



The State Bar *of California*

# SB 211 Case Processing Standards Update

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**“The case processing standards shall take into account all relevant factors, including but not limited to...”**

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

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

- Intake, Investigation, Charging

### **Complexity of cases**

- Complex vs Noncomplex

### **Risk to public protection**

- High-risk vs Low-risk

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

- Public Survey
- Solicit Public Comment



## SB 211: Areas Standards Must Reflect

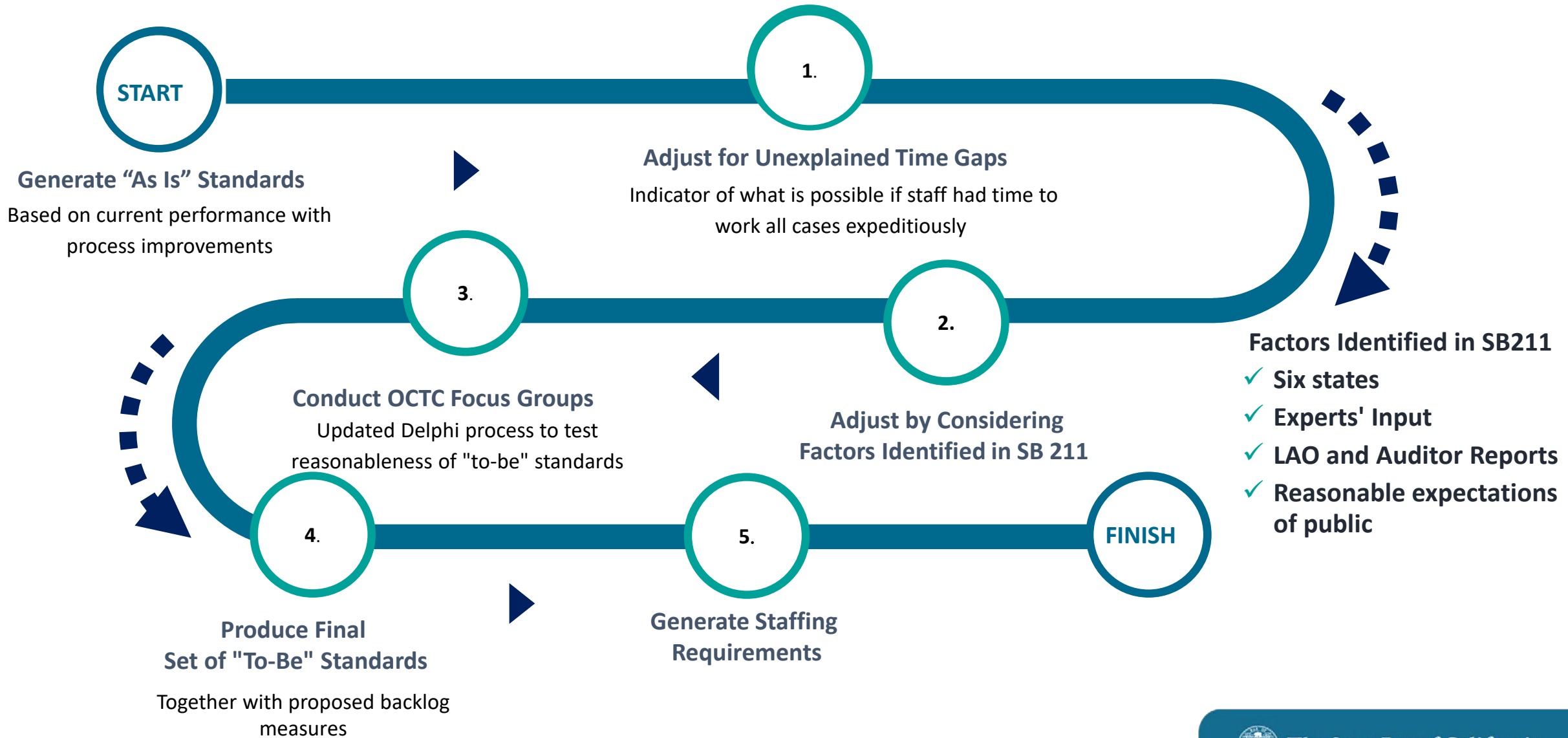
**“The case processing standards shall be based on and reflect all of the following...”**

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

- Consultation with state and national experts on attorney discipline
- Reports 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)



# Standards Development Process



# Updates to Case Processing Standards Framework

## Previous

Review of LAO and Auditor Reports, 6 States, and Public Survey Results

## Current

Review of ABA State Comparisons Data, Experts' Opinions, and Focus Group Results



# Experts' Opinions

## Opinion

Highlight use of **ENEC** which is very different from other states in that it occurs prior to **Charging** and thus counts against case processing time

**OCTC** should emphasize the need for **flexibility and discretion** both in identifying complex cases and in making investigative decisions to avoid pressure to rush to close cases

Need better system for sorting wheat from chaff and **focusing on serious cases**, such as closing cases involving minor Client Trust Accounting issues quickly as they are usually due to poor management practices rather than malfeasance

OCTC **workforce** needs stability and better training

## Changes to be Made

Time measurement in Charging will end at earliest of three occurrences: (1) Closure or dismissal in Charging; (2) Notice of ENEC (if ENEC is conducted); (3) filing of stipulation or NDC (if no ENEC is conducted).

OCTC will assign complexity flag; will re-evaluate complexity determination as case progresses and after case is closed.

OCTC will develop mechanism for assigning severity and/or risk level to cases.

Planned staffing-needs-analysis will consider staff's years of experience, turnover rates, and other factors.



# Conversation with LAO

Opinion	Changes to be Made
<p><b>Disaggregated Data</b> The more the better for a thorough understanding of the discipline system</p> <ul style="list-style-type: none"><li>▪ Example: Abated cases—though not included in the standards, the analysis of this group of cases needs to be included in Annual Discipline Report (ADR)</li></ul>	<p>More interim benchmark reports will be designed and used.</p> <p>An analysis of abated cases will be included in the 2021 Annual Discipline Report.</p>
<p><b>Case Stage is a</b> meaningful way to provide data to understand and rectify current system inefficiencies</p>	<p>The benchmark report will incorporate case stage.</p>
<p><b>Case Type</b></p> <ul style="list-style-type: none"><li>▪ Encouraged State Bar to explore specific case types to be incorporated into the standards</li></ul>	<p>Will track specific types of cases to reevaluate final case processing standards in future analysis (data did not support clear time pattern differences for different case types).</p>
<p><b>Priority-Level Reporting</b></p> <ul style="list-style-type: none"><li>▪ Prioritization based on resources should not affect the reasonable time frame required for resolution</li><li>▪ It is "not an effective discipline system" if we deprioritize, or hold, some cases based on resources</li></ul>	<p>The categories of complex vs noncomplex and high-risk vs low-risk in the case processing standards will be used to replace priority-level (P1,P2, P3) data reporting.</p>

# Two Notable Changes

## 1. Clarification (or definition) of "Charging" in terms of case processing time

Time measurement in Charging will end at earliest of three occurrences:

- Closure or dismissal in Charging
- Notice of ENEC (if ENEC is conducted)
- Filing of stipulation or NDC (if no ENEC is conducted)

## 2. Eliminate priority-level data reporting

The categories of complex vs noncomplex and high-risk vs low-risk in the case processing standards will be used to replace priority-level (P1,P2, P3) data reporting.





# State Comparisons: ABA Survey

**Table 1.1 Complaints at Different Case Stages in California Versus Six Other States (2018)**

Jurisdiction	1. # of Lawyers with Active License	2. # of Complaints Received by Disciplinary Agency	3. # of Complaints Pending From Prior Years	4. # of Complaints Summarily Dismissed / Screened Out	5. # of Complaints Investigated	6. # of Complaints Closed or Dismissed After Investigation	7. # of Lawyers Charged After Probable Cause Determination
Texas	103,342	8,015	139 (2%)	5,561 (69%)	2,315 (29%)	1,779 (15%)	74
Illinois	72,952	5,029	1,828 (36%)	1,233 (25%)	4,958 (99%)	4,958 (99%)	3,719
New Jersey	75,207	E*	939 (27%)	E*	2,163 (62%)	1,872 (53%)	291
Maryland	40,300	1,802 <sup>N</sup>	N/A	E*	E*	E*	E*
Colorado	26,963	3,586	422 (12%)	0 <sup>N</sup>	265 <sup>N</sup> (7%)	109 (3%)	58
Arizona	18,750	3,047	581 (19%)	2,439 (80%)	596 (20%)	317 (10%)	91
California	185,763	17,145	5,792 (34%)	9,285 (54%)	6,761 (39%)	5,506 (32%)	340
National Average**	25,669	1,731	570 (33%)	889 (51%)	1,163 (67%)	695 (40%)	135
National Median**	18,595	1,372	422 (31%)	615 (45%)	727 (53%)	347 (25%)	38

Data Source: [2018 Survey on Lawyer Discipline Systems \(S.O.L.D.\)](#).

E\*=Estimated; N/A = Data not available or applicable; Notes ("N") at the end of each chart include explanatory information provided by some jurisdictions.

\*\*National refers to the more than 40 states that reported data to the ABA in 2018.



# State Comparisons: ABA Survey

**Table 1.2 Caseloads and Timeframes in California Versus Six Other States (2018)**

Jurisdiction	8. Average Caseload Per Lawyer	9. Average Time from Receipt of Complaint to Summary Dismissal (days)	10. Average Time from Receipt of Complaint to Closure/Dismissal After Investigation (days)	11. Average Time from Receipt of Complaint to Filing of Formal Charges (days)
Texas	71	Maximum 30	Maximum 120 <sup>N</sup>	159
Illinois <sup>N</sup>	100*	<10	<90	N/A
New Jersey	137	<45 (per court rule)	215 <sup>N</sup>	215 <sup>N</sup>
Maryland	N/A	7-10*	120-210*	365*
Colorado	598 <sup>N</sup>   39	49	257	365
Arizona <sup>N</sup>	487   117	25	225	391
California	85	37	204	387
National Average**	152	N/A	N/A	N/A
National Median**	104	N/A	N/A	N/A

Data Source: [2018 Survey on Lawyer Discipline Systems \(S.O.L.D.\)](#).

Arizona Q15: Intake Caseload 431, Litigation Caseload 108; Illinois Q15: Per month.

Texas Q20: Unless an investigatory hearing is held, then 180.

New Jersey Q20 & Q21: Does not distinguish between cases dismissed and cases prosecuted.

\*\*National refers to the more than 40 states that reported data to the ABA in 2018.



# ABA Tables and State Comparisons: Key Takeaways

## Compared with national median\* data, in California:

- ✓ More complaints are filed against attorneys
- ✓ More cases are carried-over from previous years
- ✓ More complaints are closed at Intake stage
- ✓ Fewer complaints are moved to Investigation stage
- ✓ Although a larger number of attorneys are disciplined in California, % of attorneys disciplined (in relation to # of complaints) is smaller than the national median, but higher than Texas (most comparable state)
- ✓ The caseload per attorney is lower than the national median, but higher than Texas.

**Note:** National case processing times for cases closed at the three case processing stages is unavailable.



# Focus Group Analysis – Background

➤ **Purpose:** Solicit feedback from OCTC attorneys and investigators on draft case processing standards

➤ **Format:**

- 5 separate Delphi focus groups were held between June 28 and July 8 soliciting input from subject-matter experts on case processing in the intake, investigation, and charging phases
- For high-risk (P1) and low-risk (P3) cases, investigators and attorneys each participated in a separate focus group to capture insights unique to each classification.
- A separate focus group was held with attorneys who handle expedited (P2) cases.



# Focus Group Analysis – Major Takeaways

## Case processing standards

Both attorneys and investigators generally thought that the draft standards were reasonable with sufficient staffing, subject to the following:

- **Intake:** 30 days may be attainable as an average, but the need for additional information generally results in between 40 and 60 days
- **Charging:** Once an ENEC notice goes out, OCTC loses control; the 90-day timeframe for Charging may be appropriate if it excludes ENEC time, but more time is needed if ENEC time is included

## Staffing levels

Both attorneys and investigators emphasized the following in considering staffing levels:

- **Staff rotations and turn-over:** Transferred cases take longer and delay existing caseload
- **Staff training/experience:** New/less-experienced staff take longer than experienced staff
- **Administrative staff:** Shifting some duties to administrative staff may increase efficiency

## Workload

Both attorneys and investigators emphasized their workloads also consist of cases that are not subject to case processing standards, i.e., mini-reinstatements, post-transmittal criminal cases, moral character cases



# Focus Group Analysis—Suggestions for Efficiency and Effectiveness

- ✓ **Specialized team of investigators and attorneys to handle criminal cases post-transmittal**
- ✓ **Eliminating/streamlining some procedures for more expedited handling of less serious cases**
- ✓ **Uploading data and documents to Odyssey**
  - A possible area for increase of administrative staffing or reduction of unnecessary uploads
- ✓ **Transition from Intake to Investigation:**
  - Restore Intake ability to make requests for information to respondents
  - Earlier issuance of subpoenas and requests for information to both CWs and respondents to speed the transition from Intake to Investigation



# Focus Group Analysis—Suggestions for Efficiency and Effectiveness



## **Transition from Investigation to Charging:**

- Reduce the amount of narrative that Investigators write in the Statement of the Case and focus this hand off much more on charges and evidence



## **Communication with CWs:**

- Offer customer service training for Intake staff
- Explore more efficient methods for communicating with and obtaining information from incarcerated CWs and CWs who require translators
- Modify initial complaint form to provide more information on what is needed, e.g., consent of client if CW is a non-client and basic supporting documents such as retention agreement





# Case Processing Standards Development





# Updated Framework for "To-Be" Standards

## Stage at Which Case is Resolved

- Intake
- Investigation
- Charging

## Case Complexity

- Complex vs. Noncomplex
- Cases flagged for complexity by OCTC

## Risk to Public Protection: High Risk v. Low Risk

- Designation to be made at Intake
- **High Risk:**
  - Prior discipline
  - Multiple pending complaints
  - Pattern of similar prior complaints
  - Other markers for recidivism (as developed)
  - Level of actual or potential harm: severe, serious, minor
  - Vulnerable victim
- Cases flagged for risk by OCTC



# "As-Is" Standards and "To-Be" Standards

	Average Number of Cases	Start	Step 1	Step 2	Step 3	Step 4
Case Category		"As-Is" Standards	60-day Gap Adjusted	Adjust Based on SB 211 Factors	Adjust Based on OCTC Focus Groups	Final "To Be Standards"
1. Intake	9,281	42	30	30	30 (20/60)*	TBD
2. Investigation – High-Risk Noncomplex	547	167	134	120	120	TBD
3. Investigation – Low-Risk Noncomplex	2,455	197	148	150	150	TBD
4. Investigation – High-Risk Complex	307	248	181	180	180	TBD
5. Investigation – Low-Risk Complex	1,430	307	209	210	210	TBD
6. Charging	565	433	257	300	300**	TBD

*Note:* "As-Is" standards and 60-day Gap Adjusted times are based on 2018-2021 case age average

\* 20 days for initial read review; additional 40 days if additional information is needed – averages out to 30

\*\* Additional 90 days for charging if ENEC time is excluded; 120 days if ENEC time is included



## Backlog Measures (I): Historical Data

- Standards are based on **average** case processing time
- Backlogs are based on cases of which the processing time goes beyond **90th percentile (based on 1.65 standard deviation (SD))**
- The bell curve of case distribution based on historical data is as follows:

Case Category	# of Cases	Mean (Days)	90 <sup>th</sup> Percentile (based on 1.65 SD from Mean)
1. Intake	9281	42	163
2. Investigation - High-Risk Noncomplex	547	168	426
3. Investigation - Low-Risk Noncomplex	2455	197	464
4. Investigation - High-Risk Complex	307	248	551
5. Investigation - Low-Risk Complex	1430	307	638
6. Charging	642	433	1126



## Backlog Measures (II): Idealized Bell Curve

Backlog measure based on idealized narrow bell curve around “to-be” standards (using half of the mean)

### Example

Case Category	To Be Standard (Mean)	Half of Mean	Backlog Measure
1. Intake	30	15	45 days
2. Investigation - High-Risk Noncomplex	120	60	180 days
3. Investigation - Low-Risk Noncomplex	150	75	225 days
4. Investigation - High-Risk Complex	180	90	270 days
5. Investigation - Low-Risk Complex	210	105	310 days
6. Charging	300	150	450 days

- Overall backlog = sum of numbers of cases in backlog
- Goal is to have **90%** (based on 1.65 SD) of future cases in any fiscal year not go beyond the backlog measures above  
*(A reference point: New Jersey has standards written in statute: Docketing to closure or filing - 180 days for standard matters; 270 days for complex matter. In 2019: 72 - 76% compliance with statutory standards; 2020: 61 - 73% compliance with statutory standards)*
- We will run interim reporting on number of cases in backlog at any one stage (intake, investigation, and charging) during fiscal year



# Project Timeline

