State currently receives over \$34 million annually in Medicaid and Medicare reimbursement for the two non-sentenced forensic facilities -- the Kirby Forensic Psychiatric Center and the Mid-Hudson Forensic Psychiatric Center. CMS, in a prior audit, has raised questions regarding the role of SHTAs in patient

treatment. Their contribution and status as members of the treatment is critical to maintain certain accreditation and treatment standards in State hospitals and facility certification that is needed to collect Medicare and Medicaid revenue.

6. Other State Agencies Interested:

The Office of Mental Health, the Commission on Quality of Care for the Mentally Disabled, the Department of Criminal Justice Services, and the Governor's Office of Employee Relations recommend disapproval of this bill. The Department of Civil Service has not issued a formal position on this bill; however it is likely that they will recommend disapproval. The Department of Corrections has no position on the bill.

7. Other Interested Groups:

The New York State Correctional Officers & Police Benevolent Association supports this bill.

8. Budget Implications:

As noted in the Arguments in Opposition section, this bill carries an unfunded State fiscal impact of as much as \$6.9 million on an annual basis. Moreover, \$34 million in Federal Medicaid and Medicare revenue may be at risk if designating SHTAs as peace officers leads to these facilities being decertified. OMH cannot absorb these costs, especially given the annual legislative State Operations reductions over the past few years.

9. Recommendation: Veto

This bill designates SHTAs positions -- those direct care employees in OMH Forensic psychiatric centers -- as peace officers. Because the bill would result in significant unbudgeted costs for the State, is duplicative of current security arrangements in Forensic facilities and is inordinately intrusive on existing treatment practices, we recommend that it be vetoed.





STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12237

Antonia C. Novello, M.D., M.P.H., Dr. P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

Memorandum

To: Richard Platkin, Counsel to the Governor
From: Dennis Whalen, Executive Deputy Commissioner
Date: June 15, 2005
Subject: Assembly Bill 1685

Your office has requested the Department of Health's comments on Assembly Bill 1685, which is before the Governor for executive action. This legislation would amend subdivision 52 of Section 2.10 of the Criminal Procedure Law, and designate as peace officers security hospital treatment assistants performing duties in or arising out of the course of their employment.

The broad powers granted to peace officers include the authority to make warrantless arrests, use physical and deadly force where justified, carry licensed firearms, and execute warrantless searches. Under current law, the Office of Mental Health (OMH) may designate as peace officers employees "while transporting persons convicted of a crime to court, to other facilities within the jurisdiction of the office of mental health, or to any state or local correctional facility". Under this bill, security hospital treatment assistants in the Office of Mental Health "performing duties in or arising out of the course of their employment" would automatically be peace officers.

This legislation would automatically make security hospital treatment assistants peace officers instead of having the Commissioner of OMH and the directors of the in-patient facilities designate who is a peace officer. It would thereby eliminate OMH's ability to designate which of its employees has the power to make arrests or use deadly physical force, and its ability to limit the potential liabilities that are inherent in having such power. The Governor vetoed a similar bill in 2003, Veto Message # 167.

The Department of Health recommends disapproval of Assembly Bill 1685.

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OFFICE OF MENTAL HEALTH

COUNSEL

Sharon E. Carpinello, RN, Ph.D.
Commissioner

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ALBANY, NEW YORK 12229
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JOHN V. TAURIELLO
Deputy Commissioner and Counsel

June 14, 2005

Honorable Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol Building
Albany, NY 12224

Re: Assembly Bill #1685

Dear Mr. Platkin:

The Office of Mental Health (OMH) strongly opposes the above bill, which is before the Governor for executive action.

This bill would amend subdivision 52 of section 2.10 of the Criminal Procedure Law as it regards the peace officer status of security hospital treatment assistants (SHTA). This subdivision now provides that SHTAs may be designated by the Commissioner of Mental Health as peace officers while transporting persons convicted of a crime to court and certain other locations. This bill eliminates the discretion of the Commissioner of Mental Health and requires that all SHTAs shall be peace officers.

The Office of Mental Health operates two types of psychiatric hospitals, civil hospitals, where individuals are treated under the authority of Mental Hygiene Law and secure forensic psychiatric hospitals, where individuals, involved with the criminal justice system, are treated under authority of both the Mental Hygiene Law and the Criminal Procedure Law. SHTAs are members of the treatment staff on the wards of the four secure forensic psychiatric hospitals operated by OMH.

Designating SHTAs as peace officers would diminish the treatment aspect of their jobs and shift the emphasis of the position towards security, or a "correction officer" approach. SHTAs are important members of the staff who provide treatment (often referred to as the treatment team). They work closely with and support nurses, social workers, psychiatrists,

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psychologists and other treatment staff. Their frequent contacts and interventions assist patients in reaching their treatment goals.

OMH has worked for years to ensure a proper balance between security and treatment concerns. To a significant extent this has required that our agency, in the course of training, supervision, and day-to-day management, must stress the therapeutic aspects of the SHTA position. We have made concerted efforts to integrate the SHTAs into treatment teams, which is required to achieve positive treatment outcomes.

The therapeutic responsibilities of the SHTA position are similar to those of the Mental Health Therapy Aide (MHTA) position at OMH's civil hospitals. While there is more of a focus on security with the SHTA position than with the MHTA position, both are involved with safety, treatment, and rehabilitation. The SHTA duty description from the most recent Civil Service examination includes, "...implement treatment goals through positive therapeutic interaction with patients, lead therapeutic activity groups, ...". (See the respective responsibilities as described on the attached duty descriptions quoted from recent civil service examination announcements for SHTA and MHTA.)

The designation of SHTAs as peace officers would unnecessarily differentiate these staff from the other treatment team members. For example, an assault by a patient against a SHTA who is a peace officer, would be a felony, while the same act, under the same circumstances, involving a nurse or other non-peace officer staff, would be a misdemeanor.

OMH already has uniformed safety officers, with peace officer status, working in our forensic facilities, who have safety and security related duties and responsibilities. There are currently conflicts among staff related to the security roles and emergency responsibilities of the SHTAs and the safety officers. This designation of SHTAs as peace officers will further complicate these existing problems.

The language in subdivision 52 that states, "...nothing in the subdivision shall be deemed as authorizing SHTAs to carry or possess a firearm unless an appropriate license to do so has been issued," is not amended by this bill. However, we are very concerned that SHTAs not carry firearms. There is no duty or responsibility of the SHTA position for which a firearm is appropriate and firearms are prohibited at all OMH facilities under Part 542 of Title 14 NYCRR.

Peace officer designation will likely begin the process of making mental health forensic services more like correctional services, leading to calls for guard type uniforms, badges and related equipment for SHTAs. While the union representing SHTAs has negotiated a \$500 annual clothing cleaning allowance, SHTAs do not currently wear uniforms. We believe that wearing of guard type uniforms, by SHTAs would undermine the therapeutic approach to treatment. Based on the costs to OMH of providing uniforms, including seasonal outerwear to Safety Officers, we expect that if this bill becomes law OMH will be called upon to provide uniforms to 700 SHTAs at an approximate added cost of \$500 each in the first year for a total of \$350,000. We have no appropriation for these costs.

SHTAs are currently supervised by nursing and other clinical staff, which is appropriate to their duties. Peace officer status will strengthen the position of the union that supervision and performance evaluation of SHTAs, by other than higher level staff in the SHTA title series, is

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contrary to their contract. An arbitration on this matter, Arthur Rogers and Jean Scarry v. State of New York (OMH), was decided in favor of the State in May of this year. We expect that designation of SHTAs as peace officers would be used by the union to reopen this matter.

The integration of the SHTA into the treatment team and OMH's ability to demonstrate clinical direction and assessment of patient care, is subject to review by the Federal Centers for Medicaid and Medicare Services (CMS), and is needed to maintain the certification associated with Medicare and Medicaid revenue. New York State currently receives over \$34 million annually from these reimbursement sources for Kirby Forensic Psychiatric Center and Mid-Hudson Forensic Psychiatric Center. We are concerned that the designation of SHTAs as peace officers could be considered by CMS when reviewing the appropriate accreditation and certification of these facilities as hospitals.

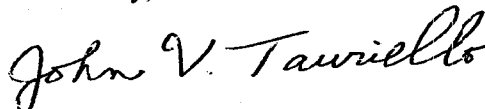
There are currently 647 filled positions and 71 vacancies in the SHTA title series. Each SHTA, as a designated peace officer, would be required to take an initial minimum 35 hours of Division of Criminal Justice Services - Bureau of Municipal Police, approved and mandated peace officer training within one year of the date of appointment and 8 hours yearly thereafter of Lawful Use of Force Training (LUFT).

The first year costs to train the current SHTAs are estimated at \$2,205,000. This estimate assumes using the current approach of centralized training as now used for safety officers. The costs would include costs for administration, instructors, training materials, training facility use, food, transportation and lodging and miscellaneous costs. We estimate that an additional \$350,000 annually will be required to train new hires and provide the annual 8 hour LUFT. Local training, in proximity to the facility, would be a less costly approach, however it would require costs associated with the use of off site space for the training.

Additional related costs, incurred by the facilities, will include overtime pay for substitute SHTAs to work the shifts of the trainees who are attending the training academy. These overtime costs are estimated at \$1,200 per SHTA per week of training, which is approximately \$840,000 in the first year when all SHTA staff must be trained. We have no appropriation associated with any of these costs.

Thank you for the opportunity to comment on this proposal.

Sincerely,



John V. Tauriello
Deputy Commissioner and Counsel

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For Mental Health Therapy Aide Trainee, following is the description from the Civil Service examination announcement reissued in January 2005:

"As a Mental Health Therapy Aide Trainee, you would provide personal care, treatment and rehabilitation to individuals diagnosed with mental illness who live in an institutional or community-based setting. Under supervision, you would groom, feed, and wash individuals who are unable to take care of themselves. You would help individuals to participate in games and recreational programs; coach and encourage individuals to develop daily living skills; and provide a clean, safe and comfortable environment. You would work with other staff to develop, carry out and record care plans and, in accordance with special instructions, you may administer medication. These positions may be physically demanding. You would need to be prepared to act to insure the health and safety of patients in emergency situations. "

For Security Hospital Treatment Assistant, following is the description from the Civil Service examination announcement for the February 7, 2004 examination:

"As a Security Hospital Treatment Assistant in a secure forensic unit or hospital, you would provide assistance with psychiatric treatment and rehabilitation, and basic nursing care. You will also be responsible for the safety and security of individuals diagnosed with mental illness who are considered to be dangerous to themselves and/or others. You would model acceptable behaviors and verbal skills, teach replacement behaviors and implement treatment goals through positive therapeutic interactions with patients. You would lead or co-lead therapeutic activity groups; escort patients off grounds to appointments; provide 1:1 patient supervision; complete reports and documentation; constantly monitor patients; and provide for a safe and therapeutic environment. You will use verbal techniques to de-escalate situations and will use approved physical intervention techniques as a last resort to ensure the safety of patients and others. You would also assist in the application of restraint or seclusion. You would assist with personal hygiene and basic nursing duties such as monitoring of vital signs, use of First Aid and CPR."



STATE OF NEW YORK

GEORGE E. PATAKI
Governor

**Commission on Quality of Care and Advocacy
for Persons with Disabilities**

401 State Street
Schenectady, NY 12305-2397
(Voice/TTY) 800-624-4143
www.cqc.state.ny.us

GARY O'BRIEN
Chair

ELIZABETH W. STACK
ANGELO MUCCIGROSSO
Commissioners

June 16, 2005

Honorable Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol
Albany, New York 12224

RE: Assembly Bill No. 1685

Dear Mr. Platkin:

The Commission on Quality of Care and Advocacy for Persons with Disabilities maintains its concerns with this bill and recommends that the Governor disapprove the proposed designation of security hospital treatment assistants as peace officers.

The provisions of the bill would impede the efforts of the Office of Mental Health to balance its responsibilities to the recipients of services and the public. On the one hand OMH must provide for the security of service recipients and others and at the same time meet the treatment needs of the individual so that both the individual and society are cared for and ultimately protected. At a time when many states are trying to find innovative ways to treat the mental health needs of persons with forensic backgrounds in the community, this measure sends the wrong message about how to treat such individuals when they are inpatients.

The bill would place the primary emphasis on security rather than on the balance of treatment and security required of OMH at this time. Therapy staff should be supporting the therapist, recreational therapist, and other staff and be a part of the team to implement the treatment plan for the individual. Therapy staff need to assist with or supervise skills of daily living and to form relationships to help achieve positive treatment outcomes. Other staff, the safety officers, are the primary security staff. The proposed redirection of the therapy staff to deal with security issues poses a risk to the effectiveness of the overall treatment and undermines OMH's balancing of both the needs of the patients and the interests of society to which they may or will return.

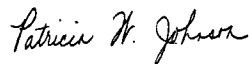
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Under this proposal, the patient who assaults a peace officer would face an enhanced criminal charge: a felony charge. The peace officer could immediately arrest the assaulting patient without additional assistance, review or input. This places additional tension on the relationship between the treatment staff and the patient. In our view, it is preferable to have arrests handled by staff other than those charged with providing therapies.

For all these reasons, the Commission urges that the Governor not approve Assembly Bill Number 1685 at this time.

If you need further assistance or information, please contact us.

Very truly yours,



Patricia W. Johnson
Assistant Counsel

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STATE OF NEW YORK
OFFICE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

44 HOLLAND AVENUE
ALBANY, NEW YORK 12229-0001
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www.omr.state.ny.us

June 22, 2005

Honorable Richard Platkin, Esq.
Counsel to the Governor
State Capitol Building
Executive Chamber
Albany, NY 12224

Re: A.1685 amends the Criminal Procedure Law to designate security hospital treatment assistants as peace officers

Dear Mr. Platkin:

The Office of Mental Retardation and Developmental Disabilities ("OMRDD") has reviewed the above referenced bill awaiting executive action which was forwarded to this office for comment.

Please be advised that OMRDD has no position on this bill because it does not impact this agency. Rather, OMRDD defers to the Office of Mental Health as this bill impacts their employees.

Thank you for the opportunity to review and comment on this bill.

Sincerely,

/s/

Cynthia E. McDonough
Associate Attorney

cc: Paul Kietzman

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STATE OF NEW YORK
DIVISION OF CRIMINAL JUSTICE SERVICES

June 14, 2005
Via E-Mail

Honorable Richard Platkin
Counsel to the Governor
Executive Chamber
State Capitol - Room 225
Albany, NY 12224

RE: Assembly Bill Number 1685
Recommend Disapproval

Dear Mr. Platkin:

This is in response to your request for comment on the above-referenced legislation that amends the Criminal Procedure Law to designate security hospital treatment assistants in the Office of Mental Health (OMH) as peace officers.

The Legislature has enacted a plethora of new peace officer designations in recent years. Peace officers possess powers very similar to police officers, including the right to use force and make warrantless arrests, but receive only a fraction of the training that police officers do. The basic course for peace officers is 35 hours (10 hours for part-time peace officers), while the basic course for police officers is 510 hours. The Division is concerned that new peace officer designations are being created without a sufficient justification being put forth and without sufficient forethought of the ramifications, and that this may have a deleterious effect on public safety.

With regard to this bill, the commissioner of OMH currently has discretion to designate certain security hospital treatment assistants as peace officers while transporting persons convicted of a crime to court, other OMH facilities, or correctional facilities. It is not clear from the sponsor's memorandum in support why the commissioner's discretion to designate security hospital treatment assistants as peace officers should be eliminated. Nor is it clear why the limited circumstances pursuant to which security hospital treatment assistants may act as peace officers should be so greatly expanded.

The justifications for designating security hospital treatment assistants as peace officers put forth in the memorandum in support are vague and conclusory. For example, the justification that peace officer status will "insure that the front line staff is guaranteed a safe and secure working environment with training appropriate to the clientele and nature of the job" is unconvincing. There is no explanation of how peace officer status will create a safe and secure work environment, nor how "training appropriate to the clientele and nature of the job," presumably the 35-hour basic course for peace officers, will enhance security hospital treatment assistants' ability to perform their duties. Moreover, if security hospital treatment assistants need additional training to perform their duties, there is no reason such training cannot be provided absent peace officer status.

Finally, the Division notes that the Governor vetoed identical legislation in 2003 (veto message number 167). We are unaware of any change in circumstances that would justify approval of the legislation this year.

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Accordingly, because we believe a sufficient justification has not been articulated to justify peace officer status for security hospital treatment assistants in the Office of Mental Health, the Division of Criminal Justice Services **recommends disapproval** of A.1685.

Thank you for the opportunity to comment on this legislation.

Very truly yours,

Kimberly A. O'Connor
Deputy Commissioner and Counsel

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NAMI-New York State
National Alliance for the Mentally Ill
Making Life Better for People with Mental Illness and Their Families

Memorandum in Opposition

A1685 and S501

The National Alliance for the Mentally Ill of New York State (NAMI-NYS), a 23 year old grassroots organization whose mission is support, education and advocacy on behalf of persons with mental illness and their families, writes in opposition to Assembly Bill 1685 and Senate Bill 501. If signed into law, this legislation would extend “peace officer” status to all aspects of the jobs of “Security Hospital Treatment Assistants” (SHTAs) in the State’s psychiatric centers operated by the New York State Office of Mental Health (OMH). NAMI-NYS and our 58 affiliate organizations and 5,000 members across New York urge Governor Pataki to VETO THIS BILL.

SHTAs are part of the mental health treatment staff and should not be turned into law enforcement officials of any type or kind. They are there to help provide medical care for medical illnesses and not to enforce any laws. Giving them peace officer status is a very bad idea and would set both a terrible example and an awful precedent. These therapeutic staff already work within the secure confines of high-security psychiatric facilities and are protected, as are the patients, by security staff, locked units, razor-wire perimeters and other devices. To our knowledge, OMH has never even extended such status to the SHTAs while transporting such patients from facility to facility, as the law now permits.

Further, the law notes that it does not grant a gun permit, but in so doing, virtually suggests that such individuals do so separately. We almost cannot think of a more horrible scenario than to convert treatment staff to law officers carrying guns inside the state’s secure psychiatric hospitals.

Therefore, NAMI-NYS opposes A1685 and S501, and urges Governor Pataki’s veto.

J. David Seay, J.D., Executive Director
NAMI-NYS
260 Washington Avenue
Albany, NY 12210

(518) 462-2000

June 8, 2005

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Memorandum

NEW YORK STATE POLICE

June 15, 2005

To: Honorable Richard Platkin
Counsel to the Governor

From: Glenn Valle
Counsel to the Division of State Police

Subject: TEN DAY BILL – A1685

AN ACT to amend the criminal procedure law, in relation to certain persons designated as peace officers

POSITION:

While the Division of State Police takes no position on this bill, we note that in light of recent federal legislation (18 U.S.C. 926B, 926C) the "limitation" concerning the carrying of firearms enacted in conjunction with conferring peace officer status to new classes of individuals may be ineffectual. Specifically, it would appear that notwithstanding the limitation under state law, if the employer allows these peace officers to carry firearms on duty, these officers would become "qualified law enforcement officers" pursuant to the federal statute, and would thus be exempt from all licensing requirements, on or off duty, despite the Legislature's limitation, both as active employees and after retirement, in both this state, and throughout the nation.

Therefore, we believe that in light of the broad sweep of this new federal law, any expansion of peace officer classifications must be evaluated with due regard to the implication of this law.

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Lee E. Mendez

19 Woodland Drive
Wurtsboro, NY 12790
845-888-0179

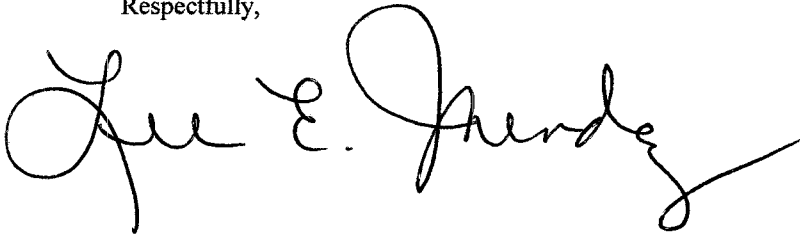
July 7, 2005

Governor George E. Pataki
State Capitol
Albany, N.Y. 12224

Dear Governor,

I am writing to you to ask you to please sign Bill A.1685 for Peace Officer for S.H.T.A.'s in the OMH / Division of Forensic Services. Our facility is a Maximum Security Forensic Psychiatric Center for the Criminal Insane, surrounded by razor ribbon, Patients -Inmates Come to us from all counties in the state and Rikers Island in cuffs and shackles. We're subjected to violence every day of our life, despite what OMH says that We are Security not treatment specific only. All we want is 8 hours on duty as a Peace officer.

Respectfully,



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September 9, 2005

Governor George Pataki
State Capitol
Albany, NY 12224

Dear Governor Pataki,

Ref: Veto message no 9. Bill A01685 / S00501, SHTA Peace Officer

SHTA's are not asking for all the powers granted under CPL. Part 1 section 2.20 Powers of Peace Officers, because our primary function is inside the facility fence on the wards themselves, but the status that it implies to provide us with safety while working in a dangerous environment. If the bill eliminated the OMH Commissioner to designate SHTA's as peace officers when they are "transporting convicted criminals to court, a mental health facility or a correctional facility", how would it change our current function while working?

Changing the wording of bills A01685 / S00501 to "Performing duties in or arising out of the course of their employment" is what we are currently doing. This bill will not diminish any treatment aspects of our job. Since the patients have not been convicted of a crime, they are transported to court to face new charges. OMH Safety officers along with an SHTA transport all patients to various clinical appointments and to other mental health facilities. Patients to be transported to any state or local correctional facility are picked up by the Department of Corrections from the jurisdiction from which they have been charged with a crime.

SHTA's are not looking for the authority to make warrant arrests, use deadly force, carry firearms or execute warrantless searches. Not all of the titles listed under the Criminal Procedure law, Article 2, section 2.10 Persons Designated as Peace Officers perform these functions in the course of their daily duties. Making warrant arrests, use deadly force, carry firearms and execute warrantless searches are duties of a **POLICE OFFICER**. As a peace officer, it is not a requirement to carry a firearm. Article 400.00 of the Penal Law refers to the licensing and other provisions relating to firearms.

Most of our clientele come from regional correctional facilities charged with a crime. When they arrive, they arrive as criminals. They are in handcuffs, chains, and shackles. They arrive for a psychological evaluation to see if they are fit to proceed with their case. They have not been convicted of a crime or have been retained until found fit to proceed. SHTA's are asking for the same protection provided to state and local correction officers while working inside a secure facility. On occasion, a patient's name will show up in the local paper.¹

¹ New York Post, Spitting Image; Hannibal Lector Court Gear for 'HIV Spew' Man, June 29, 2005, Aids Thug Spit Blood in Kill Bid, Aug 9, 2005; NY Daily News: AIDS Inmate Gets 13 yrs in Biting-Spitting Rampage, Sept 8, 2005; Times Herald Record: Psych Center Patient in Court, February 4, 2005, Sheriff Calls for Change to State Regulations, February 6, 2005

The following information concerning CPL Status and Corrections Law is from the website by The Office of Mental Health.²

Criminal Procedure Law § 330.20: Not Responsible for Criminal Conduct by Reason of Mental Disease or Defect.

Persons are admitted to Mid-Hudson (MHFPC) and Kirby (KFPC) Forensic Psychiatric Centers as well as to the Rochester Regional Forensic Unit (RRFU).

Persons subject to the provision of CPL § 330.20 progress through a continuum of services which includes secure facility care, non-secure adult psychiatric center care and community-based care. Court orders are required for each movement to a less restrictive setting including release to the community. Once released, persons are subject to renewable five-year order of conditions. The Commissioner of OMH is required to monitor compliance with the court order of conditions and the persons suitability for continued community placement.

Criminal Procedure Law § 730: Not Competent to Stand Trial as a Result of Mental Illness.

CPL 730 differentiates between felony and misdemeanor charges and local and superior courts.

CPL 730 Final Order of Observation pertains to misdemeanor charges. Upon finding of incompetence, the charges are dismissed and the defendant is transported to a state civil psychiatric center for evaluation and admission under the provisions of Mental Hygiene Law. (*Ritter v Surles*)

CPL 730.40 Temporary Order of Observation pertains to felony charges. Under finding of incompetence, defendants are committed to OMH under CPL § 730. Charges are not dismissed. Purpose of hospitalization is to restore competency to stand trial.

CPL § 730.50 Order of Commitment pertains to indicted felony defendants and are valid for one year. OMH may continue to retain defendants under CPL § 730 for up to two-thirds of the maximum sentence the patient would have received if convicted.

Bureau of Forensic Services' policy is to hospitalize Temporary Order of Observation and Order of Commitment defendants in Mid-Hudson and Kirby Forensic Psychiatric Centers as well as Rochester Regional Forensic Unit.

Correction Law § 508: Admission of pre-sentenced inmates detained in local county correctional facilities.

All admissions are involuntary and require an applicant and physician(s) certification, usually initiated by the local county Director for Community Services.

Defendants are hospitalized under guard by local sheriff. Two units, Rochester Regional and Northeast Central Regional Forensic Units admit CL 508 Patients.

CL 508 defendants may be admitted to adult psychiatric centers and municipal/general inpatient psychiatric units under sheriff guard.

² <http://www.omh.state.ny.us/omhweb/forensic/BFS.htm>

Correction Law § 402: Hospitalization of sentenced inmates in state and local correctional facilities.

All admissions are received at Central New York Psychiatric Center.

All admissions are involuntary. The terms and duration of commitments mirror Mental Hygiene Law commitments. Admission requires an applicant, certifying physicians, as well as a court order.

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SHTA's do physical restraint with as many staff as possible to protect ourselves and other employees when necessary from assaults from agitated patients. At Kirby OMH Safety officers are called to assist SHTA's when medicating a patient for a show of force. They are medicated and most of the time secluded, then the safety officers leave and an SHTA remains to monitor the patient if secluded on a 1:1 basis.

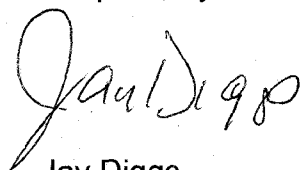
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OMH Safety officers assigned at Kirby provide security for the interior of the building up to the ward door and exterior of the building and grounds.

You may appreciate the difficult and demanding work we as SHTA's perform, but do you fully understand the limitations we are asking for with this bill and the safety it would provide us while working?

One must wonder if the Office of Mental Health, the New York State Commission on Quality Care and Advocacy for Persons with Disabilities, and the New York State Chapter of the National Alliance for the Mentally Ill, are giving you the true picture of what an SHTA does in the course of the working day. Just maybe you should sit and talk to a few for a clearer understanding of the challenges we face on a daily basis.

Respectfully submitted,

A handwritten signature in black ink that reads "Jay Diggs". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

Jay Diggs
SHTA, Kirby Forensic

September 9, 2005

Governor George Pataki
State Capitol
Albany, NY 12224

Dear Governor Pataki,

Ref: Veto message no 9. Bill A01685 / S00501, SHTA Peace Officer

SHTA's are not asking for all the powers granted under CPL. Part 1 section 2.20 Powers of Peace Officers, because our primary function is inside the facility fence on the wards themselves, but the status that it implies to provide us with safety while working in a dangerous environment. If the bill eliminated the OMH Commissioner to designate SHTA's as peace officers when they are "*transporting convicted criminals to court, a mental health facility or a correctional facility*", how would it change our current function while working?

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STATE OF NEW YORK

1685

2005-2006 Regular Sessions

IN ASSEMBLY

January 21, 2005

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to certain persons designated as peace officers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision 52 of section 2.10 of the criminal procedure
- 2 law, as added by chapter 969 of the laws of 1983, is amended to read as
- 3 follows:
- 4 52. Security hospital treatment assistants [~~as so designated by the~~
- 5 ~~commissioner of]~~ in the office of mental health while [~~transporting~~
- 6 ~~persons convicted of a crime to court, to other facilities within the~~
- 7 ~~jurisdiction of the office of mental health, or to any state or local~~
- 8 ~~correctional facility]~~ performing duties in or arising out of the course
- 9 of their employment; provided, however, that nothing in this subdivision
- 10 shall be deemed to authorize such employee to carry, possess, repair or
- 11 dispose of a firearm unless the appropriate license therefor has been
- 12 issued pursuant to section 400.00 of the penal law.
- 13 § 2. This act shall take effect on the first of November next succeed-
- 14 ing the date on which it shall have become a law.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD00229-01-5

STATE OF NEW YORK

2902

2003-2004 Regular Sessions

IN ASSEMBLY

February 3, 2003

Introduced by M. of A. GUNTHER -- read once and referred to the Committee on Codes

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LBD01316-01-3