

State of Alaska Department of Administration

Office of Public Advocacy

Presentation to House Finance Subcommittee

James E. Stinson, Division Director

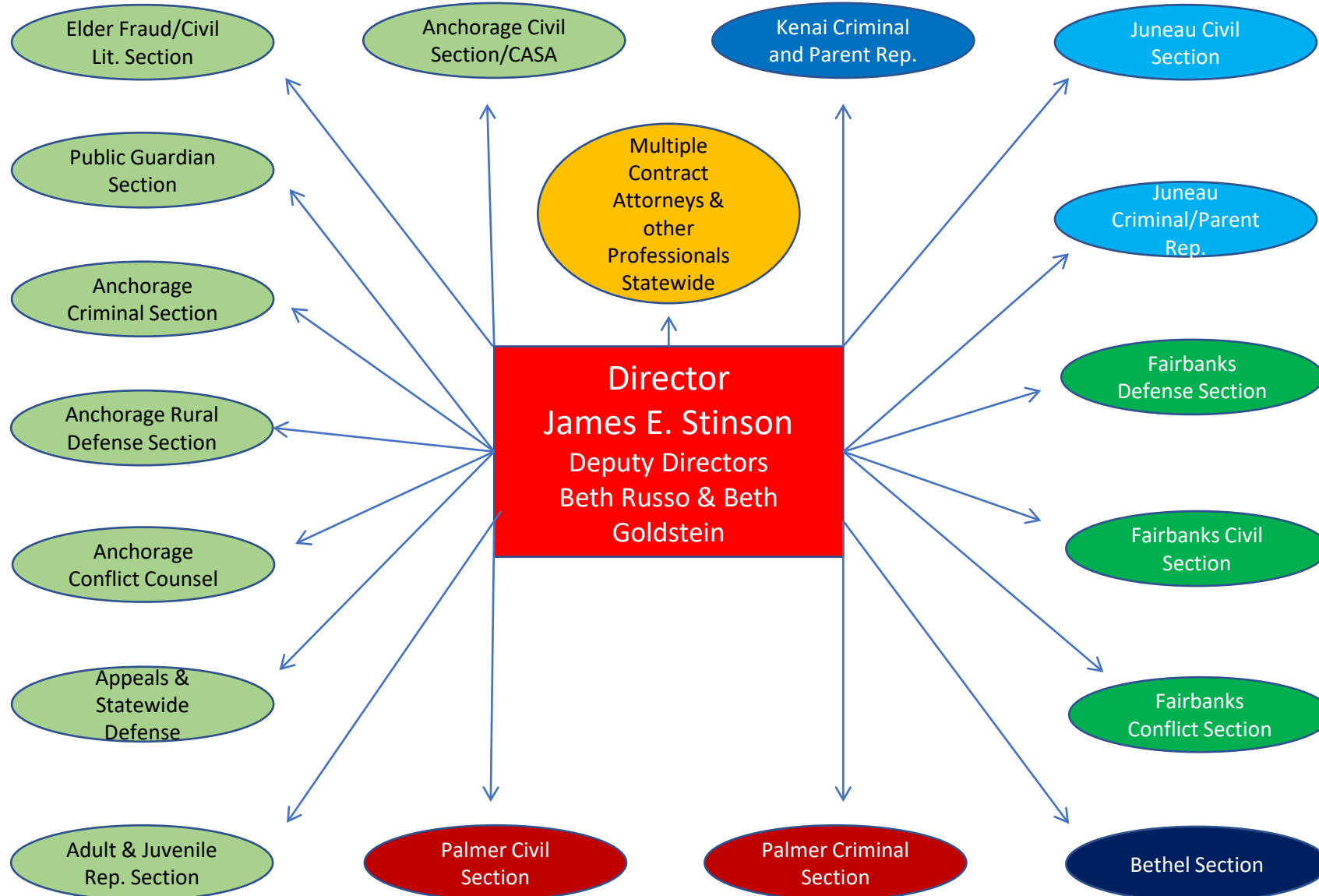
February 8, 2022



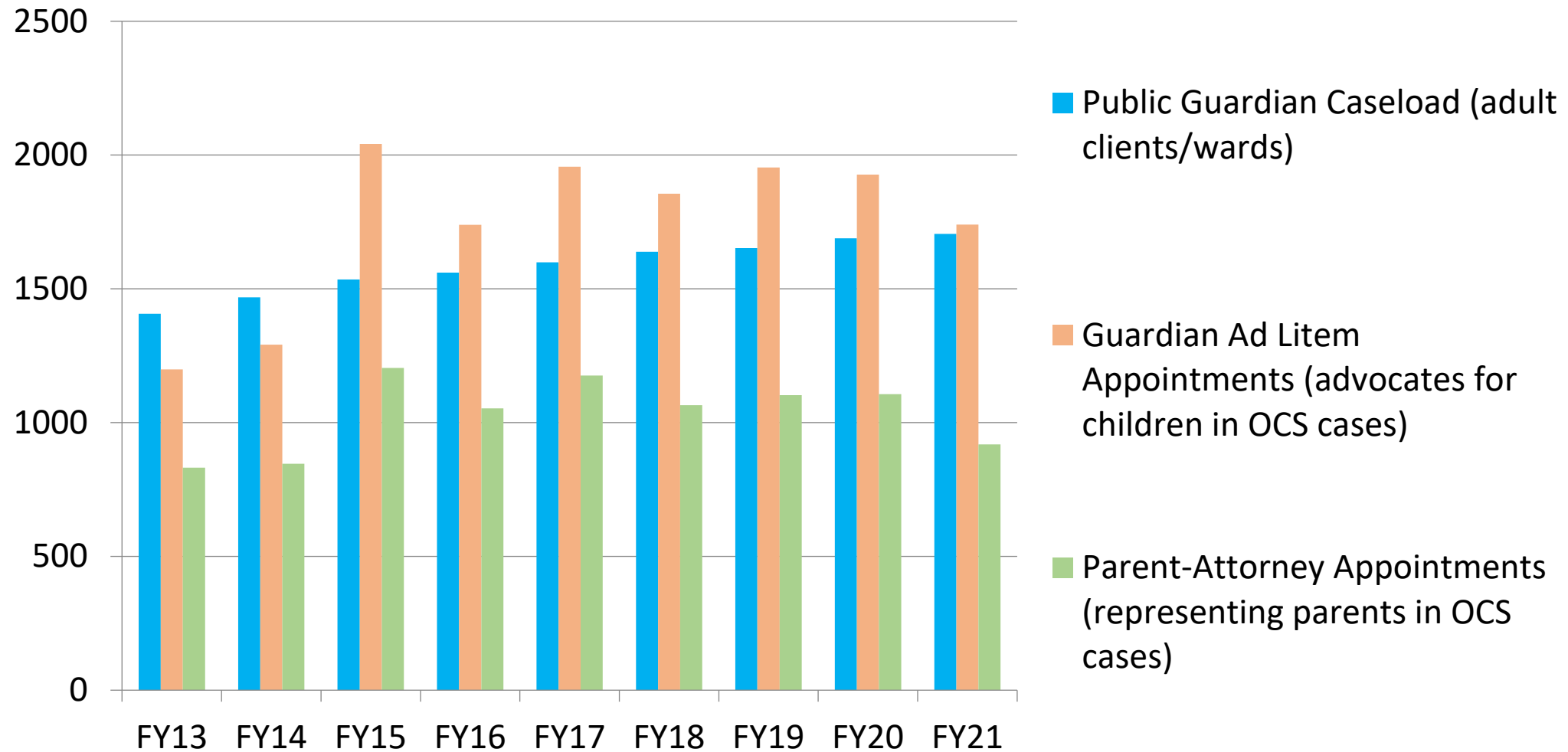
OPA Roles: statutorily and constitutionally mandated

- **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.
- **Court visitors (HB 155 transferring to Court System)** – 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 – Child In Need of Aid Cases

CINA GAL

- Since FY2015 there has been an increase in OCS-filed cases.
- Substantial increase in workload and cost as every case requires a GAL.
- GAL's ability to visit children regularly has become more challenging.
- CINA trial backlog.
- Uptick in custody cases, delinquencies, and other “family law” (non-CINA appointments).

CINA PARENT ATTORNEYS

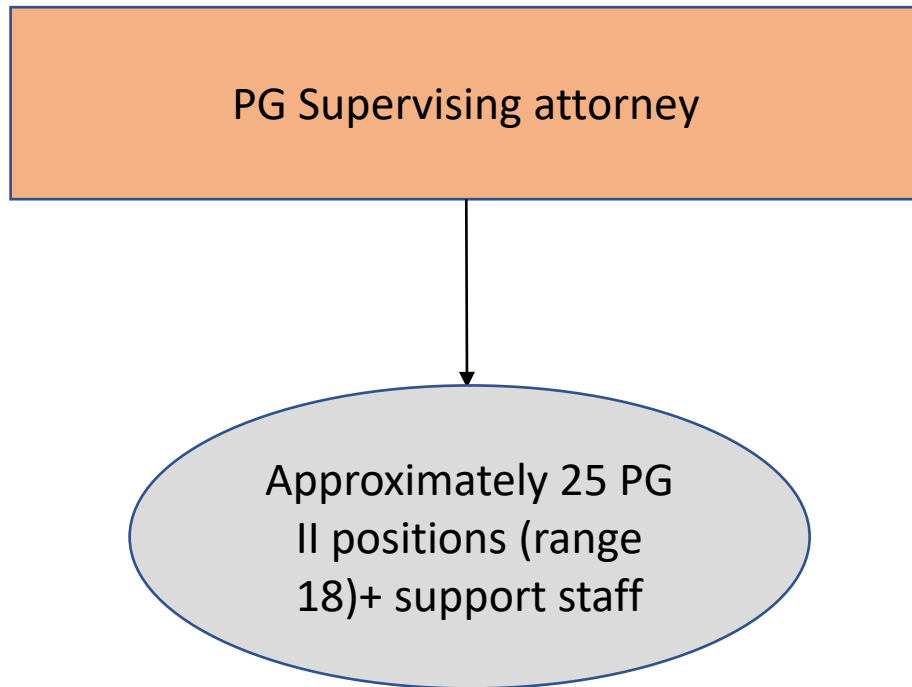
- OPA provides attorneys for parents.
- OPA provides attorneys for older children as needed – can be adverse to the GAL.
- Issues with COVID and OCS: service providers shut down, restricted visitation, OCS staffing crisis.
- Delays in addressing family situations may have negative impact on children.

OPA Challenges – Public Guardians

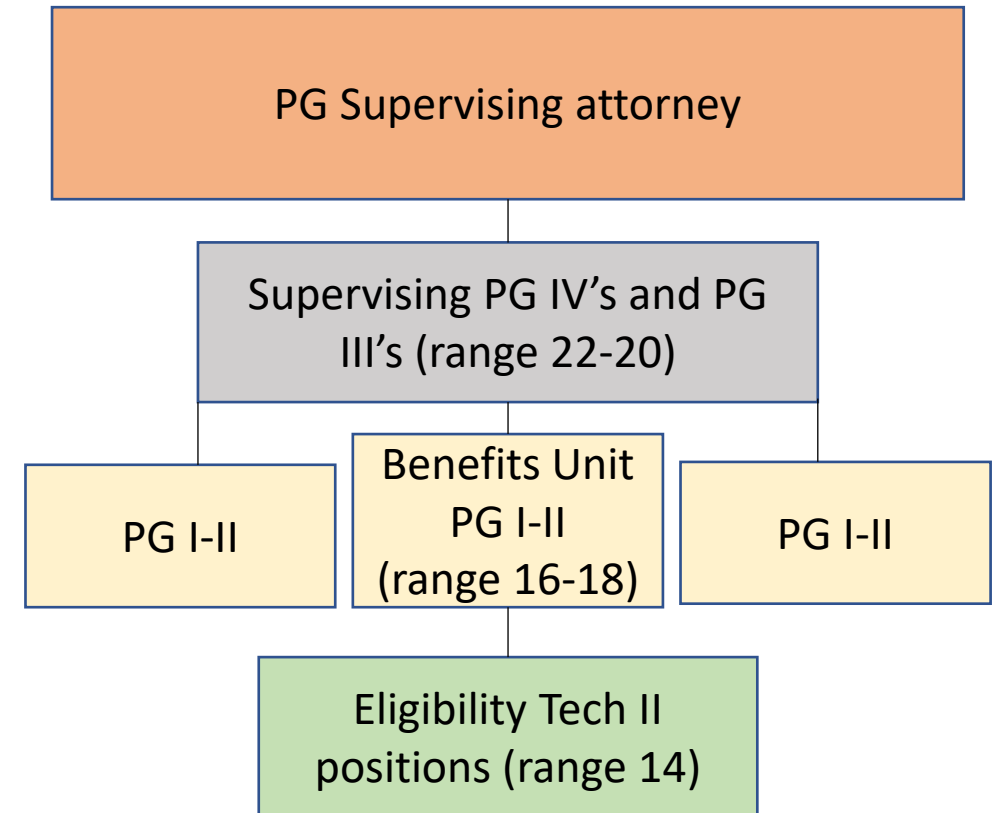
- Previously, 90-100 wards per public guardian when at full staff.
Recommended National Maximum is 40.
- Post FY2018 and FY2021 Increment, 60-100 wards per public guardian.
 - 90 wards per senior guardian (moderate to difficult cases).
 - 50-60 wards per supervisor guardian (difficult cases).
 - 70-80 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 Complete

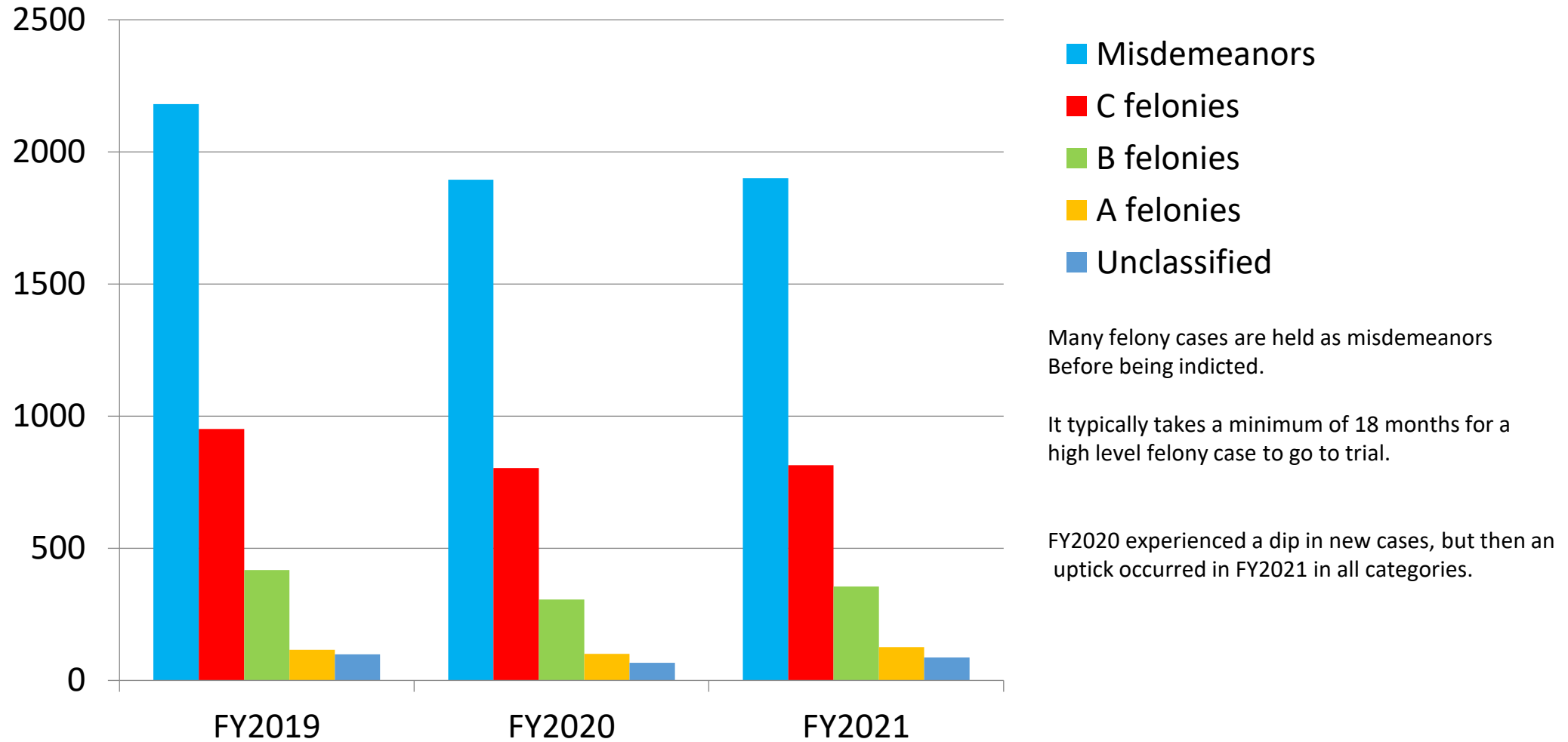
Old Structure



New Structure



OPA Criminal Caseloads/Appointments



OPA Challenges – Criminal Conflict Counsel

- COVID has drastically reduced the case closure rate and increased the backlog for trial cases. This has led to contract expenditure increases. Four attorney vacancies resulted in contracting out 400+ cases.
- 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 Anchorage post-indictment numbers as of August 1st: 2021 – 1,529; 2019 – 1,217; 2018 – 894. This means **Anchorage experienced a 71% increase** in pending post-indictment felony cases since 2018.
- The Anchorage pre-indictment numbers as of August 1st: 2021 – 1,740; 2019 – 665; 2018 – 811. This means **Anchorage experienced a 114% increase** in pending pre-indictment felony cases
- As of November 1, 2021, the number of pending felony cases was 7300 as compared to 5100 as of November 1, 2019. For pending misdemeanors, the number comparison is 12,400 as of November 1, 2021, to 9,100 as of November 1, 2019. **Approximately a 43% and 36% increase.**

OPA Challenges – Contractor costs

OPA updated its case caps by approximately 30% across the board:

Old Rates

- Misdemeanors - \$1,250
- Class C Felonies - \$3,125
- Class B Felonies - \$3,750
- Class A Felonies - \$6,875
- Unclassified Felonies - \$16,250
- Appeals and PCRs - \$5,000
- CINA Parent Rep - \$4,000

New Rates

- Misdemeanors - \$1,625
- Class C Felonies - \$4,000
- Class B Felonies - \$4,875
- Class A felonies - \$9,000
- Unclassified Felonies - \$20,000
- Appeals and PCRs - \$7,500
- CINA Parent Rep - \$5,200

- The hourly billing rate for contract defense investigators has been updated from \$50 an hour to \$55-\$65 per hour.
- The hourly billing rate for contract attorneys has not been updated, it remains between \$65-\$95 an hour.

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 new case cap for a CINA case is \$5,200 ($85 \times \$5,200 = \$442,000$).

OPA Accomplishments

- OPA has been successful in keeping majority of Unclassified and class A felonies in house for FY2021-2022.
- 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 the most efficient types of contracts whenever possible.
- 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.).
- 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.
- Alaska has a shortage of attorneys. State agencies are competing for the same small candidate pool, and other states are out competing Alaska.
- Managing the public guardian section is an ongoing challenge.

Department of Administration

Championing improvement in the State's performance and results.



For more information, please contact Ken Truitt at ken.truitt@alaska.gov