



**LAWYER
HANLON**



The National Public Defense Workload Study Methodology and Questions

NAPD Webinar – December 14, 2022

Topics to Be Covered

History of efforts to set workload standards

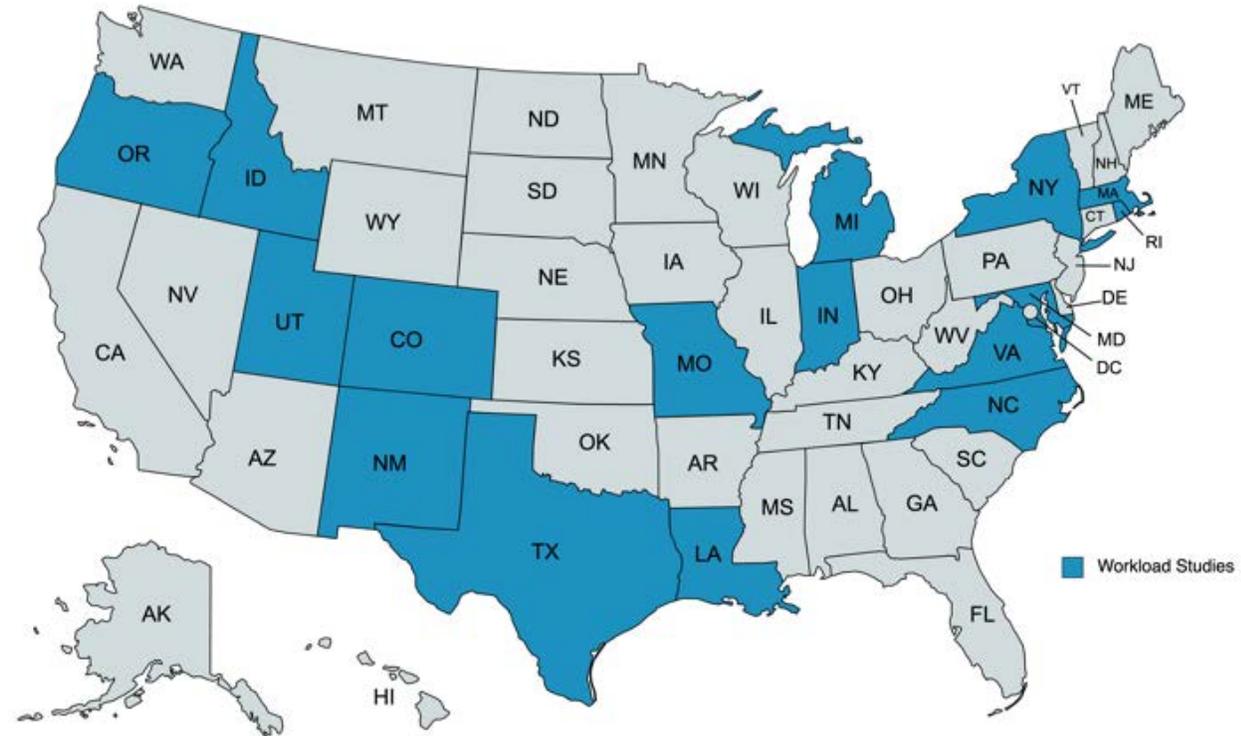
National workload standard project

Application of workload standards

History of Public Defense Workload Standards

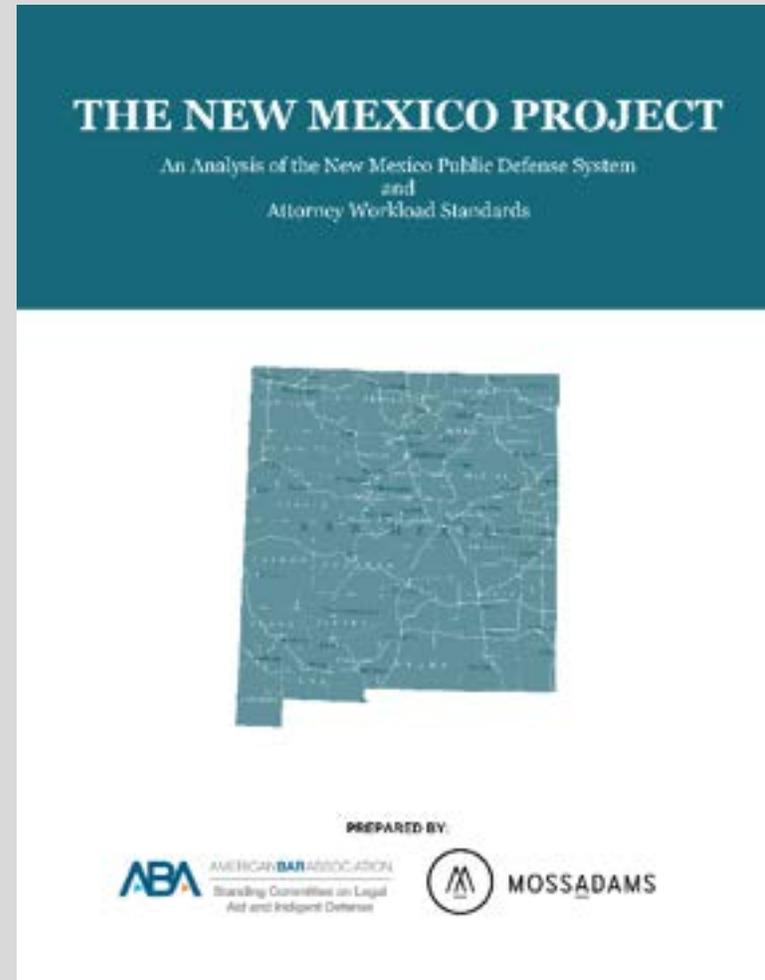
	<p>1973 NAC Standards 150 felonies/year 400 misdemeanors/year</p>
	<p>Deficiencies of NAC Standards Lack of defensible methodology Failure to distinguish case types Outdated</p>
	<p>Jurisdiction-specific efforts to set workload standards through empirical studies</p>

Jurisdictions with Workload Studies

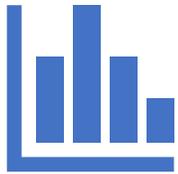


ABA SCLAID Workload Study January 2022

The New Mexico Project



ABA SCLAID Delphi Workload Studies



System Analysis

Historical Caseload Analysis

FTE analysis

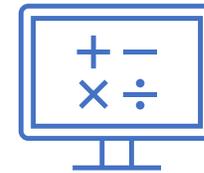
Describes the “World of Is”



Delphi Process

Describes the “World of Should”

How much time *SHOULD* a public defender spend on a particular case task in a particular type of cases?



Deficiency Analysis

Uses the system analysis and the Delphi analysis to calculate a staffing deficiency or excess

System Analysis:



Historical Caseload Analysis

- Data sourcing
- Case mapping



Time Keeping

FTE Casework Attorneys

Delphi Method



Designed to address difficult to quantify areas of expert opinion



Anonymous iterative survey process

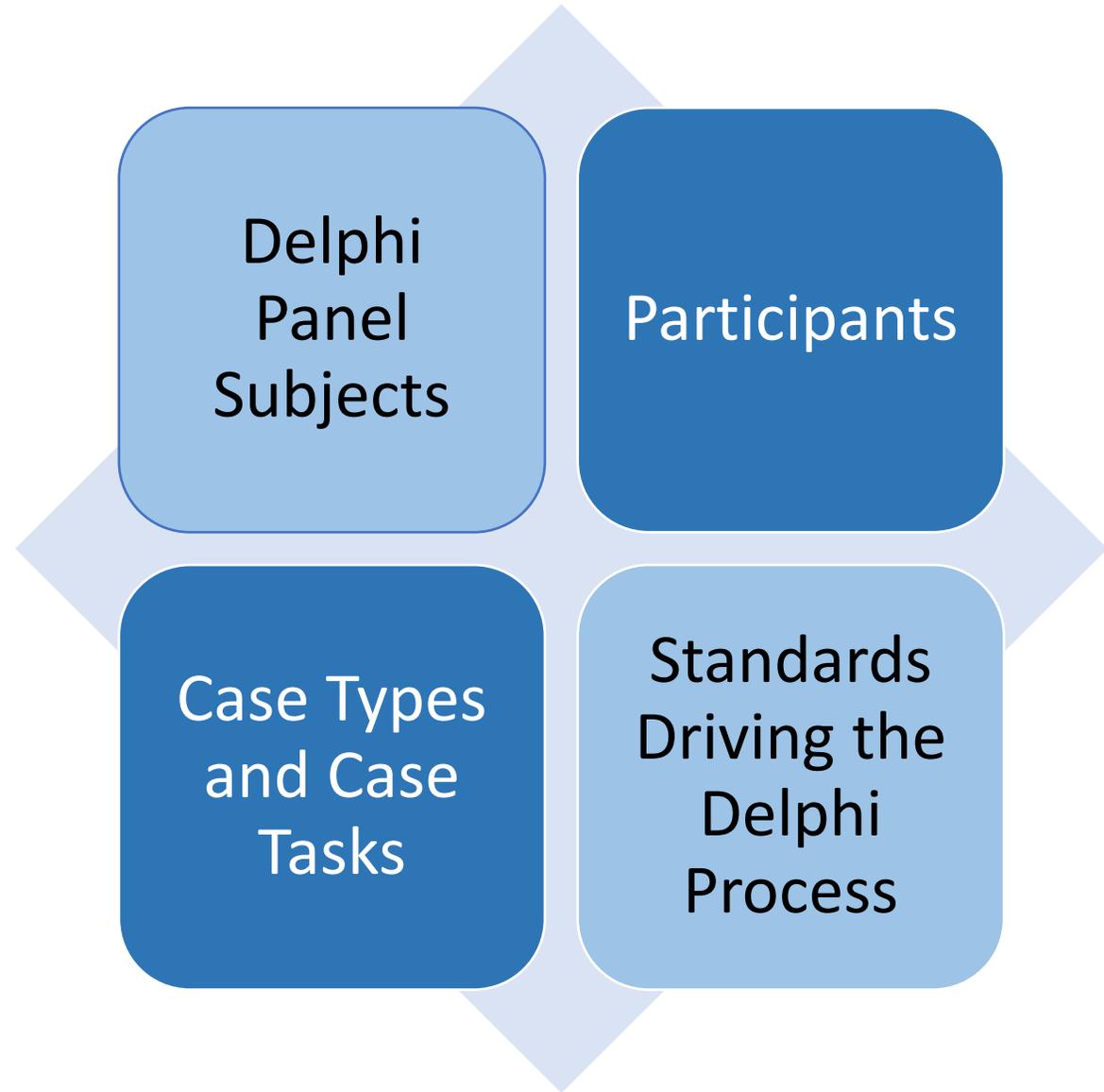


Structured feedback



Achieve consensus

Building Blocks of the Delphi Process



Standards of Practice Anchor the Delphi Process

Strickland v. Washington (1984): “The proper measure of attorney performance . . . [is] **Reasonably Effective Assistance Of Counsel Pursuant To Prevailing Professional Norms.**”

What are the prevailing professional norms?

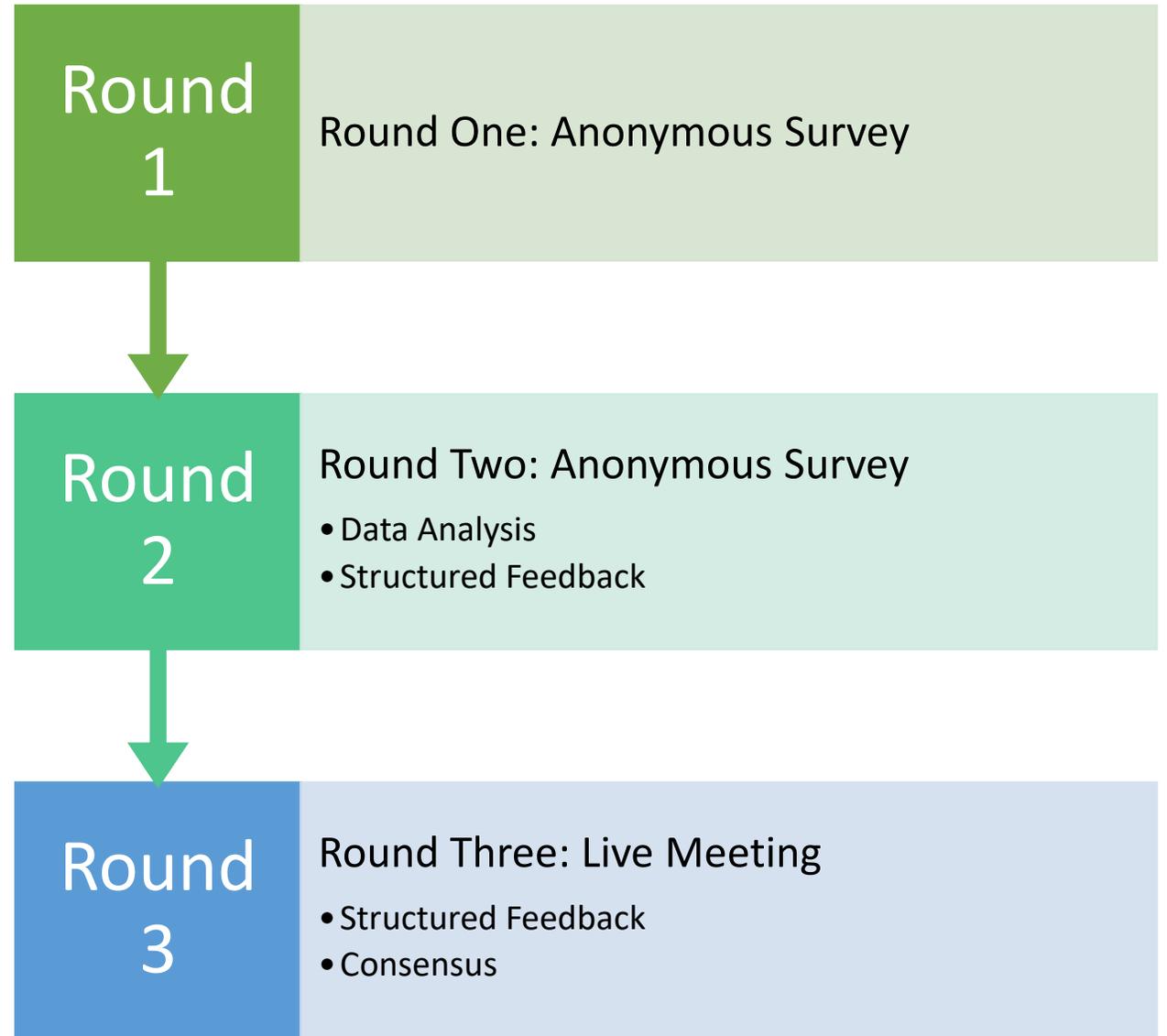
Rules of Professional Conduct

ABA Criminal Justice Standards

Standards of Practice Anchor the Delphi Process

- **Rules of Professional Conduct**
 - Require competence, diligence, and communication.
- **ABA Criminal Justice Standards**
 - Client Interviews
 - Establishing Client Trust
 - Duty to Keep the Client Informed
 - Duty to Investigate
 - Duties Prior to Plea
 - Trial Duties
 - Sentencing Responsibilities

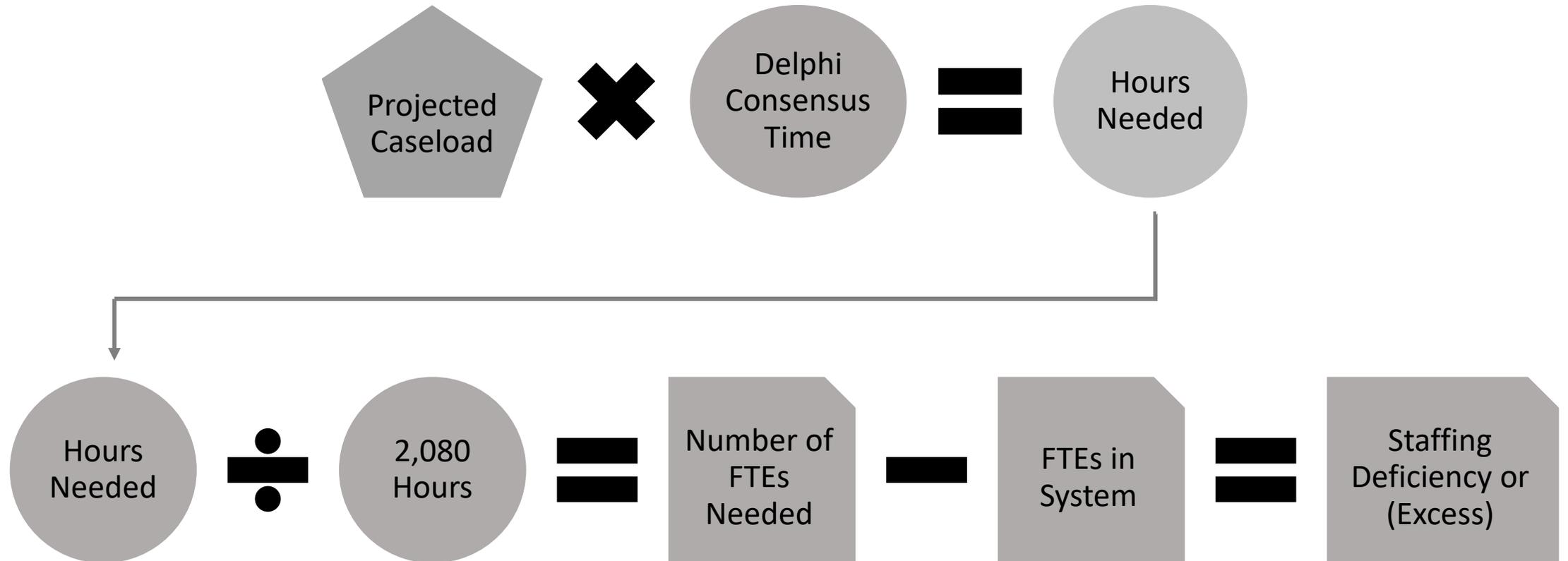
Delphi Process



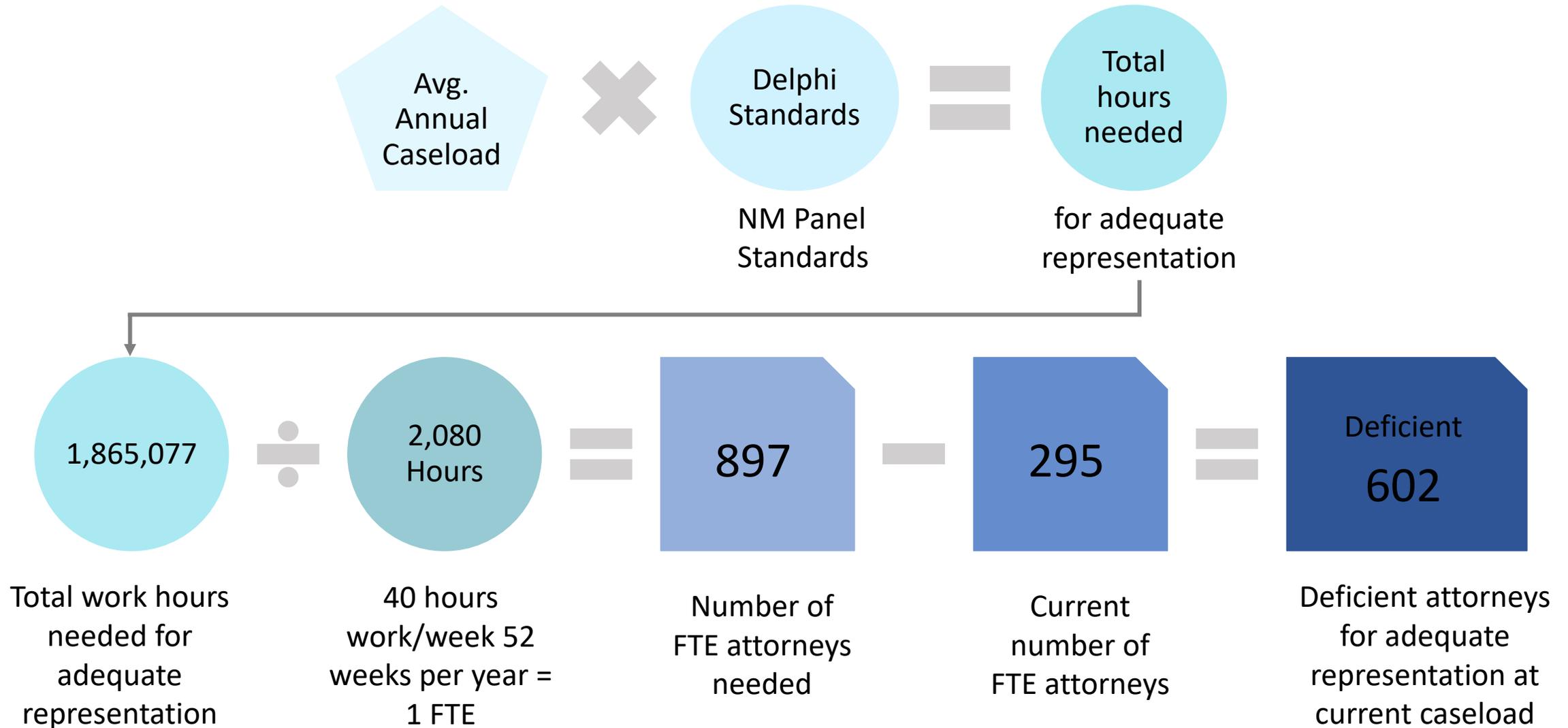
Delphi Panel Results: Adult Criminal

Delphi Panel Results – Adult Criminal	
Case Type	Hours Per Case
Traffic and Other Minor Crimes	7.60
DWI	21.70
Drug Crimes, Property Crimes, Status Offenses	32.53
Crimes Against Person (Adult Victim)	50.67
Child Pornography Cases	126.50
Child Abuse / Child Sex Crimes (Not including CARD or Child Pornography Cases)	177.36
Murder (including CARD)	391.03
Probation Violations	5.17

Deficiency Analysis



Deficiency Analysis – Adult Criminal and Juvenile



Why try to set national workload standards?

Not every state has the financial resources, necessary data collection capabilities, or political will to conduct a jurisdiction-specific study

National standards can provide a default option for policymakers

National standards could provide useful benchmarks for federal assessments and funding decisions

A photograph of a classical building facade featuring a prominent statue of Lady Justice. The statue is a woman standing, blindfolded, holding a scale of justice in her left hand and a sword in her right. She is positioned on a high ledge. Below her, there are other intricate carvings and architectural details. The sky is blue with some white clouds.

Overview of NPDWS Project

- Systematic Review of Workload Studies
 - Existing, Jurisdiction-Specific Public Defense Workload Studies
- Role of the Delphi Panel
 - Expertise
 - Consensus

Public Defense Workload Studies 2005 – April 2022

ABA SCLAID	RAND	NCSC	Other
CO (2017)	MI (2019)	MD (2005)	ID (Idaho Policy Institute, 2018)
IN (2020)	NY non-NYC (2016)	NC (2019)	MA (Center for Court Innovation/ MA Committee for Public Counsel Services, 2014)
LA (2017)	UT (2021)	NM (2007)	TX (Public Policy Research Institute, 2015)
MO (2014)		VA (2010)	
NM (2022)			
OR (2022)			
RI (2017)			

National Workload Study Overview

- **Limited in Scope – Only Adult Criminal Cases**
- **Identify Case Types and Activities/Case Tasks**
 - 11 Case Types
 - 8 Lawyer Activities

National Workload Study Overview

Adult Criminal Case Types - 11

- Felony High – LWOP
- Felony High – Murder
- Felony High – Sex
- Felony High – Other
- Felony – Mid
- Felony – Low
- DUI – High
- DUI – Low
- Misdemeanor – High
- Misdemeanor – Low
- Probation/Parole Violations

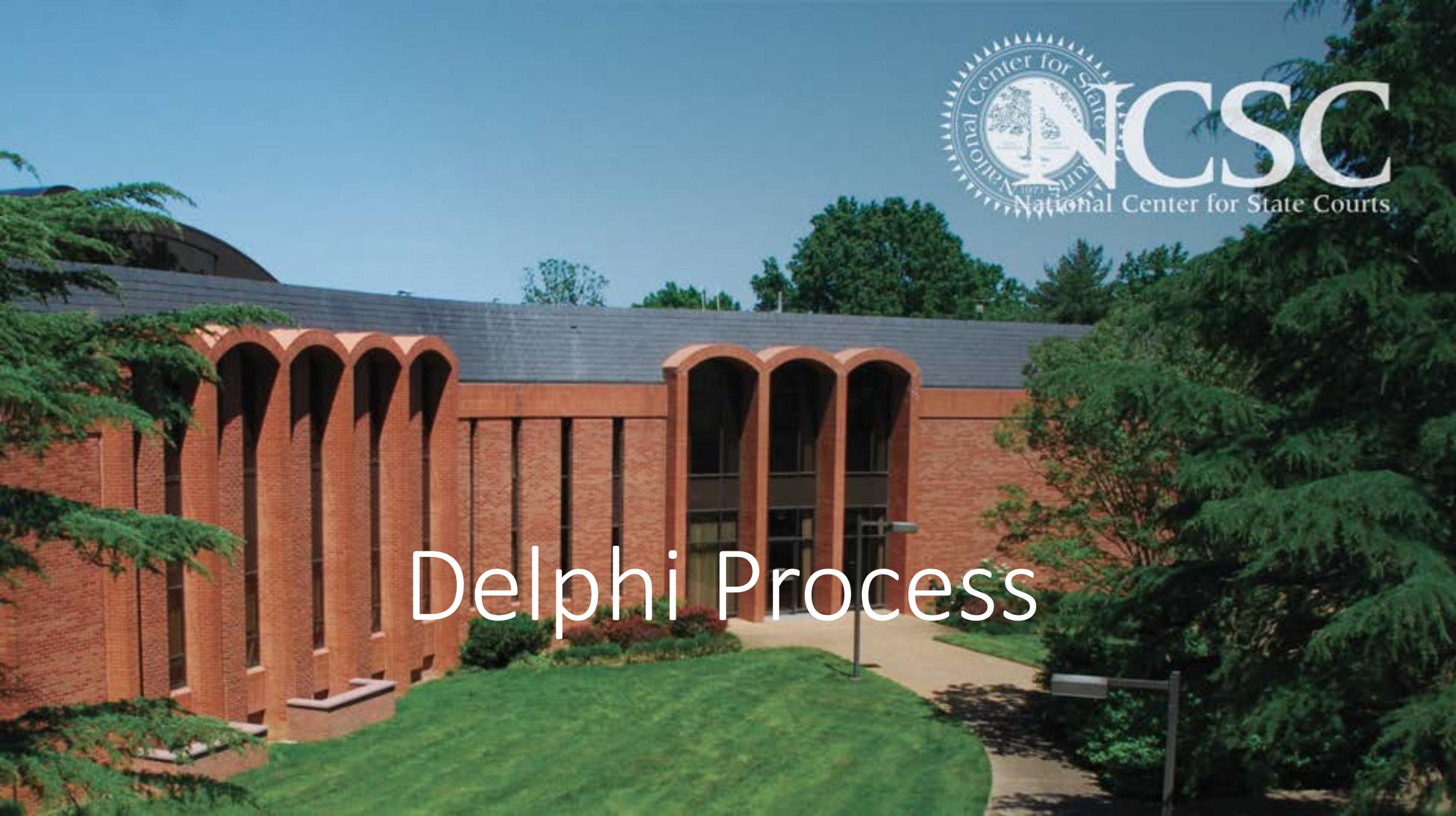
National Workload Study Overview

Adult Criminal Case Tasks/Activities - 8

- Client Communication and Care
- Discovery and Investigation
- Experts
- Legal Research, Motions Practice, Other Writing
- Negotiations
- Court Preparation
- Court Time
- Sentencing/Mitigation and Post-Adjudication



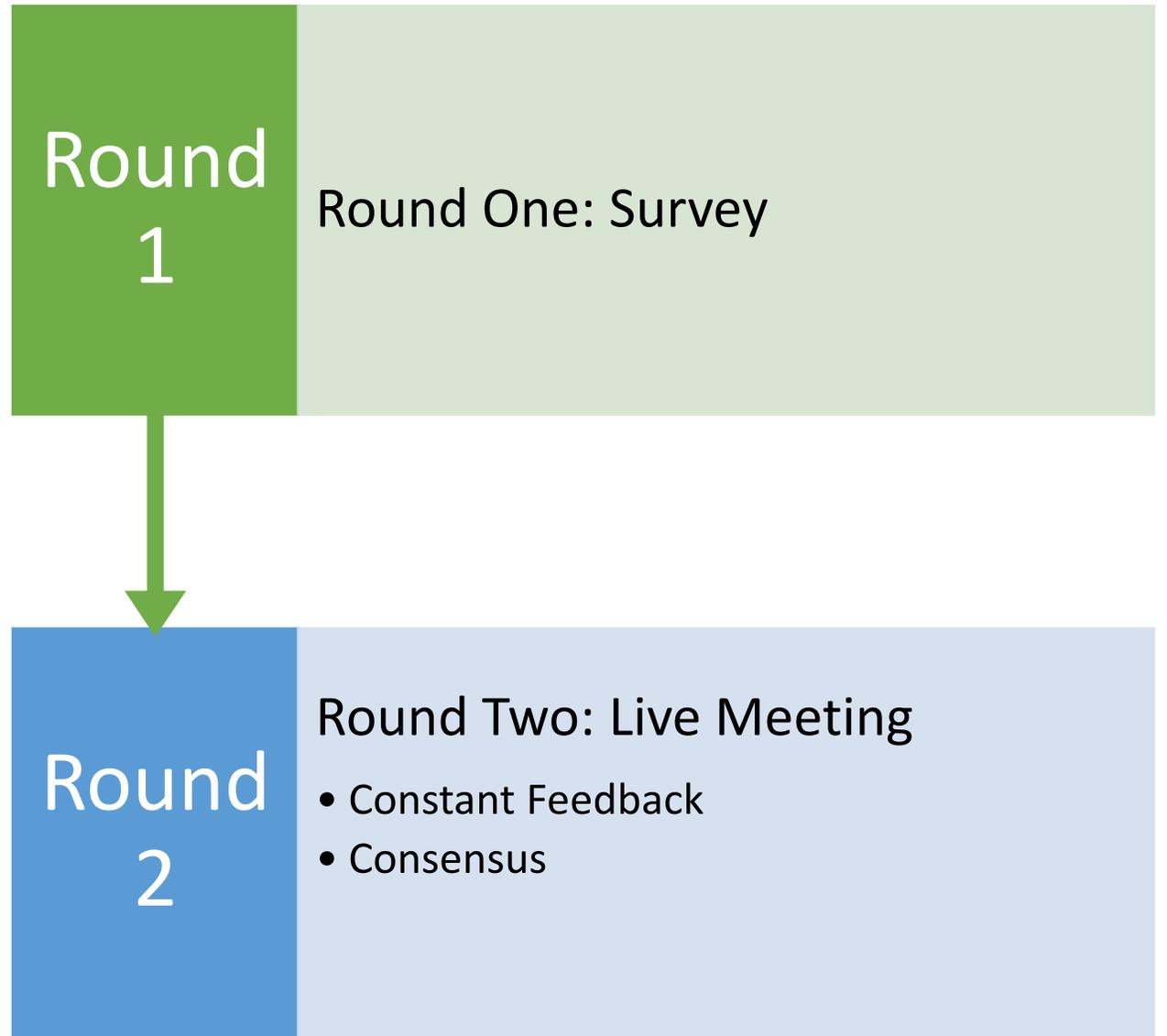
Delphi Process



National Workload Study Overview

- **Participants – 33 Criminal Defense Lawyers from Around the Country**
 - Full-time public defenders
 - Court-appointed counsel
 - Private practitioners
- **Information provided to Panelists**
 - Results of all 17 previously conducted workload studies (2005-2022)
 - Ethical Rules and Standards applicable to adult criminal cases

Delphi Process



Delphi Process

Menu National Public Defender Delphi

Overview	Client Communication and Care	20
Misdemeanor - Low	Discovery and Investigation	
Misdemeanor - High	Experts	
DUI - Low	Legal Research, Motions Practice, Other Writing	
DUI - High	Negotiations	
Felony - Low	Court Preparation	
Felony - Mid	Court Time	
Felony - High - Other	Sentencing/Mitigation and Post-Adjudication	
Felony - High - Sex	Your total:	
Felony - High - Murder	Group median:	
Felony - High - LWOP	Group agreement: 0.27 (good)	
Probation/Parole Violations	0 < Good ≤ 0.5 > Fair ≤ 0.8 > Poor	
Extra placeholder		

Post

Comments:

- extra negotiation time re: sex offender registration
- much more recorded interviews with complainant to review, transcribe, review with experts
- these cases are less likely to have substantial body cam, surveillance, etc.
- 15-life sentencing range

Recommended Average Hours

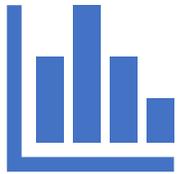
Focus Group



Results of National Workload Study

- **Case Weight for each Case Type**
 - E.g., 100 hours for each Felony-- High—Other
 - *Not a real example*
- **Case weights → caseload standards**
 - To be turned into standards, need attorney hours available for case work
 - ABA studies default to 2080 hours
 - 40 hours/week x 52 weeks/yr = 2080 hours
 - Does not account for vacation, sick leave, training, community outreach, etc.
 - Will differ by jurisdiction
 - Might differ within a jurisdiction
 - E.g., 2080 hours/year ÷ 100 hours/case = 21 Felony—High—Other per attorney per year

ABA SCLAID Delphi Workload Studies



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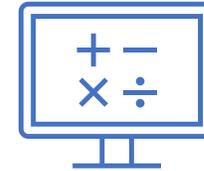
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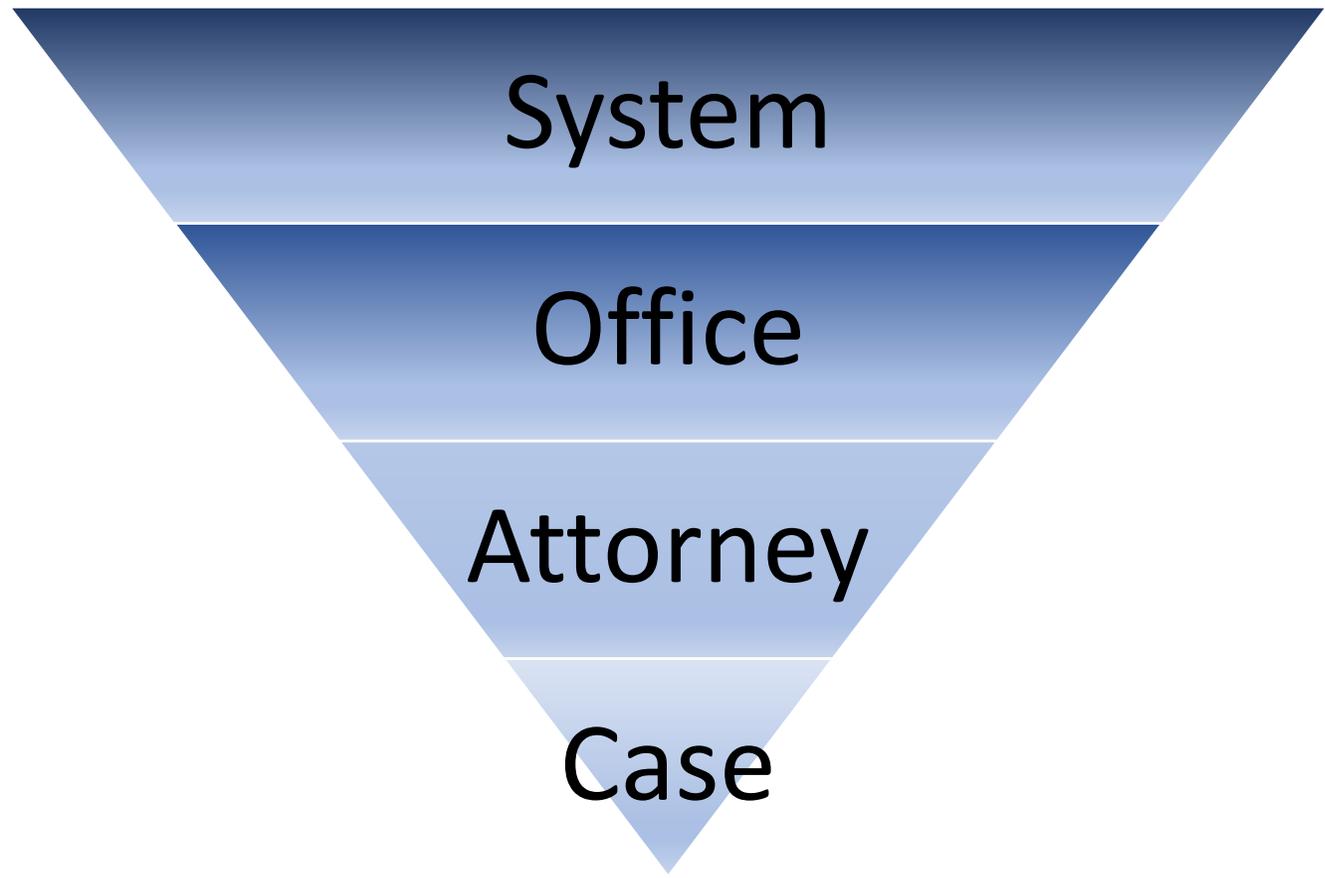
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Application of Workload Standards Data Needs

- Identifying data needs
 - Caseloads
 - Time data and/or Staffing
- Common definitions
 - Case (person-based counting)
 - Case types – highest charge
- Potential results
 - Data inventory
 - Data systems upgrade



Application
of Workload
Standards



Uses of Workload Standards



System

- Budgeting
- Personnel Needs and Management



Office

- Management and Supervision
- Case Overflow



Attorney

- Presumptive Maximums



Case

- Auditing

QUESTIONS?

