



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2015 Biennium

<b>Bill #</b>	HB0504
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<b>Title:</b>	Revise laws regarding attorneys representing children in abuse and neglect cases
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<b>Primary Sponsor:</b>	Dudik, Kimberly
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<b>Status:</b>	As Introduced
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|---|---|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2  | <input checked="" type="checkbox"/> Technical Concerns   |
| <input type="checkbox"/> Included in the Executive Budget | <input checked="" type="checkbox"/> Significant Long-Term Impacts | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
<b>Expenditures:</b>				
General Fund	\$447,979	\$447,979	\$454,699	\$461,519
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u><u>(\$447,979)</u></u>	<u><u>(\$447,979)</u></u>	<u><u>(\$454,699)</u></u>	<u><u>(\$461,519)</u></u>

**Description of fiscal impact:** In accordance with 47-1-216, MCA, the Office of the State Public Defender (OPD) shall contract with a separate entity to provide legal representation to children in proceedings under 41-3-422, MCA, that is independent from OPD and that is not associated with counsel representing a parent in the same or a related proceeding under Title 41, chapter 3. The court's action pursuant to this subsection must be to immediately order the entity to assign counsel.

### FISCAL ANALYSIS

#### Assumptions:

- OPD's case management and costing systems do not distinguish among a parent, child, or other involved party in dependent/neglect (DN) cases. OPD's Conflict Coordinator reviewed contractor information in OPD systems to develop a percentage of the dollars and cases for each contract attorney in representing children. This review found that during FY 2012 OPD had approximately 904 dependent and neglect cases represented by a contract attorney where it represented children at an approximate cost of \$431,889.
- Recently, an estimate has been provided to OPD from Montana Legal Services Association (MLSA) in the amount of \$879,868 annually to take over representation of children in dependent and neglect cases.
- OPD has not received nor solicited any other bids from any other outside entity.
- The difference between OPD's estimated cost for FY 2012 and the cost provided by MLSA is \$447,979.

5. It is assumed the \$431,889 in OPD base budget would combined with new funding in the amount of the additional \$447,979 to fund this activity for FY 2015 and beyond.
6. If the agency has difficulty canceling existing memorandums of understanding with contract attorneys, the additional cost in the first fiscal year could be anywhere from \$0 to \$431,889.
7. There is a 1.5% inflation factor applied to FY 2016 and FY 2017.
8. Title 47 does not allow OPD to award a contract “based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.”
  - a. This was an audit issue in OPD’s last legislative audit report as OPD did have four fix fee contracts in place that it has exited due to the audit recommendation.
  - b. If OPD had to convert any bid received that is fixed in nature to an hourly contract, the entity may not be able to stay within any estimate provided and covered by this fiscal note and therefore OPD could incur a funding shortfall during FY 2014 and beyond.
9. If this bill passes, it is assumed that OPD would be responsible for monitoring the contract pursuant to 47-1-216, MCA.

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
<b><u>Fiscal Impact:</u></b>				
<b><u>Expenditures:</u></b>				
Operating Expenses - OPD	\$447,979	\$447,979	\$454,699	\$461,519
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$447,979	\$447,979	\$454,699	\$461,519
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$447,979)	(\$447,979)	(\$454,699)	(\$461,519)

**Technical Notes:**

1. 47-1-216 (4), MCA, states “Contracts may not be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned.”
2. OPD is uncertain at this time if it could find another bid for this type of service within the State of Montana.

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*Sponsor’s Initials*

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*Date*

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*Budget Director’s Initials*

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*Date*