

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 if appropriate alternative transportation is available. Additionally, provides that an employee or contractor of an entity providing alternative transportation services pursuant to a contract with the Department of Behavioral Health and Developmental Services who has completed training approved by the department in the proper and safe use of restraint may use restraint when necessary.

6. **Budget Amendment Necessary:** No.

7. **Fiscal Impact Estimates:** See 8 Below.

8. **Fiscal Implications:** This substitute 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), when alternative transportation is deemed appropriate and 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 the Department of Behavioral Health and Developmental Services (DBHDS), or other transportation provider with personnel trained to provide transportation in a safe manner.

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.

In addition, the substitute version of this legislation would allow an employee of a contractor to use restraint during a TDO or ECO transport if they have completed an approved training course, if such restraint is necessary to ensure the safety of the person or others or prevent escape, and less restrictive techniques have been determined to be ineffective to protect the person or others from harm or to prevent escape.

This change would require that the contract with Allied Universal be amended to establish training requirements and updates in operating procedures related to the use of restraint. DBHDS is currently in negotiations with the contractor to discuss the implementation of selective restraint. The contract would need to be adjusted to reflect an increase in the cost per billable unit (one hour of one employee’s time), as well as increasing the number of employees required to transport patients with a higher level of acuity. Currently, the billable unit costs are \$29.41 per hour for regular time, \$41.16 per hour for overtime, and \$25.54 per training hour. DBHDS estimates that the cost could increase \$5 to \$18 per billable unit and will not have proposed figures from Allied Universal Security until mid-February.

Under this model, training would be provided by the contractor, with costs reflected in the increase cost per billable unit utilizing the existing funds appropriated for alternative transportation. DBHDS would be responsible for paying for additional training hours, as well as the increase cost per transport arising from the increase per billable hour and the increase in number of staff needed per transport. The estimated training time needed per employee to implement the use of restraint is 4-6 weeks, or 160 to 240 hours. A conservative estimate assuming 240 hours of required training at a training hour cost of \$35.54 (\$10 increase) could result in an additional cost between \$435,010 and \$682,368, depending on how many employees complete the training.

	Current	Target
Number of Employees	51	80
Training Hours for Restraint	240	240
Cost per training hour	\$35.54	\$35.54
Total	\$435,010	\$682,368

This change may result in an increase in the number of transportations provided utilizing alternative transportation. CSB pre-screeners may be more likely to request transport, and magistrates may be more likely to approve transport, if there is greater certainty that transportation can be provided to patients exhibiting violent behaviors or are at risk of elopement. In FY2022, DBHDS received 2,778 requests for transportation, of which 853 were denied by Allied Universal Services. Of the transport requests denied, 25 percent were related to patient acuity (physical aggression/assaultive behavior or risk of escape from custody) and may have been accepted if the contract allowed for selective restraint as provided for in the bill.

As the law still would provide that alternative transportation must be available for a magistrate to authorize alternative transportation, no additional funding is needed for DBHDS to comply with the requirements. However, increasing the cost per transport will lead to a reduced volume of transports that can be provided with existing resources.

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: No.

11. Other Comments: None.