Department of Planning and Budget
2014 Fiscal Impact Statement

1. **Bill Number:** SB260

House of Origin	☐	Introduced	☐	Substitute	☐ Engrossed
Second House	☐	In Committee	☐	Substitute	☒ Enrolled

2. **Patron:** Deeds

3. **Committee:** Passed Both Houses

4. **Title:** Emergency custody; time limit

5. **Summary:** The bill extends the time that a person may be held pursuant to an emergency custody order from four hours with a possible two-hour extension to eight hours. The bill also provides that a representative of the law-enforcement agency that takes the person into emergency custody or executes an emergency custody order must notify the local community services board as soon as practicable after the person is taken into custody or the order is executed. The bill provides further that an individual for whom a temporary detention order is issued shall be detained in a state facility unless the state facility or an employee or designee of the community services board is able to identify an alternative facility that is able and willing to provide temporary detention. Under no circumstances shall a state facility fail or refuse to admit an individual who meets the criteria for temporary detention unless as alternative facility has agreed to accept the individual. The state facility and the local community services board may continue to look for an alternative facility for an additional four hours. The provisions of this bill allowing for this additional four-hour period expire on June 30, 2018. The bill also requires that a person who is the subject of an emergency custody order or temporary detention order be given a written summary of the procedures and statutory protections associated with such custody or detention.

   The bill also directs the Department of Behavioral Health and Developmental Services to establish an acute psychiatric bed registry that will provide real-time information on the availability of beds in public and private psychiatric facilities and residential crisis stabilization units for individuals who meet the criteria for temporary detention. The provisions of the bill establishing such registry are subject to an emergency clause.

   The bill extends the period that a person may be held pursuant to a temporary detention order from 48 hours to 72 hours.

   The bill requires the Department of Behavioral Health and Development Services to submit an annual report to the Governor and the chairmen of the House Appropriations and Senate Finance Committees on the implementation of the provisions of the bill.

   Finally, the bill directs the Governor's Mental Health Task Force to study issues associated with law enforcement's involvement in the admission process and make recommendations designed to reduce the burden on law enforcement resources.

6. **Budget Amendment Necessary**: Yes. Items 298, 307, 312.

7. **Fiscal Impact Estimates:** See fiscal implications below.

8. **Fiscal Implications:** The enrolled bill creates additional costs in five areas: (1) Department of Behavioral Health and Developmental Services (DBHDS) central office expenses associated with coordinating and monitoring the acute bed registry and assisting Community Services Boards (CSB) in the placement of individuals into private facilities; (2) costs to local law enforcement for an extension of the emergency custody order (ECO) period; (3) the fiscal impact on DBHDS mental health facilities if an appropriate facility has not been identified for the temporary detention and such an individual must be place in a state facility; (4) the impact on the Involuntary Mental Commitment Fund (IMC) for the extension of the ECO period; and (5) the impact on the IMC fund for the extension of the temporary detention order (TDO) period.

   The complexity of the issues that must be addressed in implementing the provisions of this bill makes it difficult to clearly quantify an overall fiscal impact. Providing a single, accurate cost to this legislation has been impeded by the lack of concrete data on the impact of the current law on both law enforcement and individuals affected by the process. This fiscal impact statement generates the possible costs of the bill using information from various sources including a 2013 University of Virginia study, Virginia Supreme Court data, and clinical expertise at DBHDS. The actual impact of the legislation will be dictated by how behaviors and practices change as a result of the modification of the emergency custody order process.

	FY 2015	FY 2016
Acute Bed Registry	$111,715	$121,871
DBHDS central office	$215,835	$234,388
Law enforcement	$30,030	$30,030
DBHDS facilities	$4,070,663	$4,070,663
One-time capital at Hiram Davis	$375,000	
Involuntary Mental Commitment Fund – ECO Extension	$115,000	$115,000
Involuntary Mental Commitment Fund – TDO Extension*	$956,254	$1,560,554
Funds included in HB/SB30 for TDO extension	($1,418,880)	($1,721,788)
Total fiscal impact	**$4,455,617**	**$4,410,718**

**Funds for the TDO extension included in the introduced budget assumed a 24-hour minimum hold. The enrolled SB260 does not include the 24-hour minimum, and therefore the TDO portion of this bill is less costly than the changes assumed in the introduced budget.*

Acute Bed Registry

This bill requires the Department of Behavioral Health and Developmental Services to establish and operate a web-based registry of public and private acute psychiatric and crisis stabilization beds statewide, including availability of beds by facility. The agency is currently in the final stages of implementing such a registry using funds appropriated by the General Assembly in Chapter 806, 2013 Acts of Assembly. The registry, created via contract with Virginia Health Information, is anticipated to be operational by April 1, 2014. Funding to operate the registry is proposed in HB30/SB30.

However, to improve the effectiveness of the registry and ensure that facilities are in compliance and cooperating with the system's requirements, the department will need an additional FTE in the central office, Item 307. This position will be responsible for providing training and technical assistance to users, visiting sites to identify barriers to admissions, analyzing and reporting on data that is being collected, tracking trends, and suggesting corrective actions to improve system effectiveness. The individual will also work with hospitals and community providers on prompt discharge of clinically ready persons to reduce bed blockage for new admissions. The annualized cost of this position and the associated costs is assumed at $121,871 per year. The first year cost is assumed at 22 pay periods, or $111,715.

Salary	$80,000
Fringe Benefits	$32,420
Subtotal, Personal Services	$112,420
Travel	$4,726
Office Supplies	$150
Training	$2,500
Telephone	$449
Computer/Blackberry	$1,626
Subtotal, Nonpersonal Services	$9,451
Annual Total	$121,871
First Year	$111,715

DBHDS Central Office

It is estimated that the central office will require an additional two FTE to be responsible for working with the Community Services Boards and state mental health facilities to assist in the location of a bed if time on the ECO is expiring and/or during the first four hours after an individual has been placed in a state facility after the initial eight hour period has expired.

The cost of these two positions, also in Item 307, is estimated at $234,388 including benefits and associated costs. The first year cost is assumed at 22 pay periods, or $215,835.

Calculations for one position:

Salary	$80,000
Fringe Benefits	$32,420
Subtotal, Personal Services	$112,420
Office Supplies	$150
Training	$2,500
Telephone	$449
Computer/Blackberry	$1,675
Subtotal, Nonpersonal Services	$4,774
Annual Total	$117,194
First Year	$107,918

ECO extension – Law Enforcement

The state does not currently provide funding to reimburse sheriffs' offices or local police for mandated activities related to ECOs. Therefore, unless the decision is made to begin providing state support for this activity, the proposal is not expected to have a fiscal impact on state funding for law enforcement. However, by eliminating the requirement that a magistrate extend the period of detention after four hours, and by adding an additional two hours to the total period of detention, the legislation will have an impact on local law enforcement agencies. Below presents the estimated additional costs that could be incurred by localities under the proposal.

Under current law, law enforcement officers serve the individual with an Emergency Custody Order that has been obtained from a magistrate or via a 'paperless' ECO when on the road and encounter a situation that requires them to take custody. The ECO is currently time-limited at four hours plus a possible two hour extension upon approval of a magistrate. The time period begins upon service of the order. From that time to the order's expiration, the individual's placement in a facility under TDO, or the individual's release from care (whichever occurs first) a law enforcement officer is required to be present and maintain custody of the individual. Based on available data provided by the Compensation Board, the estimated number of emergency custody order cases that require the presence of local law enforcement each year is approximately 11,950.

Using data compiled from the ILPPP study, the Department of Behavioral Health and Developmental Services has estimated that 736 individuals per year will be in an extended ECO period, and will require continued law enforcement presence past the six hour window,

assuming that the extension period is limited to finding an available bed for an individual who has been recommended for a TDO. Applying the average hourly wage of a deputy, the estimated increased cost to law enforcement of an additional two hours is $30,030.

However, the removal of the requirement that a magistrate approve an extension of the ECO after a psychiatric evaluation has been completed by the four hour mark could increase the number of ECOs that extend past the current legal if the process is not closely monitored and addressed by the appropriate staff at DBHDS and the CSBs. Any increase beyond the estimated 736 individuals noted above would add additional costs to local law enforcement agencies.

State Mental Health Hospitals as Facility of Last Resort

The bill will create a greater demand for beds in the state facilities. However, the location or distribution of these incidences is difficult to predict over the course of year. In addition, logistical arrangement of staffing necessitates beds to be opened as a set or pods as opposed to single beds.

To ensure capacity for all regions and proper staffing, DBHDS has proposed a strategy of adding 10 beds at each of the following facilities; Southwestern Mental Health Institute (SWVMHI) and Northern Virginia Mental Health Institute (NVMHI). Individuals with significant medical requirements cannot currently be accommodated by DBHDS facilities. To address this need, DBHDS is also proposing setting up a 10 bed medical unit at Hiram Davis Medical Center. For the eastern region, the governor's proposed budget provides $2.2 million (GF) a year to open a 20 bed unit at Eastern State Hospital. Western State has sufficient capacity to handle an increase of potential TDOs.

Projected Direct and Indirect Costs for Each 10 Bed Increase

Classifications	FTEs*	10 BED BUDGETS
Physician II	1	$ 205,008
RN II	3	$ 202,118
LPN	2	$ 91,015
DSA/Therapist Asst/Peer Support Specialist	7	$ 211,162
Psychologist II	1	$ 67,716
Counselor II	1	$ 43,647
Therapists	1	$ 43,647
Housekeeper	2	$ 50,140
Food Serv Tech	1	$ 24,164
AOS II	1	$ 31,040
Sub Total		$ 969,657
Pharmaceuticals		$ 87,500
Food/Fd serv Supp		$ 30,000
Special Hospital		$ 50,000

Laundry & Linen		$ 9,000
Medical Supplies		$ 7,500
Facility Maint Supp		$ 5,000
Office Supplies		$ 2,501
Sub Total		$ 191,501
Total		$ 1,161,158

Costs for Three 10-Bed Units Staffing and Supplies
1 Unit (SWVMHI)* $1,161,158 = $1,161,158
1 Unit (NVMHI) = 1.3 (Adjustment Factor) * 1,161,158 =$1,509,505
1 Unit (Hiram Davis) = $1,400,000 Estimate
= $1,161,158+ 1,509,505 + $1,400,000 = $4,070,663

Therefore, the annual operating costs associated with ensuring sufficient capacity at state hospitals is $4.1 million.

In addition to the capital costs identified above, there would be approximately $375,000 in capital costs at Hiram Davis to isolate one-half of a floor from other patients. The following are a list of capital costs.

- Entrance doors will have to be changed to security doors with security hardware - $15,000.
- The ceilings are at 9 feet and will need to be hardened with access panels for the mechanical and electrical items above the ceiling - $40,000.
- Door hardware will have to be made anti-ligature - $20,000.
- Hanging hazards will have to be addressed in all rooms - $80,000.
- Toilets and showers will have to be made accessible - $50,000.
- A nurses' station will have to be created inside the space - $50,000.
- Windows will have to be replaced with high impact resistant type similar to WSH - $70,000.
- Paint all patient room walls and corridors with a high durability paint - $30,000.
- Assume that the HVAC, electrical and fire alarm can remain and only modified for the new arrangement - $10,000.
- Additional miscellaneous costs - $10,000.

Involuntary Mental Commitment Fund – ECO extension

Despite the current six hour limit on emergency custody orders, according to a study completed by the Institute of Law, Psychiatry and Public Policy (ILPPP) for the month of April, 2013, of the 1,370 individuals recommended for temporary detention order, only 19 individuals were reported as not being granted a temporary detention order. The study notes that in many cases where a person did not receive a TDO, the most commonly reported reason was that the individual was still undergoing medical treatment. Using the limited data available, the

Department of Behavioral Health and Developmental Services has estimated that a second two-hour extension of the ECO period will result in an additional 24-108 of those individuals being granted temporary detention orders each year, resulting in a minimal increased cost to the involuntary mental commitment fund of $25,000 - $115,000 per year.

Because the Involuntary Mental Commitment fund does reimburse state facilities, the cost listed under state facilities may be slightly offset by any reimbursement from the IMC fund, however the state's per diem cost is significantly higher than payments from the IMC fund, particularly if an individual has significant medical needs.

Involuntary Mental Commitment Fund – TDO Extension

This bill provides that a person held pursuant to a temporary detention order may be held no more than 72 hours. Currently, a person may be held pursuant to a temporary detention order for up to 48 hours. The introduced budget (HB/SB30) included funding of $1,418,880 GF in FY 2015 and $1,721,788 GF in FY 2016 in order to fund the impact of the changes to the maximum period of temporary detention.

The legislation would extend some of the inpatient hospital stays that are associated with the Temporary Detention Order (TDO) program and paid for by the Involuntary Commitment Fund, administered by the Department of Medical Assistance Services (DMAS). TDOs can start any day of the week and while some discharge dates do occur on weekend days most occur during the week, with added emphasis on Mondays, Wednesdays and Fridays. DMAS analyzed the current discharge dates of those TDOs that are lasting for approximately 48 hours and made the following assumptions. Seventy-five percent of those starting on a Saturday and ending on a Monday will receive an extra day. Ninety percent of those starting on a Sunday and ending on a Tuesday will be admitted an extra day. Seventy-five percent of those ending on a Wednesday will get an extra day. Ninety percent of those ending on a Thursday will get an extra day, and finally 10 percent of those TDOs ending on a Friday will get an extra three days, over the weekend. TDOs that currently have admission dates and discharge dates the same day, the following day, or longer than 48 hours due to a weekend or holiday are assumed not to receive any extra days due to the extension to 72 hours. With these assumptions DMAS calculates an additional 12.5 percent increase in inpatient hospital bed days and uses that as an estimate of 12.5 percent in additional costs.

TDO payments have longer lags between service dates and claims payments than typical claims. DMAS has assumed the full effect of the extension to 72 hours would not be reached until five months after the start date of the proposed legislation. This lag is included in the FY 2015 fiscal impact. The fiscal impact for the extension to 72 hours is calculated at $956,254 GF in FY 2015 and $1,560,554 GF in FY 2016. The out-years beyond FY 2016 assume no growth.

Expenditure Impact:

Fiscal Year	*Dollars*	*Positions*	*Fund*
2014	-	-	-
2015	$956,254	-	General Fund
2016	$1,560,554	-	General Fund
2017	$1,560,554	-	General Fund

2018	$1,560,554	-	General Fund
2019	$1,560,554	-	General Fund
2020	$1,560,554	-	General Fund

The fiscal impact estimate for FY 2015 and FY 2016 is lower than the funding included in the introduced budget. This is due to the fact that the bill does not include a 24-hour minimum for TDOs. No budget amendment is necessary to cover the costs because the introduced budget includes sufficient funding; however a budget amendment is necessary in order to capture the savings.

The Involuntary Mental Commitment Fund is responsible for reimbursing payments for acute care services for persons who have been involuntary detained under a TDO. TDOs are also paid for Medicaid members who receive the TDO at a facility that can bill Medicaid for that service. These TDOs are paid out of the Medicaid program but are not able to be distinguished as TDO initiated expenditures. While there would likely be some increase in Medicaid expenditures it would be minimal, difficult to estimate and is not included in this estimate. Likewise studies have shown that subsequent care is reduced due to extended TDO care. DMAS cannot identify any reduction in subsequent Medicaid expenditures and this effect has not been included in this estimate.

Potential Savings

Studies have shown that subsequent care, post-TDO, is reduced by extending the length of time individuals are subject to a TDO. It is thought that longer periods of time in a TDO allow for individuals to have the time to stabilize and be properly evaluated to determine the best treatment options for them. Therefore, post-TDO it is less likely that an individual would require inpatient hospitalization and more likely would receive outpatient treatment or services in the community. The primary study conducted on Virginia's TDO program was prepared for the Commission on Mental Health Law Reform in 2009. The study basically indicated that for FY 2010, extending TDOs by 24-hours would result in 26,288 additional TDO days and a decrease of 24,506 hospitalization days for a net increase of 1,782 days.

The main issue with determining any potential savings is figuring out what payer would incur the savings. The state would only experience savings through its Medicaid program, which covers only about 12 percent of the state population. The fiscal impact in Section 7a on the Involuntary Commitment Fund utilizes different assumptions than the TDO study. The potential savings estimate uses the same data for the TDO costs and assumes Medicaid represents 20 percent of post-TDO hospitalization costs. Extrapolating the same impact from the TDO study results in the potential for 2,616 less post-TDO days paid for by Medicaid. Assuming a cost per day of $531.84 would generate total Medicaid savings of $1,391,449, of which half or $695,725 would be savings to the general fund, which is reflected in the table in Section 7b (the FY 2015 amount factors in the typical payment lag). It should be noted that these estimates could be higher or lower, but are presented to provide some idea of the savings impact.

Potential Savings*:

Fiscal Year	*Dollars*	*Positions*	*Fund*
2014	-	-	-
2015	$475,875	-	General Fund
2016	$695,725	-	General Fund
2017	$695,725	-	General Fund
2018	$695,725	-	General Fund
2019	$695,725	-	General Fund
2020	$695,725	-	General Fund

** Note that these savings estimates to the Medicaid program are based on several fairly general assumptions, and are included in this fiscal impact statement to provide a general idea of savings that might accrue to the Medicaid program from this bill. The cost of the bill is still expected to be greater than the savings presented in the table.*

9. **Specific Agency or Political Subdivisions Affected:** Community Service Boards (CSBs), state and local law enforcement, state mental health facilities, DBHDS central office, Involuntary Mental Commitment Fund, State Compensation Board.

10. **Technical Amendment Necessary:** None

11. **Other Comments:** No