



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2027 Biennium

Bill#/Title: **SB0151: Direct the director of the public defender's office to create units for family defense and children's representation**

Primary Sponsor: Dennis Lenz Status: As Introduced

Included in the Executive Budget Needs to be included in HB 2 Significant Local Gov Impact

Significant Long-Term Impacts Technical Concerns Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>	<u>FY 2028 Difference</u>	<u>FY 2029 Difference</u>
Expenditures				
General Fund (01)	\$1,472,526	\$482,752	(\$5,776)	(\$4,127)
Federal Special Revenue (03)	\$1,348,312	\$501,970	\$57,228	\$58,086
Revenues				
General Fund (01)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$674,156	\$250,985	\$28,614	\$29,043
Net Impact	<u>(\$1,472,526)</u>	<u>(\$482,752)</u>	<u>\$5,776</u>	<u>\$4,127</u>
General Fund Balance				

Description of fiscal impact

SB 151 amends 41-1-105, MCA, to create additional organizational units to provide counsel to parents, guardians and legal custodians and an organizational unit to provide counsel to children resulting in additional cost to the Office of Public Defender (OPD).

FISCAL ANALYSIS

Assumptions

Office of the Public Defender (OPD)

- SB 151 directs OPD to limit utilization of contract attorneys to the extent possible combined with the provisions to establish a unit to provide counsel to children in abuse and neglect proceedings and up to two units to provide counsel to parents in such proceedings requires OPD to establish three units for counsel in abuse and neglect proceedings: one to represent children, one to represent the first parent involved, and one to represent the second parent involved.
- OPD assumes additional parents beyond the second parent and parents or children with conflicts of interest would still be represented by contract public defenders as would any matters beyond the Ethical Case Management (ECM) limits for the new units.
- OPD assumes that its existing Family Defense Bureau (FDB) would satisfy the requirement for the first unit representing parents and that FDB would serve as a model for the two new units.
- Based on FY 2024 numbers, OPD assumes each year OPD will be appointed to 618 first parents, 538 second parents, and 618 children sibling groups (OPD assigns all children in a case to a single attorney unless a conflict of interest develops). The 618 first parents will be handled by the FDB within ECM limits and existing FTE resources. The 538 second parents would be assigned to a second parent unit that ECM

limits would require be comprised of 2 managing attorneys, 6 attorneys, and 2 legal support staff. The 618 sibling groups would be assigned to a child unit that ECM limits would require be comprised of 2 managing attorneys, 7 attorneys, and 2 legal support staff.

5. OPD estimates 23 case weight hours for abuse and neglect proceedings with emergency protective services (EPS) hearings.
6. OPD assumes the total costs of these 21 new FTE would be \$1,909,829 in year 1, inclusive of 1st year equipment and furniture cost, other base operating costs and assuming Title IV-E reimbursement.
7. OPD assumes the Title IV-E penetration rate to remain approximately 62.5% and standard Federal reimbursement rate of 50%.
8. OPD assumes other base operating expenses to include rent at \$2,000 per FTE, motor pool at \$571.36 per FTE and other estimated support costs of \$2,716.68 per FTE.
9. OPD assumes no additional training expense as DN training is delivered virtually.
10. OPD assumes all positions in both units would be hired by SB 151's effective date at the start of FY 2026. Assuming OPD is able to fully staff both FTE units as of SB 151's effective date, OPD assumes that in FY 2026 the annual number of cases assigned to contract public defenders will decrease by 618 children cases and 538 second parent cases for a total reduction of 1,156 cases.
11. OPD assumes that existing cases that were previously assigned to contract public defenders will remain with those contractors to maintain continuity of representation and that OPD will continue to pay contract public defenders in those ongoing cases until those court cases fully resolve. This will result in a gradual reduction over two years in the number of cases contract public defenders would be actively working and invoicing.
12. Based on FY 2024 case assignments, closings, and invoiced hours, OPD assumes contract public defenders would reduce their hours billed by 4,807 hours in FY 2026, by 19,276 hours in FY 2027, and by 26,588 hours in FY 2028 and FY 2029.
13. OPD assumes it will pay contract public defenders \$97.50 per hour (\$90 per hour professional services rate plus average travel expenses of \$7.50 per case hour) plus \$100 per EPS hearing which is estimated at \$115,600 per year.
14. OPD assumes reductions in payments to contract public defenders of \$584,295 in FY 2026, \$1,994,987 in FY 2027, \$2,746,815 in FY 2028 and \$2,786,283 FY 2029.
15. These contractor cost savings would be reduced by the loss of the corresponding federal IV-E reimbursements, resulting in final net contracting savings of \$437,734 in FY 2026, \$1,407,303 in FY 2027, \$1,924,034 in FY 2028 and \$1,951,161 FY 2029.
16. OPD assumes an inflation rate of 1.5% in FY 2028 and FY 2029.
17. These savings assume the Legislature fully adopts the Governor's Budget requests for \$13,100,000 to fund existing contract attorney costs (PL - 504) and \$6,355,172 to fund increasing the contract public defender rate to \$90 per hour (PL - 704). If the Governor's budget requests are not fully funded, OPD would not realize contract program savings.

Department of Public Health and Human Services (DPHHS)

18. The additional cost of SB 151 to the Office of the Public Defender (OPD) is eligible for federal Title IV-E reimbursement. The calculation for Title IV-E eligible expenditures is based on the Montana Title IV-E blended saturation rate and the federal participation rate of allowable expenses. The Montana Title IV-E blended saturation rate is based on Title IV-E eligible children in foster care, adoption and guardianship placements and eligible activities. The Montana Title IV-E blended saturation rate changes annually, however, is approximately 62.5%. The federal participation rate for quality legal representation is 50.0%. (OPD additional cost X Montana Title IV-E blended saturation rate X federal Title IV-E participation rate for quality legal representation = federal Title IV-E reimbursement.)
19. The Montana Department of Public Health and Human Services (DPHHS) is the pass-through entity for all federal Title IV-E funds to other entities in Montana for allowable Title IV-E expenses. OPD additional cost will be both an increased federal special revenue and increased federal transfer expenditure to DPHHS.

Fiscal Analysis Table

Department of Public Health and Human Services

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Fiscal Impact				
Expenditures				
Operating Expenses	\$0	\$0	\$0	\$0
Transfers	\$674,156	\$250,985	\$28,614	\$29,043
TOTAL Expenditures	\$674,156	\$250,985	\$28,614	\$29,043
Funding of Expenditures				
Federal Special Revenue (03)	\$674,156	\$250,985	\$28,614	\$29,043
TOTAL Funding of Expenditures	\$674,156	\$250,985	\$28,614	\$29,043
Revenues				
Federal Special Revenue (03)	\$674,156	\$250,985	\$28,614	\$29,043
TOTAL Revenues	\$674,156	\$250,985	\$28,614	\$29,043
Net Impact to Fund Balance (Revenue minus Funding of Expenditures)				
Federal Special Revenue (03)	\$0	\$0	\$0	\$0

Public Defender

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Fiscal Impact				
FTE	21.00	21.00	21.00	21.00
TOTAL Fiscal Impact	21.00	21.00	21.00	21.00
Expenditures				
Personal Services	\$2,583,994	\$2,640,541	\$2,680,147	\$2,720,350
Operating Expenses	\$0	\$0	\$0	\$0
Non-Contract Operating Expenses	\$146,983	\$88,183	\$89,506	\$90,849
Contract Operating Expenses,	(\$584,295)	(\$1,994,987)	(\$2,746,815)	(\$2,786,283)
TOTAL Expenditures	\$2,146,682	\$733,737	\$22,838	\$24,916
Funding of Expenditures				
General Fund (01)	\$1,472,526	\$482,752	(\$5,776)	(\$4,127)
Federal Special Revenue (03)	\$674,156	\$250,985	\$28,614	\$29,043
TOTAL Funding of Expenditures	\$2,146,682	\$733,737	\$22,838	\$24,916
Revenues				
Net Impact to Fund Balance (Revenue minus Funding of Expenditures)				
General Fund (01)	(\$1,472,526)	(\$482,752)	\$5,776	\$4,127
Federal Special Revenue (03)	(\$674,156)	(\$250,985)	(\$28,614)	(\$29,043)

STATEWIDE SUMMARY

	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>	<u>FY 2028 Difference</u>	<u>FY 2029 Difference</u>
<u>Fiscal Impact</u>				
FTE	21.00	21.00	21.00	21.00
TOTAL Fiscal Impact	21.00	21.00	21.00	21.00
<u>Expenditures</u>				
Personal Services	\$2,583,994	\$2,640,541	\$2,680,147	\$2,720,350
Operating Expenses	\$0	\$0	\$0	\$0
Contract Operating Expenses,	(\$584,295)	(\$1,994,987)	(\$2,746,815)	(\$2,786,283)
Non-Contract Operating Expenses	\$146,983	\$88,183	\$89,506	\$90,849
Transfers	\$674,156	\$250,985	\$28,614	\$29,043
TOTAL Expenditures	\$2,820,838	\$984,722	\$51,452	\$53,959
<u>Funding of Expenditures</u>				
General Fund (01)	\$1,472,526	\$482,752	(\$5,776)	(\$4,127)
Federal Special Revenue (03)	\$1,348,312	\$501,970	\$57,228	\$58,086
TOTAL Funding of Expenditures	\$2,820,838	\$984,722	\$51,452	\$53,959
<u>Revenues</u>				
Federal Special Revenue (03)	\$674,156	\$250,985	\$28,614	\$29,043
TOTAL Revenues	\$674,156	\$250,985	\$28,614	\$29,043
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u>				
General Fund (01)	(\$1,472,526)	(\$482,752)	\$5,776	\$4,127
Federal Special Revenue (03)	(\$674,156)	(\$250,985)	(\$28,614)	(\$29,043)

Technical Concerns

1. An effective date of July 2025 for having all permanent staff hired may be overly optimistic as staffing these positions may prove difficult since OPD already employs a large percentage of the Montana attorneys who practice in this area of law.

NO SPONSOR SIGNATURE

Sponsor's Initials

Date

1/24/25

Budget Director's Initials

1/23/2025

Date