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[HF 2474](#) – Guardians Ad Litem (LSB5926HV)

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Fiscal Note Version – New

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## **Description**

[House File 2474](#) provides that a local public defender office will represent any party, by court order, in certain proceedings instead of only an indigent party. These proceedings include: child in need of assistance (CINA), family in need of assistance (FINA), delinquency, and termination of parental rights (TPR) proceedings.

House File 2474 also provides that a local public defender office will represent in a subsequent adoption proceeding any party, instead of only an indigent party, who files a petition to adopt a child who was the subject of a TPR proceeding in which the local public defender office was involved. The Bill also provides that in adoption proceedings to adopt a child who was the subject of a TPR proceeding in which the local public defender office was involved, a local public defender office is to serve as the guardian ad litem for the child.

## **Background**

Under current law, a local public defender office represents an indigent party, upon order of the court, in CINA, FINA, delinquency, and TPR proceedings when designated by the State Public Defender to represent the indigent party in the type of case for that county. Additionally, a local public defender office represents in a subsequent adoption proceeding an indigent party who files an adoption petition to adopt a child who was the subject of a TPR proceeding in which the local public defender was involved. If a conflict of interest arises, the representation is to be provided through referral of the indigent party to outside counsel with whom the State Public Defender has contracted.

The Office of the State Public Defender receives federal IV-E reimbursement for providing legal representation to children and parents in foster care legal proceedings. The total estimated IV-E reimbursement to the State Public Defender for FY 2022 is \$3.7 million.

Under current law, a local public defender office serves as the guardian ad litem for each child in all cases in which a local public defender office is the State Public Defender's designee. The local public defender is responsible for determining who will serve as guardian ad litem and for assuring that the duties are fulfilled.

## **Assumptions**

- All proceedings under this Bill requiring a local public defender office to represent any party, regardless of indigency status, will be assigned to court-appointed attorneys.
- There are approximately 1,200 TPR proceedings each year.
- Approximately 50.0% of TPR proceedings will result in an adoption.
- If the State Public Defender provides an attorney for the petitioners and another attorney as the guardian ad litem for the child for each resulting adoption proceeding, the State Public Defender will provide representation in approximately 600 adoption proceedings each year to adopt a child who was the subject of a TPR proceeding.

- The total number of attorney hours per proceeding in an adoption will range between 5 to 10 hours.
- Each adoption case will be billed by contract attorneys at an hourly rate of \$66.
- The Department of Human Services (DHS) reports that HF 2474 could result in savings under the Iowa State Adoption Assistance Program due to not reimbursing legal fees for petitioners who choose the Office of the State Public Defender for legal representation instead of private legal representation.
- The DHS reimburses adoptive parents of special needs children for up to \$500 per adoption case for attorney fees, adoption fees, and court costs.
- Due to data challenges, it is not possible for the State Public Defender to estimate the number of additional cases for CINA, FINA, delinquency, and TPR proceedings that may be assigned to a local public defender under HF 2474.

**Fiscal Impact**

As shown in **Table 1** below, the annual estimated fiscal impact to the Indigent Defense Fund of the State Public Defender providing representation in adoption proceedings under HF 2474 is between \$198,000 and \$396,000. This includes attorneys both to represent the petitioner and to serve as the guardian ad litem for the child for all adoptions resulting from a TPR proceeding in which a local public defender office was involved under HF 2474.

**Table 1 — Estimated Annual Cost of Adoption Proceedings to Indigent Defense Fund**

Termination of Parental Rights Proceedings Resulting in an Adoption	Number of Attorney Hours Per Case	Attorney Hourly Rate	Total Cost Per Year
600	5 to 10	\$66	\$198,000 to \$396,000

The requirement for the Office of the State Public Defender to represent any party by court order in CINA, FINA, delinquency, and TPR proceedings would likely increase costs significantly to the Indigent Defense Fund, but the extent of this increase cannot be estimated. The State Public Defender reports that this increase cannot be absorbed by the State Public Defender operating budget or the Indigent Defense Fund. Both are funded through the General Fund.

Additionally, the DHS reports that HF 2474 could result in savings of up to \$500 per adoption case for special needs children in which the petitioner chooses to be represented by the Office of the State Public Defender rather than by private legal representation. The average annual spending on legal fees within the Adoption Assistance appropriation is \$550,000, of which \$275,000 of this total is the State share. The amount of potential savings to the DHS is unknown.

**Sources**

Office of the State Public Defender  
 Department of Human Services  
 Legislative Services Agency

/s/ Holly M. Lyons

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The fiscal note for this Bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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