

State of Alaska Department of Administration

Office of Public Advocacy

Presentation to House Finance Subcommittee

James E. Stinson

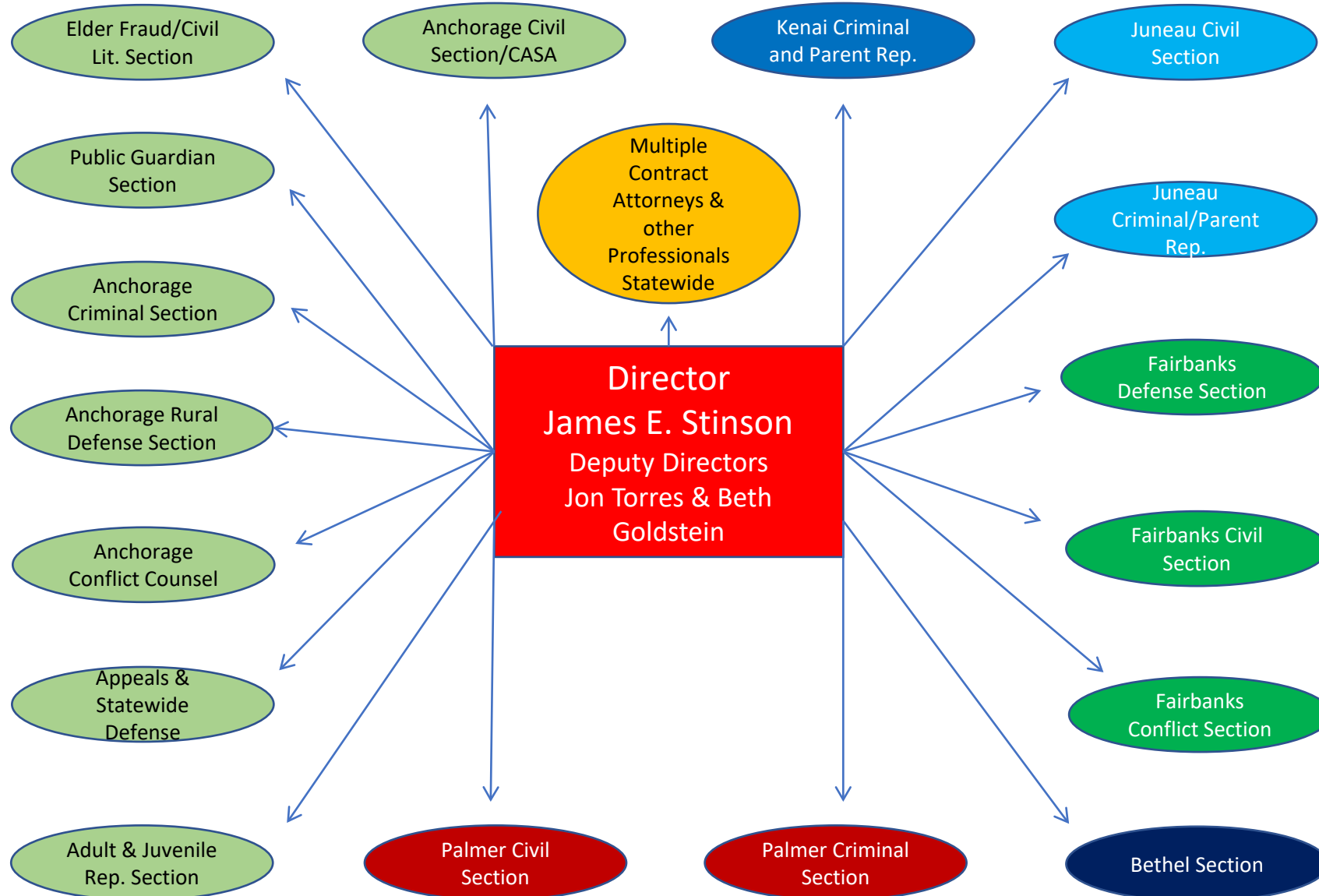
February 2023



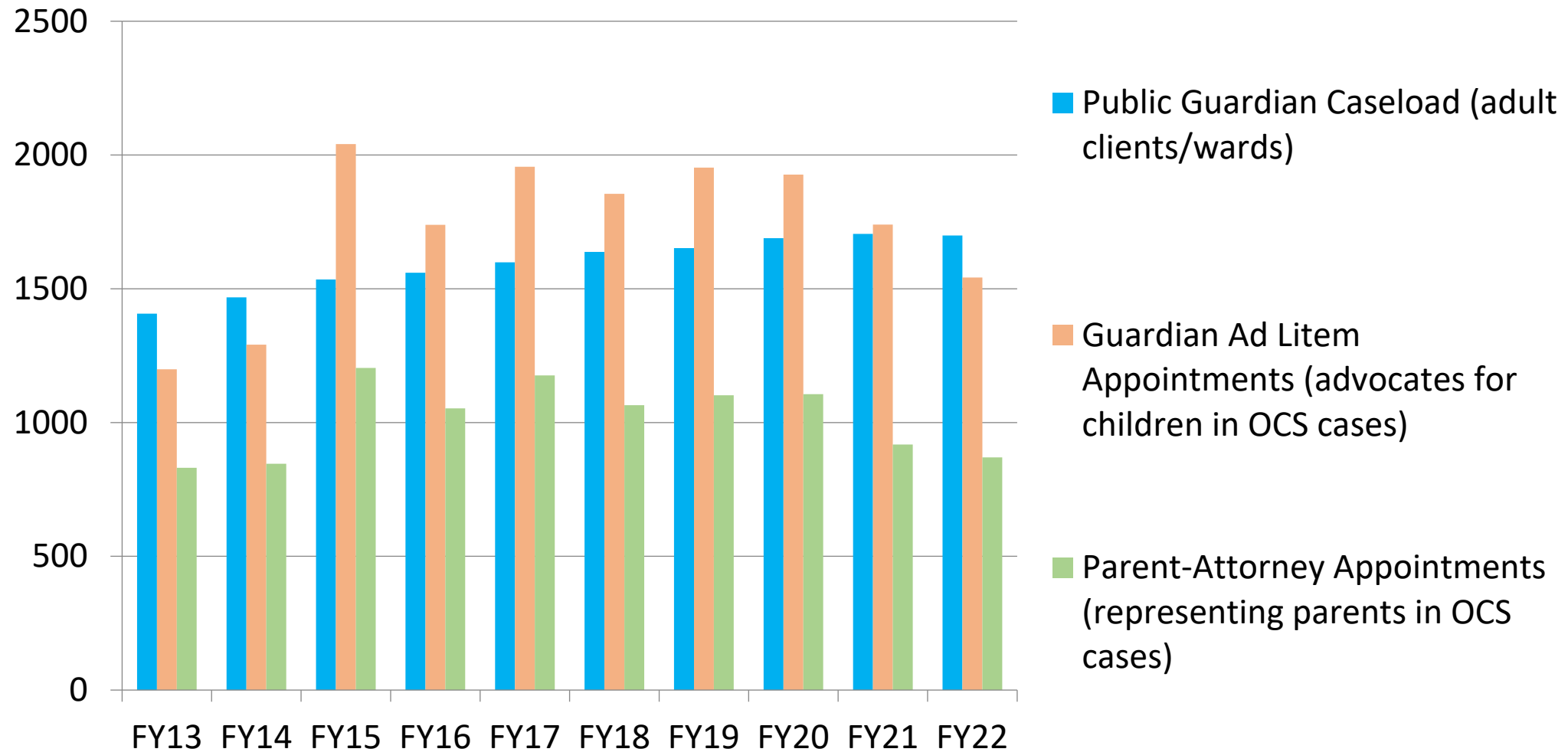
OPA Roles: Statutorily and Constitutionally Mandated

- **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. (Won a 1.5M judgement against couple who defrauded Yakutat elder)
- **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 PARENT/CHILD ATTORNEYS

- OPA provides a Guardian ad Litem.
- OPA provides attorneys for parents.
- OPA provides attorneys for older children as needed – can be adverse 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.

Dramatic Increased Court appointments due to court rules change

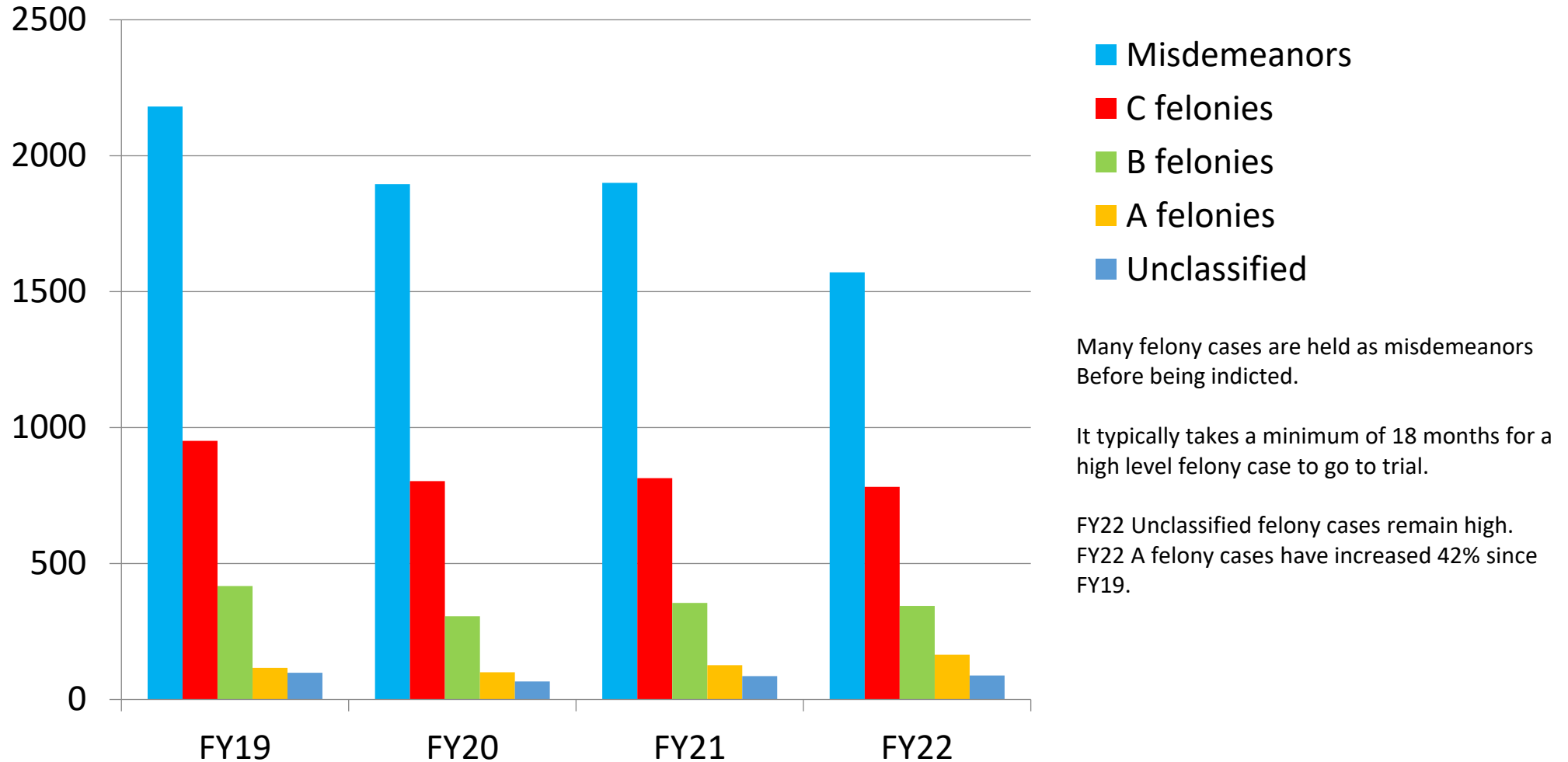
- Court rule 12.1 went into effect on October 17, 2022.
- Part of a national push.

Fiscal Year	Case Count
2020	108
2021	143
2022	171
2023	105 (Jan 1)

OPA Challenges – Public Guardians

- Previously, 90 - 100 wards per public guardian when at full staff.
Recommended National Maximum is 40.
- Current average is 85 wards per qualified guardian.
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.
- Public Health Declaration benefit renewal ending.
- “Silver tidal wave” increasing wards numbers.
- Issues with service providers such as Division of Public Assistance.
- Over appointment by the court system – OPA should be last resort.
- High turnover due to the difficulty of the position – 17 resignations in 3 years, 4 in the last 4 months.
 - 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.

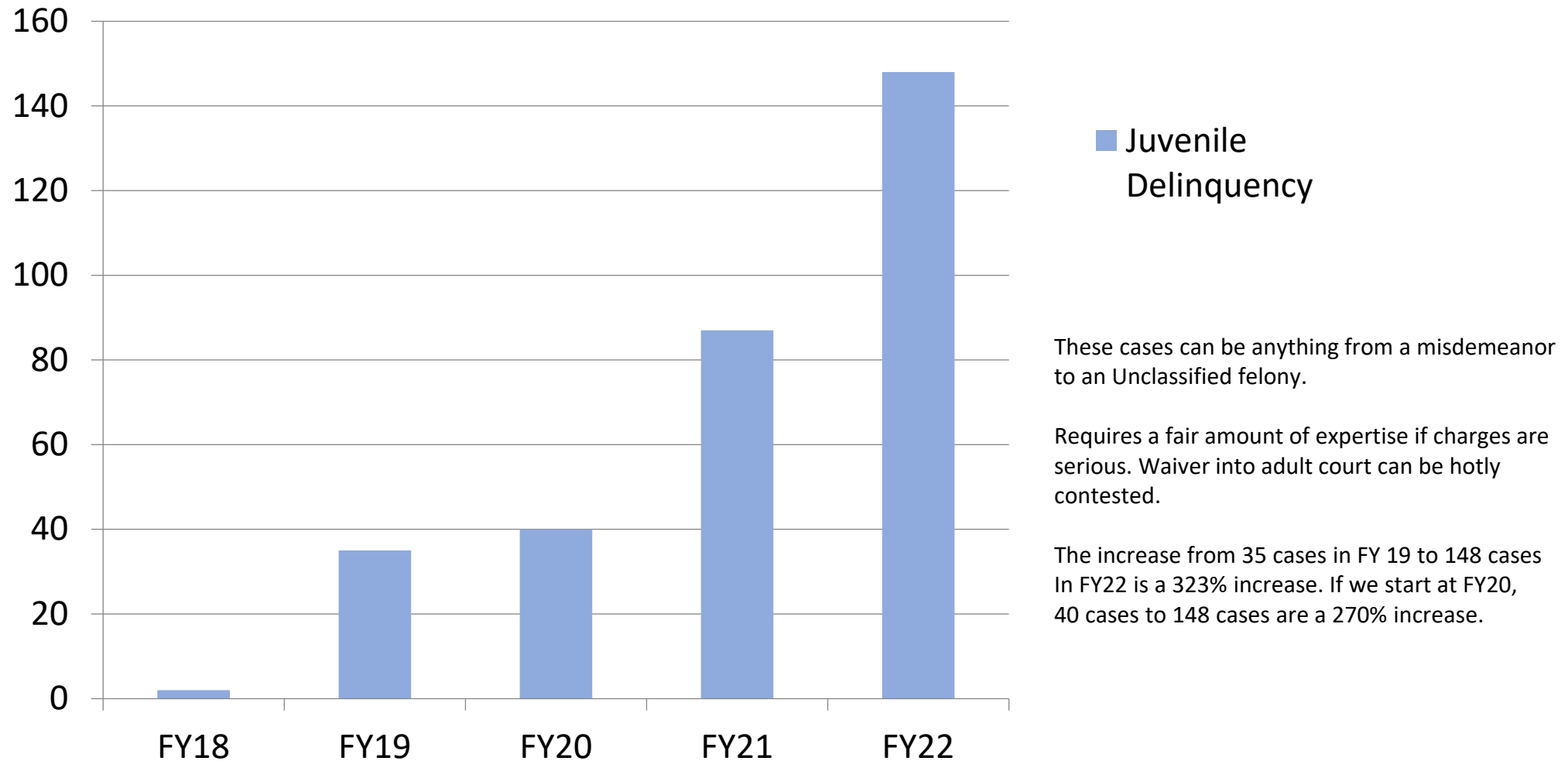
OPA Criminal Caseloads/Appointments



OPA Challenges – Criminal Conflict Counsel

- The COVID backlog is making caseloads unmanageable. The court system is pushing trials at an ever-increasing pace.
- 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, though two are currently vacant. Three of the most experienced attorneys handle the most serious felony cases, and a fourth handles the PIH calendar in Anchorage which also requires substantial experience. As of 2/1/2023, ACR has 65 Unclassified, 60 A, 124 B, and 261 C felony cases assigned to it. In addition, it has 78 Misdemeanors as well as PTRPs, Parole cases, and a small number of various other case types.
- ACR also cover cases in Palmer, Kenai, Bethel, Kotzebue, and Southeast.

Juvenile Delinquency Appointments Have Drastically Increased.



OPA Challenges – Contractor Compensation

OPA's hourly contract rates and case caps are not attractive to private counsel:

Case Caps

- Misdemeanors - \$1625
- Class C Felonies - \$4000
- Class B Felonies - \$4875
- Class A felonies - \$9000
- Unclassified Felonies - \$20000
- Appeals and PCRs - \$7500
- CINA Parent Rep - \$5200

Insufficient hours for serious cases

- Delphi analysis indicates 552 hours are needed for an Unclassified felony.
- 550 hours x \$95 an hour = \$52,250. A 161% increase from the \$20,000 cap.
- Delphi analysis indicates 150 hours needed for an A felony.
- 150 hours x \$95 an hour = \$14,250. A 60% increase from the \$9,000 cap.

- The hourly billing rate for contract attorneys is between \$65-\$95 an hour.
- Federal contract defense attorneys are paid \$164 an hour for non-capital cases.

OPA Accomplishments

- OPA has been successful in keeping a majority of Unclassified and class A felonies in house for FY22-23.
- 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 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.
- OPA's contractor pool is rapidly drying up.
- 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.
- A hot labor market coupled with out-migration makes hiring very challenging.
- Court rules changes and case law can have an immediate significant impact on OPA.

Department of Administration

Championing improvement in the State's performance and results.



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