

# State of Alaska Department of Administration

Office of Public Advocacy

Presentation to House Finance Subcommittee

James E. Stinson

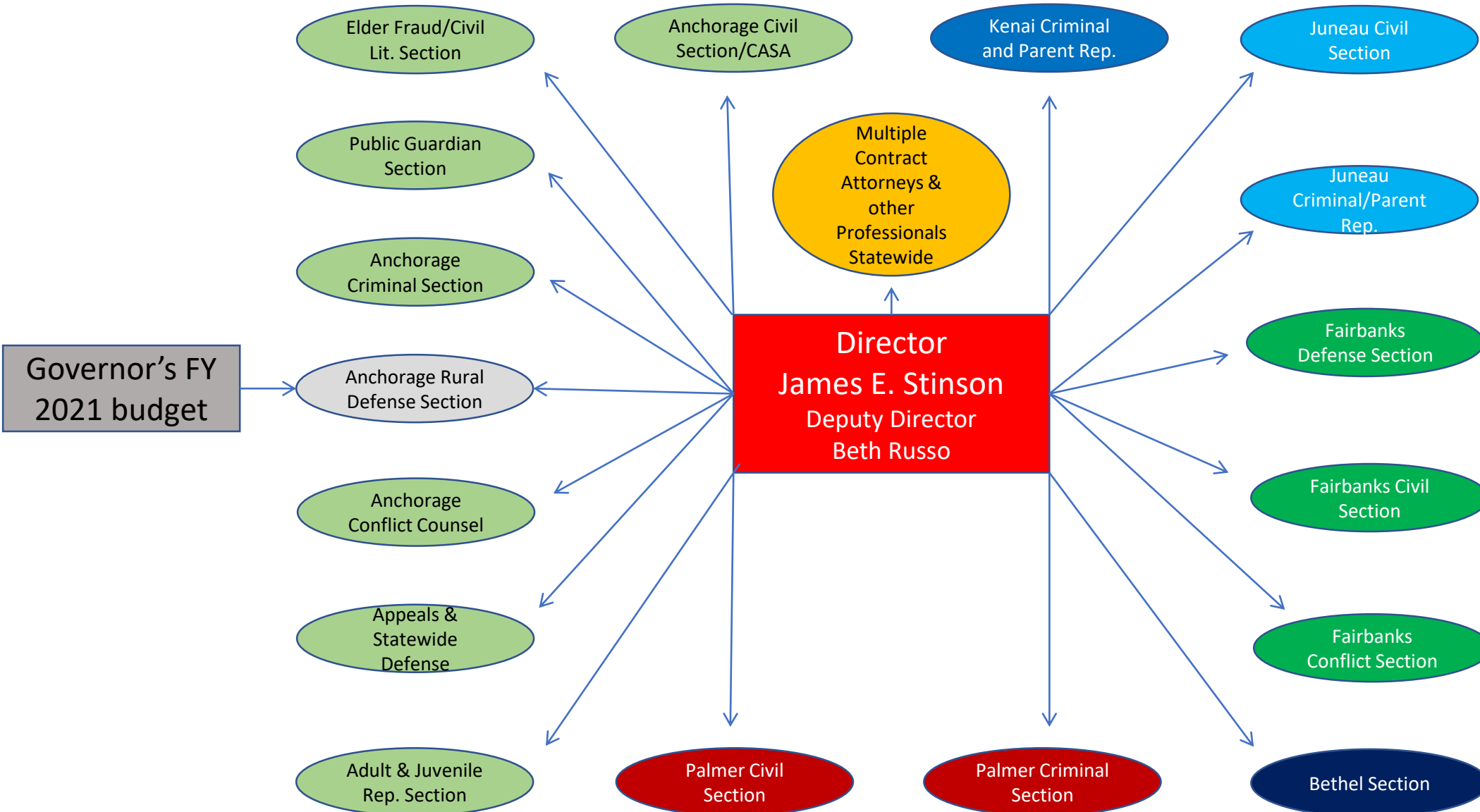
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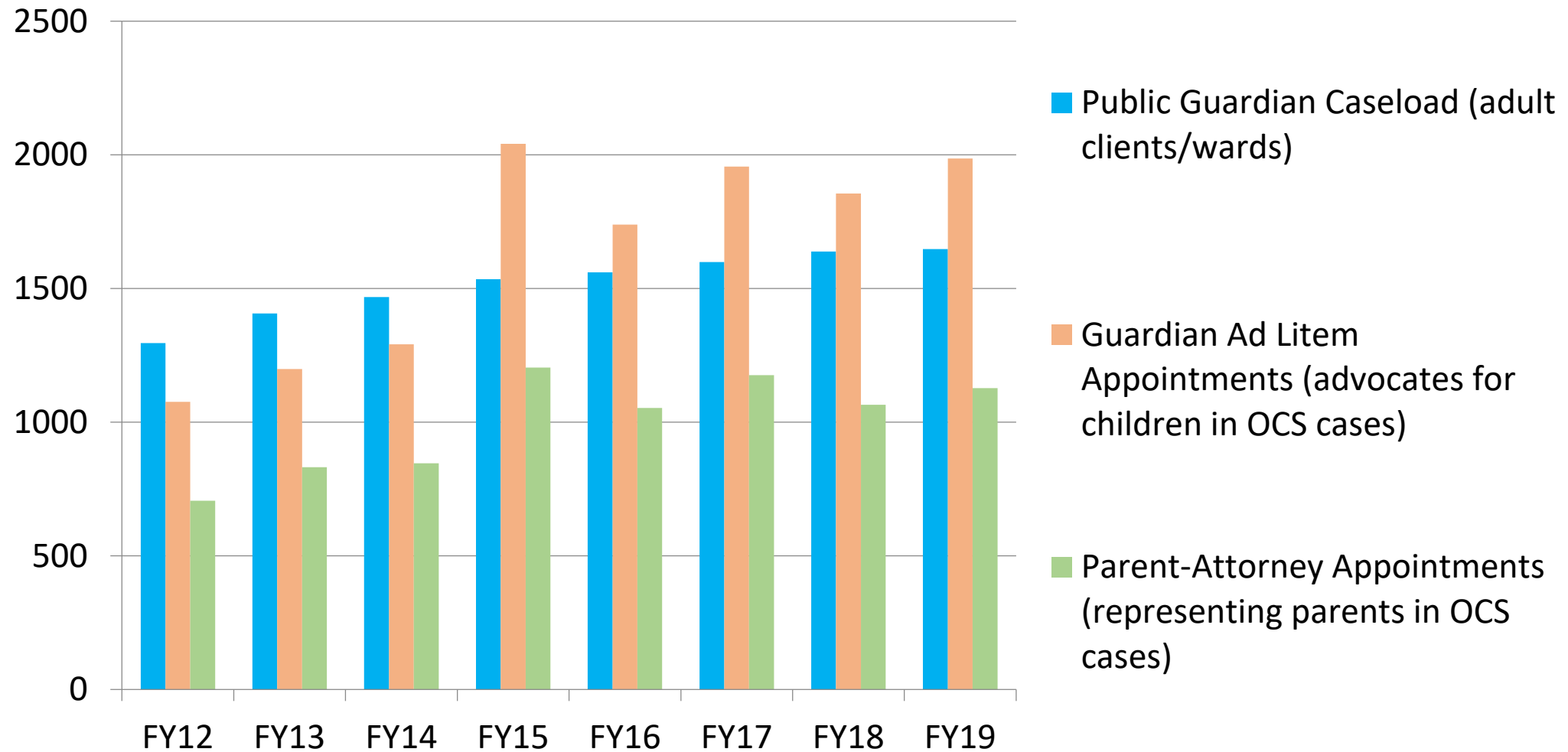
# OPA Roles: statutorily and constitutionally mandated

- **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 child in need of aid (CINA) and Civil Custody cases as well as Domestic violence cases. Statutorily required.
- **Court Appointed Special Advocates** – (CASA). 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 child in need of aid (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 – Civil



# OPA Challenges – Public Guardians

- Previously, 90 - 100 wards per public guardian when at full staff.  
Recommended National Maximum is 40.
- Post FY18 Increment, 60-100 wards per public guardian. The average will eventually be around 60-65 wards per public guardian.
  - 90 wards per senior guardian (mostly moderate to difficult cases).
  - 50-60 wards per supervisor guardian (mostly difficult cases).
  - 70-80 wards per mid-level guardian (mostly simple to moderate cases).
  - New guardians typically have 20 wards and take 2 years to train.
- Risk of serious harm to a ward caused by failure to respond due to case overload.
- Social Security Administration (SSA) representative payee crisis.
- Governor's FY21 budget includes an additional Public Guardian and support staff position – will cover Sitka, Ketchikan, and Petersburg.
  - Also adds 250K to replace loss of Department of Health and Social Services (DHSS) reimbursable services agreement (RSA).

# OPA Challenges – Child In Need of Aid Cases

## **CINA GUARDIAN AD LITEM**

- 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 GAL.
- Still issues with GAL's visiting children regularly due to the overload.
- Governor's FY21 includes an additional GAL attorney.

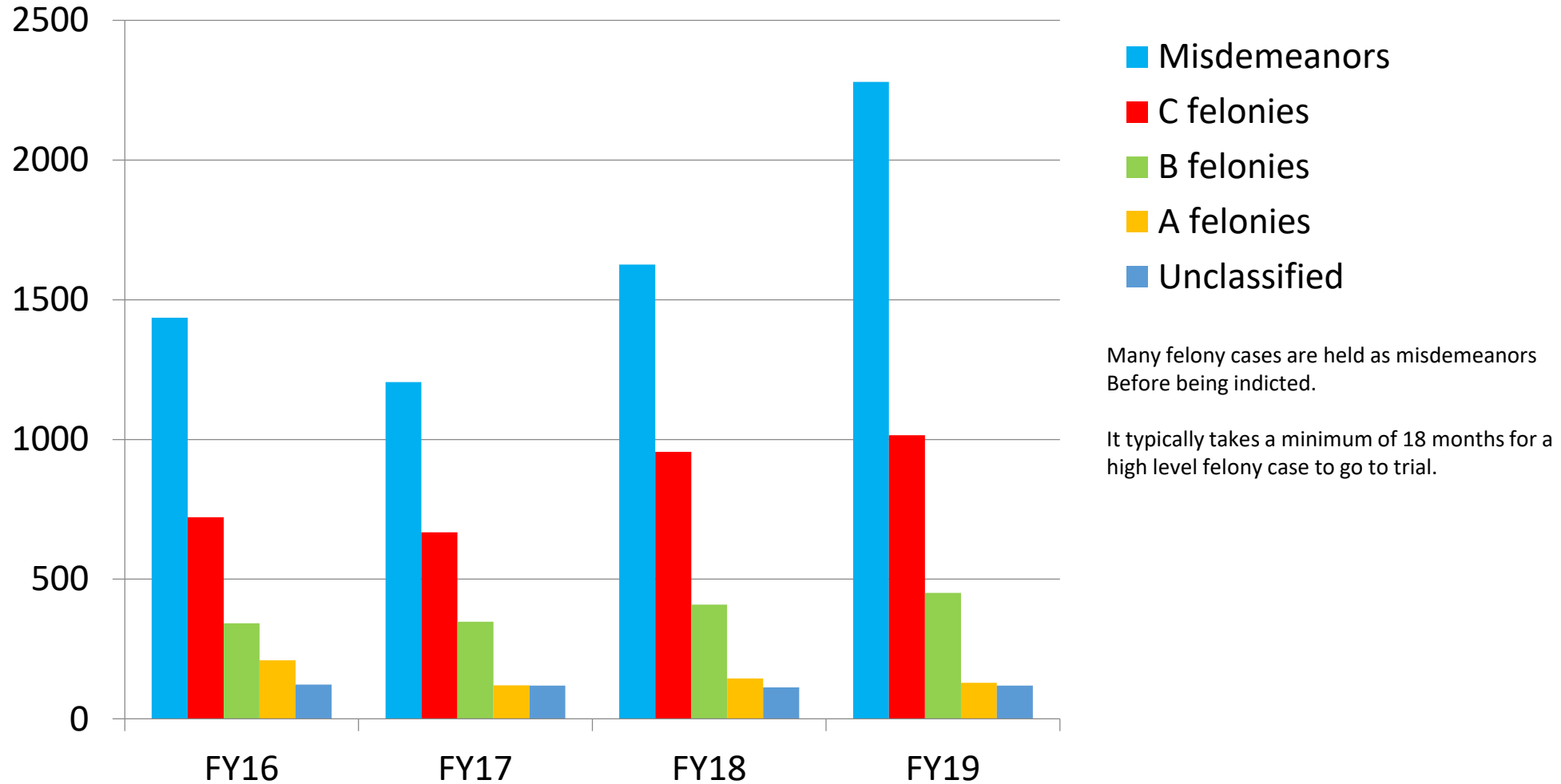
## **CINA PARENT ATTORNEYS**

- OPA provides attorneys for parents.
- OPA provides attorneys for older children as needed – can be adverse to the GAL.
- It's becoming difficult to place CINA cases due to multiple layers of conflicts and a lack of contractors.
- Governor's FY21 includes additional Anchorage CINA parent attorney.

# OPA Challenges – Criminal Conflict Counsel

- OPA Criminal Caseloads have risen substantially. OPA experienced a 25% increase in FY19 over FY18. CINA cases have shown a similar increase.
- OPA carries a disproportionate amount of the most serious types of felony cases. These cases are complicated, resource intensive, can take years to resolve, and can lead to burnout among attorneys.
- OPA criminal units are walled off in order to internalize conflicts. Thus, OPA in house attorneys may be representing all, or nearly all, of the defendant's in a multi-defendant case. This saves the state money
- There are numerous high-level multi-defendant cases where OPA is representing 4-6 co-defendants in one case.
- Governor's budget includes funding for an additional Criminal/CINA unit that would mainly cover Nome and Kotzebue while providing additional support for Bethel and Anchorage.

# OPA Criminal Caseloads/Appointments





# 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 \$1250; C felony \$3125; B felony \$3750; A felony \$6875; Unclassified \$16250. These are outdated. Many attorneys will not take cases for these prices. These caps are often exceeded.
- (3) Single case flat fee – OPA has limited using these types of contracts.
- (4) Yearly/monthly flat fee – OPA is trying to increase these types of contracts.

# OPA Challenges – Contractor costs cont.

## OPA in house criminal/civil attorney examples

- Senior OPA criminal attorneys are carrying 10+ unclassified felonies in addition to A felonies, miscellaneous PTRP's, sentence appeals, fifth amendment cases, and possibly B and C felonies.
- An OPA CINA parent attorney may carry 85-90 CINA cases at a time (in addition to other cases).

## Contractors

- An unclassified felony costs \$20,000-\$55,000 (not including ancillary costs) per case to contract out on a flat fee.
- The case cap for a CINA case is \$4000 ( $85 \times \$4000 = \$340,000$ ).

# OPA Accomplishments

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- OPA has largely been successful keeping all Unclassified and class A felonies in house for FY20 and has reduced the hourly contract line when compared to FY19.
- 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.

# Summary and future considerations.

- Case numbers continue to increase/stay high.
- OPA has no control over the amount of cases it receives. It is a downflow agency that reacts to other state agencies and systems (Office of Children's Services, Adult protective Services, the Attorney Generals Office, District Attorney's Office, Public Defenders Office, the Court System, etc.).
- 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.
- OPA is struggling to find contractors in many areas.
- It is already cost prohibitive to contract out a high volume of cases. But, our case caps are so out of date they aren't attractive to many of the remaining contractors.
- While additional staff attorneys are preferable, eventually OPA will have difficulty filling attorney positions.
- Increased per PCN costs via OIT, HR, Procurement, etc.
- The Governor's budget for FY2021 is critical to stabilizing the agency.

# **Department of Administration**

## Championing improvement in the State's performance and results.



For more information, please contact Kelly Hanke at [kelly.hanke@alaska.gov](mailto:kelly.hanke@alaska.gov)