



Office of Public Advocacy Presentation

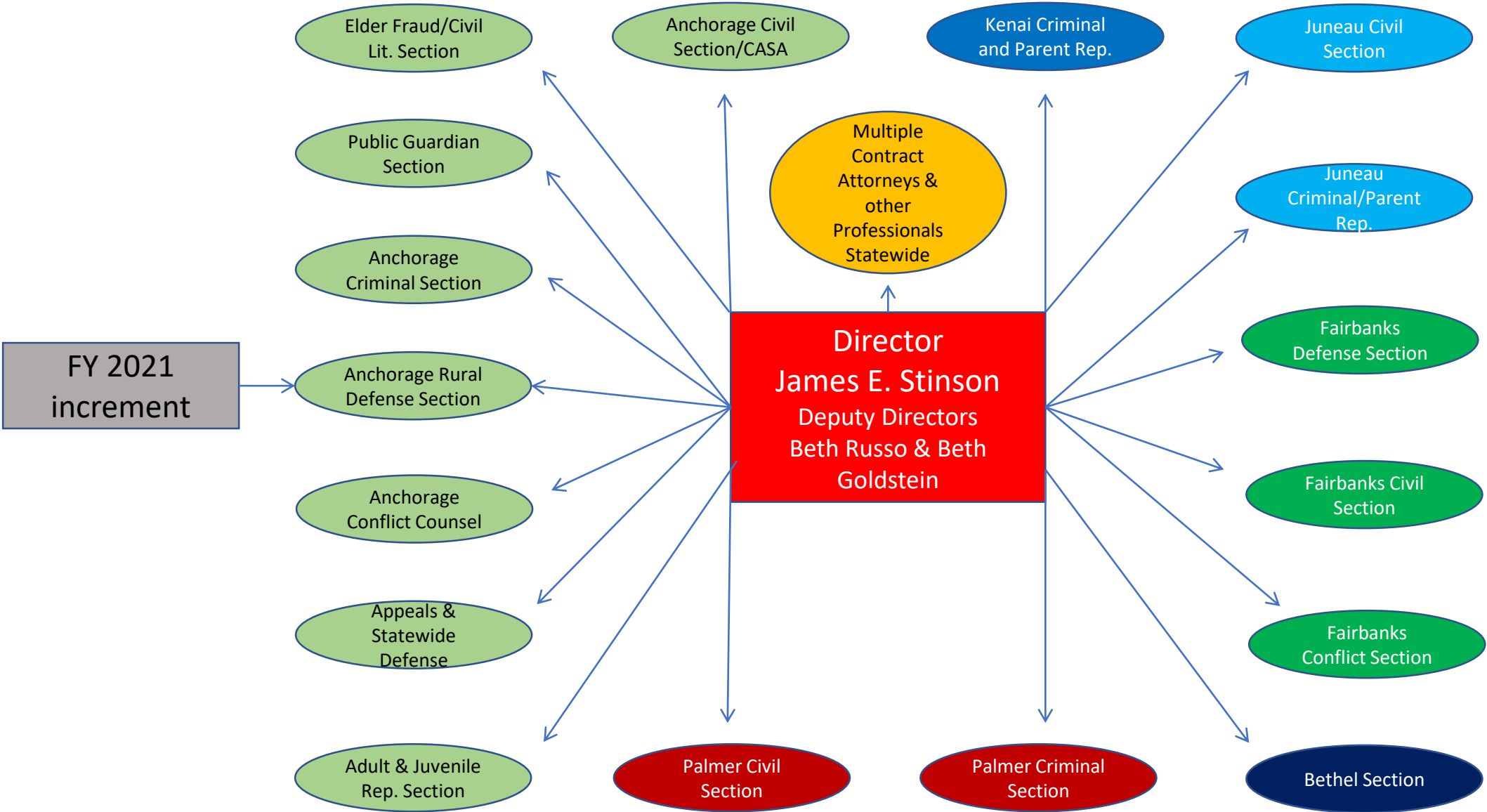
James E. Stinson, Director

March 9, 2021 | House Finance Subcommittee

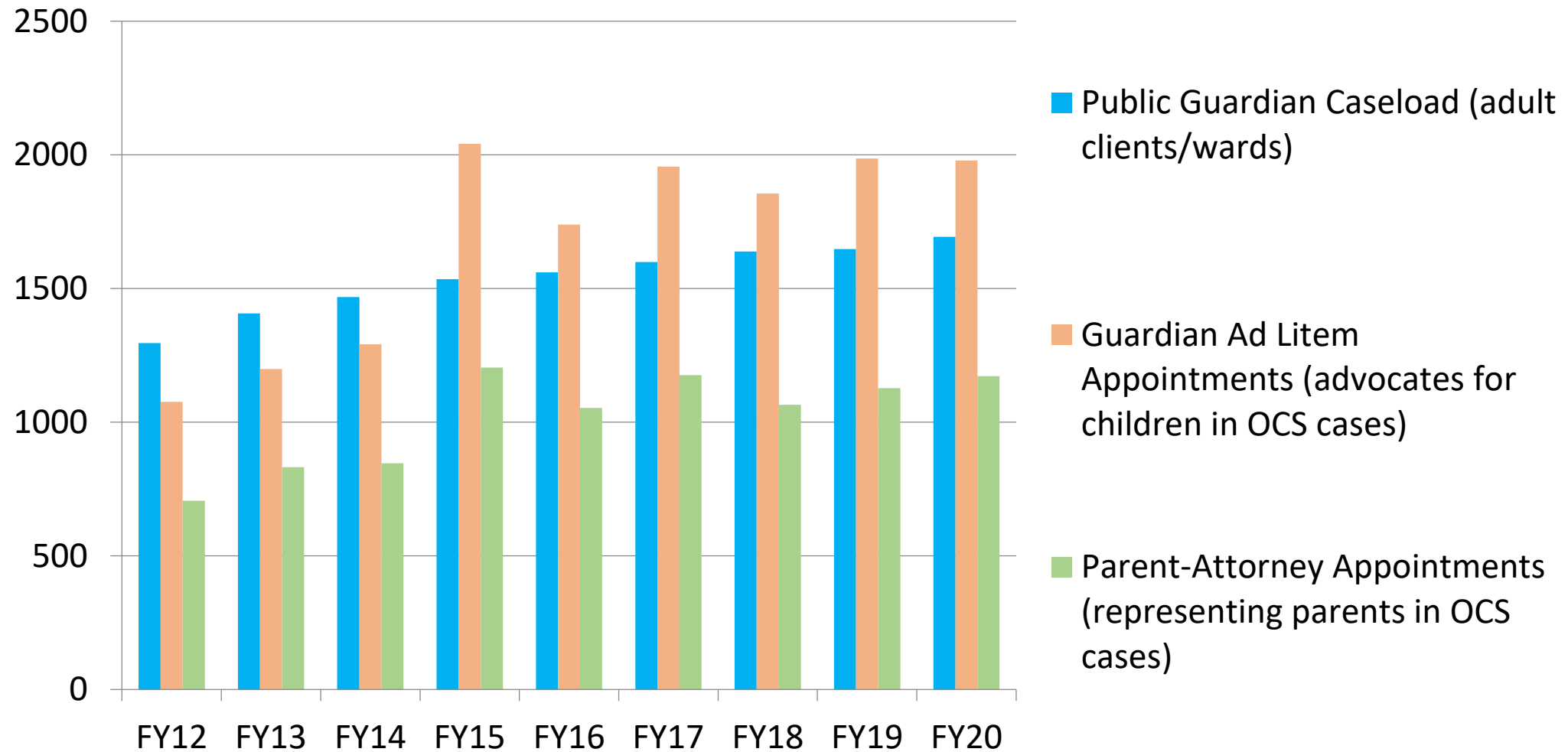
OPA Roles: statutorily and constitutionally mandated

- **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

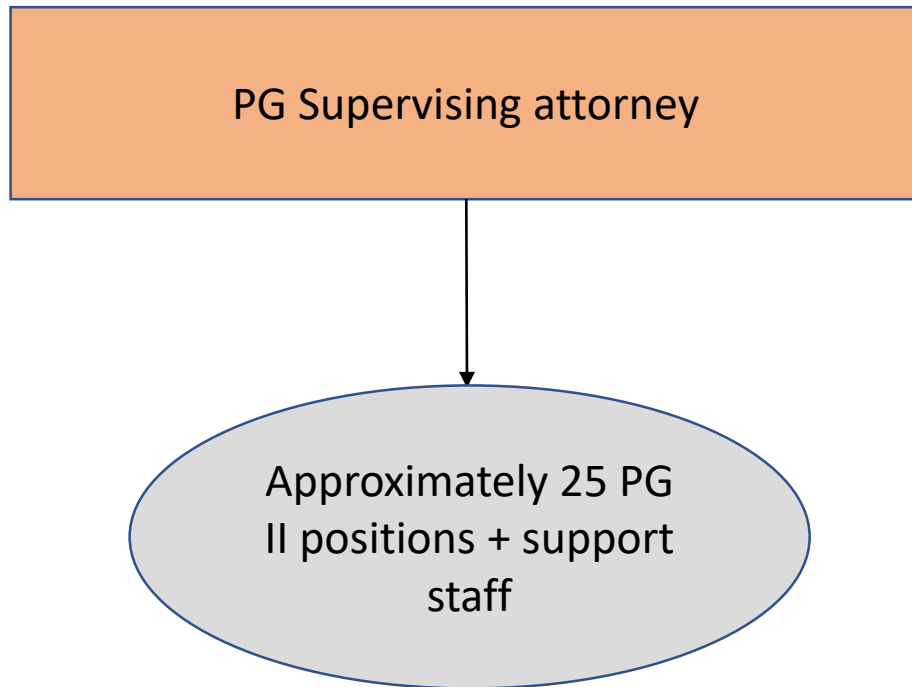


OPA Challenges – Public Guardians

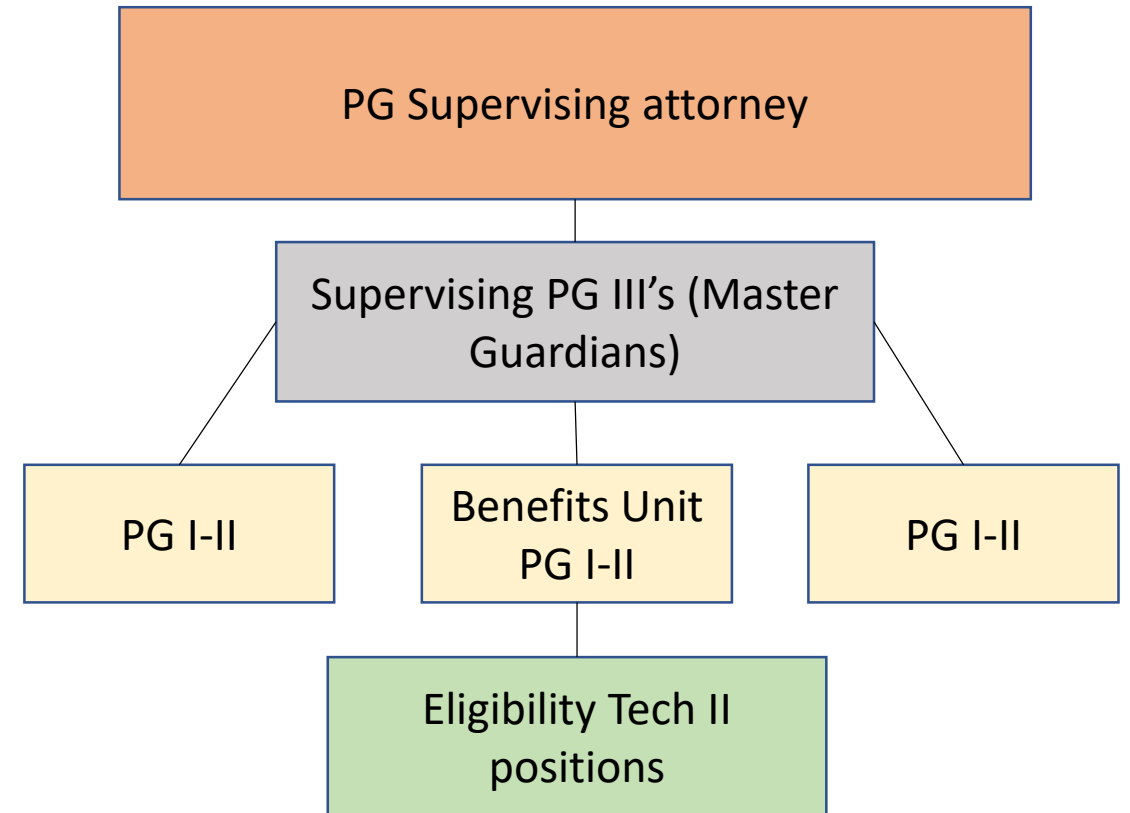
- Previously, 90 - 100 wards per public guardian when at full staff.
Recommended National Maximum is 40.
- Post FY18 and FY21 Increment, 60-100 wards per public guardian.
 - 90 wards per senior guardian (moderate to difficult cases).
 - 50-60 wards per supervisor guardian (difficult cases).
 - 70-80 wards per mid-level guardian (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.
- High turnover due to the difficulty of the position.
 - 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/Reclassifying

Old Structure



New Structure



OPA Challenges – Child In Need of Aid Cases

CINA Guardian Ad Litem (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.
- Still issues with GAL's visiting children regularly due to the overload.
- FY21 increment included an additional GAL attorney.

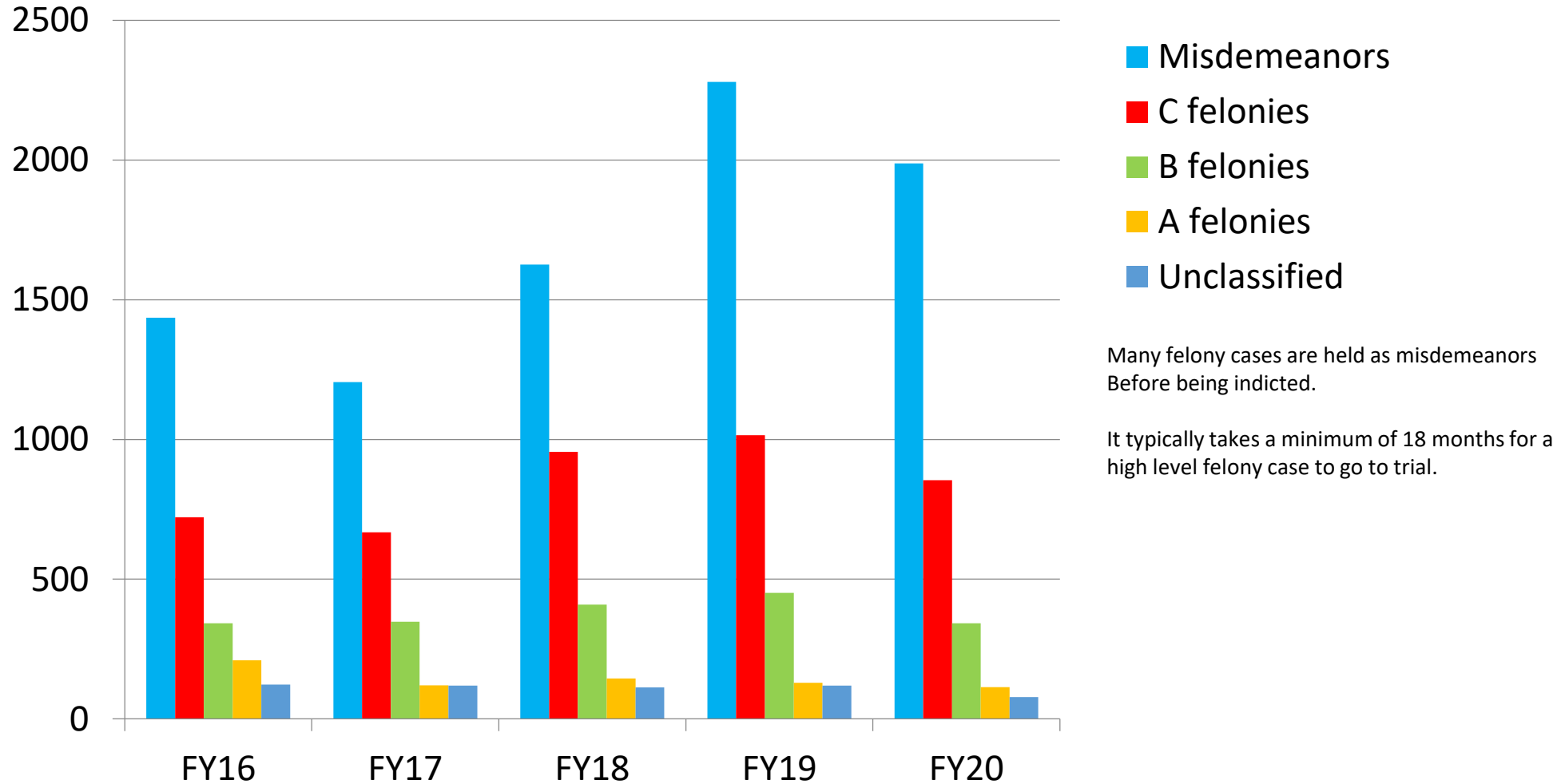
CINA PARENT ATTORNEYS

- 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.
- FY21 increment included an additional Anchorage CINA parent attorney.
- New Rural Defense Section.

OPA Challenges – Criminal Conflict Counsel

- COVID has drastically reduced the case closure rate and massively increased the backlog for trial cases. This has also reduced rule 39 fees.
- 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.
- The new Rural Defense Section has helped significantly reduce dependence on contractors in the Nome, Kotzebue, and Bethel areas.

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) Current 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 current case cap for a CINA case is \$4000 ($85 \times \$4000 = \$340,000$).
- New rate will be \$5200 ($85 \times \$5200 = \$442,000$).

OPA Accomplishments

- OPA has been successful in keeping majority of Unclassified and class A felonies in house for FY20-21 and has reduced the hourly contract line.
- 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 on a flat fee basis.

Summary and future considerations.

- Case numbers remain high due to backlog.
- No in person visitation of clients who are in custody due to Department of Corrections policy.
- 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.
- Understaffing OPA does not save money. Contractors are more expensive.
- OPA is struggling to find qualified contractors in many areas – such as appellate cases. OPA only has one dedicated appellate attorney for the entire agency.
- Case caps are in the process of being increased due to difficulty placing cases.
- Alaska has a shortage of attorneys.
- Managing the public guardian section is an ongoing challenge.
- The previous increment was critical to stabilizing the agency.

The Seal of the State of Alaska is a large, faint watermark in the background. It is a circular emblem with the words "SEAL OF THE STATE OF ALASKA" around the perimeter. The center features a landscape with a mountain, a ship, and a bear.

Department of Administration

Championing improvement in the State's performance and results.

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