



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2025 Biennium

Bill information:	
HB0037 - Generally revise child abuse and neglect laws (Carlson, Jennifer)	
Status:	As Amended in House Committee - Revised

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>
Expenditures:				
General Fund - DPHHS	\$335,280	\$296,280	\$302,975	\$309,470
General Fund - OPD	\$618,341	\$618,341	\$627,617	\$637,031
Federal Special Revenue	\$415,051	\$398,336	\$405,276	\$412,190
Revenue:				
General Fund	\$0	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
Federal Special Revenue	\$415,051	\$398,336	\$405,276	\$412,190
Net Impact-General Fund Balance:	(\$953,621)	(\$914,621)	(\$930,592)	(\$946,501)

Description of fiscal impact: HB 37 as amended requires a warrant to remove a child from the family unless the child is likely to experience sexual abuse or physical abuse in the time that would be required to obtain a warrant. The Department of Public Health and Human Services (DPHHS) Child and Family Services Division (CFSD) will incur additional overtime hours for child protection specialists (CPS) to secure warrants prior to removal, as well as costs to train current CFSD staff and county personnel on the new requirements and processes. Additional representation requirements would also result in more attorney time per case for the Office of Public Defender (OPD). Amendments to HB 37 do not substantially change the total impact of the bill, though new information on warrant writing and training has become available since the original fiscal note was written that does impact those assumptions. DPHHS has also clarified that a portion of costs incurred by OPD would be eligible for increased federal reimbursement under Title IV-E over current reimbursement amounts, and this fiscal note has been updated accordingly.

FISCAL ANALYSIS

Assumptions:

- HB 37 limits the removals that would not require a warrant to only those where a child is likely to experience sexual abuse or physical abuse *in the time it would take to obtain a warrant*. The definitions of these terms are very specific and limited and would not account for the majority of removals by DPHHS, including other

emergency and non-emergency situations (such as in cases when a child is otherwise left without available care, there is reason to believe the parent will flee the jurisdiction with the child if given the opportunity, or a parent consents to the removal). Definitions of these terms are provided in Section 4. of the bill.

2. The warrant process is in addition to work already required by federal regulation or state law under increasingly shortened timeframes. HB 37 does not alleviate the department from other required, necessary, and time-consuming work. While some warrants may be requested, processed and served during normal business hours, many others would occur during non-traditional hours. Regardless of the timing of the warrant, adding a significant new process to the existing workload results in opportunity cost of other required work, and would thus result in substantial overtime of existing staff.
3. In FY 2022, 6% of substantiations involved allegations of sexual abuse, and 8% involved allegations of physical abuse. Using these percentages as a basis for determining how many of the 1,390 removals in FY 2022 would not require a warrant, DPHHS assumes 86% would require a warrant with the passage of HB 37. It is estimated to require two hours of child protection specialist (CPS) staff time to write a warrant and five hours to wait for the warrant to be issued. It is estimated that the warrant process will occur at an average of \$50.44 per overtime hour cost of CPS staff. (1,390 FY 2022 removals x 86% requiring a warrant = 1,195 warrant removals; 2 hours warrant writing time + 5 hours warrant processing time = 7 hours per warrant; 1,195 warrant removals x 7 hours per warrant = 8,365 annual hours of additional CPS time; 8,365 annual hours x \$50.44 average hourly cost = \$421,931)

Removals during FY 2022	1,390
x Percentage of removals that would require a warrant	<u>86%</u>
= Number of removals that would require a warrant	1,195

Hours required to write a warrant	2
x Hours waiting for warrant to process	<u>5</u>
= Total hours required per warrant	7

Number of removals that would require a warrant	1,195
x Total hours required per warrant	<u>7</u>
= Annual hours required for warrant removals	8,365

4. Warrant writing will be a new process for CSD staff. Applicable CFSD staff will require training on a new warrant writing process. Training on warrant writing and the new processes will be provided to 330 current employees across multiple staff-types and take four hours at an average hourly cost of \$35.14. The warrant writing training will be incorporated into new employee training in FY 2025 and beyond. (4 hours of training x 330 current CFSD employees x \$35.14 average hourly employee cost = \$46,385)
5. HB37 Section 1 as amended limits the ability to issue warrants to district courts within the state, but still allows for peace officers and county attorneys to apply for a warrant, in addition to child protection specialists. Warrants issued under this chapter are civil warrants, not criminal warrants, and would likely need to include specific language to maintain ability to claim federal Title IV-E reimbursement in qualifying cases. CFSD anticipates providing warrant writing training specific to dependent neglect cases to peace officers and county attorneys in all 56 Montana counties specific to the language necessary to maintain Title IV-E funding. The warrant writing training will take four hours at a rate of \$47.57 per hour. (56 counties x 4 hours of training x \$47.57 per hour = \$10,655)

6. CFSD administrative expenditures are federally allowable expenditures under Title IV-E of the Social Securities Act at a federal participation rate of 30%, the remaining 70% of expenditures are funded with state general funds.
7. Quality legal representation of children in dependent neglect cases by the OPD are eligible for federal Title IV-E reimbursement based on changes to the federal Child Welfare Policy Manual in 2018. Montana elected to incorporate this policy change, and began reimbursing the OPD for legal representation in dependent neglect cases in March 2020. The increased costs to OPD as a result of HB37 would qualify for increased Title IV-E reimbursement through DPHHS. The calculation for Title IV-E eligible expenditures is based on the Montana Title IV-E blended saturation rate and the federal financial participation (FFP) rate of allowable expenses. The Montana Title IV-E blended saturation rate is based on a combination of Title IV-E eligible children in foster care, adoption and guardianship placements and eligible Title IV-E activities completed by child protection specialists each quarter. This rate is calculated in accordance with the DPHHS public assistance cost allocation plan . The saturation rate changes per quarter but is currently approximately 61%. The federal financial participation rate for quality legal representation is 50% of eligible expenditures after the saturation rate is applied. (OPD Additional cost X Montana Title IV-E blended saturation rate (61%) X federal Title IV-E participation rate for quality legal representation (50%) = Federal Title IV-E reimbursement).

	FY 2024	FY 2025	FY 2026	FY 2027
OPD Additional Cost	\$ 889,700	\$ 889,700	\$ 903,046	\$ 916,591
X Montana Blended Title IV-E Saturation Rate	61%	61%	61%	61%
= Title IV-E Eligible Cost	\$ 542,717	\$ 542,717	\$ 550,858	\$ 559,121
X Federal Participation Rate	50%	50%	50%	50%
= Federal Title IV-E Reimbursement	\$ 271,359	\$ 271,359	\$ 275,429	\$ 279,560

Judicial Branch

8. Section 1 requires a warrant before a child can be removed by a child protection specialist. A warrant may be issued in writing, by telephone, or electronically. If a warrant is issued telephonically or electronically, the provisions of 46-5-222, MCA, apply. In the 2022 District Court workload study, each warrant takes an average 20 minutes of judicial time. The ten-year average number of child abuse and neglect cases filed is 2,082. This requirement would result in an additional 700 hours of judicial time each year. The impact would fall greatest in counties with many child abuse cases.
9. Sections 6 and 7 require an emergency protective services hearing within 72 hours of the removal of a child. If the court determines the removal is necessary, the judge will order terms of visitation and other treatment requirements. Judges will alter schedules to accommodate hearings, which will delay other scheduled matters. If a hearing is required on a weekend or holiday when courts are closed (i.e. a late Friday removal with a Monday holiday), the Judicial Branch may incur costs related to overtime for court reporters but the cost is impossible to estimate.
10. The Judicial Branch is unable to estimate the impact on judicial workload or the fiscal impact. The cumulative impact of this bill may over time require additional judicial resources because generally the court dockets are full throughout the state.

Office of Public Defender (OPD)

11. 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. We 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.

12. 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.
13. 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
14. 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.
15. 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.
16. Regarding the new requirement to appoint counsel for all children in all proceedings under petitions filed pursuant to 41-3-422, MCA, OPD assumes that HB 37 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 HB 37 to contract attorneys.
17. 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.
18. Additional attorney time and cost for EPS hearings 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 added to years 3 and 4.

	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>	<u>FY 2026 Difference</u>	<u>FY 2027 Difference</u>
<u>Fiscal Impact:</u>				
FTE	0.00	0.00	0.00	0.00
<u>Expenditures:</u>				
Personal Services - DPHHS	\$478,972	\$423,527	\$432,822	\$442,100
Operating Expenses - OPD	\$889,700	\$889,700	\$903,046	\$916,591
TOTAL Expenditures	\$1,368,672	\$1,313,227	\$1,335,868	\$1,358,691
<u>Funding of Expenditures:</u>				
General Fund (01)	\$953,621	\$914,621	\$930,592	\$946,501
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$415,051	\$398,336	\$405,276	\$412,190
TOTAL Funding of Exp.	\$1,368,672	\$1,312,957	\$1,335,868	\$1,358,691
<u>Revenues:</u>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$415,051	\$398,336	\$405,276	\$412,190
TOTAL Revenues	\$415,051	\$398,336	\$405,276	\$412,190
<u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u>				
General Fund (01)	(\$953,621)	(\$914,621)	(\$930,592)	(\$946,501)
State Special Revenue (02)	\$0	\$0	\$0	\$0
Federal Special Revenue (03)	\$0	\$0	\$0	\$0

Technical Notes:

1. This bill allows for dismissal of Dependent Neglect cases when a child is returned home. Current statute requires all criteria to be met to ensure the underlying concerns are addressed and not just controlled for current safety. This change could lead to increased re-entry of children into foster care. While the department anticipates this would significantly increase the fiscal impact related to repeat maltreatment and re-entry, specific costs cannot be determined at this time. The department is also concerns about the potential adverse outcomes for impacted children as a result of this change in dismissal criteria.
2. New court cases are filed through county Clerks of Court offices. Clerks' offices are closed on weekends and holidays, which may preclude filings within the 72-hour required timeframe.

NOT SIGNED BY SPONSOR

Sponsor's Initials

Date


Budget Director's Initials

2-7-23
Date