

State of Alaska Department of Administration

Office of Public Advocacy

Presentation to House & Senate Finance Subcommittee

Director, James E. Stinson

February 27, 2024

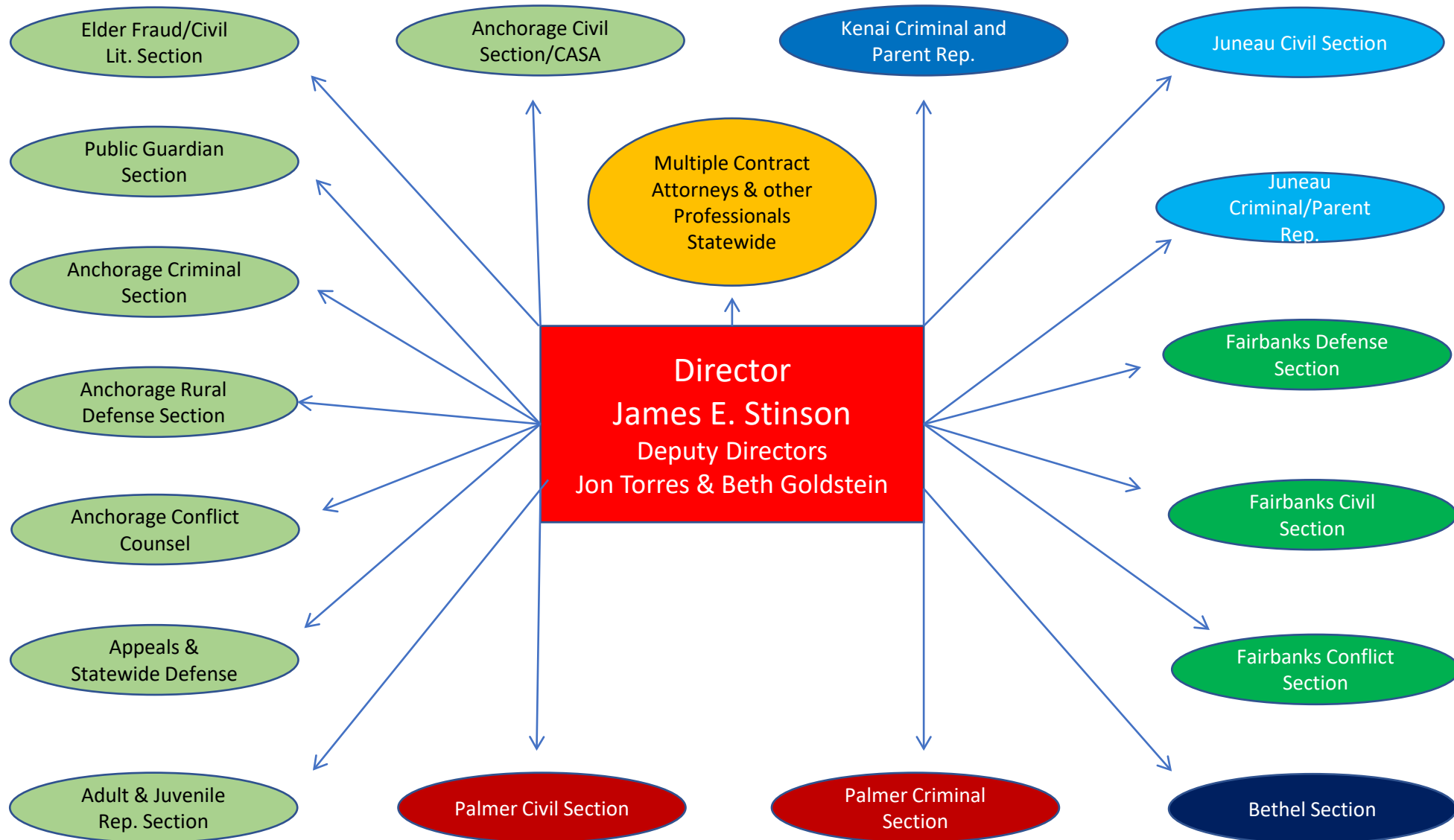


Office of Public Advocacy Roles: Statutorily and Constitutionally Mandated

- **Public Guardians** – Court appointed. Makes all financial and health care decisions for incapacitated adults. Statutorily required.
- **Guardians 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.
- **Appeals** – Court appointed. Files appeals in criminal and civil cases. Constitutionally required.

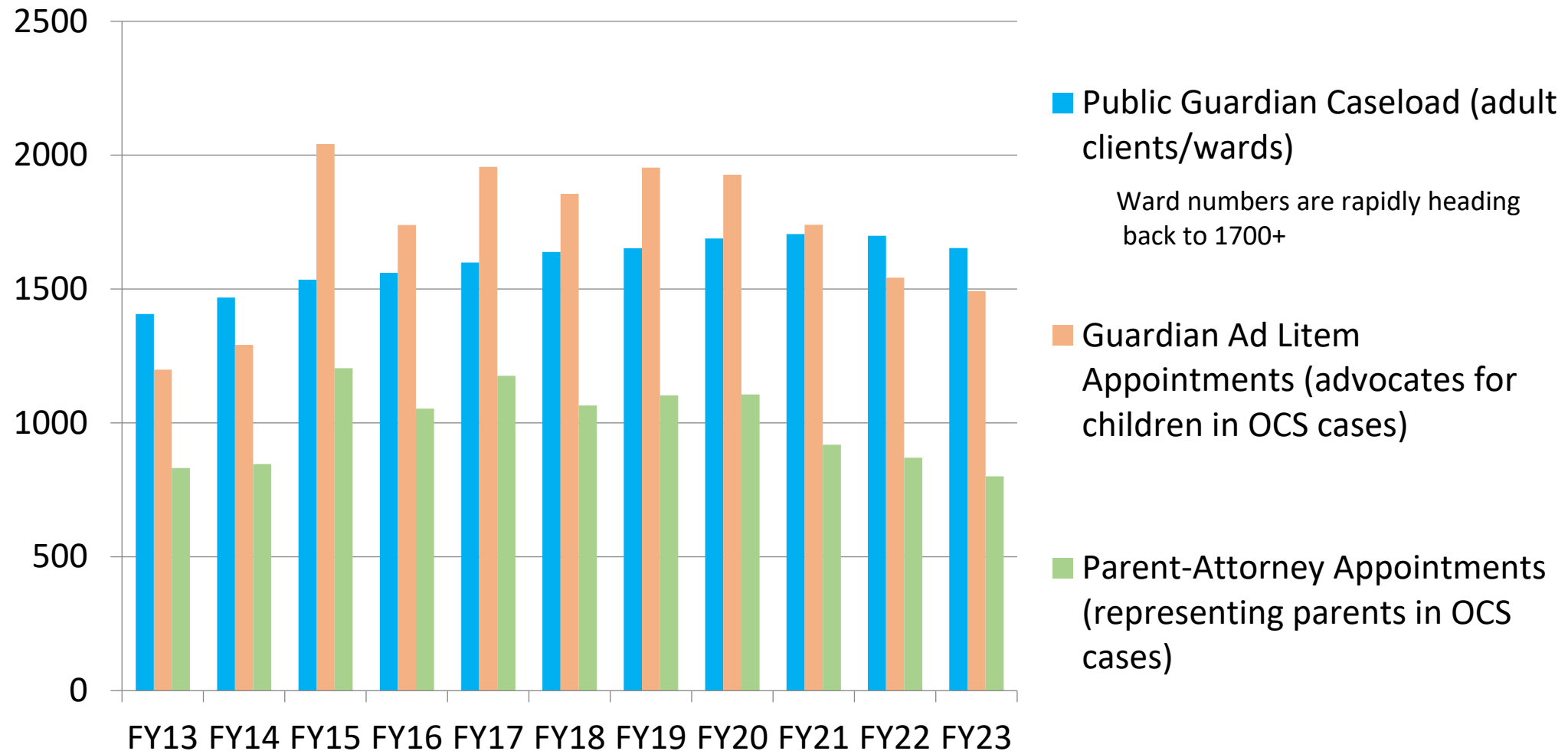


Office of Public Advocacy Structure and Functions



Office of Public Advocacy

Caseloads/Appointments – Civil



Office of Public Advocacy Challenges – Child In Need of Aid Cases

CINA PARENT/CHILD ATTORNEYS

- OPA provides a Guardian ad Litem (GAL).
- OPA provides attorneys for parents.
- OPA provides attorneys for older children as needed – can be averse to the GAL.
- Post-COVID is more litigious: angrier parents, worse family situations, and more damaged children/youth.
- There are cases where OPA is required to provide five or more attorneys.

Increased Court appointments due to court rules change

- Court rule 12.1 went into effect on October 17, 2022.
- Part of a national push.

Fiscal Year	Case Count
2020	108
2021	143
2022	171
2023	175



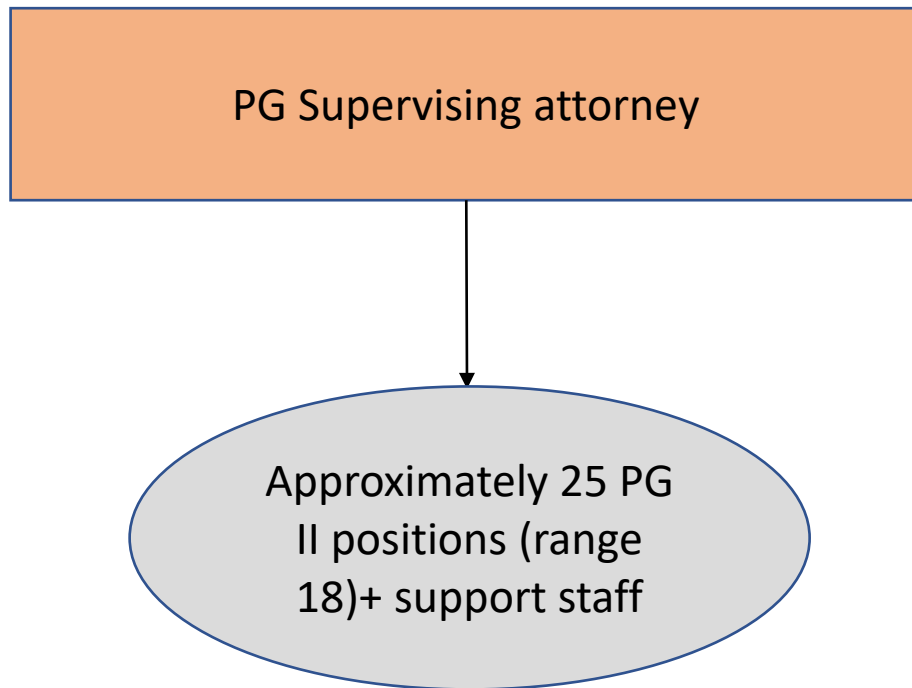
Office of Public Advocacy Challenges – Public Guardians

- Currently, 90 to 100 wards per certified public guardian.
Recommended National Maximum is 40.
 - New guardians typically have 20 wards and take two-years to train. However, many have twice that number or more before becoming certified.
- Risk of serious harm to a ward caused by failure to respond due to case overload.
- Less resources available for wards.
- “Silver tidal wave” increasing wards numbers.
- Issues with vital service providers such as Division of Public Assistance.
- Over appointment by the court system – OPA should be last resort.
- Collapse of private providers and lack of capacity.
- High turnover due to the difficulty of the position – 19 resignations in four years.
 - Applying for benefits, having full authority over finances, housing, and medical care. The Public Guardian must communicate constantly with their wards, the wards' service providers, family members of the wards, the court system, financial institutions, and others who play a role in the lives of our wards. Etc.

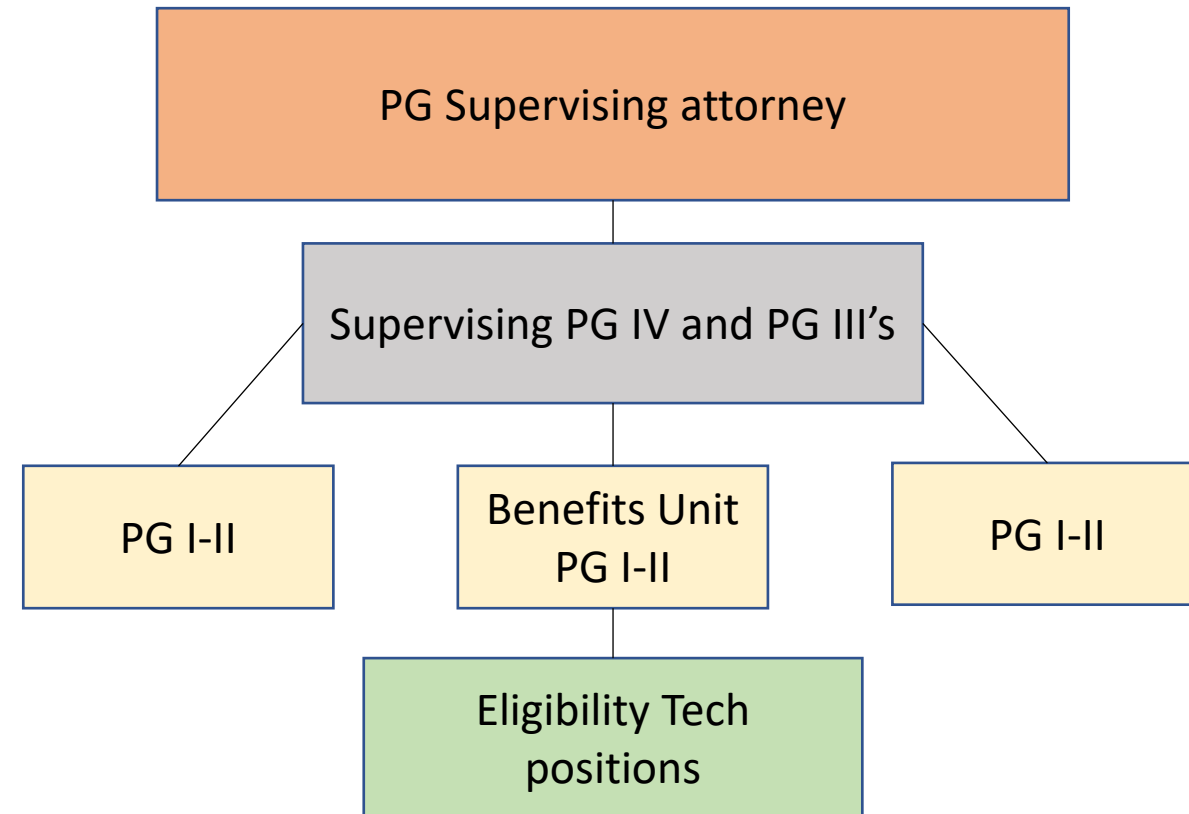


Public Guardians – Restructuring 2022-2023

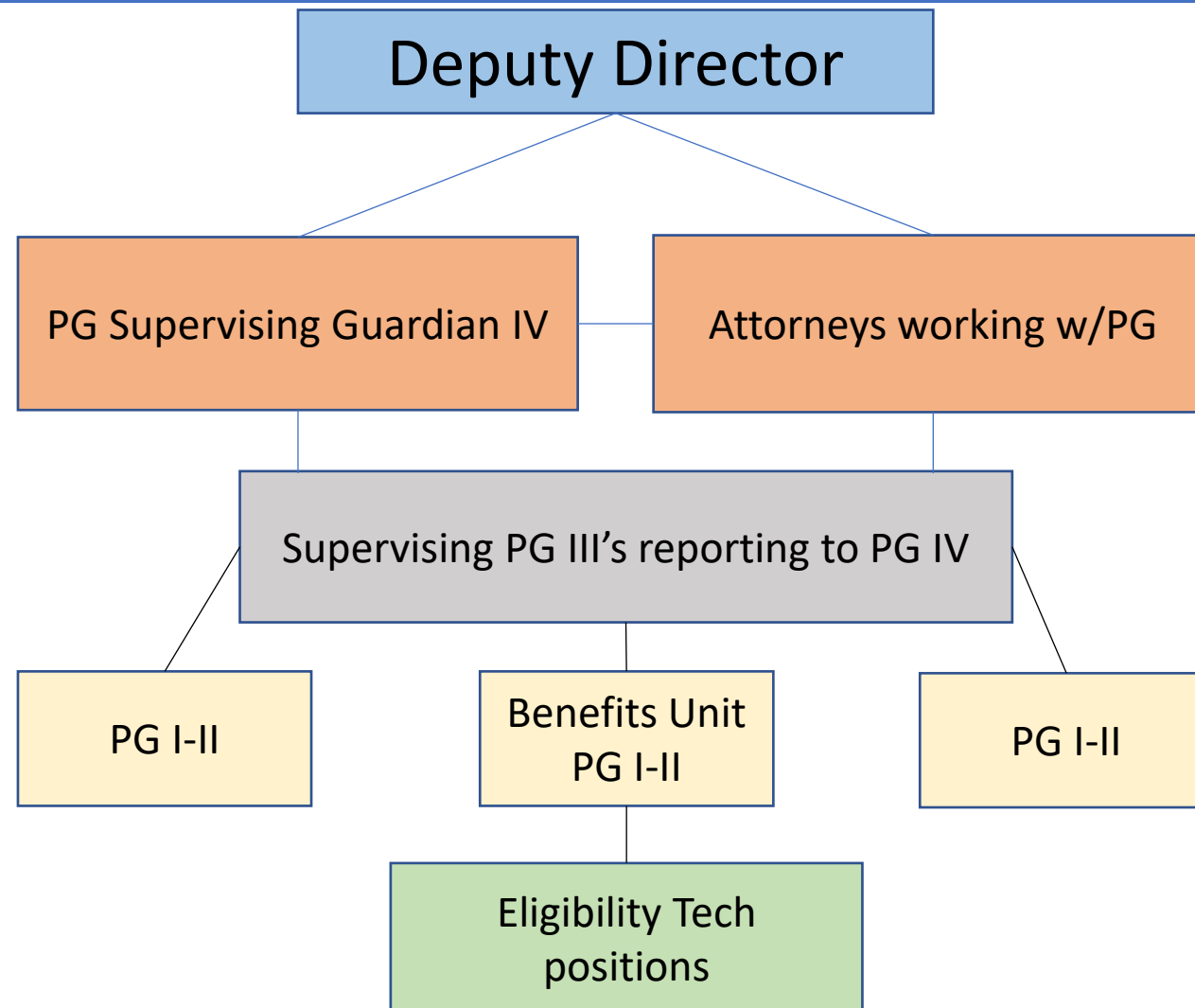
Old Structure



New Structure



Public Guardians – Final Restructuring 2024



Measures Taken to Stabilize the Public Guardian Section

On December 8, 2023, Alaska Supreme Court ruled that OPA can be appointed regardless of capacity and ended moratorium

- This nearly caused multiple resignations

New overtime policy

- Previously a comp time policy

Letter of agreement with the unions for “floating step” increases

- Incentivizes remaining with the agency

Additional public guardian and eligibility technician positions

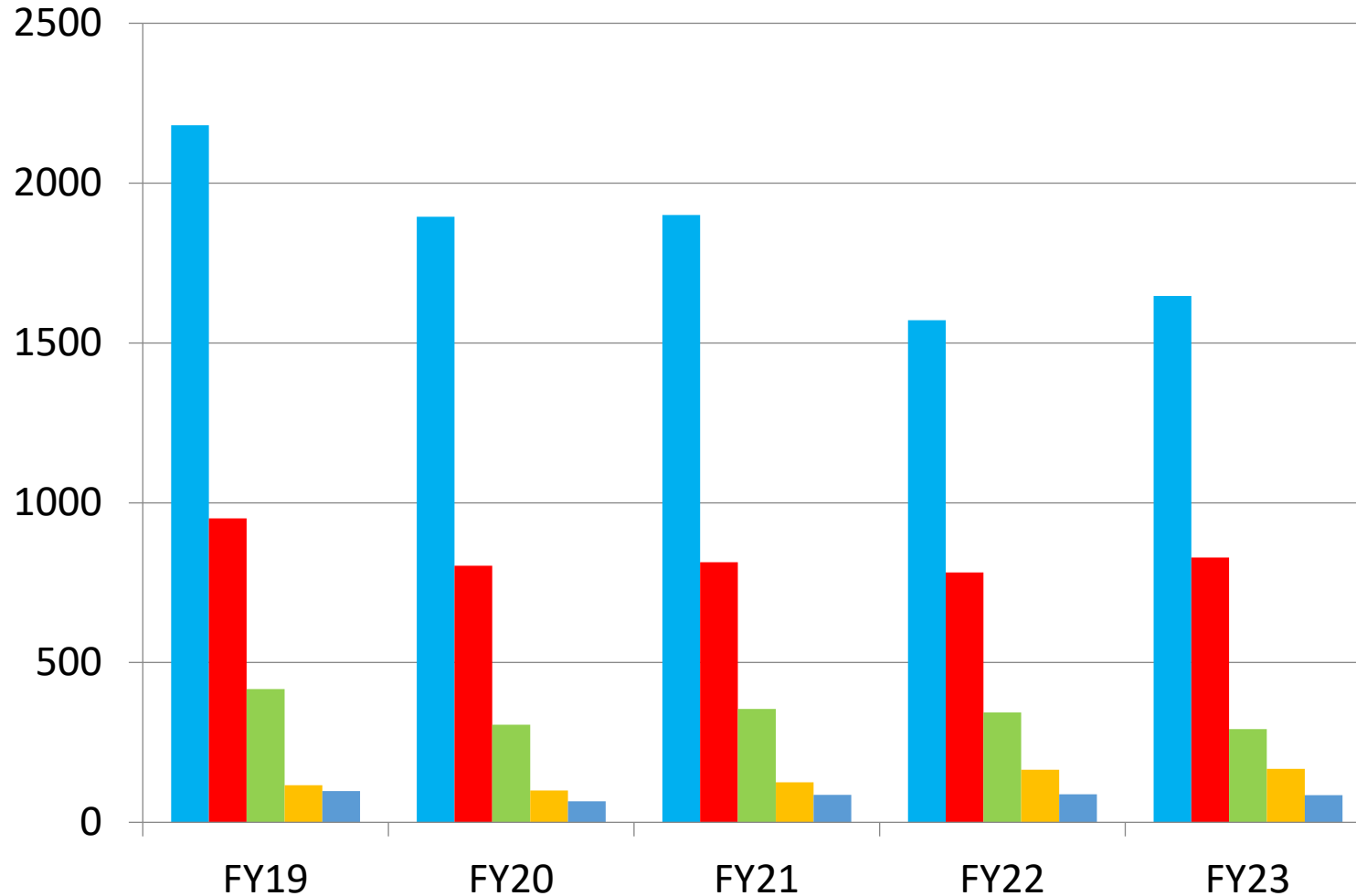
- Total public guardian PCNs is now 31

Additional LTNP PCN's proposed in Gov supplement

- Public Guardian 1, Public Guardian 2, Paralegal 1, Eligibility Technician 2



Office of Public Advocacy Criminal Caseloads/Appointments



It typically takes a minimum of 18 months for a high level felony case to go to trial.

FY2022 A felony cases have increased 42 percent since FY2019.

FY2023 A and Unclassified felony cases remain high. C felony cases also increased. B felony cases -15 percent

- Misdemeanors
- C felonies
- B felonies
- A felonies
- Unclassified



Office of Public Advocacy Challenges – Criminal Conflict Counsel

- The COVID backlog is making caseloads unmanageable. The court system is pushing trials at an ever-increasing pace.
- Agencies have many new attorneys – many of whom did not get trial experience during COVID.
- 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.
- The largest OPA criminal defense section is Anchorage Criminal (ACR) which has nine attorney positions
- ACR also cover cases in Palmer, Kenai, Bethel, Kotzebue, and Southeast.
- Working with the court system to stack lower felony trial cases under high level felony cases to incentivize faster case resolution. A and Unclassified felony cases can get scheduled for “trial date certain.”



Office of Public Advocacy Challenges – Contractor Compensation

OPA's old hourly contract rates and case caps were not attractive to private contractors. FY2024 OPA received additional funding for the contract line:

Old Case Caps

- Misdemeanors - \$1,625
- Class C Felonies - \$4,000
- Class B Felonies - \$4,875
- Class A felonies - \$9,000
- Unclassified Felonies - \$20,000

(Dollars are shown in actual Dollars)

New case caps ^ 30-40%

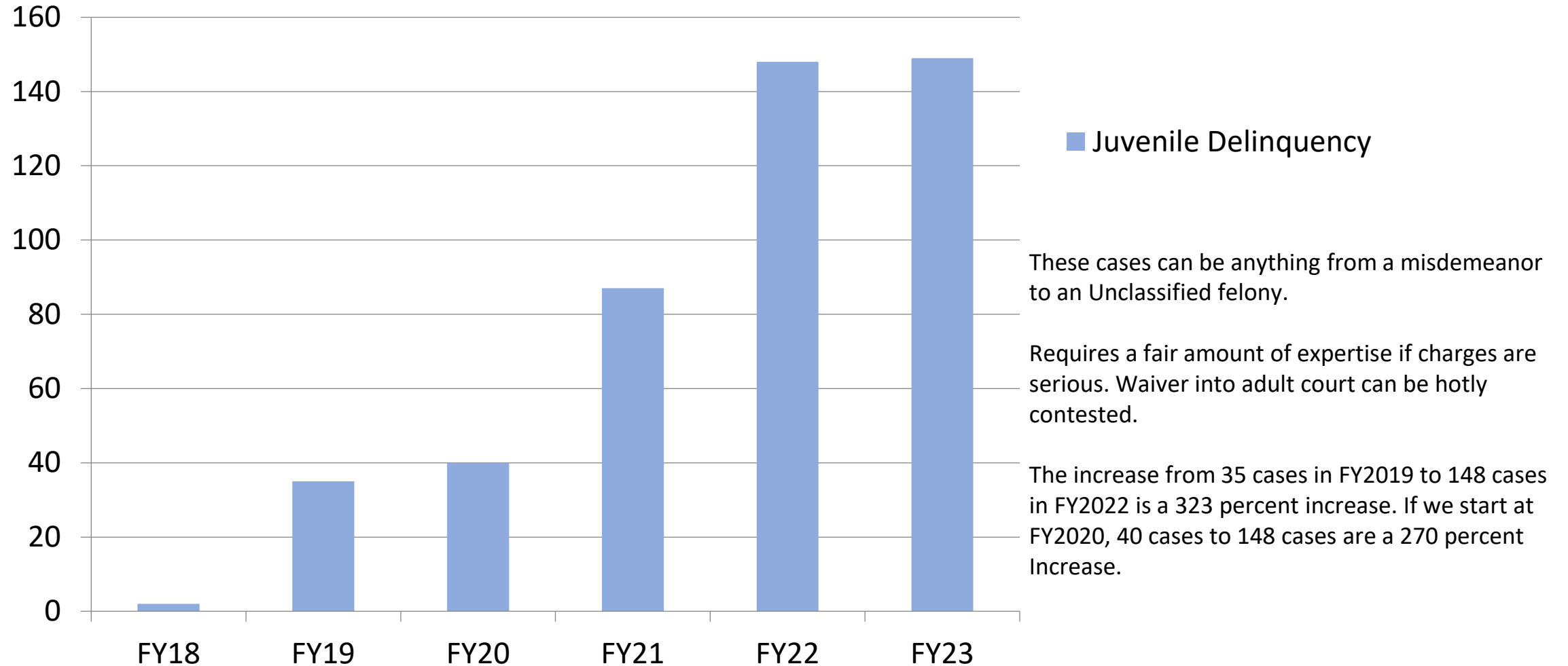
- Misdemeanors - \$3,000
- Class C Felonies - \$6,800
- Class B Felonies - \$8,300
- Class A felonies - \$15,000
- Unclassified Felonies - \$30,000

• (Dollars are shown in actual Dollars)

- The old hourly billing rate for contract attorneys is between \$65-\$95 an hour.
- The new hourly billing rate is \$125-\$155
- \$3,300.0 UGF for increased contract attorney support. (Dollars are shown in thousands)
- Updated case caps are with Department of Law awaiting finalization.



Juvenile Delinquency Appointments Have Drastically Increased



Flores Appointments Expand: Office of Public Advocacy Divorce Cases Involving Child Custody

- **1979 Flores v. Flores:** held that one of the participants was represented by a “public agency.”
 - The dissent: “The majority opinion expresses the belief that a ‘public agency’ supplied Mr. Flores with counsel in this case. I disagree. The Alaska Legal Services Corporation is a non-profit enterprise organized pursuant to 42 U.S.C. s 2996b, which established the national Legal Services Corporation.”
- **2011 In Re: Alaska Network on Domestic Violence and Sexual Assault:** The court tied “public agency” to funding sources.
 - The dissent: Justice Stowers similarly opined that there is no basis for the court's definition of “public agency.”
- **2022 OPA v. Berezkin and Smith:** Pro-bono attorneys working through the Alaska Legal Services Corporation are also “provided by a public agency.”
- **July 2022 Superior Court Case:** Recipients of Department of Justice’s violence against women grant implicate OPA providing Flores counsel. If any entity can show government funding being used for legal services in a civil custody action, OPA is likely to get appointed.



Flores Continued: Concurrence in Berezkin and Smith (S-17855)

Justice Borghesan’s concurrence in Berezkin: “However, I write separately because subsequent decisions have undercut the basis for Flores’s holding that ALSC is a public agency — a holding that Justice Stowers described as resting on a ‘complete lack of analysis or explanation’ and a ‘justification unconsidered and derived from whole cloth.’ Whatever doctrinal and practical justification Flores may once have had is now substantially eroded.”

Borghesan cited several cases that now contradict Flores. Specifically, regarding Dennis O: “Dennis O. ensures publicly funded counsel when it is actually needed – perhaps including cases like this one. Therefore, Flores’s much broader holding is no longer necessary to protect parental custody rights.”

“I do not see a principled way to carve out public agency status for this one purpose.”



Office of Public Advocacy Accomplishments

- The public guardian situation is temporarily stabilized. But the situation is very fragile.
- 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 Director for any significant expenditure.
- Travel requests are closely scrutinized and requires Director or Deputy Director approval.
- Utilizing the most efficient types of contracts whenever possible – particularly in the face of unexpected workload increases.
- Minimized attrition during a challenging time.



Summary and Future Considerations

- Case numbers remain high due to backlog.
- OPA has no control over the number 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.).
- Understaffing OPA does not save money.
- Managing the public guardian section is an ongoing challenge. If the section collapses it will be extremely serious for the State.
- Court rules changes and case law can have an immediate significant impact on OPA. The agency is often unable to bring resources to bear quick enough to address these changes.
- It is preferable to keep as many cases in house as possible. However, that puts an ever-increasing strain on OPA staff attorneys.



Department of Administration

Championing improvement in the State's performance and results.



For more information, please contact Leslie Isaacs at leslie.isaacs@alaska.gov

Department of Administration, Office of
Public Advocacy