

Department of Planning and Budget

2022 Fiscal Impact Statement

1. Bill Number: HB135

House of Origin	<input checked="" type="checkbox"/> Introduced	<input type="checkbox"/> Substitute	<input type="checkbox"/> Engrossed
Second House	<input type="checkbox"/> In Committee	<input type="checkbox"/> Substitute	<input type="checkbox"/> Enrolled

2. Patron: Cherry

3. Committee: Courts of Justice

4. Title: Emergency custody and temporary detention; transportation of person when transfer of custody.

5. Summary: Provides that, in cases in which transportation of a person subject to an emergency custody order or temporary detention order is ordered to be provided by an alternative transportation provider, the primary law-enforcement agency that executes the order may transfer custody of the person to the alternative transportation provider immediately upon execution of the order, and that the alternative transportation provider shall maintain custody of the person from the time custody is transferred to the alternative transportation provider by the primary law-enforcement agency until such time as custody of the person is transferred to the community services board or its designee that is responsible for conducting the evaluation or the temporary detention facility, as is appropriate. The bill also adds employees of and persons providing services pursuant to a contract with the Department of Behavioral Health and Developmental Services to the list of individuals who may serve as alternative transportation providers.

6. Budget Amendment Necessary: Indeterminate.

7. Fiscal Impact Estimates: See Item 8.

8. Fiscal Implications: This legislation makes changes to the emergency custody order (ECO) and temporary detention order (TDO) processes by allowing custody of a person under an ECO or TDO to be transferred to an alternative transportation provider before a TDO is ordered, and/or before a bed is identified. The cost of this legislation is indeterminate because it is not clear if this legislation requires that alternative transportation and assumed custody be provided beyond the current funding available in the Department of Behavioral Health and Developmental Services (DBHDS) budget for alternative transportation. Because current code requires that an alternative transportation provider be “available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner”, it is unclear if the requirements of this legislation would be limited by available funding for an alternative transportation contract. However, assuming that the intent is to make alternative transportation and custody transfer more accessible and widely used, this fiscal impact statement explores possible areas of impact.

Currently, once an individual is subject to an emergency custody order (ECO) by a magistrate or law enforcement, they are brought to an assessment site by law enforcement (most often a hospital emergency department). A representative of a Community Services Board (CSB) then provides a prescreening assessment of the individual either virtually or in person in order to determine if they meet the criteria for a temporary detention order. During this time, the individual is under custody of law enforcement. During the 8-hour ECO period, the CSB must decide as to whether the individual needs to be placed under a TDO. If the TDO is issued, law enforcement or an alternative transportation provider as determined by a magistrate is directed to transport the individual to the TDO location.

A TDO is effective for 72 hours, in which time the individual must have a hearing with a special justice to determine commitment status or release. If a bed cannot be established at a private hospital, the TDO designates a state facility as the bed of last resort. DBHDS facilities currently face census pressures due to COVID-19 and low staff retention, with several state hospitals undergoing temporary closures to ensure the safety of staff. This has resulted in long wait lists for individuals seeking beds at the state facilities, with 3,667 individuals being placed on the waitlist since the first round of hospital closures on July 9, 2021, subsequently increasing the period of time that law enforcement maintains custody of the individual.

Through the current contract for alternative transportation with Allied Universal Security, this program only transports individuals under a TDO. The bill suggests that those who provide alternative transportation under this contract may also be ordered to maintain custody during the ECO process, significantly extending the period of time an alternative transportation provider would be responsible for an individual. DBHDS states that the current average total time of transport is approximately 5.5 hours, as the service is frequently being used for long transports.

Language in the bill indicates that alternative transportation “shall” maintain custody throughout the period of detention, meaning that there may not be an option to transfer custody back to law enforcement for individuals who attempt to leave or become aggressive. Under the current contract, personnel are not permitted to use restraints. If an individual’s clinical presentation during the ECO period requires the use of restraint, this would be beyond the program’s current capabilities to maintain custody of that individual and would require additional funding to provide training for staff.

Prior to the development of the contract with Allied Universal Security, law enforcement transported approximately 99 percent of TDOs. The current contract requires Allied Universal Security to build capacity to eventually transport 50 percent of statewide TDOs. In the first six months of this fiscal year, Allied completed an average of approximately 190 transports per month, representing 10-12 percent of statewide TDOs per month, still short of the 50 percent goal.

Below is a table detailing the ECOs and TDOs ordered versus the transportation completed by Allied Universal Security in FY 2021. The current transportation numbers are well below

the current contract requirement seen in the far-right column. Adding ECO transportation to the contract with Allied via the proposed bill will significantly increase the need for additional staffing across the Commonwealth. In addition, additional resources would be needed to respond to multiple locations.

Total ECOs Ordered Across All Regions in FY 2021	Total TDOs Ordered Across All Regions in FY 2021	Completed TDO Transports by Allied as of March 2021	Eventual 50% of TDOs Requiring Transport via Current Contract with Allied
23,033	22,864	4,000	11,432

Under the current contract, which is funded at \$4.5 million per year, Allied Universal Security does not assume custody of the individual until the individual is ready for transport. If the number of orders for alternative transportation increase, and the length of time an alternative transportation provider retains custody of an individual increases, the cost of the contract would also need to be increased. As it stands, the vendor is working to provide 50 percent of the transportation services under TDO, which will require an additional \$2.0 million above the current funding. The introduced budget includes an amendment to fully fund up to 50 percent of TDO transports via alternative transportation.

Additionally, the introduced budget includes \$3.5 million in FY 2024 to address custody transfer for individuals under a TDO who are waiting for a bed who have been deemed appropriate for alternative transportation. It is anticipated that this legislation could result in orders for alternative transportation and alternative custody exceed that projected capacity, and additional work with the current vendor is needed to identify the scope of the required workforce.

The number of hours needed for transportation and custody will largely be dependent on the decisions of magistrates to allow for alternative transportation, and that number is unknown at this time. Additionally, because the service is provided by a contracted vendor there could be fluctuations in cost if another provider is needed or identified to provide the expanded services if the current vendor is unable to provide the needed services.

Finally, coordinating an effort of this magnitude would likely require additional DBHDS staff to help administer and coordinate these custody and transportation services with the vendor and various stakeholders. DBHDS currently has two positions assigned to this program, and estimates they would need as many as three additional staff members for contract management, program oversight, regional liaisons, and data analysis. The cost for the administrative positions is assumed at two specialist positions at approximately \$64,500 each. The third position would be held by a higher-level administrator, at a cost of approximately \$80,700. The total for all of these positions, including fringe benefits, would be \$209,700.

9. Specific Agency or Political Subdivisions Affected: Department of Behavioral Health and Developmental Services, Law Enforcement.

10. Technical Amendment Necessary: No.

11. Other Comments: This bill is a companion to SB176.