



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2027 Biennium

Bill#/Title: **SB0429.02 (001): Generally revise laws related to determination and restoration of fitness in criminal proceedings**

Primary Sponsor: John Esp Status: As Amended in Senate Committee

☐ 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>
<b>Expenditures</b>				
General Fund (01)	\$75,000	\$93,751	\$117,188	\$146,484
<b>Revenues</b>				
General Fund (01)	\$0	\$0	\$0	\$0
<b>Net Impact</b>	<u>(\$75,000)</u>	<u>(\$93,751)</u>	<u>(\$117,188)</u>	<u>(\$146,484)</u>
<b>General Fund Balance</b>				

### Description of fiscal impact

SB 429 revises Montana Laws regarding determining and restoring fitness in criminal proceedings and the costs associated examinations. It excludes the Department of Public Health and Human Services (DPHHS) from being held in contempt in a civil or criminal proceeding for several criteria and provides clarity on the responsibility for costs incurred for an examination of fitness to proceed. The amended version of SB 429 adds costs for the State Office of Public Defender, and removes any fiscal impact to DPHHS.

### FISCAL ANALYSIS

#### Assumptions

#### Judicial Branch

- SB 429 generally revises laws related to determination and restoration of fitness in criminal proceedings
- Under MCA 46-14-202, if the issue of the defendant's fitness to proceed was raised by the court or the examination was requested by the prosecution, the costs incurred must be paid by the court. If the examination was jointly requested by the prosecution and defense counsel or the need of the examination was jointly agreed, the costs are divided.
- Section 5 (6) of SB 429 would amend MCA 46-14-202 to read that a court may not order the superintendent of the Montana state hospital to designate a qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse to examine or report on the defendant's mental condition unless there is no person located within the county of venue of the committing court who is willing, able, or available to perform an examination.
- Examinations performed by the Montana state hospital are paid by the department of public health and human services with funds appropriated to the Department.
- Section 5 (6) of SB429 would increase the costs to the Judicial Branch for the examinations done by a

- professional in the community as currently most examinations are done by PHHS covered under Section 5(5)(a)(iv) with costs related to local examinations not currently reflected in Judicial Branch budget.
6. Currently DPHHS receives an average of 80-100 court ordered evaluations a year and estimate an increase of 25% annually.
  7. Judicial Branch estimates 30 of those would be performed by someone in the community at an average cost of \$2,500 per evaluations.
  8. It is assumed that the evaluations would occur at the detention center where the defendant is held as such the Judicial Branch does not estimate housing costs or transportation costs as outlined in Section 5 (5)(b).
  9. Based on Office of Public Defender (OPD) assumptions below, three-quarters of all court-ordered fitness evaluations will be a result of requests by OPD clients or attorneys and that OPD would be responsible for the costs of those evaluations.
  10. The Judicial Branch will be responsible for twenty-five percent of the cases, with the Office of Public Defender paying for the remaining seventy-five percent of the cases.
  11. The added costs to the Judicial Branch would be \$18,750 in FY 2026, \$23,438 in FY 2027, \$29,297 in FY 2028 and \$36,621 in FY 2029 assuming a twenty-five percent increase in court ordered evaluations based on the historical information from DPHHS.
  12. Section 7 (e) requires the court to review the defendant's custodial status every 30 days or at an interval the court determines appropriate.
  13. The additional hearings imposed by this bill may over time require additional judicial resources and delay adjudication of other case types because generally court dockets are full throughout the state.

**Department of Public Health and Human Services**

14. As amended, the bill now states that "the cost of care, custody, and treatment at a facility for which the legislature has made a general fund appropriation to the department of public health and human services may not be charged to the office of court administrator." Therefore there is no fiscal changes to current practice, and the agency now assesses no fiscal impact.

**Office of Public Defender (OPD)**

15. SB 429, as amended, would require courts to order evaluations by local mental health providers whenever available and would prohibit ordering Montana State Hospital evaluations unless such local providers are unavailable.
16. OPD assumes that under SB 429, as amended, OPD would be responsible for the costs of these court-ordered, local, fitness evaluations as they would not be performed by DPHHS employees.
17. Relying upon the Judiciary's estimates, OPD assumes these local evaluations would have an average cost of \$2,500.
18. Relying upon the Judiciary's estimates, OPD assumes that SB 429's local provider requirement would result in 30 additional evaluations by providers outside of Montana State Hospital in FY 2026 at a cost of \$75,000 and that due to an increasing number of evaluations, these costs would rise to \$93,751 in FY 2027, \$117,188 in FY 2028, and \$146,484 in FY 2029.
19. OPD assumes that roughly three-quarters of all court-ordered fitness evaluations are the result of requests by OPD clients or attorneys and that OPD, thus, would be responsible for three-quarters of the additional, local evaluations costs: \$56,250 in FY 2026, \$70,313 in FY 2027, \$87,891 in FY 2028, and \$109,863 in FY 2029.

## Fiscal Analysis Table

Judiciary				
	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>	<u>FY 2028</u> <u>Difference</u>	<u>FY 2029</u> <u>Difference</u>
<b><u>Fiscal Impact</u></b>				
<b><u>Expenditures</u></b>				
Operating Expenses	\$18,750	\$23,438	\$29,297	\$36,621
<b>TOTAL Expenditures</b>	<b>\$18,750</b>	<b>\$23,438</b>	<b>\$29,297</b>	<b>\$36,621</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	\$18,750	\$23,438	\$29,297	\$36,621
<b>TOTAL Funding of Expenditures</b>	<b>\$18,750</b>	<b>\$23,438</b>	<b>\$29,297</b>	<b>\$36,621</b>
<b><u>Revenues</u></b>				
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	(\$18,750)	(\$23,438)	(\$29,297)	(\$36,621)

Public Defender				
	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>	<u>FY 2028</u> <u>Difference</u>	<u>FY 2029</u> <u>Difference</u>
<b><u>Fiscal Impact</u></b>				
<b><u>Expenditures</u></b>				
Operating Expenses	\$56,250	\$70,313	\$87,891	\$109,863
<b>TOTAL Expenditures</b>	<b>\$56,250</b>	<b>\$70,313</b>	<b>\$87,891</b>	<b>\$109,863</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	\$56,250	\$70,313	\$87,891	\$109,863
<b>TOTAL Funding of Expenditures</b>	<b>\$56,250</b>	<b>\$70,313</b>	<b>\$87,891</b>	<b>\$109,863</b>
<b><u>Revenues</u></b>				
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	(\$56,250)	(\$70,313)	(\$87,891)	(\$109,863)

**STATEWIDE SUMMARY**

	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>	<u>FY 2028 Difference</u>	<u>FY 2029 Difference</u>
<b><u>Fiscal Impact</u></b>				
TOTAL Fiscal Impact	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
<b><u>Expenditures</u></b>				
Operating Expenses	<u>\$75,000</u>	<u>\$93,751</u>	<u>\$117,188</u>	<u>\$146,484</u>
TOTAL Expenditures	<u>\$75,000</u>	<u>\$93,751</u>	<u>\$117,188</u>	<u>\$146,484</u>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	<u>\$75,000</u>	<u>\$93,751</u>	<u>\$117,188</u>	<u>\$146,484</u>
TOTAL Funding of Expenditures	<u>\$75,000</u>	<u>\$93,751</u>	<u>\$117,188</u>	<u>\$146,484</u>
<b><u>Revenues</u></b>				
TOTAL Revenues	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	<u>(\$75,000)</u>	<u>(\$93,751)</u>	<u>(\$117,188)</u>	<u>(\$146,484)</u>

**Technical Concerns****Judiciary**

- Section 7 amends 46-14-221 (3) to add that if a defendant has been determined to require treatment including administration of medication, the defendant has the right to a hearing to contest the petition. If the court determines the order is appropriate, it may enter the order if they prove an overriding justification. The term overriding justification is not defined and could therefore affect the number of evaluations making it difficult to estimate the total fiscal impact of this legislation.

Sponsor's Initials

Date

Budget Director's Initials

4/12/2025  
Date