

Budget Overview: Office of Public Advocacy



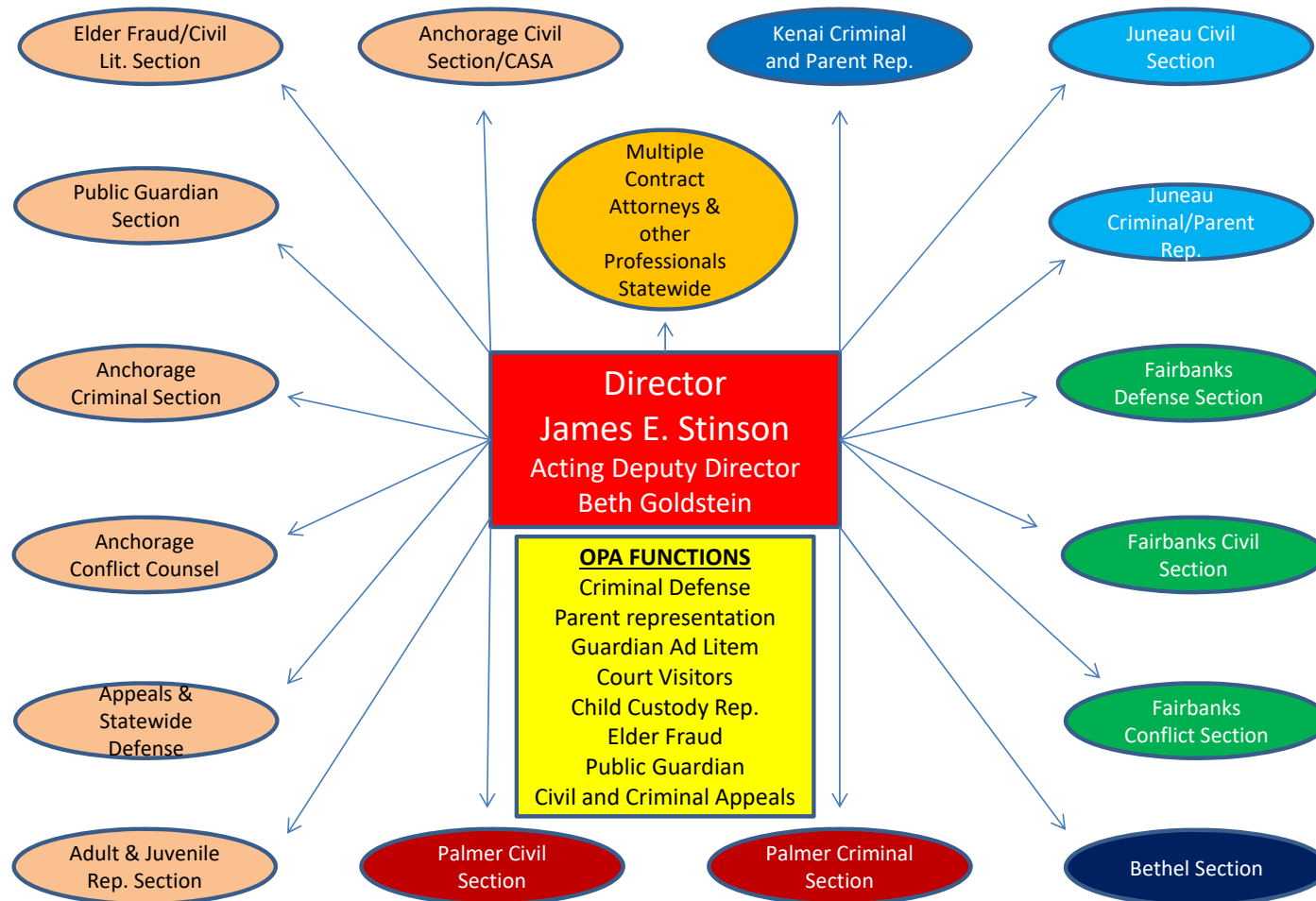
Presented by
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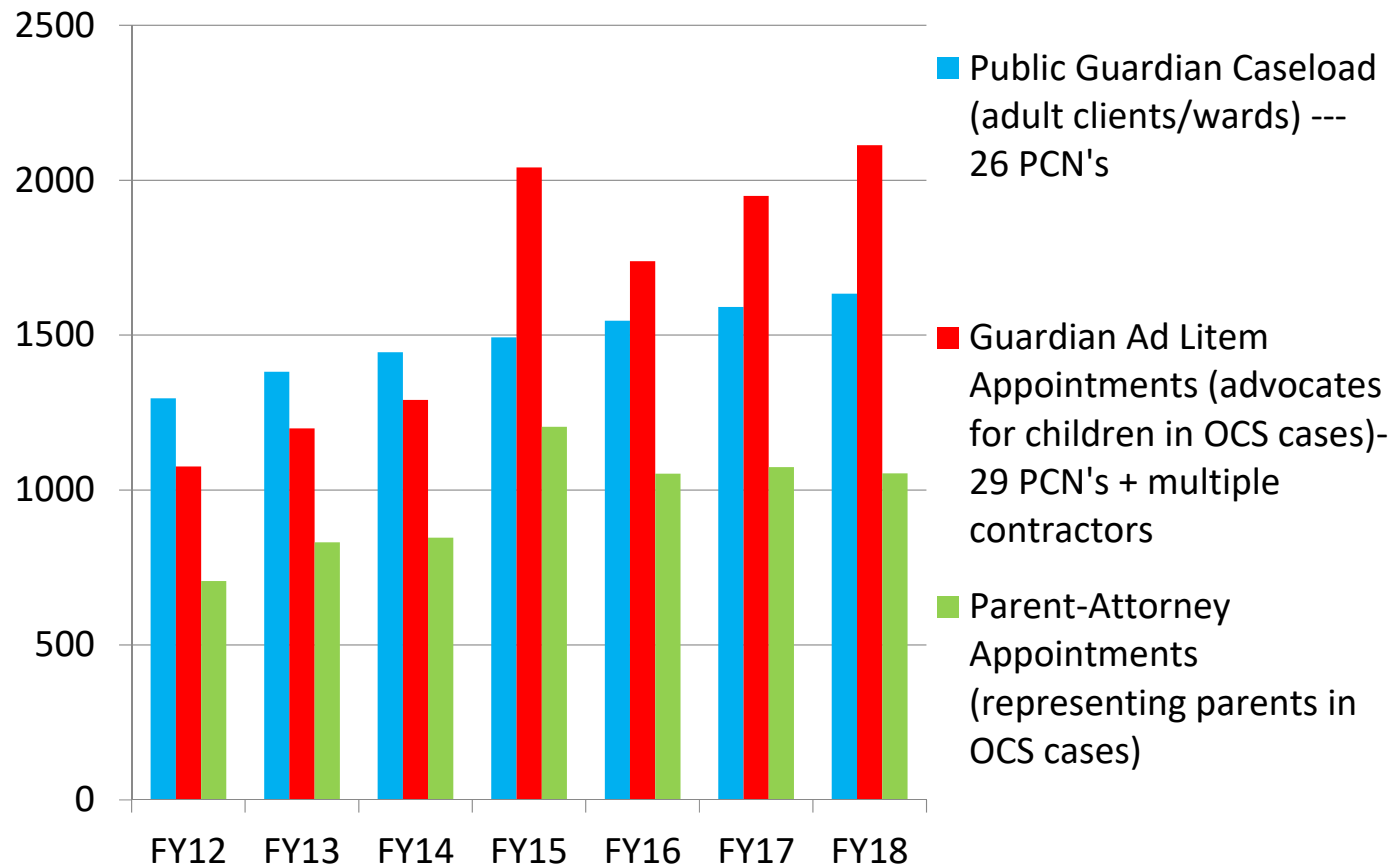
OPA Roles

- **Public Guardian** – Court appointed. Makes all financial and health care decisions for incapacitated adults. Statutorily required.
- **Guardian Ad Litem** – Court appointed. Advocates for the best interests of children in CINA and Civil Custody cases as well as Domestic violence cases. Statutorily required.
- **CASA** – Court Appointed Special Advocates. Volunteers who help Guardians Ad Litem.
- **Criminal Defense Attorneys** – Court appointed. Represent indigent persons accused of crime when the Public Defender agency (PDA) has a conflict of interest precluding PDA representation of a defendant. Constitutionally required.
- **Parent Representation Attorneys** – Court appointed. Represent indigent parents in CINA and Civil Custody cases. Constitutionally required.
- **Elder Fraud** – OPA decides the cases to pursue. Files lawsuits on behalf of elders who have been defrauded of assets. Statutorily required.
- **Court visitors** – Court appointed. Investigates the need for adult guardianships. Statutorily required.
- **Appeals** – Court appointed. Files appeals in criminal and civil cases. Constitutionally required.

OPA STRUCTURE AND FUNCTIONS



OPA Caseloads/Appointments



OPA Challenges – Conflict Counsel

- OPA experienced a 28% increase in FY18 over FY17. This trend has continued into FY19.
- OPA carries a disproportionate amount of the most serious types of felony cases. Many of these are complex multi-defendant homicide cases.
- OPA criminal units are walled off in order to internalize conflicts.
- The more investigation a case requires, the more likely the defendant(s) will have a conflict with the Public Defenders Agency and be sent to OPA.
- The Anchorage Criminal Defense Section (ACR) has 5 to 6 attorneys capable of handling Unclassified Felony cases. That unit is currently carrying 66 Unclassified felony cases in addition to A, B, and C felonies.
- Anchorage Conflict Counsel (ACC) has three attorneys capable of handling Unclassified felonies and is currently carrying 26 Unclassified felony cases in addition to A, B, and C felonies.

OPA Challenges – Public Guardian

- Previously, 90 - 100 Wards per Public Guardian when at full staff. Recommended National Maximum is 40.
- Post FY19 Increment, it is now 60-100. The average should eventually be 67.4 Wards per Public Guardian.
- It takes around 2 years to fully train a Public Guardian. New hires aren't yet able to carry a full caseload.
- Recent lawsuit alleging that the Public Guardian is violating statutory duties to visit wards – a direct result of case overload.
- Risk of serious harm to a ward caused by failure to respond due to case overload.
- Current focus is on training the new Public Guardians. OPA is re-shuffling caseloads to fast track training.

OPA Challenges – Child In Need of Aid Cases

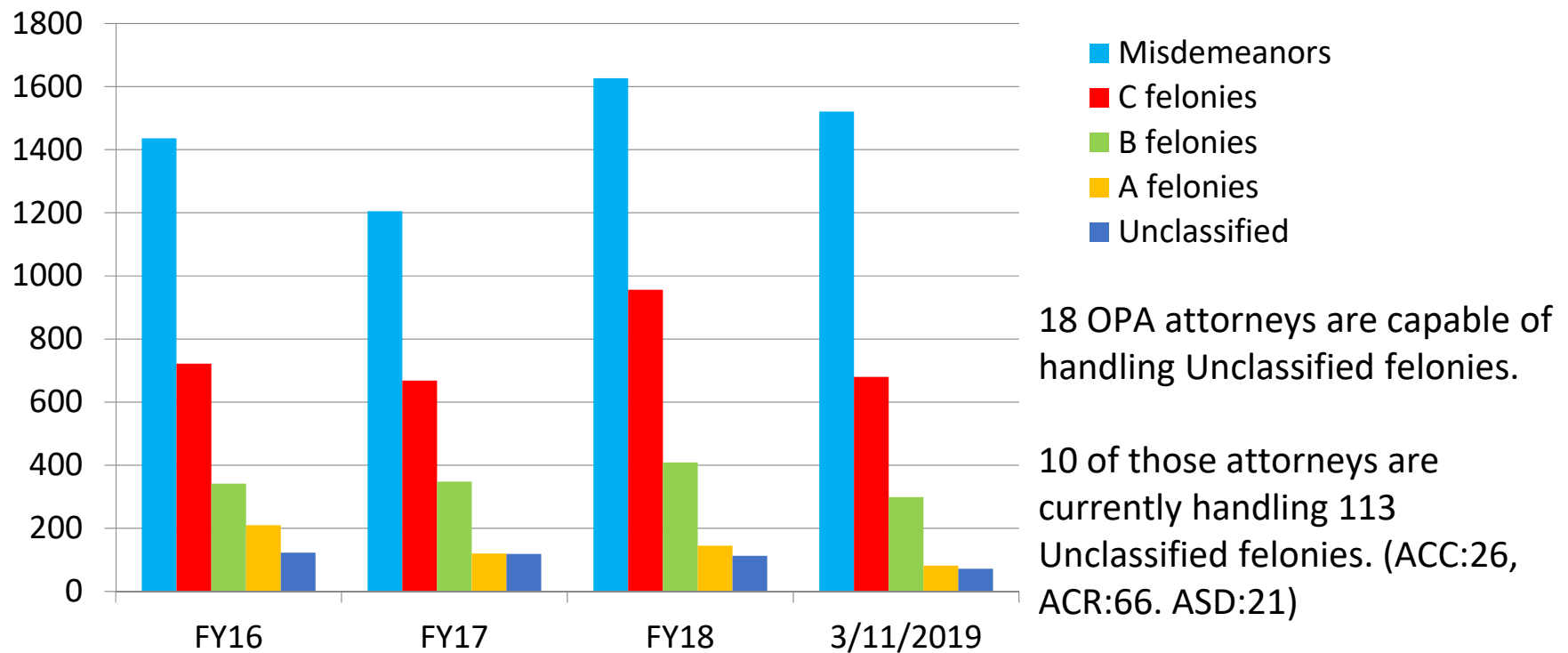
CINA GAL

- Since FY15 there has been a massive increase in OCS-filed cases
- Substantial increase in workload and cost as every case requires a GAL
- Post FY19 Increment Average of 70-100 children per Guardian Ad Litem
- Had been 110 children per GAL
- Still issues with GAL's visiting children regularly due to the overload

CINA ATTORNEYS

- OPA provides attorneys for parents
- OPA provides attorneys for older children as needed – can be adverse to the GAL
- Due to the increase in cases there is a substantial increase in workload and cost as each case typically triggers 1-4 attorneys

OPA Criminal Caseloads/Appointments – FY 19 is on track to be highest



OPA Challenges – Contractor costs

- (1) Hourly rates: vary from x to x based on the years of experience a contractor has and the type of case. When a case cannot be kept in house due to conflicts or geographical location they get sent to a contractor. These cases are capped with various caps depending on the type of case, except for Guardian Ad Litem (GAL) cases.
- (2) Case Cap examples: Misdemeanor \$1,250; C felony \$3,125; B felony \$3,750; A felony \$6,875; Unclassified \$16,250. These are outdated. Many attorneys will not take cases for these prices. These caps are often exceeded.
- (3) Single case flat fee
- (4) Yearly/monthly flat fee

OPA Challenges – Contractor costs cont.

OPA in house criminal attorney examples

- ACR attorneys are carrying 10 Unclassified felonies per attorney at the low end (in addition to other cases).
- An OPA attorney may carry 85-90 CINA cases at a time (in addition to other cases).
- OPA's lone Juneau criminal attorney is currently carrying 50 CINA cases, 1 A felony, 13 B felonies, 15 C Felonies, and 37 misdemeanors (in addition to other cases).

Contractors

- An unclassified felony costs \$20,000-\$30,000 (or more) per case to contract out. That would cost \$200,000 - \$300,000 per ACR attorney. The total would be: $66 \times \$20,000 = \1.32 million . $66 \times \$30,000 = 1.98 \text{ million}$.
- The case cap for a CINA case is \$4,000 ($85 \times \$4,000 = \$340,000$).
- The cost to contract out that caseload would be \$348,751.

FY18 contract line

ATTORNEY BILLING 7/1/2017 - 6/30/2018			
MONTH	MONTHLY FLAT FEE	MONTHLY HOURLY	TOTAL MONTHLY
JULY	\$ 143,832.04	\$ 329,185.42	\$ 473,017.46
AUGUST	\$ 140,582.04	\$ 364,854.90	\$ 505,436.94
SEPTEMBER	\$ 134,832.04	\$ 316,997.75	\$ 451,829.79
OCTOBER	\$ 131,541.74	\$ 333,552.25	\$ 465,093.99
NOVEMBER	\$ 137,832.04	\$ 313,017.76	\$ 450,849.80
DECEMBER	\$ 138,262.04	\$ 279,406.95	\$ 417,668.99
JANUARY	\$ 138,922.04	\$ 348,721.44	\$ 487,643.48
FEBRUARY	\$ 138,922.04	\$ 298,011.75	\$ 436,933.79
MARCH	\$ 145,096.04	\$ 348,370.92	\$ 493,466.96
APRIL	\$ 139,042.04	\$ 373,799.97	\$ 512,842.01
MAY	\$ 139,032.04	\$ 392,934.89	\$ 531,966.93
JUNE	\$ 139,032.04	\$ 378,349.83	\$ 517,381.87
TOTAL	\$ 1,666,928.18	\$ 4,077,203.83	\$ 5,744,132.01

First Quarter of FY19 shows the impact of OPA relying on contractors for case relief

ATTORNEY BILLING 7/1/2018 - 02/28/2019								
MONTH				TOTAL FLAT FEE		TOTAL HOURLY		TOTAL MONTHLY
JULY				\$ 139,776.04		\$ 706,608.75		\$ 846,384.79
AUGUST				\$ 146,869.04		\$ 599,073.67		\$ 745,942.71
SEPTEMBER				\$ 146,497.04		\$ 453,713.29		\$ 600,210.33
OCTOBER				\$ 146,590.04		\$ 398,870.60		\$ 545,460.64
NOVEMBER				\$ 147,218.04		\$ 333,748.42		\$ 480,966.46
DECEMBER				\$ 150,509.04		\$ 350,455.45		\$ 500,964.49
JANUARY				\$ 153,962.04		\$ 383,536.78		\$ 537,498.82
FEBRUARY				\$ 154,148.04		\$ 319,307.48		\$ 473,455.52
TOTAL				\$ 1,185,569.32		\$ 3,545,314.44		\$ 4,730,883.76

The hourly contract line typically runs around 350K.

- Please note, these figures are not fully up to date. We still have contract bills coming in for February.

Other considerations regarding contractor costs

- OPA in house attorneys are cheaper than contractors even with case caps.
- OPA attorneys are competent, supervised, and can call on institutional knowledge. Contractors can be problematic in the following ways:
 - (1) the cost of a trial where the more qualified attorney could have negotiated a plea bargain;
 - (2) the cost of an appeal, if the case could have been resolved in a plea bargain but went to trial;
 - (3) and ineffective assistance of counsel which could have the case overturned either on appeal or post-conviction thereby costing the state the resources for a second trial including the cost of the appeal and the post-conviction proceedings which can be as costly as a trial
- But, OPA's criminal sections are small. It is difficult to absorb caseload increases.

One time flat fee contracts are expensive

- \$152,500 worth of one time flat fee contracts were paid out of FY2018 monies.
- \$289,000 worth of one time flat fee contracts were paid out of FY2019 monies.
- Does not include expert witnesses, investigation, and travel costs.

If more expensive, why contract?

- Conflicts
 - OPA has conflicts as well.
 - Unclassified and class A felonies cheaper to keep, but not necessarily other cases.
- Case relief
 - Attrition – hard to replace attorneys who can handle high volume of Unclassified felonies.
 - Too few attorneys – Kenai, Fairbanks, Juneau office examples.
- In certain instances it can be cheaper.
 - Remote areas with no OPA office (Kotzebue, Nome, Dillingham, Utqiagvik)
 - Flat fee bulk contracts are preferable – but not always an option.

OPA Accomplishments

- OPA has begun trying to keep all Unclassified and class A felonies in house.
- Actively and successfully continuing to challenge improper appointments by the Court.
- Tight cost control measures requiring clear justification and approval by the Director or Deputy for any significant expenditure.
- Travel requests closely scrutinized and requires Director or Deputy approval.
- Utilizing bulk flat fee contracts rather than individually contracting out cases whenever possible.
- Reviewing current bulk flat fee contracts.
- Enforcing the contracts we sign – clawing back money if contractor conflicts out or there is ineffective assistance of counsel.
- Stopped paying per diem to contractors – this will save \$15,000 - \$20,000 a year.

Summary

- Case numbers continue to increase/stay high.
- OPA is statutorily and constitutionally mandated to provide services. Thus, OPA has no choice but to provide services.
- It is preferable to keep as many cases in house as possible. However, that puts an ever increasing strain on OPA staff attorneys which leads to attrition. It also makes hiring difficult.
- Understaffing OPA does not save money. Contractors are more expensive.