



The State Bar *of California*

Update on Plans to Address the Requirements Contained in SB 211

Lisa Chavez, Director II

Regulation and Discipline Committee, March 24, 2022

Key Deliverables

Propose case processing standards that:

“reflect the goal of resolving attorney discipline cases in a timely, effective, and efficient manner while having small backlogs of attorney discipline cases and best protecting the public”.

The State Bar will also propose alternative metrics for the Annual Discipline Report.



Must be "based on and reflect all of the following" per SB 211 -- B&P 6094.5(b)(1)

- Consultation with state and national experts on attorney discipline
- Review of case processing standards in at least five other states
 - Large and small
 - Jurisdictions with strong and effective discipline systems that protect the public
- Reports from the Legislative Analyst's Office
- Reports from the California State Auditor





State and National Experts

Robert Fellmeth

Professor, University of San Diego Law School
Executive Director, Center for Public Interest Law

Ellyn Rosen

American Bar Association Regulation Counsel

Serving as part of the ABA Standing Committee on Professional Regulation's discipline system consultation program

Richard Zitrin

Solo Practice

Lecturer, University of San Francisco Law School
Committee on Professional Responsibility and Conduct, Former Chair





Other States

- Based on recommendations from Ellyn Rosen
- Large states
 - Texas – 106,591 lawyers
 - Illinois – 94,907 lawyers
 - New Jersey – 97,971 lawyers
- Small states
 - Maryland – 41,611 lawyers
 - Colorado – 28,014 lawyers
 - Arizona – 18,973 lawyers



**Factors that must be
taken into account
per SB 211
-- B&P 6094.5(b)(1)**

- Mechanics of the discipline process
- Risk to public protection
 - Including multiple complaints against the same attorney
- Complexity of cases
- Reasonable expectations of the public for resolution of complaints



Mechanics of the Discipline System



Mechanics of the Discipline System

- Within the Office Chief Trial Counsel, cases go through three stages between receipt and the potential filing of an NDC.
- At each stage, staff engage in a series of steps to determine whether to move the complaint forward to the next stage or close it.

Stage 1: Intake (attorneys)

- Read complaint and assess allegations
- Decision:
 - Decline/close
 - Prioritize & refer to investigation



Mechanics of the Discipline System

Stage Two: Investigation (investigators, with assistance from attorneys acting as legal advisors)

- Investigation Plan
- Notice of allegations (TR Letter) to Respondent/Response (required by rule 2409)
- Gather evidence: subpoenas, interviews, depositions
- Decision:
 - Decline/close (with or without alternative to discipline)
 - Prepare investigative report (Statement of the Case, or SOC) & refer to charging



Mechanics of the Discipline System

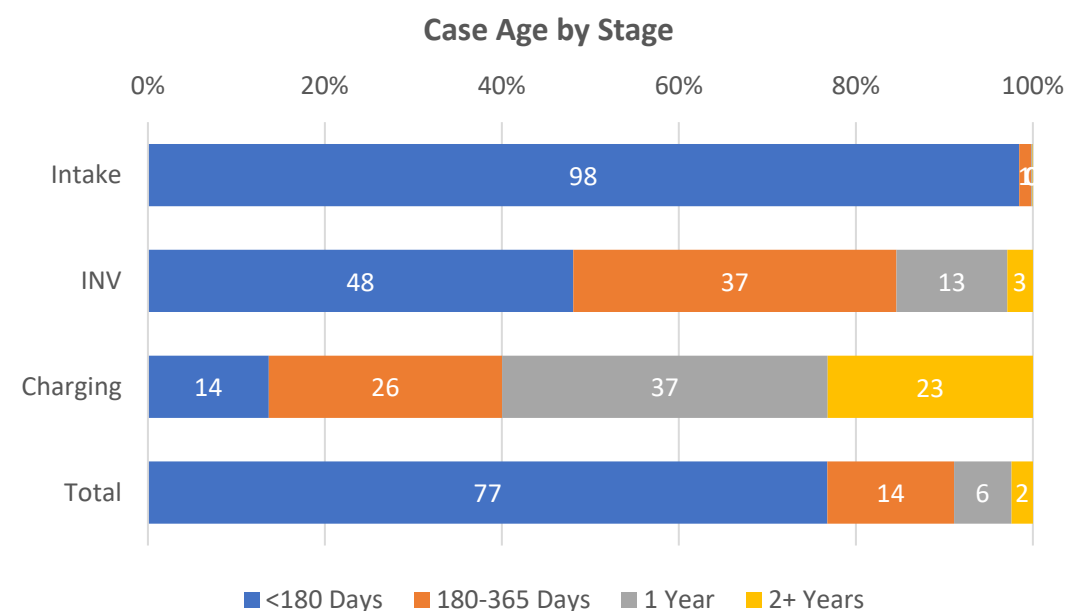
Stage 3: Charging (attorneys)

- Charging memo & draft Notice of Discipline Charges (NDC)
- Early Neutral Evaluation Conference (ENEC) (required by rule 5.30 if requested by respondent)
- Settlement negotiations
- Decision:
 - Decline/close (with or without alternative to discipline)
 - File Stipulation reflecting settlement
 - File NDC



Mechanics of the Discipline System

Cases closed from 2017 to 2021



Most cases are closed in Intake.

Case age is strongly related to case stage:

- 98% of cases closed in Intake are closed in less than 180 days;
- 48% of cases closed in Investigation take less than 180 days;
- 23% of cases in Charging stage take more than two years from the time the complaint was received to charge or close; and
- For all cases going through different stages, 77% take less than 180 days and 2% take more than two years.



Mechanics of the Discipline System

In the investigation and charging stages, some matters may be held in **abeyance** as the result of pending events.

Examples:

- State Bar Court has recommended disbarment or the acceptance of the respondent's resignation in another matter
- Respondent is likely to be disbarred based on other cases that will be or are being pursued in State Bar Court
- Respondent is physically or mentally incapacitated (potential 6007 interim action)
- There is litigation pending in an outside court (civil or criminal) concerning the same issues that are presented in the disciplinary matter the resolution of which would expedite or aid in resolving the disciplinary matter
- The respondent is unavailable because on active military duty

Matters held in abeyance for these types of reasons are referred to as "abated matters" (see rules 5.50 to 5.52)

Policy Issues:

- Is our current approach to abatement appropriate?
- How should we report on abated matters (they are not included in most of the data that follows)?



Risk to Public Protection



Case Prioritization

OCTC's current case prioritization system was implemented in 2018 to base prioritization on public protection. Its goals are to:

- Prioritize those matters involving conduct that puts clients and the public at the most significant risk
- Endeavor to address as many allegations of misconduct as quickly, completely, and competently as possible.



Risk to Public Protection

High Risk -- Priority One (P1)

- Attorneys who have
 - committed serious misconduct;
 - caused significant or ongoing harm; **or**
 - pose a risk of significant future harm; **and**
 - have the ability to repeat their misconduct (on active status or able to return to active status within one year)
- Resources prioritized to address these cases with goal of completing them within statutory backlog period
- Criteria set with goal of designating no more than 5–10% of cases as Priority One (actually results in 20%)
- Examples:
 - Intentional misappropriation or misappropriation of more than \$25,000
 - Vulnerable victim, e.g., disabled, incarcerated, in immigration process
 - Repeated abandonment of clients
 - Prior suspension or disbarment

Lower Risk/Expedited -- Priority Two (P2)

- Lower risk and easily resolved with limited investigation **or**
- Require rapid investigation to determine if more significant harm is occurring or will occur (in which case, redesignated as high risk – P1)
- Experienced expeditor team of investigators and attorneys
 - Conserve resources by not requiring all investigative steps prior to resolution/redesignation

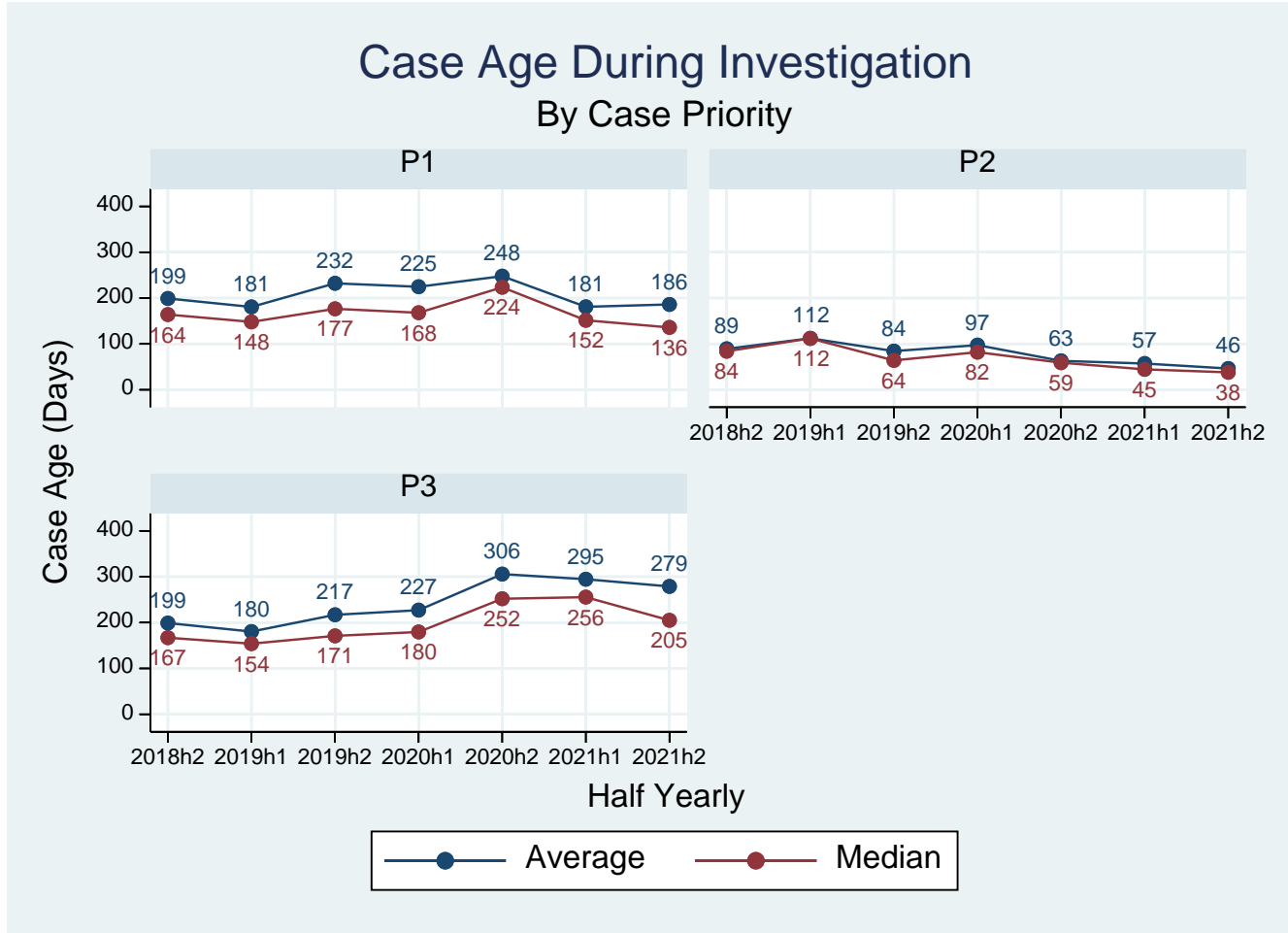
Lower Risk/Unexpedited -- Priority Three (P3)

- Everything else



Public Protection

The amount of time a case spends in the investigation stage varies by case priority.



The upward trend for P3 cases—starting second half of 2019, with a pronounced uptick in the second half of 2020—reflects the reallocation of resources to P1 and P2 cases and appears to have largely contributed to the overall case age trend.



Case Complexity



Case Complexity

There are many factors that contribute to case complexity which, in turn, contributes to more time needed for case resolution.

Factors that Contribute to Case Complexity

Factors inherent to the case

- Requesting Bank Records
- Requesting Court Records
- Other Subpoenas

Factors objectively determined as case proceeds

- Multiple Parties
- Multiple Charges
- Major Case Designation (high-profile investigations)

Third-party Actions

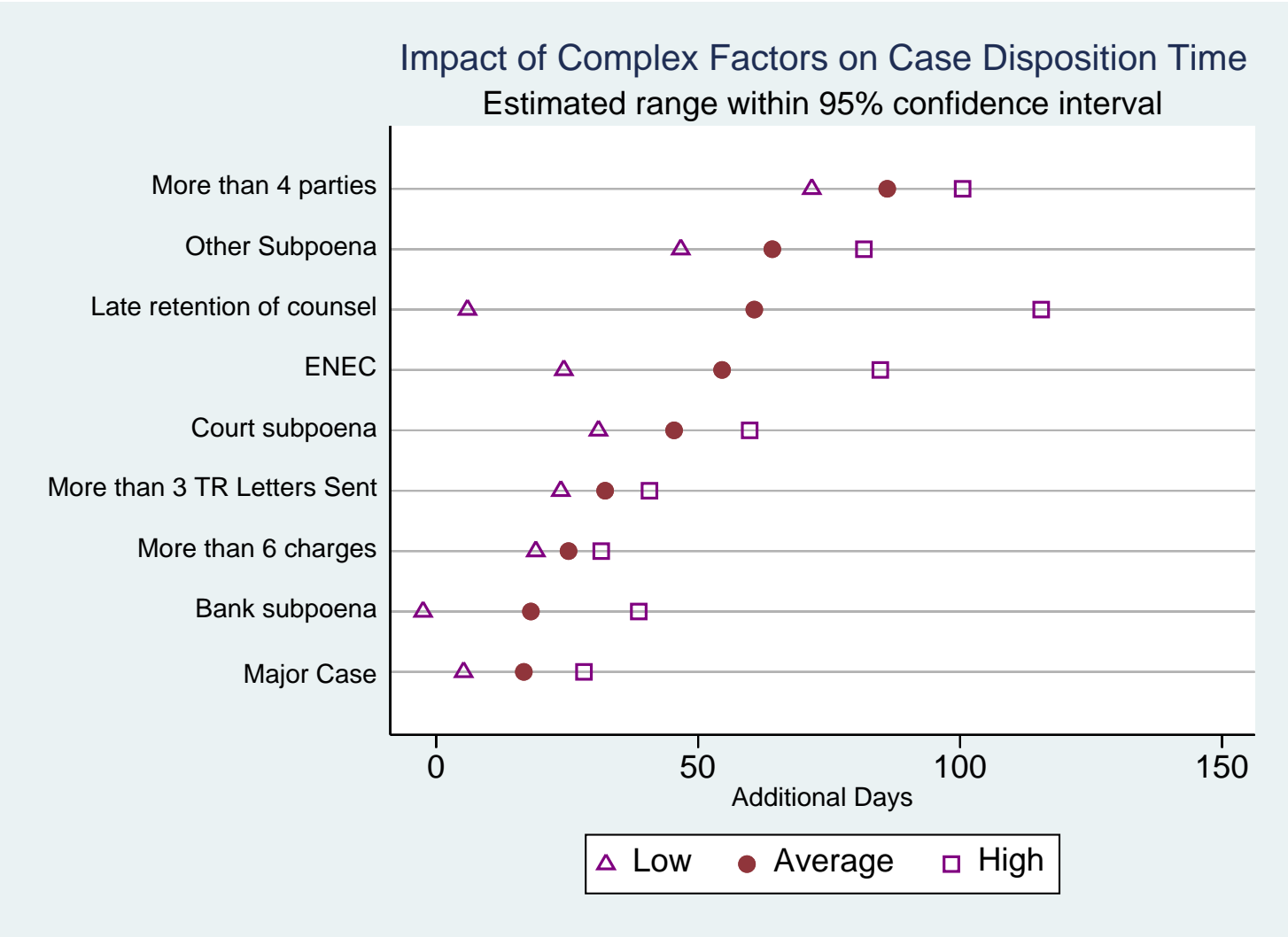
- Scheduling of Early Neutral Evaluation Conferences
- Respondent retaining counsel after OCTC issues notice of intent to file an NDC
- Respondent delays in responding

- Approximately **20%** of all cases (excluding abated cases) are complex.
- **80%** of cases closed/charged during the charging stage have at least one complex factor.

Complexity factors slow investigation and charging **despite dedication of resources**



Additional Case Time Due to Complex Factors



Reasonable Expectations of the Public



Reasonable Expectations of the Public

- Survey of Public forthcoming
- Three factual scenarios:
 - Failure to perform competently
 - Failure to communicate
 - Withholding settlement funds
- Two questions for each:
 - Complex or noncomplex
 - Multiple choice re: reasonable time to resolve (0–90, 91–180, 181–270, 271–365, more than 365 days)



Proposed Framework for Case Processing Standards



Summary of Framework

Case Processing Standards will consider:

- **Stage at Which Case is Resolved**
 - Either by closure (with or without alternative to discipline) or filing of NDC
 - Three stages: Intake, Investigation, Charging
- **Risk to Public Protection**
 - Based on Case Prioritization
 - High risk (P1), Lower Risk/Expedited (P2), Lower Risk/Unexpedited (P3)
- **Complex or Noncomplex Case**

Other Key Details

- Per SB 211 (B&P 6094.5(c)), the following matters are **excluded**: NA-UPL, Section 6007 matters, moral character matters, resignations with charges pending, mini-reinstatements, criminal conviction matters
- **Abated cases** will be considered separately



8 Categories of Cases

1. Intake

2. Investigation-P2

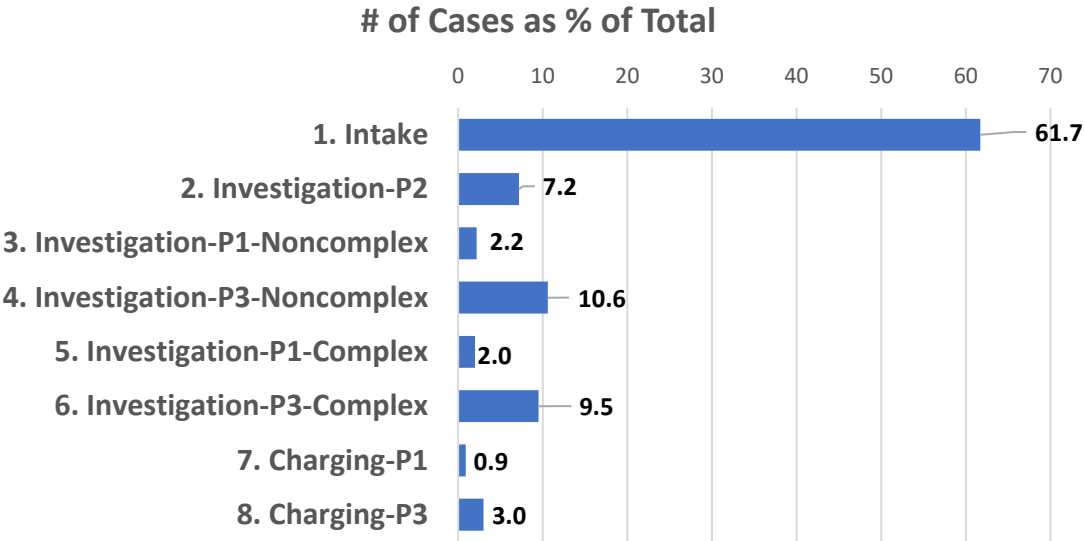
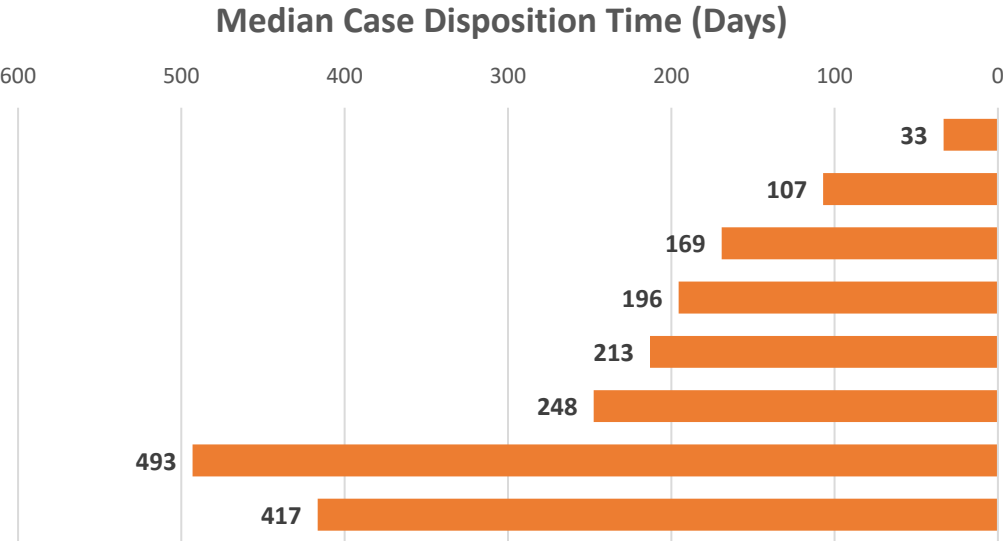
3. Investigation-P1-Noncomplex

4. Investigation-P3-Noncomplex
5. Investigation-P1-Complex

6. Investigation-P3-Complex

7. Charging-P1

8. Charging-P3



Establishing Case Processing Standards

Two sets of standards

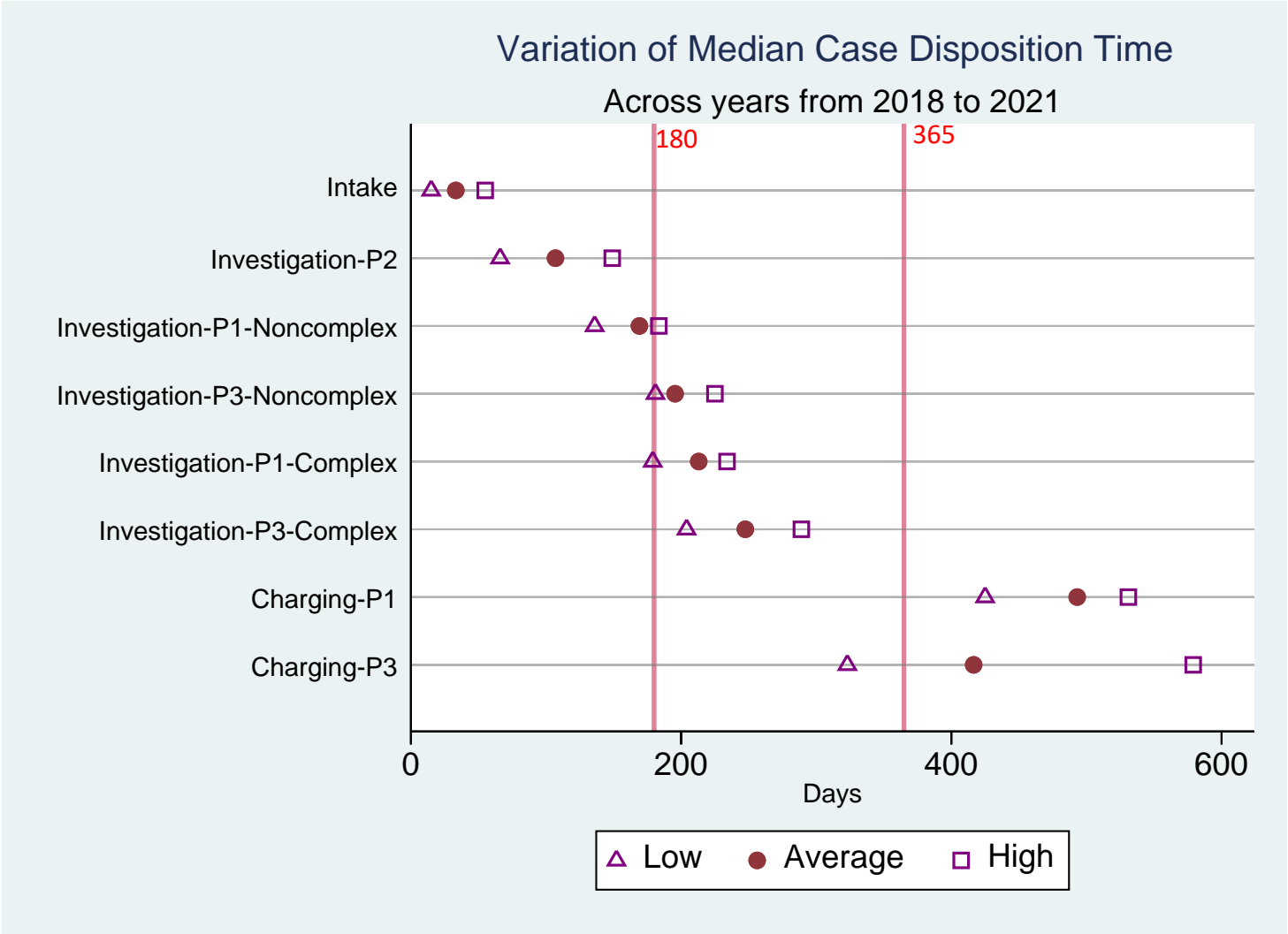
1. As-Is: standards we believe we can achieve with current resources and increased efficiencies in case processing
2. Enhanced: standards that would require additional resources to achieve

Options for case processing standard metrics

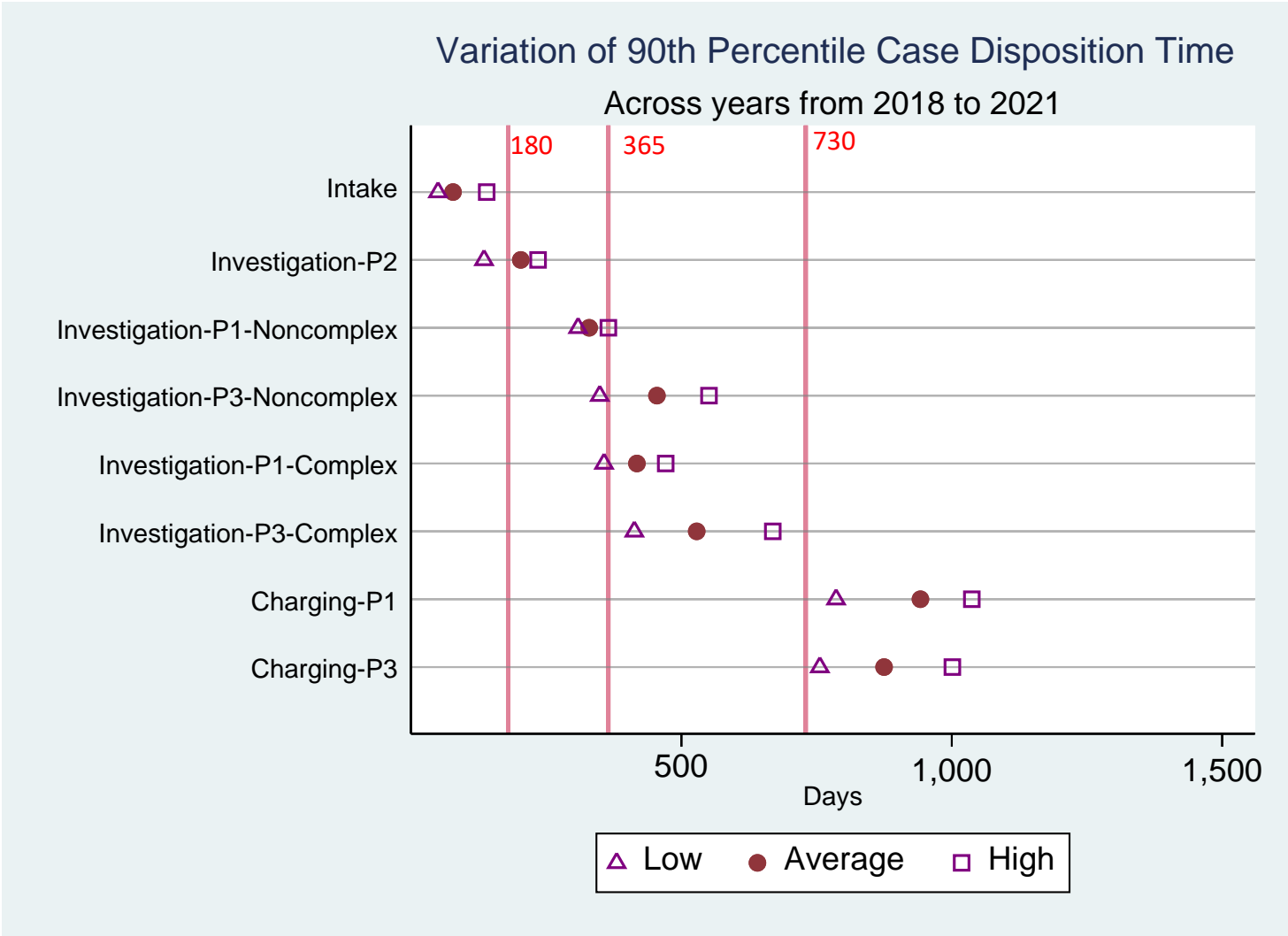
1. Average/median case time
2. Case time for xx percent of cases closed



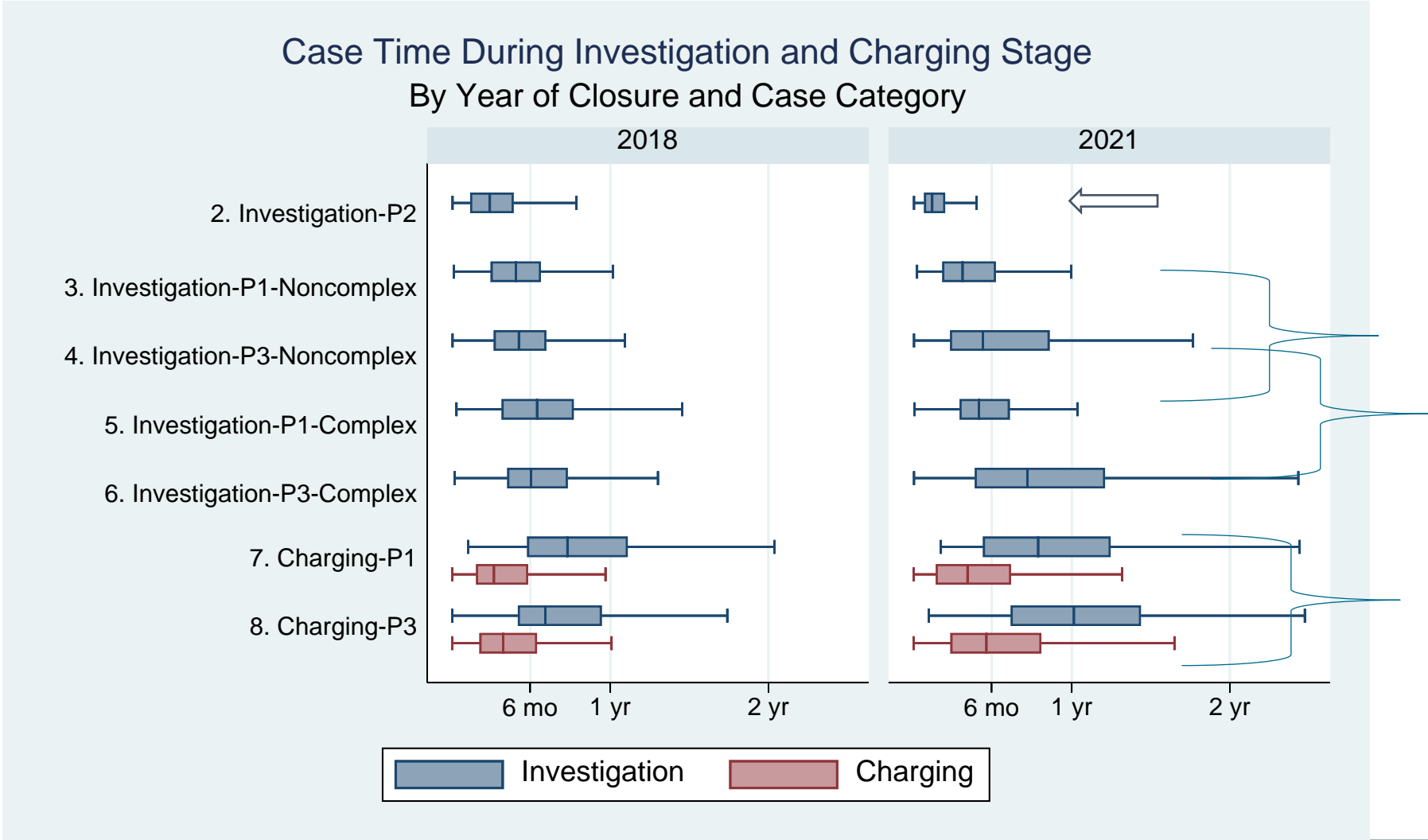
Variation of Median Case Disposition Time



Variation of 90th Percentile Case Disposition Time



Case Duration in Investigation and Charging Stage



1. Establishing Standards of Median Time

Case Category	# of Cases*	% of Total	Median Time***			Current Median Time (2021)	Proposed Standards (No Resource Change)	Proposed Standards (Additional Resources)
			Min	Max	Avg			
1. Intake	9,275	61.7	15	55	33	15	-	-
2. Investigation-P2	1,082	7.2	66	149	107	66	-	-
3. Investigation-P1-Noncomplex	331	2.2	136	184	169	136	-	-
4. Investigation-P3-Noncomplex	1,593	10.6	181	225	196	184	-	-
5. Investigation-P1-Complex	301	2.0	179	234	213	179	-	-
6. Investigation-P3-Complex	1,428	9.5	204	289	248	289	-	-
7. Charging-P1**	135	0.9	425	531	493	492	-	-
8. Charging-P3**	451	3.0	323	579	417	579	-	-
Total	14,596	97.1	37	50	52	40	-	-

* 4-year average from 2018 to 2021, excluding conviction monitoring and NA/UPL cases. Also excluded are abated cases, which will be reported separately.

** Cases in these two categories reach the end of OCTC's process when they are closed or an NDC is filed with the State Bar Court. For cases in which an NDC is filed without a stipulated disposition, proceedings in State Bar Court will take additional time before any discipline is imposed. Once an NDC is filed, however, public notice of the charges is posted on the attorney's State Bar profile page.

***Range of annual data from 2018 to 2021.



2. Case Time (Days) for 90 Percent of Cases Closed

90th Percentile Case Time*						Proposed Standard (No resource change)	Enhanced Standard (Additional Resources)
Case Category	# of Cases	% of Total	Min	Max	Avg	Current (2021)	
1. Intake	9,275	61.7	59	147	91	61	-
2. Investigation-P2	1,082	7.2	135	274	218	135	-
3. Investigation-P1-Noncomplex	331	2.2	311	377	334	321	-
4. Investigation-P3-Noncomplex	1,593	10.6	349	543	450	529	-
5. Investigation-P1-Complex	301	2.0	357	471	418	357	-
6. Investigation-P3-Complex	1,428	9.5	413	669	528	669	-
7. Charging-P1	135	0.9	778	1,037	940	1,001	-
8. Charging-P3	451	3.0	751	998	872	998	-
Total	14,596	97.1	276	486	350	486	-
* Range of annual data from 2018 to 2021.							<180 days
							181-365 days
							>365 days



Establishing Case Processing Standards

- Empirical data regarding trends in case processing time as influenced by:
 - Staffing resource changes (both FTE positions and experience level)
 - Exogenous factors (e.g., dramatic influx of new cases in 2018, implementation of new case management system in 2019, pandemic in 2020)
- Previous workforce studies and results from staff surveys and focus groups;
- Potential effects of operational and management adjustments;
- Potential effects on fairness of the process;
- Consultation with state and national experts;*
- Consideration of case processing standards from 6 other states;*
- Previous audits and reports from Legislative Analysts Office and California State Auditor;*
- Survey of the public regarding reasonable time expected;*
- Examples from other sectors of government services.

* Required by SB 211

