



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2027 Biennium

Bill#/Title: **SB0151.03 (002): 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 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</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>Expenditures</b>				
General Fund (01)	\$702,199	\$938,428	(\$7,508)	(\$7,621)
Federal Special Revenue (03)	\$642,062	\$888,222	\$57,228	\$58,086
<b>Revenues</b>				
General Fund (01)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$642,062	\$888,222	\$57,228	\$58,086
<b>Net Impact</b>	<u>(\$702,199)</u>	<u>(\$938,428)</u>	<u>\$7,508</u>	<u>\$7,621</u>
<b>General Fund Balance</b>				

### 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). Amendments to SB 151 direct the OPD to stagger the hiring of new positions across the 2027 Biennium, reducing costs of implementation.

### FISCAL ANALYSIS

#### Assumptions

#### Office of the Public Defender (OPD)

1. SB 151's direction to limit utilization of contract attorneys and 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 would require 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.
2. OPD assumes parents or children with conflicts of interest and additional parents beyond the second-parent would still be represented by contract public defenders as would any matters beyond the Ethical Case Management (ECM) limits for the new units.
3. 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.
4. 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. SB 151 would direct OPD to create during FY 2026 would be 2 managing attorneys, 6 attorneys, and 2 legal support staff and that the additional 11 FTE positions SB 151 directs OPD to create during FY 2027 would be 2 managing attorneys, 7 attorneys, and 2 legal support staff.
  6. OPD estimates 23 case weight hours for abuse and neglect proceedings with emergency protective services (EPS) hearings.
  7. OPD assumes the total, FY 2026 costs of the 10 FTE would be \$906,596, inclusive of first year equipment and furniture cost, other base operating costs, and assuming federal Title IV-E reimbursement.
  8. OPD assumes the total, FY 2027 costs of the 21 FTE would be \$1,921,231, inclusive of first year equipment and furniture cost for the 11 FTE added in FY 2027, other base operating costs, and assuming federal Title IV-E reimbursement.
  9. OPD assumes the Title IV-E penetration rate to remain approximately 62.5% and standard Federal reimbursement rate of 50%. OPD assumes the continuation of this federal Title IV-E funding.
  10. 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.
  11. OPD assumes no additional training expense as DN training is delivered virtually.
  12. OPD assumes all FY 2026 positions would be hired on July 1, 2025, and all FY 2027 positions would be hired on July 1, 2026. Assuming OPD is able to fully staff all positions on those dates, OPD assumes that the annual number of cases and EPS hearings assigned to contract public defenders would decrease by 538 in FY 2026 and by an additional 618 in FY 2027.
  13. OPD assumes that existing cases that were previously assigned to contract public defenders would remain with those contractors to maintain continuity of representation and that OPD would continue to pay contract public defenders in those ongoing cases until those court cases fully resolve. This would result in a gradual reduction over three years in the number of cases contract public defenders would be actively working and invoicing.
  14. Based on FY 2024 case assignments, closings, and invoiced hours, OPD assumes these reductions in new assignments to contract public defenders would reduce their hours billed by 2,247 hours in FY 2026, by 12,937 hours in FY 2027, and by 26,588 hours in FY 2028 and FY 2029.
  15. 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 \$53,800 for the first year and \$115,600 per following year.
  16. OPD assumes an inflation rate of 1.5% in FY 2028 and in FY 2029.
  17. OPD assumes reductions in payments to contract public defenders of \$272,848 in FY 2026, \$1,376,986 in FY 2027, and \$2,748,549 in FY 2028, and \$2,789,777 in FY 2029.
  18. These contractor cost savings would be reduced by the loss of the corresponding federal IV-E reimbursements, resulting in final net contracting savings of \$204,397 in FY 2026, \$982,803 in FY 2027, \$1,926,294 in FY 2028 and \$1,955,189 in FY 2029.
  19. Given these offsetting contract cost savings and FTE cost additions, OPD assumes the total, net general fund impact of SB 151 would be an increase of \$702,199 in FY 2026, an increase of \$938,428 in FY 2027, a savings of \$7,508 in FY 2028, and a savings of \$7,621 in FY 2029.
  20. 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)**

21. 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. The additional cost

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.)

	FY2026	FY2027	FY2028	FY2029
OPD Additional Operational Expense	\$1,027,297	\$1,421,154	\$91,563	\$92,936
x Montana Title IV-E Blended Saturation Rate	<u>62.5%</u>	<u>62.5%</u>	<u>62.5%</u>	<u>62.5%</u>
= IV-E Allowable Amount	\$642,061	\$888,221	\$57,227	\$58,085
x 50% federal Title IV-E Participation Rate	<u>50.0%</u>	<u>50.0%</u>	<u>50.0%</u>	<u>50.0%</u>
Federal Title IV-E Operational Reimbursement	\$321,031	\$444,111	\$28,614	\$29,043

22. 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**

	<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>				
<b><u>Expenditures</u></b>				
Operating Expenses	\$0	\$0	\$0	\$0
Transfers	\$321,031	\$444,111	\$28,614	\$29,043
<b>TOTAL Expenditures</b>	<b>\$321,031</b>	<b>\$444,111</b>	<b>\$28,614</b>	<b>\$29,043</b>
<b><u>Funding of Expenditures</u></b>				
Federal Special Revenue (03)	\$321,031	\$444,111	\$28,614	\$29,043
<b>TOTAL Funding of Expenditures</b>	<b>\$321,031</b>	<b>\$444,111</b>	<b>\$28,614</b>	<b>\$29,043</b>
<b><u>Revenues</u></b>				
Federal Special Revenue (03)	\$321,031	\$444,111	\$28,614	\$29,043
<b>TOTAL Revenues</b>	<b>\$321,031</b>	<b>\$444,111</b>	<b>\$28,614</b>	<b>\$29,043</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
Federal Special Revenue (03)	\$0	\$0	\$0	\$0


**Public Defender**

	<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>				
FTE	10.00	21.00	21.00	21.00
<b>TOTAL Fiscal Impact</b>	<b>10.00</b>	<b>21.00</b>	<b>21.00</b>	<b>21.00</b>
<b><u>Expenditures</u></b>				
Personal Services	\$1,226,345	\$2,640,541	\$2,680,149	\$2,720,350
Operating Expenses	\$0	\$0	\$0	\$0
Non-Contract Operating Expenses	\$69,733	\$118,984	\$89,506	\$90,849
Contract Operating Expenses,	(\$272,848)	(\$1,376,986)	(\$2,748,549)	(\$2,789,777)
<b>TOTAL Expenditures</b>	<b>\$1,023,230</b>	<b>\$1,382,539</b>	<b>\$21,106</b>	<b>\$21,422</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	\$702,199	\$938,428	(\$7,508)	(\$7,621)
Federal Special Revenue (03)	\$321,031	\$444,111	\$28,614	\$29,043
<b>TOTAL Funding of Expenditures</b>	<b>\$1,023,230</b>	<b>\$1,382,539</b>	<b>\$21,106</b>	<b>\$21,422</b>
<b><u>Revenues</u></b>				
Federal Special Revenue (03)	\$321,031	\$444,111	\$28,614	\$29,043
<b>TOTAL Revenues</b>	<b>\$321,031</b>	<b>\$444,111</b>	<b>\$28,614</b>	<b>\$29,043</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	(\$702,199)	(\$938,428)	\$7,508	\$7,621
Federal Special Revenue (03)	\$0	\$0	\$0	\$0

**STATEWIDE SUMMARY**



	<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>				
FTE	10.00	21.00	21.00	21.00
<b>TOTAL Fiscal Impact</b>	<b>10.00</b>	<b>21.00</b>	<b>21.00</b>	<b>21.00</b>
<b><u>Expenditures</u></b>				
Personal Services	\$1,226,345	\$2,640,541	\$2,680,149	\$2,720,350
Operating Expenses	\$0	\$0	\$0	\$0
Contract Operating Expenses,	(\$272,848)	(\$1,376,986)	(\$2,748,549)	(\$2,789,777)
Non-Contract Operating Expenses	\$69,733	\$118,984	\$89,506	\$90,849
Transfers	\$321,031	\$444,111	\$28,614	\$29,043
<b>TOTAL Expenditures</b>	<b>\$1,344,261</b>	<b>\$1,826,650</b>	<b>\$49,720</b>	<b>\$50,465</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	\$702,199	\$938,428	(\$7,508)	(\$7,621)
Federal Special Revenue (03)	\$642,062	\$888,222	\$57,228	\$58,086
<b>TOTAL Funding of Expenditures</b>	<b>\$1,344,261</b>	<b>\$1,826,650</b>	<b>\$49,720</b>	<b>\$50,465</b>
<b><u>Revenues</u></b>				
Federal Special Revenue (03)	\$642,062	\$888,222	\$57,228	\$58,086
<b>TOTAL Revenues</b>	<b>\$642,062</b>	<b>\$888,222</b>	<b>\$57,228</b>	<b>\$58,086</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	(\$702,199)	(\$938,428)	\$7,508	\$7,621
Federal Special Revenue (03)	\$0	\$0	\$0	\$0



Sponsor's Initials

2-21-25  
Date



Budget Director's Initials

2/21/2025  
Date