



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)	\$101,000	\$126,250	\$157,808	\$196,599
<b>Revenues</b>				
General Fund (01)	\$0	\$0	\$0	\$0
<b>Net Impact</b>	<u>(\$101,000)</u>	<u>(\$126,250)</u>	<u>(\$157,808)</u>	<u>(\$196,599)</u>
<b>General Fund Balance</b>				

### Description of fiscal impact

SB 429 revises Montana laws regarding determining and restoring fitness in criminal proceedings. 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 makes the court administrator's office responsible for reimbursing commitment, examination, or treatment costs at the Montana State Hospital (MSH). This change will result in a general fund savings for DPHHS and general fund increases for the Judicial Branch. Amendments to SB 429 direct the office of court administrator to pay a \$20 fee for each examination of fitness, and adds additional costs to the general fund.

### FISCAL ANALYSIS

#### Assumptions

#### Department of Public Health and Human Services

1. People issued court-ordered evaluations (COE) to be performed at MSH are housed in the MSH Galen facility, which has a 54-bed capacity. Currently, half of those beds are occupied by guilty but mentally ill (GBMI) patients, leaving 27 beds available for stabilization and COE.
2. Per MCA 46-14-202, the defendant is committed for a COE for a period not to exceed 60 days, which is the length of stay for most of these patients. The department assumes the maximum number of COE people the facility can accommodate yearly is 162 (27 beds available x 6 people per bed per year assuming a full 60-day stay).
3. The Department receives an average of 80-100 court-ordered evaluations yearly. Based on historical information and capacity at the Galen facility, the department estimates the number of COEs will increase by 25% each year. The Galen facility will continue to grow COE bed use until the maximum capacity the facility can provide is reached. The department assumes it will provide 100 COEs in FY 2026, 125 (100

COEs x 1.25) in FY 2027, 156 (125 x 1.25) in FY 2028, and 162 (maximum number of COEs MSH can do per year) in FY 2029.

- The current daily per diem cost per patient in Galen is \$708.84. Assuming a growth rate of 3%, the per diem is calculated to be \$730.11 in FY 2026 (\$708.84 x 1.03), \$752.01 in FY 2027 (\$730.11 x 1.03), \$774.57 in FY 2028 (\$752.01 x 1.03), and \$797.81 in FY 2029 (\$774.57 x 1.03).

	Estimated Court Ordered Evaluations Performed	Forensic Daily Per Diem Rate - 3% yearly growth rate	Days Committed for Court Ordered Evaluation	Reduction to Department Costs
FY 2026	100	\$ 730.11	60	\$ 4,380,660.00
FY 2027	125	\$ 752.01	60	\$ 5,640,075.00
FY 2028	156	\$ 774.57	60	\$ 7,249,975.00
FY 2029	162	\$ 797.81	60	\$ 7,754,713.00
			<b>Total</b>	<b>\$ 25,025,423.00</b>

**Judiciary**

- SB 429 generally revises laws related to determination and restoration of fitness in criminal proceedings.
- Section 2 of the bill would revise 3-5-901 to move costs of all examination expenses to the court administrator’s office if an examination is requested by prosecutor, court or defendant.
- The average costs of an evaluation is \$1,440 for a qualified psychiatrist outside of the Montana State hospital.
- With the costs of all court ordered examinations to be billed to the court administrator's office, using an estimate of an additional 20 evaluations performed per year by a qualified psychiatrist, the costs would be \$28,800 in FY 2026. The following fiscal years would see an approximate 25% increase in the number of additional evaluations. FY 2027 \$36,000, FY 2028 \$45,000 and FY 2029 \$56,250.
- Section 7 of the bill would amend 46-14-221 to prohibit the court from committing a defendant to a private mental health facility or hospital without the express consent of the facility or hospital.
- SB 429, section 7 (3), would prohibit the court from transporting a defendant to the Montana State hospital until the facility has confirmed in writing that the terms in (3) (a) through (c) have been met.
- It is assumed that if the beds are full at the hospital, the defendant would be housed in the county jail while awaiting the evaluations and the costs would be paid by OCA .
- Using the daily rate from a large county's office of \$117.00 per day and an average of 30 days, it is estimated the costs for FY 2026 would be \$70,200 for 20 people, with an approximate increase of defendants of 25%. FY 2027 would be \$87,750, FY 2028 \$109,688 and FY2029 \$137,110.
- SB 429 (6) requires the committing court, within 7 days of receiving notice, order the defendant to be returned to county for trial.
- Section 7 amends 46-14-221 to require the court to review the defendant’s custodial status every 30 days after the initial review of the defendant’s custodial status
- The additional deadlines imposed by this bill may delay adjudication of other case types as the dockets of the court are full.
- Section 7(8), amends 46-14-221 to allocate costs of care, custody, and treatment from DPHHS to the Court Administrator’s office.
- Per the Department of Health and Human Services, the department receives an average of 80-100 court ordered evaluations yearly. Based on historical information and capacity at the Galen facility, the department estimates the number of court ordered evaluation (COE) will increase by 25% each year. The current daily per diem rate is \$730.11. The max days allowed are 60 days. DPHHS assumed it would provide 100 COEs in FY2026, 125 on FY 2027, 156 in FY 2028 and 162 in FY 2029 with rate increasing at 3% each year.

	Estimated Court Ordered Evals performed	Forensic Daily per diem rate 3% yearly growth rate	Max days committed for COE's	
FY2026	100	\$ 730.11	60	\$ 4,380,660.00
FY2027	125	\$ 752.01	60	\$ 5,640,075.00
FY2028	156	\$ 774.57	60	\$ 7,249,975.20
FY2029	162	\$ 797.81	60	\$ 7,754,713.20
				\$ 25,025,423.40

- 14. Per SB 429, these costs would transfer to the Judiciary branch.
- 15. SB 429 was amended to add a fee of \$20.00 per examination to be paid by the Judicial Branch.
- 16. Using the estimated court ordered evaluations provided by DPHHS, the additional costs would be \$2,000 in FY2026, \$2500 in FY 27, \$3120 in FY 2028 and \$3240.00 in FY2029.

**Fiscal Analysis Table**

<b>Department of Public Health and Human Services</b>				
	<b>FY 2026 Difference</b>	<b>FY 2027 Difference</b>	<b>FY 2028 Difference</b>	<b>FY 2029 Difference</b>
<b><u>Fiscal Impact</u></b>				
<b><u>Expenditures</u></b>				
Operating Expenses	(\$4,380,660)	(\$5,640,075)	(\$7,249,975)	(\$7,754,713)
<b>TOTAL Expenditures</b>	<b>(\$4,380,660)</b>	<b>(\$5,640,075)</b>	<b>(\$7,249,975)</b>	<b>(\$7,754,713)</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	(\$4,380,660)	(\$5,640,075)	(\$7,249,975)	(\$7,754,713)
<b>TOTAL Funding of Expenditures</b>	<b>(\$4,380,660)</b>	<b>(\$5,640,075)</b>	<b>(\$7,249,975)</b>	<b>(\$7,754,713)</b>
<b><u>Revenues</u></b>				
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	\$4,380,660	\$5,640,075	\$7,249,975	\$7,754,713

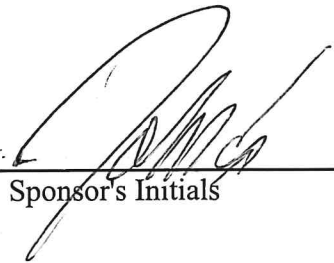
<b>Judiciary</b>				
	<b>FY 2026 Difference</b>	<b>FY 2027 Difference</b>	<b>FY 2028 Difference</b>	<b>FY 2029 Difference</b>
<b><u>Fiscal Impact</u></b>				
<b><u>Expenditures</u></b>				
Operating Expenses	\$4,481,660	\$5,766,325	\$7,407,783	\$7,951,312
<b>TOTAL Expenditures</b>	<b>\$4,481,660</b>	<b>\$5,766,325</b>	<b>\$7,407,783</b>	<b>\$7,951,312</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	\$4,481,660	\$5,766,325	\$7,407,783	\$7,951,312
<b>TOTAL Funding of Expenditures</b>	<b>\$4,481,660</b>	<b>\$5,766,325</b>	<b>\$7,407,783</b>	<b>\$7,951,312</b>
<b><u>Revenues</u></b>				
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	(\$4,481,660)	(\$5,766,325)	(\$7,407,783)	(\$7,951,312)

<b>STATEWIDE SUMMARY</b>				
	<b>FY 2026 Difference</b>	<b>FY 2027 Difference</b>	<b>FY 2028 Difference</b>	<b>FY 2029 Difference</b>
<b><u>Fiscal Impact</u></b>				
<b>TOTAL Fiscal Impact</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>
<b><u>Expenditures</u></b>				
Operating Expenses	\$101,000	\$126,250	\$157,808	\$196,599
<b>TOTAL Expenditures</b>	<b>\$101,000</b>	<b>\$126,250</b>	<b>\$157,808</b>	<b>\$196,599</b>
<b><u>Funding of Expenditures</u></b>				
General Fund (01)	\$101,000	\$126,250	\$157,808	\$196,599
<b>TOTAL Funding of Expenditures</b>	<b>\$101,000</b>	<b>\$126,250</b>	<b>\$157,808</b>	<b>\$196,599</b>
<b><u>Revenues</u></b>				
<b>TOTAL Revenues</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures)</u></b>				
General Fund (01)	(\$101,000)	(\$126,250)	(\$157,808)	(\$196,599)

Technical Concerns

Office of Budget and Program Planning

- 1. SB 429, requires the district court office of the court administrator to cover all costs associated with a fitness to proceed examination, including, medical care, and transportation costs to the Montana State Hospital. HB 643 requires the Department of Public Health and Human Services (DPHHS) to reimburse counties for costs incurred for holding a person who has been committed to the custody of the department and is awaiting placement in an appropriate facility. If both HB 643 and SB 429 are passed and approved, the Department of Public Health and Human Services and the Judicial Branch will have conflicting statuses regarding the financial responsibility for jail hold costs.

  
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 Sponsor's Initials

3/24/25  
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 Date

  
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 Budget Director's Initials

3/23/2025  
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 Date