

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: SB872

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Newman

3. Committee: Education and Health

4. Title: Emergency custody; temporary detention; alternative transportation.

5. Summary: Requires magistrates to authorize alternative transportation if a person subject to an emergency custody order or temporary detention order is deemed to not be a danger to himself or others and appropriate alternative transportation is available.

6. Budget Amendment Necessary: No.

7. Fiscal Impact Estimates: See 8 Below.

8. Fiscal Implications: This legislation would compel a magistrate to authorize alternative transportation for an individual who is subject to an emergency custody order (ECO) or temporary detention order (TDO), contingent on the determination that an individual is not a danger to himself or others and appropriate alternative transportation is available.

Currently § 37.2-808 and § 37.2-810 require that a magistrate “shall consider any request to authorize transportation by an alternative transportation provider in accordance with this section, whenever an alternative transportation provider is identified to the magistrate”. The code outlines that alternative transportation may be provided by a person, facility, or agency, including a family member or friend of the person who is subject of the ECO or TDO, a representative of the community services board (CSB), an employee of or person providing services pursuant to a contract with DBHDS, or other transportation provider with personnel trained to provide transportation in a safe manner.

The Department of Behavioral Health and Developmental Services (DBHDS) currently contracts with Allied Universal Security for the purposes of providing alternative transportation for individuals under a TDO. This program is funded in Chapter 2, 2022 Acts of Assembly, Special Session I, at \$6.4 million per year, as well as an additional \$3.4 million for those who are under a TDO but are awaiting admission. As written, the legislation would not result in a fiscal impact to DBHDS as language would still require that appropriate alternative transportation be “available” for a magistrate to authorize alternative transportation. While this legislation may result in an increase in requests for alternative transportation, the authorization of alternative transportation is contingent upon its

availability. If all resources for alternative transportation have been expended by the DBHDS, then there would be no availability. The current contract requires Allied Universal Security to build capacity to eventually transport 50 percent of statewide TDOs. In FY 2022, only 9.11 percent of TDOs were transported using alternative transportation.

The current contract with Allied Universal Security does not include those individuals under an ECO, thus it is possible the contract would have to be altered to include those individuals. However, the service would still have to be “available” in order for a magistrate to order the use of alternative transportation for that population and would not increase the costs beyond those provided for in the agency budget.

It is unclear if this legislation will have a fiscal impact on the courts, and comment was not available at the time this fiscal impact statement was issued.

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

10. Technical Amendment Necessary: See comment below.

11. Other Comments: While the legislation as drafted is not anticipated to have a fiscal impact, there may be some uncertainty as to which ECOs/TDOs will be impacted. In order to be held under an ECO or a TDO, an individual must have a mental illness and either (a) be at imminent risk of causing serious physical harm to himself or others, or (b) at risk of suffering serious harm due to their lack of capacity to protect themselves from harm or provide for basic human needs.

Given these criteria and the language proposed in this legislation (that an individual must not be a risk to themselves or others), it is unclear if the legislation would only impact the emergency custody and temporary detention orders that are the result of a lack of mental capacity of the individual under the order to protect themselves from harm. In many cases of individuals under an ECO/TDO as a result of their mental capacity to protect from harm, specialty transport is required as these individuals are more likely to have ambulatory related issues, such as limited mobility, that require assistance from medical services. This type of transport is not currently covered under the contract with Allied Universal Security.