



The State Bar *of California*

# SB 211 Case Processing Standards Update

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## SB 211: Four Factors To Take Into Account

**“The case processing standards shall take into account all relevant factors, including but limited to...”**

**B&P 6094.5(b)(1)**

### **Mechanics of the discipline process**

- Intake, Investigation, Charging

### **Complexity of cases**

- Different standards for complex and noncomplex cases

### **Risk to public protection**

- Reevaluating priority Level (P1, P2, P3)

### **Reasonable expectations of the public for resolution of complaints**

- Survey conducted of public



## SB 211: Areas That Standards Must Reflect

**“The case processing standards shall be based on and reflect all of the following...”**

**B&P 6094.5(b)(1)**

**Consultation with state and national experts on attorney discipline**

- Reviewed data, analyses and conceptual framework; will issue report on final proposal

**Report from the Legislative Analyst's Office**

**Reports from the California State Auditor**

**Review of case processing standards in at least five other states (both large and small)**

- *Six states identified*



# Updates to Case Processing Standards Framework

Based on review of LAO and Auditor Reports , 6 States, and public survey



The State Bar of California

## 2019 LAO Report: Key Takeaways

- **Identified four case-processing stages:** Intake, Investigation, Prefiling, and Hearing. First three stages are counted towards the 180-day statutory time frame.
- **Recognized new case prioritization methodology:** "rather than focusing on the oldest cases first, the new methodology prioritizes cases with the greatest potential impact on members of the public" - three priority categories, P1, P2, P3.
- **Recommended more differentiation among types of cases:** "differentiating between the processes for specific complaint types or priority cases can help more accurately identify workload need."
- **Recognized need for case processing time frames that provide meaningful metrics:** "alternative statutory time frames—like ones based on either the specific state in which cases are closed, the severity of complaints, or specific complaint types — could provide more meaningful metrics measuring State Bar activities while also potentially requiring fewer additional staff."
- **Recognized need for developing benchmarks for “further improvements to address backlog of discipline cases”:** “The State Auditor recommends the State Bar further improve its ability to operate more efficiently and reduce the backlog of discipline cases by: (1) developing benchmarks to delineate the duration of each step in its investigation process.”



## 2021 State Auditor Report: Key Takeaways

- **Emphasis on benchmarks:** State Bar "has not effectively measured the performance of its discipline system staff against internal performance benchmarks." State Bar needs to "develop benchmarks for the duration of each step in its investigation process" and "monitor its staff's performance against its internal benchmarks."
- **Emphasis on backlog measure:** "it must develop and recommend an appropriate backlog measure and goal, including the number of days at which a case should be added to the backlog as well as a goal for the number of cases in the backlog"
- **Preference for a single backlog figure:** "Although different time frames may be appropriate for different types of cases, a single backlog figure that can be compared to prior periods helps ensure that stakeholders can easily understand the overall health of the discipline system."
- **Emphasis on staffing need analysis:** "it must determine the associated staffing level to meet that goal—as we also recommended in our 2015 report—which requires that it determine the workload benchmark for the number of cases each staff member should be able to process."
- **Question on priority level:** "our analysis indicates that during the period we reviewed the backlog grew and both higher- and lower-priority cases took longer to resolve."



## 2022 State Auditor Report: Key Takeaways

- **Emphasis on lengthy patterns of complaints:** State Bar should "adequately investigate attorneys with lengthy patterns of complaints."
- **Emphasis on identifying patterns of complaints based on complaint type:** "Categorizing allegations into broader categories would allow staff to more easily identify patterns of complaints." State Bar "should begin using its general complaint type categorizations when determining whether to investigate a complaint."



# Update and Recommendation Implementation

## Categorize cases as “high risk” and “low risk”

### High Risk Cases

- Priority 1 cases including respondents with repeated patterns of complaints and complaint types

**Benefit:** improved definition of “risk to public protection”; language easier to discern stakeholders

## Implemented Auditor Recommendation #6: Internal Performance Benchmark Report

- The State Bar has developed a weekly operational report to monitor whether OCTC team members accomplish investigative tasks.
- Will review, evaluate, and modify the benchmarks to align with the final case processing standards.





## Six States Recommended by Expert

			Average Time from Receipt of Complaint To:		
		Number of Attorneys	Summary Dismissal	Closure/Dismissal After Investigation	Filing of Formal Charges
Large States	Texas	106,591	18 days	120–180 days	141 days
	Illinois	94,907	Fewer than 10 days	Fewer than 90 days	N/A
	New Jersey*	97,971	N/A	N/A	N/A
Small States	Maryland	41,611	7–10 days	120-210 days	365 days
	Colorado	28,014	50 days	279 days	323 days
	Arizona	18,973	22 days	210 days	304 days

\* **New Jersey** has standards written in statute

Docketing to closure or filing – 180 days for standard matters; 270 days for complex matters

2019: 72–76% compliance with statutory standards

2020: 61–73% compliance with statutory standards



## Updates and Next Steps



### **Explore basing case processing standards on average time rather than median.**

- Align with other states and California regulatory agencies reporting of time standards
- Will report both median and average in our Annual Discipline Report per statute



### **Conduct additional analyses on 6 states by considering the following:**

- number of staff members involved in the disciplinary system
- number of complaints received
- number of pending investigations at the end of the fiscal year



# Public Survey Results

## Survey

- Distributed via social media to public (N=304)
- Also distributed to OCTC staff (N=150)

## Three factual scenarios:

- Failure to perform competently
- Failure to communicate
- Withholding settlement funds

## Two questions for each scenario:

- Complex or noncomplex – rating from 1 (very simple) to 5 (very complex)
- Estimated case time (in month)

**Estimated Time (Month) for Case Closure  
By Case Complexity and Survey Respondents**

Survey Respondent	<u>Complexity Rating</u>				
	1	2	3	4	5
General Public	2.8	3.6	4.5	5.3	6.2
OCTC Staff	3.4	5.6	7.9	10.1	12.3
Total	2.6	4.3	5.8	7.7	11.0

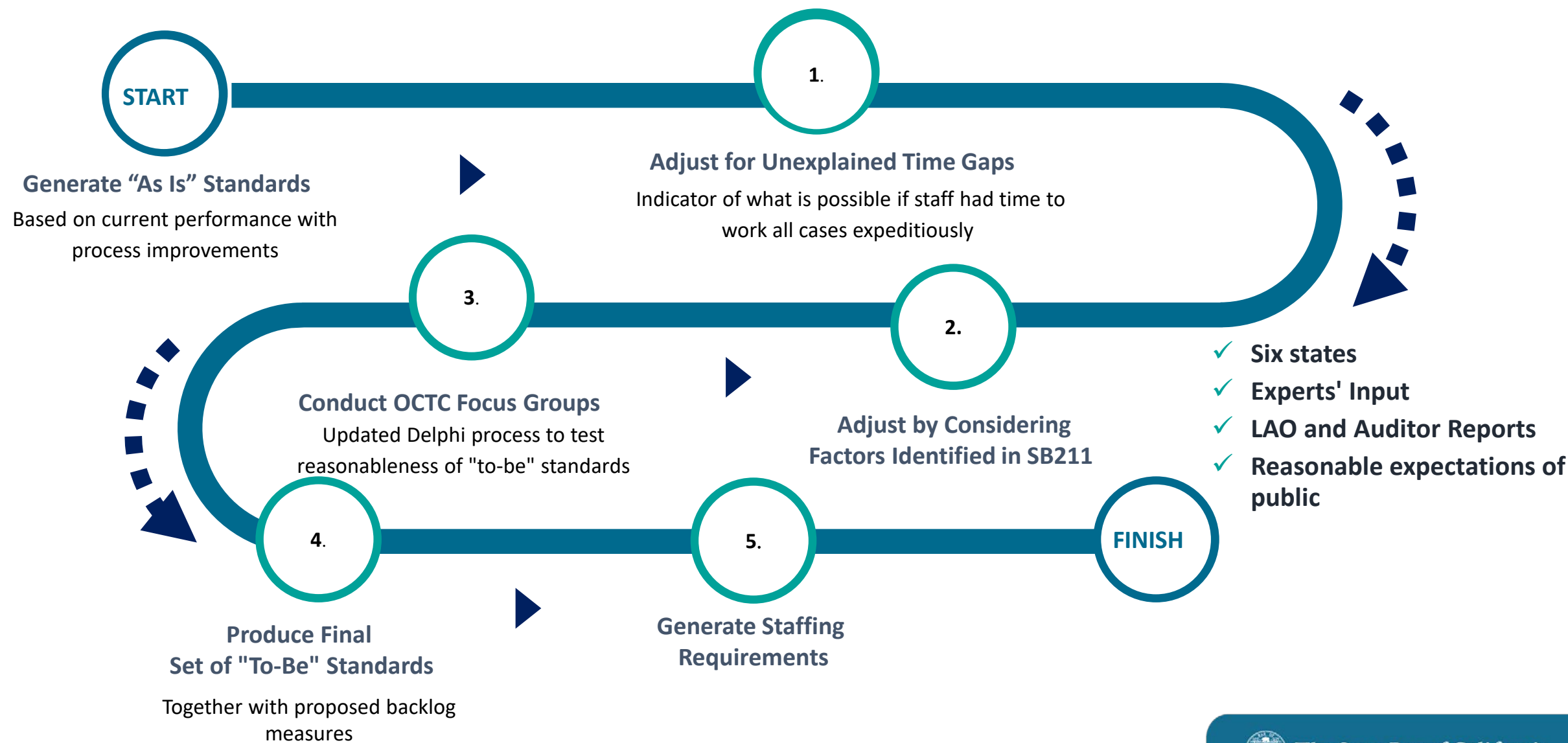
**Key finding:** The public and OCTC staff differed on their assessments of reasonable time, but both demonstrate a correlation between complexity and estimated time for case closure.



# Case Processing Standards Development



# Standards Development Process



# Previous Categories and “As Is” Standards

Case Category	# of Cases*	% of Total	Median Time***			Current Median Time (2021)	As-Is Standards (No Resource Change)	Enhanced Standards (Additional Resources)
			Min	Max	Avg			
1. Intake	9,275	61.7	15	55	33	15	30	-
2. Investigation-P2	1,082	7.2	66	149	107	66	110	-
3. Investigation-P1-Noncomplex	331	2.2	136	184	169	136	140	-
4. Investigation-P3-Noncomplex	1,593	10.6	181	225	196	184	180	-
5. Investigation-P1-Complex	301	2.0	179	234	213	179	180	-
6. Investigation-P3-Complex	1,428	9.5	204	289	248	289	250	-
7. Charging-P1**	135	0.9	425	531	493	492	475	-
8. Charging-P3**	451	3.0	323	579	417	579	500	-
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.



# Updated Framework for "To-Be" Standards



## Stage at Which Case is Resolved

- Intake
- Investigation
- Charging



## Case Complexity

- Complex vs. Noncomplex



## Case Expedition

- Expedited (P-2 Cases)



## Risk to Public Protection

- High Risk vs. Low Risk
  - Actual or potential harm, e.g., misappropriated funds
  - Vulnerable victims, e.g., immigrant persons, minors, significantly reduced ability to manage affairs
  - Lawyers with prior discipline
  - Lawyers with patterns of similar previous complaints and investigations
  - Lawyers with other markers for recidivism



# Updated Categories of Cases

**Consolidated 8  
categories into 6**

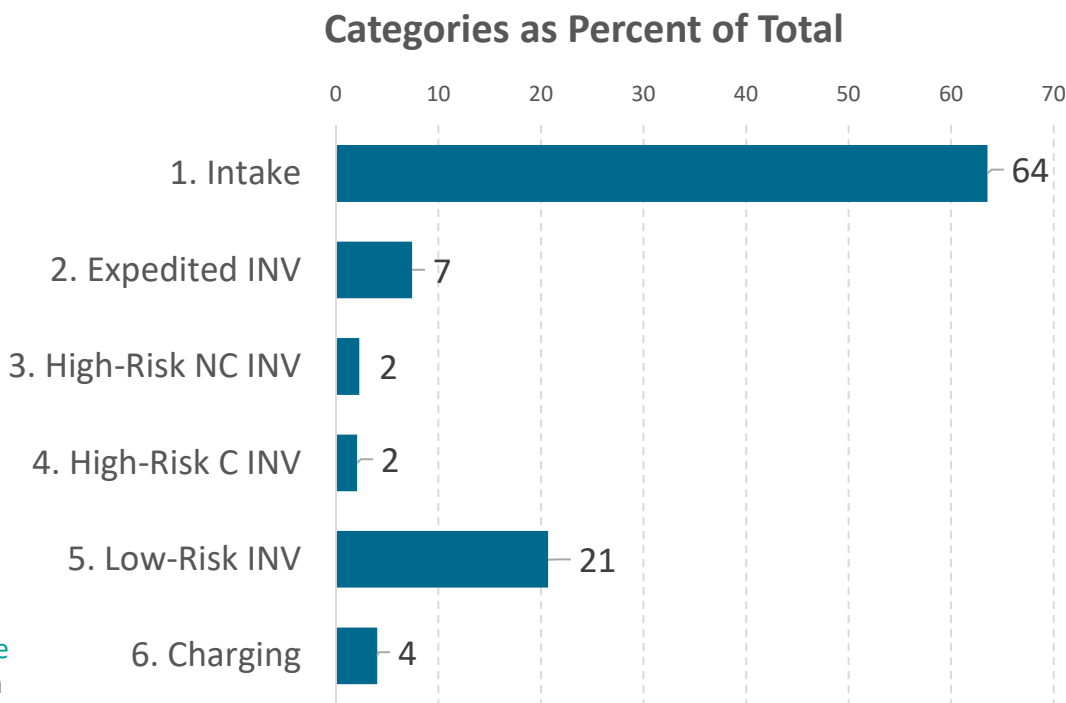
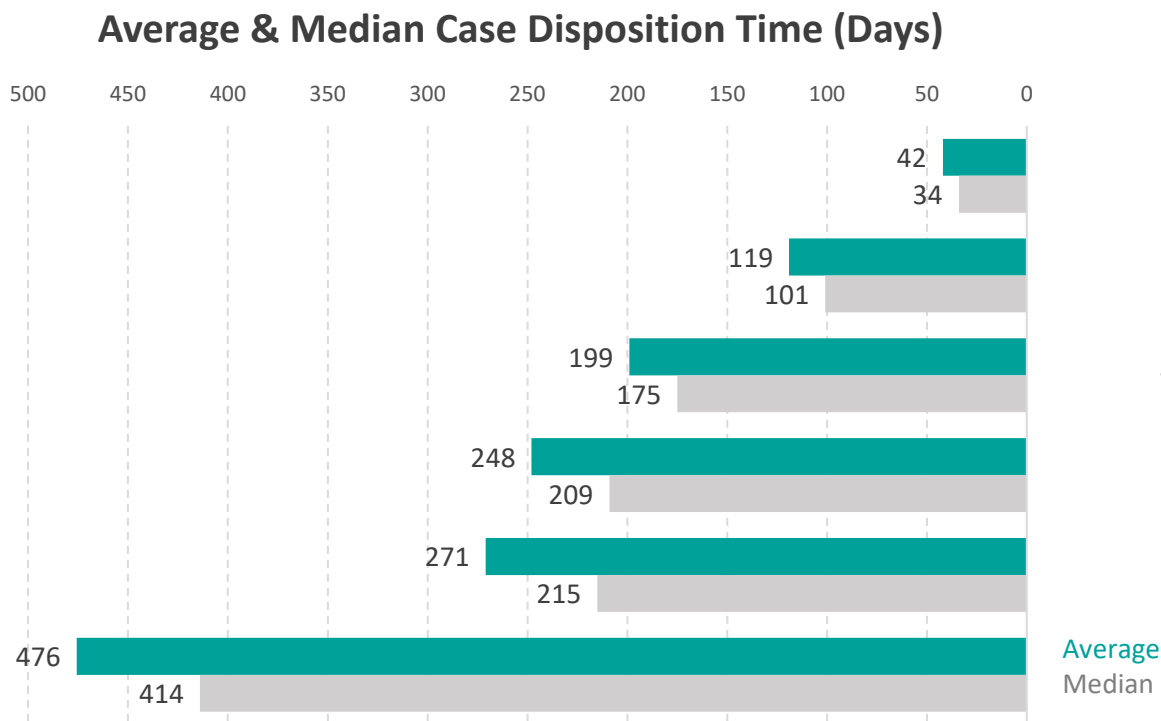
1. Intake
2. Expedited Investigation
3. High-Risk Noncomplex Investigation
4. High-Risk Complex Investigation
5. Low-Risk Investigation
6. Charging





# 6 Categories: Basis for “As-Is” Standards

- Nearly two-thirds of cases close in intake (category 1).
- Low risk cases that close in investigation are 21 percent of all cases.
- Cases that close in the charging phase take the longest to close and comprise 4 percent of all cases.



Values based on average across 2018-21



### Analyses found unexplained gaps between case processing events

**2021: 44% of investigations closed had unexplained gaps between case processing events of 60+ days**

#### **Possible explanations:**

- High caseloads
- Not enough available time for investigators/attorneys to work every case
- Investigators/attorneys forced to allocate available time among cases
- **RESULT:** cases sitting without action for periods of time



# Method of “Adjusting” Processing Time

**Action:** Adjust case age by removing all unexplained time of more than 60 days from case age.

**Rationale:** Indicator of reasonable time needed to resolve case if investigators and attorneys had enough time to work every case.

Case	Case Age Upon Closure	Unexplained Gap	Adjusted Case Age for Case Processing Standard Development
A.	320 days	65 days	255 days
B.	200 days	100 days	100 days

## Work Conducted to Date

	Start	1	2	3	4
	As Is Standards (No + Resources)	60-Day Gap Adjusted Average	Adjust by Considering Factors in SB 211 (Tentative)	Adjust based on OCTC Focus Groups	Produce Final “To Be Standards”
1. Intake	30	N/A	30	TBD	TBD
2. Expedited Investigation	110	67	90	TBD	TBD
3. High-Risk Noncomplex Investigation	160	134	120	TBD	TBD
4. High-Risk Complex Investigation	220	181	180	TBD	TBD
5. Low-Risk Investigation	270	176	210	TBD	TBD
6. Charging	450	370	+90	TBD	TBD



# Project Timeline

