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# Alternative Transportation

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Jane D. Hickey

Office of the Attorney General

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# Alternative Transportation

HB 2460(O'Bannon)/SB 823 (Cuccinelli)

- Permits person or entity other than law enforcement to transport persons under ECO and TDO
- Strengthens authority of judge/special justice to order alternative transportation after commitment hearing
- Follows lead of 27 other states

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# Alternative Transportation

## Purpose

- First step
- Designed to
  - Reduce unnecessary dependence on law enforcement for transportation
  - Reduce criminal stigma associated with law enforcement and need for restraints
  - Reduce trauma to participants as result of involuntary commitment process

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# Alternative Transportation

## Trauma

- Research shows that individuals sustain long-lasting, often lifetime trauma from involuntary commitment resulting from
  - Commitment hearing itself – whether person perceives process as fair (whether others consider his views, motivation of others, chance to speak and have others take it into account)
  - Law-enforcement transportation – 65%
- As result, individual's recovery thwarted leading to more frequent and severe relapse; less likely to seek voluntary treatment for fear of imposition of involuntary treatment

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# Alternative Transportation

## Voluntary Alternatives

- Lack of voluntary alternatives leads to involuntary admissions/transportation
- Voluntary examples
  - ❑ HPR V (Taxi services)
  - ❑ CSB staff – 15-20 CSBs are Medicaid transportation providers
  - ❑ Medicaid routine transportation
  - ❑ Family/friends
  - ❑ Peer counselors
  - ❑ Vouchers – pay gas station or family per trip/mile

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# Alternative Transportation

## ECOs/TDOs - Consultation

- Alternative provider includes family member, friend, CSB, other transportation provider with trained staff
- Magistrate must consider information provided by petitioner, CSB, law-enforcement, if involved, treating physician, if any, and others available and with knowledge of person

§§ 37.2-808, 37.2-810

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# Alternative Transportation

## ECOs/TDOs - Consultation

- When he deems appropriate, magistrate may consult with proposed transportation provider to determine whether provider is available, willing and able to safely transport
- Consultation may occur in person or by two-way electronic video and audio or telephone

§§ 37.2-808, 37.2-810

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# Alternative Transportation

## Role of Law Enforcement

- Magistrate orders primary law enforcement agency to:
  - ❑ Execute ECO/TDO
  - ❑ Take person into custody
  - ❑ Transfer custody to alternative provider

**§§ 37.2-808, 37.2-810**

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# Alternative Transportation

## ECOs/TDOs - Delivery

- Copy of ECO/TDO must accompany person at all times
- **ECOs:** alternative provider delivers **copy to CSB** conducting evaluation; CSB returns copy to court designated by magistrate
- **TDOs:** alternative provider delivers **copy to TDO facility**; TDO facility returns copy to court designated by magistrate

§§ 37.2-808, 37.2-810

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# Alternative Transportation ECOs/TDOs – Delivery/Return

- CSB/TDO facility must return copy of the ECO/TDO to court as soon as practicable
- Delivery of ECO/TDO to law enforcement and return of the order to court may be done electronically or by facsimile

§§ 37.2-808, 37.2-810

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# Alternative Transportation

## ECO limitation

- Alternative transportation only available under ECOs if person meets 2<sup>nd</sup> prong of criteria, i.e. person lacks capacity to protect himself from harm or provide for basic human needs
- Not available if person meets dangerous prong
- Custody may be transferred to evaluation facility, as with law enforcement
- Law enforcement need not transfer custody to alternative provider if safety problem perceived

§ 37.2-808

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# Alternative Transportation Following Commitment

- § 37.2-830 authorizing alternative transportation repealed and provisions moved to § 37.2-829
- Judge/special justice first considers whether transportation to be provided by sheriff or other provider
- Alternative providers include family, friends, CSB, TDO facility, or provider with trained staff

**§ 37.2-829**

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# Alternative Transportation Following Commitment

- Judge/special justice must consider information from person's treating mental health professional and CSB regarding dangerousness
- Judge/special justice may consult with proposed provider in person or by two-way electronic video and audio system or by telephone to determine whether proposed provider is available, willing and able to provide transportation

§ 37.2-829

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# Alternative Transportation Following Commitment - Payment

- Requirement that cost of transportation be paid by Commonwealth from funds for care in jail repealed
- Will enable sheriffs to bill third party payers
- If any state hospital is full, DMHMRSAS must now notify CSB, not sheriff

§ 37.2-829

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# Alternative Transportation Minors (§ 16.1-345)

- Alternative transportation providers may also transport minors after commitment under § 16.1-345
- Revised transportation provisions for ECOs/TDOs for adults also apply to minors under § 16.1-340