

**Department of Planning and Budget**  
**2022 Fiscal Impact Statement**  
**REVISED 2/6/22**

**1. Bill Number:** HB159

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

**2. Patron:** Byron

**3. Committee:** Courts of Justice

**4. Title:** Emergency custody and temporary detention orders; custody.

**5. Summary:** Provides that facilities to which a minor or adult who is the subject of an emergency custody or temporary detention order is transported must accept custody of such person immediately upon completion of transportation and the arrival of such person to the facility. The bill also provides that the primary law enforcement agency, not a sheriff, is responsible for providing transportation for a person in the involuntary commitment process.

**6. Budget Amendment Necessary:** Yes. Item 312.

**7. Fiscal Impact Estimates:** Preliminary. See Item 8 below.

**8. Fiscal Implications:** This statement is being revised to include a fiscal impact statement from the Department of Behavioral Health and Developmental Services (DBHDS). According to DBHDS, under current law, 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 (TDO). 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. The 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 the state facility as the bed of last resort. Several facilities currently face bed census pressures due to COVID-19 and low staff retention, with several state hospitals undergoing 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. This has resulted in law enforcement having to maintain custody for extended periods of time, prior to transport to the TDO location.

This bill would require state facilities or other designated locations (CSBs, CITACs, or private hospitals) to accept custody of an individual under an ECO or TDO, or whom a law enforcement officer has deemed meets the criteria for an ECO, upon completion of transportation of that individual by law enforcement and prior to assessment by a CSB.

Taking on custody during these periods would require vast resources across the state. As several facilities currently face bed-census pressures and cannot readily admit new patients, the bill would also place a strain on emergency departments where individuals would have to wait for a bed to become available without the security of a law enforcement officer. On average, approximately 80 people are on the waitlist to get a bed at a state facility at any given time.

In order to provide secure settings, DBHDS has estimated the cost of establishing a security program that would move staff to the locations where an individual is being transported. An example of the costs associated with increased contracted staffing at designated locations can be shown in the table below, accounting for ECOs that become TDOs.

DBHDS projects alternate staffing needs for individuals in need of restraint, using 2:1 and 1:1 staff to patient ratios, accounting for 3 shifts per additional employee as they maintain 24/7 care. The estimated cost per employee is based on a salary of \$30/hour at approximately 2,080 hours per year. The total labor costs to add an additional 406 employees would be around \$25.3 million.

ECOs + TDOs Per Year	ECO +TDO Per Day	Daily Projected Need 2:1	Daily Projected Need 1:1	Daily Staff to provide 2:1 and 1:1 staff to patient ratios	# Additional Shifts	# Yearly of Employees Needed (based on 1.5 Replacement Rate)	Cost Per Employee	Total Labor Costs
23,500	64	52	39	90	270	406	\$62,400	\$25,310,466

DBHDS currently contracts with a vendor to provide alternative transportation for certain individuals under a temporary detention order. This bill would require a contract amendment and expansion of the scope of work for the current vendor to include alternative custody, which would have significant costs. Under the current contract, personnel are not permitted to use restraints. If an individual's clinical presentation during the ECO or TDO period requires the use of restraint, this would be beyond the program's current capabilities to maintain custody of that individual. Therefore, additional training and resources would be needed to make this a viable option under the Code change as presented in the bill.

The above table assumes a central group moving staff to the specific location where the ECO is occurring. However, if all emergency departments and other sites need to incorporate staff into their operations to staff 24/7 on the potential to receive custody during the ECO, the

impact to providers, both public and private, would be significantly greater. According to Virginia Hospital and Healthcare Association (VHHA) data, there are 207 urgent care clinics, 80 hospitals with emergency departments, and an additional 18 free standing emergency departments across Virginia. Costs to hire security staff would vary across the state depending on salary ranges in the area, and the triage needs at the various private facilities.

There is no anticipated fiscal impact on agency operations for the Courts or the Department of State Police as a result of the provisions of this bill. The impact on local law enforcement cannot be determined at this time.

- 9. Specific Agency or Political Subdivisions Affected:** Courts, Department of State Police, Department of Behavioral Health and Developmental Services, Local law enforcement agencies.

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** None.