

## Department of Planning and Budget

### 2022 Fiscal Impact Statement

**1. Bill Number:** SB268

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

**2. Patron:** Favola

**3. Committee:** Appropriations

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

**5. Summary:** The substitute bill provides that when a magistrate orders alternative transportation for an individual under a temporary detention order, 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 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.

The substitute bill clarifies that if no alternative transportation provider is available, the magistrate shall order an individual to be kept in law enforcement custody. The substitute also requires DBHDS to amend their contracts for alternative transportation to ensure sufficient availability of the services until all funding designated for the service is expended.

**6. Budget Amendment Necessary:** Preliminary – See 8 below.

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

**8. Fiscal Implications:** The substitute legislation makes changes to the temporary detention order (TDO) processes by allowing custody of a person under a TDO to be transferred to an alternative transportation provider before a bed is available. Because the substitute version of the legislation requires that an alternative transportation provider be “available to provide transportation, willing to provide transportation, and able to provide transportation in a safe manner”, and requires that DBHDS amend its contracts to ensure availability up until funds are expended, this legislation does not require a budget amendment. However, if the intent is to make alternative transportation and custody transfer more accessible and widely used, this fiscal impact statement explores possible areas of impact of this legislation.

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 facility identified in the TDO.

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. Current average total time of transport averages 5.5 hours, as the service is frequently being used for long transports.

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.

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 \$1.9 million above the current funding. The introduced budget includes an amendment to fully fund up to 50 percent of TDO transports via alternative transportation.

In addition to the funds for alternative transportation, the introduced budget includes an additional \$3.4 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, bringing the total contract to nearly \$10.0 million in FY 2024.

The number of additional hours needed for transportation and custody will largely be dependent on the decisions of magistrates. 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. Any type of new service model will have to be negotiated with the vendor and costs could vary as a result of the additional expectations.

Finally, if there is a significant increase in funding and program expansion, DBHDS would require staff to help administer and coordinate these custody and transportation services with the vendor and various stakeholders. DBHDS would need approximately three additional staff members for contract management, program oversight, regional liaisons, and data analysis. Two specialist positions would have a salary of approximately \$60,000, and total cost of \$64,500 each including fringe benefits. The third position would be held by a higher-level administrator, with a salary of \$75,000, for a total cost of \$80,700 including fringe benefits. The total for all of these positions, including fringe benefits, would be \$209,700

#### **Additional information provided by DBHDS:**

Since the original fiscal impact statement for this legislation was posted, additional information has become available regarding current use of law enforcement for custody in emergency rooms for individuals under a temporary detention order. The following paragraphs discuss possible costs if all individuals awaiting admission to facilities are transferred to alternative custody and transportation based on current admission delays.

From July through February of this fiscal year, 4,683 admissions to inpatient mental health facilities were delayed at an average wait time of 41.3 hours each. Law enforcement has waited 193,408 hours with these patients this fiscal year. If the current trend continues through the fiscal year, law enforcement will spend approximately 330,000 hours with individuals awaiting transfer to a facility. The current alternative transportation contract includes an hourly cost of \$35 per hour, thus a rough estimate of the cost, assuming all individuals only require 1:1 ratio of provider to patient is as follows:

Delayed Admissions (July 2021- Feb 2022)	Average Wait Time (hrs)	Hours of Delayed Admissions as of 2/22	Hours of Delayed Admissions as of 2/22*\$35/hr	Cost for AT custody coverage per delayed admission	Projected Delayed Admissions (Annually)	Projected Total Cost of Providing Custody During Delayed Admissions (Annually)
4683	41.3	193408	\$6,769,276	\$1,445.50	8028	\$11,604,474

If, however, some individuals require a 2:1 staffing ratio, the cost would increase:

Labor Costs					
100% staffing capacity	Projected Hours of Delayed Admissions (Annually)	Ratio	Projected Hours needed to cover delayed admissions	Hourly Wage	Yearly Cost
2:1 Staffing Ratio	331556.4	0.4	132622.56	\$35 x 2	\$9,283,579
1:1 Staffing Ratio	331556.4	0.6	198933.84	\$35	\$6,962,684
				<b>Labor Subtotal:</b>	<b>\$16,246,264</b>

In addition to the costs of labor, DBHDS provided as estimate of additional funds needed for mileage, leasing fees, and administrative overhead costs associated with provider contracts:

Non-Labor Costs	Factor	Total Yearly Cost
Mileage	\$.56/mi assuming 50,000 mi/month	\$336,000
Vehicle Leasing Fee for 23 Vehicles Across All Hubs	\$15,333.33 Per Month	\$184,000
4 Supervisors	\$30/hour *2080 hours	\$249,600
Project Manager		\$80,000
<b>Total Yearly Cost</b>		<b>849,600</b>

**Summary:**

Because this legislation limits the use of alternative transportation and custody to the funding available for the program, the legislation does not require an amendment. However, expanding the program without additional resources may result in fewer individuals being provided alternative transportation overall as the available resources could be expended quickly on those individuals awaiting transfer to a facility. Once those resources are expended, all individuals would remain in law enforcement custody. Current delays in admission to facilities are exacerbated by staffing shortages and temporary bed closures due to the COVID-19 pandemic. If facilities are able to stabilize the workforce, the number of delayed admissions may decrease, and thus the number of hours that an alternative custody provider would be needed would also likely decrease.

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

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** Item 312 of the introduced budget includes two separate earmarks for alternative transportation and custody for the temporary detention order period.