



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2025 Biennium

<b>Bill information:</b>	
SB0148 - Revise laws regarding legal representation of children (Lenz, Dennis R)	
<b>Status:</b>	As Introduced

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input type="checkbox"/> Technical Concerns              |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts           | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$618,342	\$618,342	\$627,617	\$637,031
Federal Special Revenue	\$271,359	\$271,359	\$275,429	\$279,560
<b>Revenue:</b>				
General Fund	\$0	\$0	\$0	\$0
Federal Special Revenue	\$271,359	\$271,359	\$275,429	\$279,560
<b>Net Impact-General Fund Balance:</b>	(\$618,342)	(\$618,342)	(\$627,617)	(\$637,031)

**Description of fiscal impact:** SB 148 requires legal representation for children involved with child abuse and neglect cases that are eligible for federal Title IV-E reimbursement.

### FISCAL ANALYSIS

**Assumptions:**

**Department of Public Health & Human Services (DPHHS)**

1. Legal representation of children in dependent neglect cases are eligible for federal Title IV-E reimbursement. The calculation for Title IV-E eligible expenditures is based on Montana Title IV-E blended saturation rate and the federal participation rate of allowable expenses.
2. 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 Title IV-E saturation rate changes per quarter but is approximately 61% and the federal participation rate for quality legal representation is 50%. A table splitting out the IV-E funding and state funding can be found in Assumption #9.

**Office of Public Defender (OPD)**

3. Regarding the new requirement to hold EPS hearings within 72 hours, OPD anticipates it would assign counsel to represent OPD clients in roughly 665 EPS hearings per year of the biennium. At least one party will always

be represented by an FTE attorney, while the additional parties would be represented by contract attorneys. OPD anticipate that 3 contract attorneys will be assigned to each matter. Attorneys will spend on average 3 hours per EPS hearing totaling 7,980 additional attorney hours per matter. OPD contractor attorneys are currently paid \$71 per hour, though OPD anticipates it will need to pay a higher rate to ensure contractor availability for these emergency hearings. Due to the time constraints and general contractor availability, OPD anticipates it would need to pay \$109 per hour to contract attorneys to accept assignments for these EPS hearings, an increase of \$38.00 per hour.

4. The cost of the increase in contractor rates of \$38 dollars per hour for the estimated 7,980 hours that contractors would spend on EPS cases over the biennium would be approximately \$303,240.
5. OPD further assumes that courts will continue to allow for remote appearances that would allow OPD and contract attorneys to appear remotely for EPS hearings. Every EPS hearing that OPD can staff with a remote full-time employee would reduce the fiscal impact and increase the consistence and quality of representation
6. OPD anticipates all EPS hearings would be held Monday through Friday, 8 am to 5 pm hours. If EPS hearings are held outside these hours, OPD would need to establish an on-call rotation and work with unionize staff to pay a higher rate of compensation for on call time, which would increase OPD’s costs related to these EPS hearings.
7. OPD further assumes that judges will use consistent scheduling for EPS hearings or allow other judges to over EPS hearing scheduled outside the normal scheduling of the assigned judge.
8. Regarding the new requirement to appoint counsel for all children in all proceedings under petitions filed pursuant to 41-3-422, OPD assumes that SB 148 would require assignment of an attorney to represent the involved children in approximately an additional 413 cases per year. As OPD primarily assigns its FTE attorneys to represent parents, OPD would assign these new, additional child appointments from SB 148 to contract attorneys.
9. OPD’s current case weight predicts such new appointments will require an average of 20 hours of attorney time per case with a total cost of 20 hours x 413 x 71 totaling \$586,460. Additional attorney time and cost for EPS hearings if this bill passes is as follows: 3 hours x 3 contract attorneys x 665 hearings = 7980 hours. Additional costs at higher contract rates are: \$38 x 7980 hours totaling \$303,240 + 413 attorney matters x 20 hours x \$71 per hour totaling 889,700 per year. 1.5% inflation factor will be applied to FY 2026 and FY 2027.

	2024	2025	2026	2027
Office of Public Defender Projected Costs	\$ 889,700	\$ 889,700	\$ 903,046	\$ 916,591
Montana Blended Title IV-E Saturation Rate	61%	61%	61%	61%
Title IV-E Eligible Cost	\$ 542,717	\$ 542,717	\$ 550,858	\$ 559,121
Federal Participation Rate	50%	50%	50%	50%
Federal Title IV-E Reimbursement	\$ 271,359	\$ 271,359	\$ 275,429	\$ 279,560

**Judicial Branch**

10. This bill changes 41-3-425, MCA, to require the court to appoint the office of the state public defender to immediately assign counsel for any child or youth involved in an abuse and neglect proceeding.
11. This bill does not relieve the court of the obligation to appoint a GAL or CASA pursuant to 41-3-112, MCA. As such, there will be no reduction of costs for the Judicial Branch because according to 3-5-901(e)(iv), MCA, the Judicial Branch is still obligated to pay the expenses associated with the appointment of a guardian ad litem or child advocate appointed pursuant to Title 41, chapter 3, part 4, MCA.

	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>	<u>FY 2026</u> <u>Difference</u>	<u>FY 2027</u> <u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
<b><u>Expenditures:</u></b>				
Operating Expenses	\$889,700	\$889,700	\$903,046	\$916,591
<b>TOTAL Expenditures</b>	<b>\$889,700</b>	<b>\$889,700</b>	<b>\$903,046</b>	<b>\$916,591</b>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$618,342	\$618,342	\$627,617	\$637,031
Federal Special Revenue (03)	\$271,359	\$271,359	\$275,429	\$279,560
<b>TOTAL Funding of Exp.</b>	<b>\$889,700</b>	<b>\$889,700</b>	<b>\$903,046</b>	<b>\$916,591</b>
<b><u>Revenues:</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$271,359	\$271,359	\$275,429	\$279,560
<b>TOTAL Revenues</b>	<b>\$271,359</b>	<b>\$271,359</b>	<b>\$275,429</b>	<b>\$279,560</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$618,342)	(\$618,342)	(\$627,617)	(\$637,031)
Federal Special Revenue (03)	\$0	\$0	\$0	\$0

**NO SPONSOR SIGNATURE**

\_\_\_\_\_  
Sponsor's Initials

1/20/23  
Date

  
\_\_\_\_\_  
Budget Director's Initials

1-18-23  
Date