



Judicial Council of California

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REPORT TO THE JUDICIAL COUNCIL

Item No.: 23-070

For business meeting on March 24, 2023

Title

Juvenile Law: Secure Youth Treatment
Facility Offense-Based Classification Matrix

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 5.806

Recommended by

Family and Juvenile Law Advisory
Committee
Hon. Stephanie E. Hulse, Cochair
Hon. Amy M. Pellman, Cochair

Agenda Item Type

Action Required

Effective Date

July 1, 2023

Date of Report

March 1, 2023

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Executive Summary

The Family and Juvenile Law Advisory Committee recommends the adoption of a rule of court to implement Welfare and Institutions Code section 875(h), which requires the council to develop and adopt a matrix of offense-based classifications to be used by all juvenile courts when setting baseline terms for youth committed to a Secure Youth Treatment Facility (SYTF) disposition. The statute calls for the matrix to assign a baseline term of years to each offense for which a youth can be committed to an SYTF. The offenses are to be grouped into offense categories that are linked to a standard baseline term of years for each offense category. The proposed matrix in the rule would include four total offense categories, with each category assigned a range of years as the standard baseline term. To assist the court in determining a baseline term for each youth within the range, the rule sets forth criteria for the court to weigh in making its decision.

Recommendation

The Family and Juvenile Law Advisory Committee recommends that the Judicial Council, effective July 1, 2023, adopt California Rules of Court, rule 5.806 to include the matrix for setting baseline terms as well as criteria for the court to apply when selecting a term within the range.

The proposed rule is attached at pages 13–17.

Relevant Previous Council Action

No previous action has been taken by the Judicial Council or one of its internal committees as this concerns the implementation of a new law and classification framework.

Analysis/Rationale

Background

Realignment of the Division of Juvenile Justice

In 2020, the Governor and the Legislature reached agreement on a framework to close the Division of Juvenile Justice (DJJ) and reallocate funding to counties to allow them to meet the needs of youth who would previously have been committed to the DJJ in local or regional programs. The details of this framework were spelled out in detail in Senate Bill 92 (Stats. 2021, ch. 18), which was enacted in May of 2021.

Senate Bill 92 added a new article to the Welfare and Institutions Code for secure youth treatment facilities that set forth a new dispositional option for juveniles ages 14 and over who are adjudicated for a Welfare and Institutions Code section 707(b) offense and for whom a less restrictive alternative disposition is unsuitable. If a court commits a youth to an SYTF disposition, it must set a baseline term of commitment that must “represent the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community.”¹ This term is to be based on an offense-based classification matrix to be developed and adopted by the Judicial Council by July 1, 2023. In the interim, the baseline term is governed by the discharge consideration guidelines that apply to the DJJ, which can be found in California Code of Regulations, title 9, sections 30807 through 30813.

SYTF Offense-Based Classification Matrix Working Group

Senate Bill 92 specified that in developing the matrix, the council would be advised by a working group of stakeholders to include “representatives from prosecution, defense, probation, behavioral health, youth service providers, youth formerly incarcerated in the Division of Juvenile Justice, and youth advocacy and other stakeholders and organizations having relevant

¹ Welf. & Inst. Code, § 875(b).

expertise or information on dispositions and sentencing of youth in the juvenile justice system.”² To fulfill this requirement, the Judicial Council’s Family and Juvenile Law Advisory Committee established a subcommittee to perform this task, and solicited nominations from the public. On November 2, 2021, the Former Chief Justice Tani Cantil-Sakauye appointed the members of the SYTF Offense-Based Classification Matrix Working Group (hereafter the working group) and they began meeting in mid-December of 2021 (see Attachment A).

The statute directed that the council take into account the following in its development process: “youth sentencing and length-of-stay guidelines or practices adopted by other states or recommended by organizations, academic institutions, or individuals having expertise or having conducted relevant research on dispositions and sentencing of youth in the juvenile justice system.”³ The working group held numerous meetings ensuring that it was informed by all of these sources before beginning work in earnest on developing the proposed matrix, hearing from another state juvenile justice agency that recently implemented a similar matrix after conducting a review of their data, a professor with expertise on length of stay and juvenile recidivism, as well as from leadership at the DJJ and from California probation departments. The working group also discussed how the proposed matrix relates to the goals, structure, and implementation of the 2020–21 DJJ realignment legislation, including the potential impact of the matrix on prosecutor decisions to maintain juvenile jurisdiction under the SYTF sentencing structure or to pursue transfer of the case to adult criminal court.

After the information-gathering phase was completed, the working group proceeded with the development of the matrix itself, beginning with a set of objectives designed to guide the rest of the process. The working group settled on three primary objectives for the matrix, as well as the following explanations of those objectives:

Positive Youth Development

A primary objective of a commitment to an SYTF must be an evidence-based and trauma-responsive effort to promote healthy adolescent development by providing positive incentives for long-term prosocial behavior, and targeting the treatment needs of the youth to ensure healing and rehabilitation. The ultimate goal of an SYTF commitment is to provide an enduring foundation to support successful reentry into the community, emphasizing family and community connections with extended support at the time of release from the SYTF.

Public and Community Safety

An SYTF commitment is only permissible when community safety and rehabilitation of the youth cannot be accomplished with a less restrictive disposition; thus, protecting the public and the community is a central objective of the matrix. To accomplish this goal, use of the matrix helps ensure that the term of commitment is no longer than necessary to protect the public, by working to prevent the likelihood that the youth will reoffend, but is of sufficient

² Welf. & Inst. Code, § 875(h)(1).

³ Welf. & Inst. Code, § 875(h)(1).

length to assure the victim and the community that the harm committed can be redressed by the juvenile justice system in a developmentally appropriate manner and thus reduce the need for the youth to be transferred to criminal court.

Flexible and Fair Terms of Commitment

A baseline term should be based on the needs of the individual being committed, and not simply the seriousness of the offense for which the youth was adjudicated. Evidence demonstrates that recidivism is more highly correlated with the extent to which the treatment offered by the juvenile justice system can address the unique strengths and needs of individual youth, rather than the nature of the offense. The matrix provides flexibility for the court and positive incentives for the youth to reduce the baseline term. This flexibility is intended to meet the statutory mandate to “represent the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community.”⁴ This individualized approach must be balanced with the goal of the fair and just application of the matrix across California jurisdictions and an awareness that racial and ethnic disproportionality has been a failing of our juvenile justice system that all stakeholders must seek to remedy at each decision point.⁵

With these objectives in mind, the working group held a series of meetings, informed by a series of surveys of working group members, to determine the number of categories needed, assign each of the 707(b) offenses to those categories, and then assign the baseline term range to the category. The working group reached consensus early on that it would be preferable to provide the court with a range of years from which a baseline term could be selected to ensure that the key matrix objectives could be achieved. In addition, the working group reached consensus that implementing such an approach would require the court to exercise some structured discretion in selecting the baseline term, and thus the proposed rule sets forth some basic criteria to be evaluated by the court in setting the term.

Rule 5.806

Commitment to a secure youth treatment facility

Subdivision (a) (Eligibility) echoes the new Welfare and Institutions Code section 875(a), which defines when a youth may be committed to a secure youth treatment facility.

Setting the baseline term

The proposed rule directs the court when setting the baseline term to apply the range set forth in the matrix for the category under which the commitment offense falls and then to assign a specific term to each youth based on the court’s review and consideration of four criteria. An analysis of these criteria will provide a basis for the court to more effectively accomplish the statutorily mandated goal that the term “represent the time in custody necessary to meet the

⁴ Welf. & Inst. Code, § 875(b).

⁵ The committee notes that these objectives which the matrix is designed to advance cannot be accomplished for youth committed to an SYTF by the matrix alone.

developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community.”⁶ To assist the court in applying the criteria, the rule includes a set of nonexclusive factors that the court may take into consideration in its review of each criterion.

- **Circumstances and gravity of the offense**

The first criterion for the court to evaluate is the specific facts of the offense that resulted in the youth’s commitment to the SYTF. Unlike the DJJ regulations that currently govern the expected length of stay in an SYTF, the proposed matrix does not put the same offense in different categories depending on the facts of the offense (e.g., whether a firearm was used or the degree of harm to the victim). Instead, the breadth of the ranges allows the court to look at all the specific offense factors in assessing the gravity of the offense in relationship to the appropriate baseline term. Specific proposed factors that the court is encouraged to consider include the severity of the offense, the extent of harm to the victims, the role of the youth and any co-participants, and any exculpatory circumstances.

- **Youth’s history in the juvenile justice system**

SYTF commitments are reserved for youth who were at least 14 when the offense was committed and who cannot be served in a less restrictive setting. Typically, such youth have prior history in the juvenile justice system and have continued to commit law violations despite less restrictive interventions. This criterion directs the court to evaluate any such prior history and suggests that it weigh factors including prior offense history, the success of prior rehabilitative efforts, and the environmental and family system factors that may have influenced the youth’s prior involvement in the juvenile justice system.

- **Confinement time necessary to rehabilitate the youth**

This criterion directly reflects the statutory language on the baseline term and ensures that the commitment is focused on the individual rehabilitation of the youth. The factors that the court should focus on include the programming that the youth has already received and what programming the court anticipates the youth will need in the SYTF, as well as the youth’s specific circumstances and characteristics that may influence the time needed to be rehabilitated, such as specific mental health or substance abuse needs or being pregnant or currently parenting a child.

- **Youth’s developmental history**

This criterion calls on the court to consider the maturity of the youth as well as the youth’s exposure to trauma (including involvement in the child welfare system) and its impact on the youth’s development and maturity. This criterion takes into account the significant role that developmental immaturity plays in influencing antisocial behavior in

⁶ Welf. & Inst. Code, § 875(b).

youth and the objective that the SYTF promote prosocial positive youth development as the key factor in preventing recidivism when the youth is returned to the community.

Adjusting the baseline term at the progress review hearings

Welfare and Institutions Code section 875 provides that the court review the progress of each youth committed to an SYTF at least every six months, and that at each hearing the court may reduce the youth's baseline term by up to six months. The statute also provides that the matrix may provide for positive incentives for youth. The proposed rule would incorporate positive incentives into this progress review process by requiring the probation agency to track the youth's positive behavior in a systematic way and to report on those results at the progress review hearing, as well as to make a recommendation to the court on any reduction in the baseline term that should be ordered based on the youth's behavior. The working group proposed this approach to positive incentives because it incorporates the evidence-based practice of positive behavioral incentives in a manner that allows each SYTF program the flexibility needed to implement a specific behavioral incentive structure.

Offense-based classification matrix

Subdivision (d) of the proposed rule contains the matrix that is required by the statute. It divides the 30 listed offenses in Welfare and Institutions Code section 707(b) into four categories, A through D, and assigns each category a range of baseline terms from which the court can select a specific term for each commitment. Category A contains murder, kidnapping with bodily harm involving death or substantial injury, and torture, for which the range of baseline terms is 4 to 7 years. Thus, for a youth committed to an SYTF for an offense in Category A, the court would need to select a baseline term of at least 4 and no more than 7 years. Category B contains the most serious sex offenses, the kidnapping offenses that do not result in death or substantial injury, attempted murder, and voluntary manslaughter, and has a range of 3 to 5 years. Category C contains many of the most commonly adjudicated 707(b) offenses, including arson, robbery, serious assaults, and carjacking, and has a range of 2 to 4 years. Category D has only two offenses, the one controlled substance offense in section 707(b) and witness intimidation, and has a range of 1 to 2 years.

The committee intentionally created ranges with some overlap in recognition of the great variety of variables and factors present for each youth and their committing offenses. The proposed matrix ensures that there will be adequate time to provide rehabilitative services to the youth and protect community safety, while also providing ample opportunities for the youth to demonstrate positive development and to have the baseline term reduced at the six-month progress review hearings. Offenses were grouped based on their underlying severity, with an eye toward maintaining consistency with the DJJ guidelines, as well as an estimate of the level of programming needed to address the behavior, with the ranges providing a level of flexibility that ensures that the matrix can be applied to each youth fairly, taking into account their specific needs and the risks that they pose to the community.

Policy implications

The recommended rule will further the policy of transferring the jurisdiction of youth from the Division of Juvenile Justice to local county jurisdictions in accordance with the new law. Providing a structured matrix for the exercise of judicial discretion in setting the baseline terms for the transfer of youth out of the DJJ promotes statewide consistency and provides a road map that courts can follow for compliance with the statutory authority for the closure of the DJJ.

Comments

This proposal was circulated for public comment from September 23 to November 4, 2022, as part of a special invitation to comment cycle. Ten organizations (including five district attorney offices, the California District Attorneys' Association, the Chief Probation Officers of California, the Pacific Juvenile Defender Center and two superior courts), one coalition of 33 organizations, and four individuals submitted comments on this proposal. Two commenters agreed with the proposal. Ten organizations agreed if the proposal was modified, and three individual commenters did not indicate a position but expressed significant reservations about some aspects of the proposal. A chart with the full text of the comments received and the committees' responses is attached at pages 18–68.

Comments on modifying the proposed sentencing ranges

Both a large coalition of youth advocates and the Pacific Juvenile Defender Center recommended modifying the lower end of the range for Category C offenses from 2 years to 18 months because under existing regulations for the DJJ, adjudications for two of the Category C offenses, Penal Code sections 211 (“unarmed robbery”) and 245(a)(4) (“assault by means likely to cause great bodily injury”) currently have a minimum confinement of 18 months. These commenters raised concerns that the proposed rule would increase the potential sentences for these offenses by a third, thus lengthening the potential incarceration time, contrary to the goals of DJJ realignment and the statutory mandate.

The working group reviewed and discussed the commenters' concerns, but believes that two years is the appropriate bottom of the range for Category C because these SYTF commitments are intended to be imposed only for youth whose behavior cannot be addressed in a less restrictive setting. The committee notes that while two years is the initial minimum baseline term, all youth committed to this disposition will have their progress reviewed every six months and can earn a reduction of up to six months at each of those review hearings. As a result, a two-year baseline term might be reduced to a one-year term if the youth is accomplishing their rehabilitative goals. In addition, youth can make a motion for a step-down in programming at each review hearing, if appropriate. For these reasons, the committee has concluded that the two-year minimum is not likely to result in an increase in confinement time for these offenses, and will serve as a reminder that SYTF commitments are to be used sparingly, and only when less restrictive alternatives are not appropriate.

A number of commenters, including the California District Attorneys Association and four district attorneys, raised concerns that the SYTF matrix sentencing ranges did not reflect the maximum commitment time available before youth would age out of the juvenile court's

jurisdiction for the listed offenses and were not severe enough to promote accountability, protect community safety, and allow for the flexibility and time needed to address the rehabilitative needs of confined youth. They proposed that the range for Category A be extended to be 5 to 11 years. In addition, some individual commenters recommended increases in all the ranges other than Category D to make them a bit broader.

After further discussion and review, the committee concluded that the 4- to 7-year range for Category A is sufficient to provide substantial time and flexibility to achieve rehabilitation for the most serious juvenile offenses. Seven years was the discharge guideline for the DJJ, and the committee found no evidence that this term was insufficiently long to provide programming and treatment for these youth. The committee concurs that courts need flexibility and that is why a range of years is proposed rather than one set term. The committee also considered the significant time that these adjudications can take and the information that the court has been able to gather about the youth's progress in treatment while in juvenile detention. The 4- to 7-year term will provide the court with flexibility while also ensuring that youth with the most serious needs can receive extended programming and intervention for up to 7 years, with the opportunity to extend by an additional year if the youth still poses an imminent risk of harm to the community. A term longer than 7 years seems punitive rather than rehabilitative, and therefore at odds with the objectives of the juvenile court.

Comments on modifying the categorization of offenses within the matrix

The Orange County and Yolo County district attorneys proposed moving some of the more serious offenses—kidnapping, attempted murder, torture, and aggravated mayhem—into Category A, in part because portions of some of these offenses were previously in DJJ Category I and they warned that failing to increase the sentencing ranges by shifting the offenses into a higher sentencing category will lead to an increase in the number of transfer requests to adult criminal court, resulting in a “net widening” of juveniles tried as adults. The San Diego County district attorney proposed that forcible sex crimes also be listed in this category because of the current limits on transfer to criminal court (note that they were not in DJJ Category I but in Category II). The Los Angeles County District Attorney's Office recommended that the one sex offense in Category C, “(6) A lewd or lascivious act, as provided in Penal Code section 288(b),” be moved to Category B.

The committee agreed with most of this suggestion in its recommendation and moved “Torture, as described in Penal Code sections 206 and 206.1” and “Kidnapping with bodily harm resulting in death or substantial injury” into Category A. This change will make Category A consistent with DJJ Category I and therefore reduce any incentive to seek transfer motions for these offenses as an unintended consequence of the adoption of the matrix. The committee has left all other “kidnapping with bodily harm” offenses that do not result in death or substantial injury in Category B, also consistent with the DJJ categorization, and in recognition that Category A has a very high maximum term that should be reserved for only the most serious offenses.

While attempted murder and aggravated mayhem are serious crimes, the former was in DJJ Category II and the latter in DJJ Category III, while both are in Category B of rule 5.806. The

committee believes that a baseline term of 3 to 5 years is appropriate for these offenses. In its work to assign each of the 707(b) offenses to a category, the committee was significantly guided by the DJJ categories, and the resulting matrix is mostly consistent in its assignment of offenses.

One exception is the offenses in Penal Code section 288(b), which the committee assigned to proposed Category C, when it had been assigned to DJJ Category II, because there is a qualitative difference between most of these offenses and the forcible sex offenses listed in Welfare and Institutions Code section 707(b). The committee agreed that Penal Code section 288(b) charges can encompass a broad range of circumstances and that the range for Category C adequately addresses that range. The committee noted that because the matrix in rule 5.806 has ranges rather than set terms, the court can set a baseline term for this offense at up to 4 years, which is the same as the DJJ Category II guideline. With this flexibility, the committee believes that the term for Category C will allow for the court to address these cases appropriately, providing longer terms when needed and shorter terms in those cases that require less extensive interventions.

Comments on modifying the factors for consideration in sentencing

A coalition of juvenile justice advocates requested that the factor for the court to consider in rule 5.806(b)(3)(B)—capacity of the SYTF to provide suitable treatment and education for the youth—be removed because it was outside the youth’s control and should not be used to extend the baseline term of commitment. An individual commenter suggested that the factor in subdivision (b)(4)(E)—discrimination experienced by the ward based on gender, race, ethnicity, sexual orientation, or other factors—be eliminated because any social disparities that can be attributed to such factors are captured by other paragraphs of subdivision (b)(4).

The committee agrees that no youth should receive a longer baseline term because of a factor outside the youth’s control and in response has amended subdivision (b) of the proposed rule to expressly include that “[t]he court must select a baseline term that is no longer than necessary to meet the developmental needs of the youth and to prepare the youth for discharge to a period of probation supervision in the community. Enumerated factors listed below that are outside the youth’s control must not result in a longer baseline term than otherwise needed to meet this objective.” Accordingly, inadequate SYTF program capacity or trauma from past discrimination should not result in a longer baseline term. The committee concluded that these factors may be taken into account, when appropriate, so long as they do not mechanically extend the baseline term.

Some commenters requested that the rule explicitly articulate that the factors contained in rule 5.806(b)(4) are intended to be used only as mitigating factors in support of lower commitments. When the working group developed the list of factors, it decided not to flag them as mitigating or aggravating because the goal was a holistic review of the youth. Instead, the committee has amended proposed subdivision (b) to include clarifying language that factors beyond the youth’s control should not result in a longer baseline term.

Comments regarding progress review provisions of rule 5.806

Two commenters suggested that rule 5.806 should allow for the court to make upward adjustments to the baseline term at the progress review hearings for youth committed to an SYTF to respond to the progress of the youth in the program and deter the filing of transfer motions. The committee understands the concern but was restricted from including such authority in the rule as section 875(e)(1) provides that the court can only reduce or maintain the baseline term at each progress review. One commenter was concerned about the phrase “probation departments operating a secure youth treatment facility” in a provision of the rule requiring that probation implement a system for tracking the positive behavior of youth in the SYTF and report to the court on any downward adjustment that should be made based on that behavior because the rule only referred to probation departments, and not to other entities that might operate an SYTF. The committee concluded that the rule was appropriate in its application to probation departments which serve as an arm of the juvenile court and concluded that this provision of the rule would not apply to an entity other than probation operating an SYTF. The committee declined to address such a contingency in the rule because no such facility is currently operating or planned, and thus the committee does not have sufficient information to craft an alternative rule within the rulemaking authority of the council.

Issues outside the scope of the proposal

The committee also received comments seeking to revise the proposal in ways that went beyond the scope of the statutory delegation to the council and appeared to require further legislative clarification. These included a suggestion that the rule of court prohibit plea bargaining involving the provisions of the rule as well as a suggestion that the rule of court require courts to collect and publish data about SYTF commitments and baseline terms.

The committee recognized that setting a baseline term is plainly a judicial function under section 875 but notes that the statute makes no reference to plea bargaining or any limitations on plea bargaining with regard to baseline terms. Existing case law allows plea bargains in juvenile matters, and the Legislature neither changed that law in the new statute, nor delegated such action to the council. The committee notes that the court is never required to accept a plea bargain and that a youth and the youth’s counsel are under no obligation to agree to a plea bargain if they would prefer to seek a judicial resolution.

The committee understood that transfer motions may be used as leverage by some prosecuting attorneys to secure an agreement to a longer baseline term but notes that these motions can only be brought for older youth and now require the prosecution to show by clear and convincing evidence that the youth cannot be rehabilitated under juvenile court jurisdiction and that determination must be made by the court. Thus, even youth subject to transfer have options other than a stipulation if they wish to have the juvenile court make these determinations.

The committee also recognized the vital role that data collection and analysis play in ensuring that baseline terms are applied fairly across California, but the statute does not require any data collection and reporting. Placing such a requirement on the courts, who are not part of a statewide juvenile justice data collection system, would be a significant workload burden for

which the council would need to seek public comment from the courts. The committee is hopeful that existing efforts at the state level led by the Department of Justice will result in an effective and efficient means of collecting such data in a manner that can be used by to ensure that courts are applying the matrix fairly. In the meantime, the committee has tried to address this issue within its charge by adding a sentence to the advisory committee comment encouraging courts and probation to monitor implementation of this rule to ensure that it is fairly and consistently applied.

Alternatives considered

The committee considered a number of revisions to the matrix rule based on the comments, including whether to reduce the bottom of the range for Category C to 18 months, and to increase the range for Category A from 4 to 7 years to 5 to 11 years. For the reasons described above, the committee concluded that the matrix ranges as circulated for comment were appropriate.

As the working group was developing the matrix proposal it spent considerable time discussing alternative approaches to the rule that circulated for comment and is proposed here. One of the threshold issues was whether the matrix should provide for just one baseline term for each category, like the current regulations that apply to DJJ commitments, or if more flexibility was preferred. The working group had strong consensus that a more flexible approach was best suited to address individual case circumstances and to determine the appropriate baseline term for each youth. This was seen as preferable to applying a fixed term of years for each offense category subject to deviations up or down.

Similarly, the working group considered including risk and needs assessments in the matrix to provide for longer terms for higher risk youth and lower terms for those with lower risk scores. However, the working group concluded that too many measures of risk and need reinforce racial and ethnic biases and disparities, and that it would be unworkable to require all courts and probation agencies to use one risk assessment tool. Thus, the working group opted instead to require the court to consider the factors in each case when selecting the baseline term for each youth and to articulate its analysis on the record to promote transparency and prevent bias.

The working group also considered whether the matrix should include credits for time served as authorized in the statute but concluded that a separate credit system was not necessary because under current law, pre-commitment confinement time must already be credited against the youth's maximum confinement time. Additionally, the proposed criteria for selecting a term of years within a category range permits the judge to take into account the amount of time the youth has already spent in custody. The working group was mindful that in some cases, youth spend excessive time in predisposition detention such that they may be subject to extended time in secure confinement, but noted that recent trailer bill clarifications expressly authorize the court to set a maximum confinement time that is less than the statutorily allowable maximum, and that this provision provides a safety valve to prevent excessive confinement without including day-for-day credits against the baseline term for predisposition detention time.

Fiscal and Operational Impacts

Implementation of SB 92 will create new costs, primarily derived from the legislation rather than the matrix. Judges, probation agencies, prosecutors, and defense counsel will need to be trained on the structure and requirements of the proposed rule and matrix. Case management systems may need to be modified to track relevant information. Probation agencies will need to ensure that they are tracking the positive behavior of the youth committed to their SYTF programs and can collect needed information to make a recommendation to the court at each progress review hearing on reductions that should be made to the baseline term as a reward for positive behavior. Notably, two courts indicated that three months would not be enough time to implement the rule, but given the firm statutory deadline, the rule must become effective by July 1, 2023.

Attachments and Links

1. Cal. Rules of Court, rule 5.806 at pages 13–17
2. Chart of comments, at pages 18–68
3. Attachment A: Secure Youth Treatment Facility Offense-Based Classification Matrix Working Group Roster
4. Link A: Welf. & Inst. Code, § 875,
http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=297.&lawCode=WIC

Rule 5.806 of the California Rules of Court is adopted, effective July 1, 2023, to read:

1 **Rule 5.806. Secure youth treatment facility baseline term**

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3 **(a) Category for baseline term based on most serious recent offense**

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5 If the court orders the youth committed to a secure youth treatment facility, the
6 court must set a baseline term of months, years, or months and years falling within
7 the range for the offense category, based on the most serious recent offense that is
8 the basis for the youth's commitment to the secure youth treatment facility, as
9 provided in the matrix contained in (d) of this rule.

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11 **(b) Selecting the baseline term with the range for the offense category**

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13 The baseline term must be set by the court based on the individual facts and
14 circumstances of the case. In its selection of the individual baseline term, the court
15 must review and consider each of the criteria listed in paragraphs (1) through (4).
16 When evaluating each of the criteria, the court may give weight to any relevant
17 factor, including but not limited to the factors listed below each one. The court
18 must select a baseline term that is no longer than necessary to meet the
19 developmental needs of the youth and to prepare the youth for discharge to a period
20 of probation supervision in the community. Enumerated factors listed below that
21 are outside the youth's control must not result in a longer baseline term than
22 otherwise needed to meet this objective. The court must state on the record its
23 reasons for selecting a particular term, referencing each of the criteria and any
24 factors the court deemed relevant.

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26 **(1) *The circumstances and gravity of the commitment offense***

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28 (A) The severity and statutory degree of the offense for which the youth has
29 been committed to the secure youth treatment facility;
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31 (B) The extent of harm to victims occurring as a result of the offense;
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33 (C) The role and behavior of the youth in the commission of the offense;
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35 (D) The role of co-participants or victims in relation to the offense; and
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37 (E) Any exculpatory circumstances related to the commission of the
38 offense including peer influence, immaturity or developmental delays,
39 mental or physical impairment, or drug or alcohol impairment.

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41 **(2) *The youth's prior history in the juvenile justice system***

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43 (A) The youth's offense and commitment history;

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(B) The success of prior efforts to rehabilitate the youth; and

(C) The effects of the youth’s family, community environment, and childhood trauma on the youth’s previous behavior that resulted in contact with the juvenile justice system.

(3) *The confinement time considered reasonable and necessary to achieve the rehabilitation of the youth*

(A) The amount of time the youth has already spent in custody for the current offense and any progress made by the youth in programming and development;

(B) The capacity of the secure youth treatment facility to provide suitable treatment and education for the youth;

(C) Special needs the youth may have in relation to mental health, intellectual development, academic or learning disability, substance use recovery, and other special needs that must be addressed during the term of confinement;

(D) Whether the youth is pregnant, is a parent, or is a primary caregiver for children; and

(E) The availability of programs and services in the community to which the youth may be transitioned from secure commitment to less restrictive alternatives.

(4) *The youth’s developmental history*

(A) The age and overall maturity of the youth;

(B) Developmental challenges the youth may have in relation to mental health, intellectual capacity, educational progress or learning disability, or other developmental deficits, including specific medical or health challenges;

(C) The youth’s child welfare and foster care history including abandonment or abuse by parents or caregivers or the incarceration of parents;

- (D) Harmful childhood experiences including trauma and exposure to domestic or community violence, poverty, and other harmful experiences; and
- (E) Discrimination experienced by the ward based on gender, race, ethnicity, sexual orientation, or other factors.

(c) Adjusting the baseline term at review hearings

As provided in Welfare and Institutions Code section 875(e)(1), the court must review the progress of a youth committed to a secure youth treatment facility at least every six months, and may modify the baseline term downward by up to six months at each hearing. To provide an incentive for each youth to engage productively with the individual rehabilitation plan approved by the court under section 875(b)(1), each probation department operating a secure youth treatment facility must implement a system to track the positive behavior of the youth in a regular and systematic way and report to the court at every progress hearing on the youth’s positive behavior, including a recommendation to the court on any downward adjustment that should be made to the baseline term in recognition of the youth’s positive behavior and development. In developing this recommendation, the probation department must consult with and report on the input of all other agencies or entities providing services to the youth.

(d) Secure youth treatment facility offense-based classification matrix

The court must select a baseline term within the range set for the category that has been assigned to the Welfare and Institutions Code section 707(b) commitment offense as provided in this matrix:

Category	Offense <i>(Listed with reference to paragraph within section 707(b))</i>	Term
A	(1) Murder. (11) Kidnapping with bodily harm involving death or substantial injury. (23) Torture, as described in Penal Code sections 206 and 206.1 .	4 to 7 years
B	(4) Rape with force, violence, or threat of great bodily harm. (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm. (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm. (8) An offense specified in Penal Code section 289(a) . (9) Kidnapping for ransom.	3 to 5 years

	<p>(10) Kidnapping for purposes of robbery.</p> <p>(11) Kidnapping with bodily harm not involving death or substantial injury.</p> <p>(12) Attempted murder.</p> <p>(24) Aggravated mayhem, as described in Penal Code section 205.</p> <p>(26) Kidnapping for purposes of sexual assault, as punishable in Penal Code section 209(b).</p> <p>(27) Kidnapping, as punishable in Penal Code section 209.5.</p> <p>(29) The offense described in Penal Code section 18745.</p> <p>(30) Voluntary manslaughter, as described in Penal Code section 192(a).</p>	
C	<p>(2) Arson, as provided in Penal Code section 451(a) or (b).</p> <p>(3) Robbery.</p> <p>(6) A lewd or lascivious act, as provided in Penal Code section 288(b).</p> <p>(13) Assault with a firearm or destructive device.</p> <p>(14) Assault by any means of force likely to produce great bodily injury.</p> <p>(15) Discharge of a firearm into an inhabited or occupied building.</p> <p>(16) An offense described in Penal Code section 1203.09.</p> <p>(17) An offense described in Penal Code section 12022.5 or 12022.53.</p> <p>(18) A felony offense in which the minor personally used a weapon described in any provision listed in Penal Code section 16590.</p> <p>(21) A violent felony, as defined in Penal Code section 667.5, that also would constitute a felony violation of Penal Code section 186.22(b).</p> <p>(22) Escape, by the use of force or violence, from a county juvenile hall, home, ranch, camp, or forestry camp in violation of Penal Code section 871(b) if great bodily injury is intentionally inflicted on an employee of the juvenile facility during the commission of the escape.</p> <p>(25) Carjacking, as described in Penal Code section 215, while armed with a dangerous or deadly weapon.</p> <p>(28) The offense described in Penal Code section 26100(c).</p>	2 to 4 years
D	<p>(19) A felony offense described in Penal Code section 136.1 or 137.</p> <p>(20) Manufacturing, compounding, or selling one-half ounce or more of a salt or solution of a controlled substance specified in Health and Safety Code section 11055(e).</p>	1 to 2 years

Advisory Committee Comment

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In developing the matrix for baseline terms required by Welfare and Institutions Code section 875, the committee sought to accomplish three primary goals that should serve as objectives for the court when setting a baseline term: positive youth development, public and community safety, and the establishment of flexible and fair commitment terms.

A primary objective of a commitment to a secure youth treatment facility must be an evidence-based and trauma-responsive effort to promote healthy adolescent development. This objective will be achieved by providing positive incentives for prosocial behavior, focusing on the treatment needs of the youth to ensure healing and rehabilitation, and with a persistent focus on the end goal of successful reentry into the community. The flexibility inherent in the matrix is intended to result in a baseline term of commitment that is no longer than necessary to protect the public but is of sufficient length to assure the victim and the community that the harm committed can be redressed by the juvenile justice system in a developmentally appropriate manner and thus reduce the need for the youth to be transferred to criminal court.

A baseline term should be based on the needs of the individual being committed and not simply the seriousness of the offense for which the youth was adjudicated. This individualized approach must be balanced with the goal of fair and just application of the matrix across California jurisdictions and an awareness that racial and ethnic disproportionality has been a failing of our juvenile justice system that all stakeholders must seek to remedy at each decision point. To advance this goal the advisory committee encourages juvenile courts and probation departments to monitor implementation of this rule to ensure that it is fairly and consistently applied.

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Juvenile Law: Secure Youth Treatment Facility Offense Based Classification Matrix (Adopt Cal. Rules of Court, rule 5.806)

All comments are verbatim unless indicated by an asterisk (*).

List of All Commenters, Overall Positions on the Proposal, and General Comments				
	Commenter	Position	Comment	Committee Response
1.	<p>California Alliance for Youth and Community Justice, by Israel Villa Deputy Director</p> <p>W. Haywood Burns Institute Coalition, Oakland, by Laura Ridolfi Policy Director</p> <p>Human Rights Watch Elizabeth Calvin, by Senior Advocate, Children’s Rights</p> <p>3rd Street Youth Center & Clinic Joi C. Jackson-Morgan Executive Director</p> <p>Center on Juvenile and Criminal Justice Brian Goldstein Director of Policy and Development</p> <p>Children's Defense Fund-California Aditi Sherikar Youth Justice Policy Associate</p> <p>Club Stride Rhonda Renfro Executive Director</p> <p>Community Interventions Ucedrah Osby</p>	AM	<p>Thank you for the invitation to comment on proposed California Rule of Court, rule 5.806 related to Secure Youth Treatment Facility Offense-Based Classification Matrix.</p> <p>We write to express general support for the proposed rule. We are pleased to see that it shifts from an offense-based classification structure with a fixed time based solely on offense to one that allows for a range of time aimed to address the unique strengths and needs of individual youth. We believe that this flexibility will allow courts to meet the statutory mandate “to represent the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community.” We are, however, concerned about several components. Our recommendations for changes are below.</p> <p>We thank the Judicial Council and the Workgroup for your hard work. We believe our suggestions will assist in ensuring that the rules are aligned with the existing law, and promote community safety and equity.</p> <p>See comments on specific provisions below.</p>	<p>No response required.</p> <p>The committee appreciates the attention to this proposal from this broad stakeholder coalition and the overall support for the flexible approach in the proposed matrix.</p> <p>See responses to specific issues below.</p>

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Juvenile Law: Secure Youth Treatment Facility Offense Based Classification Matrix (Adopt Cal. Rules of Court, rule 5.806)

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List of All Commenters, Overall Positions on the Proposal, and General Comments			
Commenter	Position	Comment	Committee Response
Executive Director			
Communities United for Restorative Youth Justice John Vasquez Policy & Legal Services Manager			
CARAS Marty Estrada Director of Community Development			
Community Works Kyle Magallanes Castillo Deputy Director			
Fresh Lifelines for Youth Cassidy Higgins Chief Strategy Officer			
End Poverty in CA Jasmine Dellafosse Director of Organizing + Community Engagement			
Fresno Barrios Unidos Ruben Espinoza Policy Advocate			
Fresno County Public Defender's Office JoAnna Edwards Chief Defense Attorney - Juvenile Division			

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Commenter	Position	Comment	Committee Response
Humboldt County Transition Age Youth Collaboration Kelsey Reedy Youth Organizer, Youth Advocacy Board Leaders			
Humboldt County JJDPC Mark Taylor Commissioner			
Indigenous justice Morning Star Gali Project Director			
MILPA Cesar Lara Programs and Policy Director			
National Institute for Criminal Justice Reform David Muhammad Executive Director			
Pacific Juvenile Defender Center Alisa Blair Policy Director			
Restore 180 Misty L. Franklin Executive Director			
San Francisco Court Appointed Special			

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Juvenile Law: Secure Youth Treatment Facility Offense Based Classification Matrix (Adopt Cal. Rules of Court, rule 5.806)

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Commenter	Position	Comment	Committee Response
Advocates Kate Durham Executive Director			
San Mateo County Private Defender Program Ron Rayes Managing Attorney Juvenile Division			
Santa Cruz Barrios Unidos Sam Cunningham Youth Outreach Specialist			
Sigma Beta Xi, Inc. Jessica Aparicio Director of Engagement & Social Impact			
Silicon Valley De-Bug Andrew Bigelow Participatory Defense Organizer			
Sunset Youth Services Dawn Stueckle Executive Director			
Urban Peace Movement Sandy Valenciano Campaign and Organizing Director			
Young Women’s Freedom Center Analisa Ruiz			

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List of All Commenters, Overall Positions on the Proposal, and General Comments				
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	<p>Policy Director</p> <p>Youth ALIVE! Anne Marks Executive Director</p> <p>Youth Alliance Diane Ortiz CEO</p> <p>Youth Law Center Meredith Desautels Staff Attorney</p>			
2.	<p>California District Attorneys’ Association By Tim Ward, Tulare County District Attorney, California District Attorneys’ Association President</p>	AM	<p>CDAAs are committed to the overarching goals of the Juvenile Court in its approach to Minors under its jurisdiction. “Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstance.” (Welf. & Inst. Code § 202(b).)</p> <p>We are guided by both the pursuit of public safety and the care and treatment that is in the best interest of Minors in juvenile court. We agree that Minors are deserving of an individualized approach under this matrix. Further, we agree that flexibility must be built into the system to allow for the proper creation</p>	<p>The committee shares the goal of ensuring that juvenile justice courts carry out their statutory mandate as set forth in section 202.</p> <p>The committee appreciates the support for its overarching objectives for the matrix and the emphasis on fair and flexible baseline terms to meet the individual needs of youth committed to an SYTF.</p>

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		<p>of a path forward into ensured healing, rehabilitation, and eventual reentry of the Minor into the community. Finally, we applaud the inclusion of adverse childhood experiences of the Minor into the algorithm of variable in determining what is a fair and flexible term of confinement.</p> <p>Like you, we want the Minors who enter into juvenile court to emerge as community members and neighbors. We want age appropriate and developmentally appropriate dispositions that have the best opportunity to redress the circumstances of a Minor’s experience. We want to identify the most traumatized and we want to give them the best shot possible.</p> <p>Thank you for your thoughtful approach to this important work and consideration of our amendments.</p> <p>See comments on specific provisions below.</p>	<p>The committee notes this common purpose to ensure that the SYTF commitment will meet the developmental needs of youth and provide for rehabilitation.</p> <p>No response required.</p> <p>See responses to specific comments below.</p>

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	Commenter	Position	Comment	Committee Response
3.	Chief Probation Officers of California By Rosemary Lamb McCool, Deputy Director	AM	<p>The Chief Probation Officers of California (CPOC) write to offer our public comment to the draft Juvenile Law: Secure Youth Treatment Facility (SYTF) Offense-Based Classification Matrix released on September 22, 2022. We commend the Judicial Council, Family and Juvenile Law Advisory Committee and the SYTF Sentencing Matrix Workgroup for their dedication and thoughtfulness towards the drafting this proposal. We offer our comments to further the intent of the matrix and state our overall support of the work in total while noting additional areas we believe should be considered as outlined below.</p> <p>We respectfully ask the Judicial Council and workgroup to consider and discuss the following additions to the matrix:</p> <p>See comments on specific provisions below.</p>	<p>The committee appreciates the review of its proposal by the Chief Probation Officers of California, and its overall support for the proposal.</p> <p>See responses to specific comments below.</p>
4.	Chris [Last name not provided]	N	See comments on specific provisions below.	See responses to specific comments below.

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	Commenter	Position	Comment	Committee Response
	Individual from Oxnard			
5.	Community Agency for Resources, Advocacy and Services (C.A.R.A.S.) By Marty Estrada, Director of Community Development, Gilroy	AM	<p>Thank you for the invitation to comment on proposed California Rule of Court, rule 5.806 related to Secure Youth Treatment Facility Offense-Based Classification Matrix.</p> <p>We write to express general support for the proposed rule. We are pleased to see that it shifts from an offense-based classification structure with a fixed time based solely on offense to one that allows for a range of time aimed to address the unique strengths and needs of individual youth. We believe that this flexibility will allow courts to meet the statutory mandate “to represent the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community.”</p> <p>We are, however, concerned about several components. Our recommendations for changes are below.</p> <p>See comments on specific provisions below.</p>	<p>The committee appreciates the review of its proposal and the overall support for the approach taken in the matrix.</p> <p>See responses to specific comments below.</p>
6.	Thomas Harp Sacramento	NI	<p>Flexible and Fair commitment - The more flexible commitments are, the more room you give potential biases to manifest. The proposal states that "...racial and ethnic disproportionality has been a failing of our juvenile justice system..." If this is true, the only way to eliminate all bias is to eliminate the ability to sentence those who the system is biased toward to longer sentences to those it's biased against.</p>	<p>The committee notes that there is a tension between providing flexibility to meet individual needs and ensuring that youth with similar circumstances are treated similarly, but trusts that judges, with the guidance provided in rule 5.806(b) will be able to fairly apply the matrix.</p>

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			See comments on specific provisions below.	See responses to specific comments below.
7.	Los Angeles County District Attorney’s Office By Frank C. Santoro, II Assistant Head Deputy Juvenile Division	AM	See comments on specific provisions below.	See responses to specific comments below.
8.	Orange County District Attorney Todd Spitzer	NI	See comments on specific provisions below.	See responses to specific comments below.
9.	Pacific Juvenile Defender Center By, Brooke Harris Executive Director & Laurel Arroyo President, on Behalf of the PJDC Board of Directors	AM	We write with comments related to the Secure Youth Treatment Facility Offense-Based Classification Matrix (“Matrix”), and the proposal to adopt rule 5.806 of the California Rules of Court. We support adoption of the proposed matrix in its current form, with the additions and clarifications explained below. The Pacific Juvenile Defender Center (PJDC) was founded in 1999 as an affiliate of the National Juvenile Defender Center (now the Gault Center) with an overall mission to promote justice for all youth by ensuring excellence in juvenile defense and advocating for systemic reforms to the delinquency system. Today, PJDC has a membership of over 1,600 defenders and advocates across California. To further its mission, PJDC engages its members through four main areas: (1) Training and Technical Assistance; (2) Communications and Outreach; (3) Research and (4) Policy and Legal Reform. We strongly support a number of elements of	The committee appreciates the review of the Pacific Juvenile Defender Center and its support for the structure and goals of the proposed matrix. No response required. The committee appreciates the support for many

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Juvenile Law: Secure Youth Treatment Facility Offense Based Classification Matrix (Adopt Cal. Rules of Court, rule 5.806)

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			<p>the current proposal. These include the three identified primary objectives for the matrix; the move to range categories; the direction to the court to set the range based on youth- and offense-specific factors; the requirement that probation departments track and report on the youth’s positive behavior and achievements at each six-month progress review hearing; and the recognition that the court should consider time the youth has already spent in detention and any pre-adjudication progress in treatment when setting the baseline term. These aspects of the proposed Matrix are consistent with positive youth development principles and provide important guidance to the court when considering an SYTF disposition.</p> <p>We also have several concerns about the proposed Matrix, and request the Committee make adjustments to the proposal before finalizing and adopting rule 5.806.</p> <p>See comments on specific provisions below.</p>	<p>of the key provisions and objectives of the matrix proposal.</p> <p>See responses to specific comments below.</p>
10.	Jeff Rhoades Senior Deputy Probation Officer Sacramento County Probation	AM	<p>I’ve taken the time to review the SYTF Classification Matrix. I believe this will be helpful to guide Court decisions and provide a degree of fairness and uniformity for SYTF commitments across the state. I also generally agree with the principles of the proposal, the concept of offering a range for base terms, and most of the factors considered when setting a</p>	<p>The committee appreciates the time taken to review this proposal and the support for the principles underlying the matrix.</p>

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			<p>base term.</p> <p>Since it was specifically requested that Juvenile Justice Stakeholders provide comments, I will briefly mention my background. I have worked in Juvenile Probation for the past 10 years. In the last 6 years, I have been directly involved with DJJ reentry support and field supervision. I am actively involved in my Department's efforts to transition to the SYTF program.</p> <p>My critiques of this proposal are below:</p> <p>See comments on specific provisions below.</p>	<p>No response required.</p> <p>See responses to specific comments below.</p>
11.	Ryan [Last name not provided] Deputy Probation Officer Sacramento County Probation	N	See comments on specific provisions below.	See responses to specific comments below.
12.	San Diego County District Attorney Summer Stephan	AM	<p>Incarceration within the Juvenile Justice System, when necessary, is focused on rehabilitation and restoration of youth so they can thrive when returned to our communities. At the San Diego District Attorney's Office, we take this seriously and have implemented reforms that invest in our youth early to prevent or address trauma and break the cycles of abuse, addiction and violence. In 2021, we began the Juvenile Diversion Initiative (JDI) which provides pre-filing diversion to youth on non-violent felonies and to date has served over 350 youth and their families. JDI provides youth with the opportunity to attempt to repair the harm they caused and understand the impact of</p>	<p>The committee appreciates this context on the more specific critiques of the proposal and commends the San Diego District Attorney's Office for its efforts to use confinement of youth only when no less restrictive alternative is available.</p>

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			<p>their choices while avoiding formal entry into the juvenile justice system. For most crimes committed by youth, alternatives to incarceration are sufficient to appropriately address the root causes of the behavior, hold the youth accountable and protect the public. This discussion is specific to the most violent crimes, such as murder and forcible sex crimes, that devastate victims and profoundly impact communities and public safety.</p> <p>See comments on specific provisions below.</p>	<p>See responses to specific comments below.</p>
13.	Superior Court of Los Angeles By Bryan Borys	A	<p>The Court does not anticipate cost savings from the proposal. To the contrary there will be implementation costs and additional resources required and associated with updating the Case Management System (CMS) to reflect the new criteria and factors to be implemented, facilitating training for judicial officers and court staff, creating current quick reference guides (QRGs), and additional hearings. Additionally, judicial officers and court staff will need to be trained on the new offense-based baseline categories, how to enter the SYTF sentences and reduce them on subsequent hearings, and how to capture the Court’s findings at the time the baseline sentence is ordered. Reference materials will also need to be created to assist staff with these updated procedures.</p> <p>Due to current workload, scheduled go-live on a new case management system at the end of the</p>	<p>The committee acknowledges that the proposal, which is statutorily required, is unlikely to provide any cost savings to the court and will note these implementation costs in its report to the council.</p> <p>The committee appreciates the challenges for courts in implementing a rule like this with a</p>

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			year, and for the reasons listed above, 3 months would be insufficient time to implement; 180 days would provide more time to ensure effective implementation.	short turn around time, but the statute requires that the rule be in place by July 1, 2023, so there is no ability to provide additional time for implementation.
14.	Superior Court of Orange By Vivian Tran Operations Analyst	A	<ul style="list-style-type: none"> ▪ Does the proposal appropriately address the stated purpose? <ul style="list-style-type: none"> ▫ Yes, the proposal appropriately addresses the stated purpose. ▪ Given that Welfare and Institutions section 875 directs that the matrix reflect the expertise of the following stakeholders: “representatives from prosecution, defense, probation, behavioral health, youth service providers, youth formerly incarcerated in the Division of Juvenile Justice, and youth advocacy and other stakeholders and organizations having relevant expertise or information on dispositions and sentencing of youth in the juvenile justice system” the committee is particularly interested in hearing from the stakeholders regarding the extent to which the matrix would further the goals of the juvenile justice realignment legislation, and if it does not, how it might be revised? <ul style="list-style-type: none"> ▫ The matrix does further the goals of the juvenile justice realignment legislation by providing a baseline confinement term for specific offenses. 	<p>The committee appreciates the support for the proposal from the Superior Court of Orange County.</p> <p>The committee concurs that the matrix is consistent with the objectives of the realignment legislation.</p>

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		<ul style="list-style-type: none"> ▪ Would the proposal provide cost savings? If so, please quantify. <ul style="list-style-type: none"> ▫ The proposal does not appear to provide any cost savings. ▪ What would the implementation requirements be for courts – for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems? <ul style="list-style-type: none"> ▫ The implementation for the courts would include the following: <ul style="list-style-type: none"> – Revise procedure to include matrix. – Update case management system by modifying minute order macros/activities and system tracking information. – Inform court staff of implementation in staff meeting (1 hour). – Inform judicial officers of implementation (1 hour). – ▪ Would 3 months from Judicial Council 	<p>The committee concurs that no cost savings is likely.</p> <p>The committee will note these impacts in its report to the Judicial Council.</p>	

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			<p>approval of this proposal until its effective date provide sufficient time for implementation?</p> <p>No, six months would be needed to revise procedure, make changes to the case management system, and conduct training.</p>	<p>The committee appreciates the challenges for courts in implementing a rule like this with a short turn-around time, but the statute requires that the rule be in place by July 1, 2023, so there is no ability to provide additional time for implementation.</p>
15.	Ventura County District Attorney Erik Nasarenko	AM	See specific comments below.	See responses to specific comments below.
16.	Yolo County District Attorney Jeff Reisig	AM	<p>In response to the Judicial Council of California - Invitation to Comment SP22-14 “Juvenile Law: Secure Youth Treatment Facility Offense-Based Classification Matrix”, the Office of the District Attorney of Yolo County has two paramount issues regarding the proposed SYTF matrix. They are outlined in the attached letter.</p> <p>See comments on specific provisions below.</p>	<p>The committee appreciates the review of its proposal by the Yolo County District Attorney.</p> <p>See responses to specific comments below.</p>

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Juvenile Law: Secure Youth Treatment Facility Offense Based Classification Matrix (Adopt Cal. Rules of Court, rule 5.806)

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Rule 5.806(d) – Comments on Proposed Ranges		
Commenter	Comment	Committee Response
<p>California Alliance for Youth and Community Justice, by Israel Villa Deputy Director, and 31 co-signatories</p> <p>Community Agency for Resources, Advocacy and Services (C.A.R.A.S.) By Marty Estrada, Director of Community Development, Gilroy</p>	<p>*Both comments included the same comments and concerns verbatim*</p> <p>(2) In Proposed Rule 5.806(d) on “Range of Baseline Term,” the lower range for Category C offenses should be 18 months.</p> <p>Overview: Within the offense based-matrix proposed in Rule 5.806(d), the court must select a baseline term within the range set for a category of offenses. Category C assigns a baseline confinement time range of two (2) to four (4) years and includes a number of offenses listed in Welf. Inst. Code 707(b), including Pen. Code 211 (“unarmed robbery”) and Pen. Code 245(a)(4) (“assault by means likely to cause great bodily injury), two of the most common Welf. Inst. Code 707(b) offenses for which youth are adjudicated.</p> <p>Reason for Concern: The proposed rule’s minimum baseline confinement time exceeds the current standard. Under existing regulations, most adjudications for PC 211 “unarmed robbery” (Pen. Code PC 211) and “assault by means likely to cause great bodily injury” (Pen. Code 245(a)(4)) have a minimum confinement of 18 months. The proposed rule would increase that by a third, potentially lengthening the incarceration time for the majority of cases seen by the court. This is an outcome contrary to the goals of DJJ realignment and the statutory mandate.</p> <p>Recommendation to address the concern: Modify the lower end for the range for Category C offenses from 2 years to 18 months.</p> <p>...</p> <p>In providing our comments, we must note some reservation around the overall concept assigning a minimum for lengthy terms of incarceration. No research supports the premise that</p>	<p>The committee appreciates the concern raised here that the two-year minimum baseline term appears to be an increase in the projected confinement time for unarmed robbery and some assaults, but believes that two years is the appropriate bottom of the range for SYTF commitments because these commitments are intended to be only for youth whose behavior cannot be addressed in a less restrictive setting. The committee notes that while two years is the initial minimum baseline term, all youth committed to this disposition will have their progress reviewed every six months and can earn a reduction of up to six months at each of those review hearings. As a result, a two year baseline term might be reduced to a one year term if the youth is accomplishing their rehabilitative goals. In addition, youth have the opportunity to move to a step-down program at each review hearing, if that is appropriate. For these reasons, the committee has concluded that the two year minimum is not likely to result in an increase in confinement time for these offenses, and will serve as a reminder that SYTF commitments are to be used sparingly, and only when less restrictive alternatives are not appropriate.</p>

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Rule 5.806(d) – Comments on Proposed Ranges		
Commenter	Comment	Committee Response
	<p>sending young people away from their home and community for lengthy periods of time is effective to promote community safety and youth well-being. In fact, overwhelming evidence shows that quality programming, connection to credible mentors, and minimal time in out-of-home placement are the factors that decrease the likelihood of reoffending, even for youth accused of more serious charges.</p>	
<p>California District Attorneys’ Association By Tim Ward, Tulare County District Attorney, California District Attorneys’ Association President</p>	<p>To those worthy ends and with those agreements, we request the following:</p> <p>2. The amendment of terms for Category A crimes to 5–11 years.</p> <p>The adoption of these amendments serve numerous goals: decreasing the number of transfer hearings of Minors into adult court, providing the court with enough flexibility to tailor a resolution that fits the unique need of the particular Minor before the court and enough time to address the rehabilitative, treatment and care needs that best serve the interests of the justice-involved Minor.</p> <p>...</p> <p>To limit the time these Minors have to avail themselves of the guidance and positive youth development that this committee seeks to ensure is antithetical to the very goals of the juvenile court. Rather, the court should be allowed the flexibility to put the actions of the Minor into context with what else is known about his or her circumstances. Juvenile courts should have the flexibility to respond appropriately to the changing needs of the Minor as they age and mature; that flexibility should not be based solely on the seriousness of the charge but rather on the unique needs of a particular Minor.</p>	<p>The committee understands the concerns about the seriousness of Category A offenses and believes that the range for Category A is designed to provide substantial time and flexibility to achieve rehabilitation for the most serious juvenile offenses. Seven years was the discharge guideline for the Division of Juvenile Justice (DJJ) and the committee found no evidence that this term was insufficiently long to provide programming and treatment for these youth. The committee concurs that courts need flexibility and that is why a range of years is provided rather than one set term. Given the seriousness of the offenses in category A, the committee recognizes the need for greater judicial discretion and has conferred the longest range upon Category A to afford the court the greatest flexibility to address a youth’s programmatic needs and to oversee their progress. The committee also considered the significant time that these adjudications can take and the information that the court has been able to gather about the youth’s progress in treatment while in juvenile detention. The four to seven year term will provide the court with flexibility, while also ensuring that youth with the most serious needs can receive extended programming and intervention for up to seven years, with the opportunity to extend time in custody by an additional year if the youth still poses an imminent risk of substantial harm to the community (see</p>

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All comments are verbatim unless indicated by an asterisk (*).

Rule 5.806(d) – Comments on Proposed Ranges		
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		875(e)(3). A term longer than 7 years seems punitive rather than rehabilitative, and therefore at odds with the objectives of the juvenile court.
Chris [Last name not provided] Individual from Oxnard	So this is suggesting that a human life is only worth 4-7 years? And even less than that if the killer is awarded time off their sentence every review period? We're talking about kids who kill and permanently take away a loved one from someone. I understand that the brain is still developing at their age but we're not talking about a beer run, or taking a car. This is a human life that was taken, and the consequence being proposed are just too lenient. At least the current rules call for incarceration up to 23 or 25 years of age. That was a hard pill to swallow, but it at least provided some accountability. This proposal is a slap in the face to victims, and their families. Once again, California is leading the way in making sure criminals are treated better than victims. The system continues to fail victims repeatedly and if this proposal is adopted, will serve as yet another example of how little California cares for the victims of crime.	The committee recognizes that human life is priceless. The committee was charged with developing a matrix of offense-based classifications to be applied by the juvenile courts in all counties in setting the baseline confinement terms for youth to further greater consistency. The matrix provides flexibility for the court and positive incentives for the youth to reduce the baseline term. This flexibility is intended to meet the statutory mandate “to represent the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community.” ¹ In developing the matrix, the Committee was advised by a working group of stakeholders, including representatives from prosecution, defense, probation, behavioral health, youth service providers, youth formerly incarcerated in the Division of Juvenile Justice, and youth advocacy and other stakeholders and organizations having relevant expertise or information on dispositions and sentencing of youth in the juvenile justice system. In the development process, the Committee also examined and took into account youth sentencing and length-of-stay guidelines and practices adopted by other states or recommended by organizations, academic institutions, or individuals having expertise or having conducted relevant research

¹ Welf. & Inst. Code, § 875(b).

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		on dispositions and sentencing of youth in the juvenile justice system and determined the established ranges to fairly meet the gravity of the specified offense categories.
Thomas Harp Sacramento	Additionally the offenses still within Category B are incredibly serious, grave, and damaging towards victims. Due to this severity, and the length of time that may be needed to rehabilitate the youth (youth sex offender programs typically last several years), section B should range from 3 to 7 years. Offenders sentenced to the maximum 7 years should still have their sentencing reduced with successful compliance to their individualized rehabilitation plan.	The committee appreciates the intent of this suggestion, but has concluded that a term of three to five years will allow the court to provide an extended term for these offenses when needed. The committee notes that most of these offenses were subject to a four year term at DJJ and thus a three to five year term is consistent with current practice while offering more flexibility for the court to take into account the individual factors in each case. The committee is not persuaded that extended baseline terms as a rule would provide motivation for these youth and has concerns that it might be counter-productive in creating the appearance that release is too far away and thus it is not critical to actively engage in programming at the outset.
Orange County District Attorney Todd Spitzer Yolo County District Attorney Jeff Reisig	<p>II. The baseline term of Category A should reflect the maximum allowable commitment under the law.</p> <p>*Both the Orange and Yolo County District attorney specifically request that the matrix* increase the baseline of SYTF Category A to 5-11 years. This will further the goals the SB 823 by decreasing the number of transfer hearings and providing the court both flexibility and sufficient time to address the rehabilitative needs of the youth. (Proposed changes typed in blue and highlighted in yellow – *See Appendix A which adds offenses to Category A discussed below and proposes a term of 5-11 years*)</p> <p>*These comments are verbatim from the Orange County District Attorney and were expressed in almost identical</p>	The committee was mindful in building the matrix that it advance the goals of SB 823 and ensure that it did not result in additional transfer motions being filed as a result of the matrix. As a result, the committee set the ranges to be overlapping with the terms that would have applied at DJJ and to provide significant time for rehabilitation in juvenile programs. The committee notes that a youth must have been at least 16 years of age to be eligible for a transfer to criminal court jurisdiction and thus the maximum time that such youth can spend in an SYTF before hitting the age 25 jurisdictional limit would in practice be no more than eight years given the time needed to adjudicate the case. Rule 5.806 provides a maximum baseline term of seven years for category A offenses, and section 875 authorizes the court to add two

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	<p>language by the Yolo County District Attorney*</p> <p>The commitment terms across all categories in the proposed matrix range from 1 year to 7 years. Per §875(a), youth as young as 14 may be committed to the SYTF and the maximum limit of jurisdiction for purposes of incarceration would be 11 years for those individuals. As such, the maximum baseline commitment term of Category A offenses should reflect the maximum period of incarceration-11 years.</p> <p>This judicial committee has the opportunity to depart from the former Division of Juvenile Justice (DJJ) matrix and set realistic baselines consistent with the range of rehabilitative needs of those individuals ---committed to the SYTF. The committee has shown incredible insight in proposing Rule 5.806(b)(1-4). By establishing criteria which the court must state on the record, referencing each and any factors deemed relevant, the courts have been given a wider range to operate in addressing the needs of committed youth. The existing ranges are both low in scale and narrow in application. A widening of the range not only for Category A, but across all categories, will create a greater amount of flexibility by which our courts can operate. The widening of the range should not be seen as contrary to the goals of juvenile legislation but consistent with existing law which is predicated on sound principle. FN1</p> <p>FN1: A DJJ regulation in effect for decades establishes “[a] parole consideration date interval of seven years” when a minor is committed to DJJ for various offenses, including murder. (Cal. Code Regs., tit. 9, §30807). Thus, “as a general rule, a minor confined for committing first degree murder is eligible for parole consideration at least every seven years.” (In re</p>	<p>additional six month periods of confinement to the baseline term for youth who pose a risk of imminent harm to the community. As a result, rule 5.806 offers the court the opportunity to commit a youth eligible for transfer for up to the maximum age of juvenile court jurisdiction, if necessary. Extending the top of the range from seven to eleven years would mostly impact youth whose offenses were committed at age 14 or 15 who are not eligible for transfer to criminal court. The committee appreciates the concern expressed by the commenters about having sufficient time for rehabilitation, but has concluded that seven years is a developmentally appropriate maximum term, consistent with the current guidelines at DJJ, and allowing for a period of supervision in the community post-release as provided in section 875. Given the seriousness of the offenses in category A, the committee recognizes the need for greater judicial discretion and has conferred the longest range upon Category A to afford the court the greatest flexibility to address a youth’s programmatic needs and to oversee their progress. The committee also considered the significant time that these adjudications can take and the information that the court has been able to gather about the youth’s progress in treatment while in juvenile detention. The four to seven year term will provide the court with flexibility, while also ensuring that youth with the most serious needs can receive extended programming and intervention for up to seven years, with the opportunity to extend by an additional year if the youth still poses an imminent risk of harm to the community.</p>

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	R.O.(2009) 176 Cal.App.4 th 1493, 1498) Although “parole consideration date represents, from its date of establishment, an interval of time in which a ward may reasonably and realistically be expected to achieve readiness for parole ... it is not a fixed term or sentence, nor is it a fixed parole release date.” (Cal. Code Regs., tit.9, §30815, subd. (a).)	
Pacific Juvenile Defender Center By, Brooke Harris Executive Director & Laurel Arroyo President, on Behalf of the PJDC Board of Directors	First , we urge the Committee to change the range for Category C offenses from the current proposed range of 2-4 years to a range of 18 months-4 years. In the current DJJ parole consideration structure, there are several Category Five offenses (presumptively 18 months to parole) which are now part of Category C. Two of these offenses, PC 211 (unarmed robbery) and PC 245(a)(4) (assault by means likely to cause great bodily injury) are two of the most common offenses charged in juvenile court. PJDC urges the Committee not to increase the current 18 month baseline to two years, and instead adopt an 18 month – 4 year range for Category C offenses.	The committee appreciates the concern raised here that the two-year minimum baseline term appears to be an increase in the projected confinement time for unarmed robbery and some assaults, but believes that two years is the appropriate bottom of the range for SYTF commitments because these commitments are intended to be only for youth whose behavior cannot be addressed in a less restrictive setting. The committee notes that while two years is the initial minimum baseline term, all youth committed to this disposition will have their progress reviewed every six months and can earn a reduction of up to six months at each of those review hearings. As a result, a two-year baseline term might be reduced to a one year term if the youth is accomplishing their rehabilitative goals. In addition, youth have the opportunity to move to a step-down program at each review hearing if that is appropriate. For these reasons, the committee has concluded that the two-year minimum is not likely to result in an increase in confinement time for these offenses, and will serve as a reminder that SYTF commitments are to be used sparingly, and only when less restrictive alternatives are not appropriate.
Jeff Rhoades Senior Deputy Probation Officer Sacramento County Probation	Like DJJ/CYA before, SYTFs are now the harshest consequence that the California Juvenile Justice system can provide. Commitments to SYTFs should be reserved for the most serious of criminal charges and/or highest risk offenders.	In its development of the matrix the committee was informed by the fundamental purpose of the juvenile court and the juvenile justice system which exists to rehabilitate youth, whose development is in progress, so

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	<p>There are a substantial number of less restrictive dispositions available to youth with lesser offenses and lower risk— intervention programs, electronic monitoring, Ricardo M. time, RFAs, STRTPs, etc., to name a few. SYTFs are the final resort in the Juvenile Justice process.</p> <p>With the above said, if we take into account a youth’s ability to reduce their base term by half (6 months off at each 6 month review hearing), the commitment ranges are too low. How comfortable are we explaining to California citizens, in a time when violent crime is on the rise and concern for community safety is high, that our State is willing to release a (juvenile) murderer after only 2 years of custody? How about only 3.5 years for the most severe of murders? District Attorneys will be pressured to fervently push for transfers to Criminal Court once it's understood that this is the sanction that the Juvenile Justice system provides.</p> <p>Furthermore, 875(e)(2) WIC, prohibits the extension of a youth’s base term, or modified base term, as a discipline for misconduct. Let’s, for a moment, explore this concept with our hypothetical murder case that received a 4 year base term. After 1.5 years at the SYTF, this youth has done relatively well and had their base term reduced by 1.5 years. At 20 months in, they get caught smuggling drugs into the facility and were selling to other youth. (This is rooted in a real-world example, by the way.) Because of 875(e)(2), the greatest institutional consequence the Court can provide is to deny a reduction of the modified base term. This juvenile offender, who now shows further disregard for the rule of law, will only serve a maximum of 2.5 years in custody. 875(e)(2)’s limitations necessitate longer base terms to account for the very real possibility that many SYTF youth will incur infractions and violations that</p>	<p>that they can reform their behavior and become productive adults. This function is different from the criminal justice system which includes more punitive sanctions to provide accountability for the harms committed by adults. The ranges for each of the categories in rule 5.806 are consistent with the prior guidelines for DJJ. The committee concurs that the SYTF should be used for the kinds of cases that previously resulted in a commitment to DJJ and was guided in its development by the DJJ guidelines, but concluded that the primary flaw with those guidelines was that they were insufficiently flexible to meet the needs of individual youth.</p> <p>The committee is aware that section 875 does not allow for the extension of a baseline term for misconduct in the facility, but notes that it does allow up to an additional year of confinement if the court determines that the youth poses a substantial risk of imminent harm to the community. This flexibility gives the court discretion to address serious risks posed by youth committed to an SYTF whose conduct is uneven and provides an incentive for youth to continue with their rehabilitation even as their initial baseline term is ending.</p>

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	<p>demonstrate their lack of readiness for return to the community.</p> <p>We have to remember, these are the highest risk, often antisocial, offenders who will struggle regardless of how supportive the SYTF programs are. This seeming lack of consequence will also encourage Probation Departments and DAs to more readily file criminal charges for in-custody violations, rather than treat them as institutional infractions. This will further perpetuate the "prison pipeline" that our efforts are working to avoid. It's wonderful that the system was designed to benefit youth with mitigating offense factors and positive institutional behavior. However, it does little to consider and address the youth who will struggle to adjust to SYTF rehabilitation efforts. And since consequences for negative behavior has been statutorily limited, we must rely on this Classification Matrix to account for this legislative oversight.</p> <p>The California Justice System, including Juvenile Justice, has a mandate to provide for community safety. Longer commitments provide this by limiting known, violent offenders access to the public. The streets are far more savvy than citizens and politicians give credit, and most offenders, even juveniles, are very much aware of the potential consequences of criminal actions. Longer commitments ultimately benefit the youth by keeping them away from negative environments, providing more time to take advantage of rehabilitative services, and giving them a safe space to navigate the turbulent transition into young adulthood.</p>	<p>The committee notes that section 875 is clear that additional time is not to be used to address institutional misconduct: "The ward's confinement time...shall not be extended beyond the baseline confinement term, or beyond a modified baseline term, for disciplinary infractions or other in-custody behaviors." Thus it does not appear that this was a legislative oversight, but rather a preference by the legislature that such behavior be addressed by alternative means: "Any infractions or behaviors shall be addressed by alternative means, which may include a system of graduated sanctions for disciplinary infractions adopted by the operator of a secure youth treatment facility and subject to any relevant state standards or regulations that apply to juvenile facilities generally." For this reason the committee has concluded that it would be contrary to the legislative mandate to consider this issue in the development of the matrix.</p> <p>Except for the two offenses in category D, which would be uncommon as an SYTF commitment offense, the minimum baseline term for rule 5.806 is two years and the maximum is seven years. Two years of confinement is a significant intervention for a minor and the court can select a higher term where it appears that the needs of the youth are more substantial.</p>

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	<p>Regarding that last point, research has shown that brain development continues into the early 20s. I can professionally attest that 21-23 year old youths have far greater maturity and responsibility over 17-19 year olds.</p> <p>I propose the following changes to the classification matrix:</p> <p>Category A: 6 – 10 years -->The availability of such a commitment would provide significant persuasion to keep a youth in Juvenile Court. The maximum term would provide a true “Juvenile Life” for cases that are severe enough to warrant it—i.e. a 15 year old would potentially not discharge until they turn 25. Even with a term of 10 years, a 15 year old could reasonably discharge by age 21-23. Any 16 or 17 year old with a severe enough murder case would likely be transferred to Criminal Court.</p> <p>Category B: 4 – 7 years -->Since this category includes most of the serious sex offenses, the minimum 2 years served would provide adequate</p>	<p>No response required.</p> <p>The matrix allows a term of seven years for category A, and section 875 allows for an additional year of confinement when the youth poses a substantial risk of imminent harm to the community. The result would be eight years of confinement for the most serious offenders which the committee believes is a very serious intervention for a juvenile. Given the seriousness of the offenses in category A, the committee recognizes the need for greater judicial discretion and has conferred the longest range upon Category A to afford the court the greatest flexibility to address a youth’s programmatic needs and to oversee their progress. The committee also considered the significant time that these adjudications can take and the information that the court has been able to gather about the youth’s progress in treatment while in juvenile detention. The four to seven year term will provide the court with flexibility, while also ensuring that youth with the most serious needs can receive extended programming and intervention for up to seven years, with the opportunity to extend by an additional year if the youth still poses an imminent risk of harm to the community.</p> <p>The committee agrees that the term for category B must allow time for sex offender treatment, and has set that term at a minimum of three and a maximum of five</p>

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	<p>custody time for completion of a sexual offense treatment program. Current treatment programs, including DJJ’s own SBTP, typically take 1.5-2 years to complete. Completion of treatment in custody is ideal because it reduces obligations placed on the youth for post-SYTF probation.</p> <p>Category C: 2 – 6 years -->This is a very broad category and the specific facts of some of these offenses may be aggravating enough to extend the commitment term to a length that is nearly that of Category B or A. Factors in 5.806(b) can be applied to determine an appropriate base term.</p> <p>Category D: 1 – 2 years -->I have no issues with this category given the limited offenses that fall into it.</p>	<p>years. The committee believes that this range will allow for sex offender treatment to be completed prior to the end of the baseline term for these offenses, and notes that the term can be extended by a year where there is imminent risk to public safety.</p> <p>The committee notes that the range in rule 5.806 for category C of two to four years is an increase over what the guidelines were for some of these offenses in the DJJ guidelines, and has concluded that two to four years is an adequate range to address the range of circumstances in these cases.</p> <p>No response required.</p>
San Diego County District Attorney Summer Stephan	<p>The Judicial Council’s recommended matrix of baseline ranges of commitment to a SYTF does not give the courts the ability to impose a term long enough for the most serious and violent offenses to meaningfully rehabilitate the youth which causes grave concern for the future of public safety in our community. In the past, the most serious crimes, such as murder and forcible sex crimes, were frequently transferred to adult court where they were subject to adult sentencing schemes and not to the matrix of baseline terms. Recent legislation has restricted the ability to transfer youth to adult court, and legislation due to take effect next year will further restrict the transfer of cases to adult court. Therefore, more cases will remain within the jurisdiction of the juvenile courts. The proposed matrix of baseline terms must address and adapt to this change. As proposed, the baseline terms will not be adequate to allow a judge to sentence youth for crimes such as murder, forcible</p>	<p>While the committee is aware that recent statutory changes have restricted the ability of the prosecuting attorney to seek a transfer of jurisdiction to criminal court, in developing rule 5.806, it has been guided by the text of section 875 which requires that the baseline term be “the time in custody necessary to meet the developmental and treatment needs of the ward and to prepare the ward for discharge to a period of probation supervision in the community.” If the legislature wishes the courts to confine youth adjudicated for the most serious offenses to their jurisdictional maximum age, it can modify section 875 to make that clear. The committee does not believe that it would be within its purview to propose a matrix with terms substantially in excess of the terms at DJJ to respond to recent changes in the law on transfer of jurisdiction as that would be a</p>

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	<p>rape, or a school shooting, in a way that protects the community. The baseline term for the most serious offenses, such as murder, torture and forcible sex crimes, should provide a wider range to allow the court the ability in appropriate cases to sentence a youth up until the time the juvenile justice system loses jurisdiction of the youth. Because WIC section 875(e)(1) requires the court review the youth’s progress every six months and allows the court to reduce the sentence by up to six months at each review hearing, providing a range of 5-11 years for these offenses would allow the court to frequently and regularly reduce the sentence if safe to do so.</p> <p>The Committee’s stated goal of protecting the public and community by ensuring the term of commitment is of “sufficient length to assure the victim and the community that the harm committed can be addressed by the juvenile justice system in a developmentally appropriate manner and thus reduce the need for the youth to be transferred to criminal court” is not met by the proposed matrix. Expanding the range of the baseline term for the most serious and violent offenses to a maximum of 11 years, with the safeguards provided by WIC 875(e)(1), would fulfill this Committee’s stated objectives by protecting victims and communities, providing a flexible and fair term of commitment that allows for rehabilitation and positive youth development.</p>	<p>policy decision better left to the legislature. Given the seriousness of the offenses in category A, the committee recognizes the need for greater judicial discretion and has conferred the longest range upon Category A to afford the court the greatest flexibility to address a youth’s programmatic needs and to oversee their progress. The committee also considered the significant time that these adjudications can take and the information that the court has been able to gather about the youth’s progress in treatment while in juvenile detention. The four to seven year term will provide the court with flexibility, while also ensuring that youth with the most serious needs can receive extended programming and intervention for up to seven years, with the opportunity to extend by an additional year if the youth still poses an imminent risk of harm to the community.</p> <p>The committee appreciates that victims may struggle to understand the differences between the juvenile and criminal justice systems and have concerns that juvenile terms are significantly shorter than the sentences meted out by the criminal courts, but the committee was tasked with looking at the evidence around length of stay in the juvenile justice system and found no evidence that extended periods of confinement were beneficial to reducing recidivism and protecting the public and some evidence that they can be counter-productive. For that reason, the committee is proposing a maximum term of 7 years, consistent with what was in place at DJJ for many years.</p>
Ventura County District Attorney	I am writing on behalf of the Ventura County District	The committee was mindful in building the matrix that it

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Erik Nasarenko	<p>Attorney's Office to urge the Juvenile Law Advisory Committee to include in the SYTF offense-based classification category A not only the crime of murder, but also kidnapping with bodily harm, kidnapping during the commission of carjacking, and torture. Also, the matrix baseline term for these violent crimes should be 5 to 11 years. The Committee's proposed category A offenses only includes murder and sets the matrix at a 4 to 7-year range.</p> <p>One of the primary goals of SB 823 was to reduce juvenile transfers to criminal court. However, by narrowing the offense-based categories, and decreasing the baseline, the opposite may occur as prosecutors see transfer hearings as the more appropriate mechanism for addressing the most violent crimes. The Committee's proposed SYTF offense-based classification matrix will create the possibility that a youth who commits a murder could serve a minimum of 4 years. Additionally, pursuant to Welfare and Institutions Code section 875(e)(1), the court has the discretion to reduce this 4-year minimum by 6 months at every SYTF review hearing. The proposed category A baseline matrix is too low, does not provide sufficient time for rehabilitation, and does not ensure the public's safety.</p> <p>I urge the Committee to increase the baseline term to a 5 to 11-year range, and include not only the crime of murder, but also kidnapping with bodily harm, kidnapping during the commission of carjacking, and torture.</p>	<p>advance the goals of SB 823 and ensure that it did not result in additional transfer motions being filed as a result of the matrix. As a result, the committee set the ranges to be overlapping with the terms that would have applied at DJJ and to provide significant time for rehabilitation in juvenile programs. The committee notes that a youth must have been at least 16 years of age to be eligible for a transfer to criminal court jurisdiction and thus the maximum time that such youth can spend in an SYTF before hitting the age 25 jurisdictional limit would in practice be no more than eight years given the time needed to adjudicate the case. Rule 5.806 provides a maximum baseline term of seven years for category A offenses, and section 875 authorizes the court to add two additional six month periods of confinement to the baseline term for youth who pose a risk of imminent harm to the community. As a result, rule 5.806 offers the court the opportunity to commit a youth eligible for transfer for up to the maximum age of juvenile court jurisdiction if necessary. Extending the top of the range from seven to eleven years would mostly impact youth whose offenses were committed at age 14 or 15 who are not eligible for transfer to criminal court. The committee appreciates the concern expressed by the commenters about having sufficient time for rehabilitation but has concluded that 7 years is a developmentally appropriate maximum term, consistent with the current guidelines at DJJ, and allowing for a period of supervision in the community post-release as provided in section 875. Given the seriousness of the offenses in category A, the committee recognizes the need for greater judicial discretion and has conferred the longest range upon Category A to afford the court the greatest flexibility to</p>

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		address a youth’s programmatic needs and to oversee their progress. The committee also considered the significant time that these adjudications can take and the information that the court has been able to gather about the youth’s progress in treatment while in juvenile detention. The four to seven year term will provide the court with flexibility, while also ensuring that youth with the most serious needs can receive extended programming and intervention for up to seven years, with the opportunity to extend by an additional year if the youth still poses an imminent risk of harm to the community.

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Rule 5.806(d) – Comments on Categorization of Offenses

Commenter	Comment	Committee Response
<p>California District Attorneys’ Association By Tim Ward, Tulare County District Attorney, California District Attorneys’ Association President</p>	<p>To those worthy ends and with those agreements, we request the following:</p> <p>1. The inclusion of Kidnapping with Bodily Harm, Kidnapping as punishable by Penal Code section 209.5 and Torture as described in Penal Code sections 206 and 206.1 into Category A Offenses.</p> <p>To be plain, a Minor who has committed the crimes of Murder, Kidnapping with the Death of the Victim, Kidnapping with Substantial Injury or Torture is a Minor in very significant crisis. Of course, whatever drove the Minor to the commitment of these offenses is a concern, but so is the trauma experience by the Minor after their commitment. This Minor is in need of a system that has as many tools as possible at their disposal to fashion a way out of this crisis and into wholeness.</p>	<p>The committee has adopted most of this suggestion and moved Torture as described in Penal Code sections 206 and 206.1 and Kidnapping with Bodily Harm which results in death or substantial injury into category A. This change will make category A consistent with DJJ category I and therefore reduce any incentive to seek transfer motions for these offenses as an unintended consequence of the adoption of the matrix. The committee has left all other Kidnapping with Bodily Harm offenses in category B, also consistent with the DJJ categorization, and in recognition that category A has a very high maximum term that should be reserved for the most serious offenses.</p>
<p>Thomas Harp Sacramento</p>	<p>Categorization - The following Category B offenses should be included in Category A as they are severe offenses that carry significant weight: (12) Attempted murder, (23) Torture, as described in Penal Code sections 206 and 206.1, (24) Aggravated mayhem, as described in Penal Code section 205.</p>	<p>The committee is persuaded that (23) Torture, as described in Penal Code sections 206 and 206.1 should be included in category A, as it was in the DJJ guidelines. While attempted murder and aggravated mayhem are serious crimes, the former was in DJJ category II and the latter in DJJ category III, while both are in category B of rule 5.806. The committee believes that a baseline term of three to five years is appropriate for these offenses.</p>
<p>Los Angeles County District Attorney’s Office By Frank C. Santoro, II Assistant Head Deputy Juvenile Division</p>	<p>After reviewing the new baseline terms promulgated by the Judicial Council, it appears that almost all of the revised baseline terms are reasonable in light of the rehabilitative needs of the youth who will be committed to an SYTF facility. However, the offense of PC 288(b), lewd or lascivious act with a minor under 14 years of age, (hereafter “288”), was bumped down a category in the new matrix. Generally speaking, there are five sex offenses listed 707(b) that can lead to an SYTF</p>	<p>In its work to assign each of the 707(b) offenses to a category the committee was significantly guided by the DJJ categories, and the resulting matrix is mostly consistent in its assignment of offenses. As the commenter notes, one exception was for Penal Code section 288(b), which the committee assigned to category C, when it had been assigned to DJJ category II. As the commenter suggests, there is a qualitative</p>

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Juvenile Law: Secure Youth Treatment Facility Offense Based Classification Matrix (Adopt Cal. Rules of Court, rule 5.806)

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Rule 5.806(d) – Comments on Categorization of Offenses

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	<p>sentence. They consist of what are commonly called “the big four” sex offense (rape/PC 261, sodomy/PC 286, digital penetration/PC 289, and oral copulation/PC 287) and the fifth sex offense, 288. Force, menace, duress, or threat of injury, etc., is required in any of the five sex offenses to qualify it as a 707(b) offense, and to thereby make a youth eligible for an SYTF commitment. Under the old matrix, all of the five sex offenses were listed as category two offense which had a four year parole eligibility date. Under the new matrix the big four sex crimes have a baseline term of three to five years as compared to 288 which has a baseline term of two to four years.</p> <p>First, we understand the downward matrix may be because there can be “less offensive” 288s. In other words, because the crime of 288 is based on the age of the victim (unlike the big four sex offenses) the crime can be committed with “less offensive” behavior. For example, a 288 can be committed by a 15-year-old rubbing the breasts of a 13-year-old female over the 13-year-old’s clothing. This sounds less offensive than rape, sodomy, etc., which generally requires the direct touching of the victim’s genitals under the clothing. Second, in the more serious 288 cases, usually one of the big four sex crimes is also committed. However, that is not always the case. In some of the most serious 288s that is the only sex crime committed. In addition, in order for a 288 to qualify as a section 707(b) offense and to make the youth eligible for SYTF, force, duress, etc., must be used. This means that the less serious heavy petting cases, even if not consensual, don’t rise to the level of force and don’t qualify as a 707b/SYTF offense. Moreover, if there is a 288 that by definition may qualify as a 707(b)/SYTF offense but the crime is not as serious and the youth does not need a long SYTF commitment to rehabilitate, then the charge</p>	<p>difference between most of these offenses and the forcible sex offenses listed in section 707(b) and for that reason, the committee concluded that this offense more appropriately belonged in category C. The committee notes that because the matrix in rule 5.806 has ranges, rather than set terms, the court can set a baseline term for this offense at up to 4 years, which is the same as the DJJ category II guideline. With this flexibility, the committee believes that the range for category C will allow for the court to address these cases appropriately, providing longer baseline terms when needed and shorter terms in those cases that require less extensive interventions.</p>

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	<p>can be a simple 288(a) with no force which precludes a 707(b)/SYTF offense. This change in sentencing for 288s by the JC addresses the needs of the youth who commits the less serious 288 but it does not, necessarily, address the needs of the youth who commits the more serious 288. While charging a 288 can avoid a SYTF sentence by filing the appropriate charges and precluding an SYTF commitment, the opposite is not true, for a youth who need [sic] a longer, more rehabilitate [sic] commitment to an SYTF facility. For these reasons, the position of the Juvenile Division of the Los Angeles County District Attorney’s Office’s is that the charge of PC 288(b), as listed in section 707(b), should have a matrix baseline term of three to five years like the four other sex crimes listed in section 707(b), not two to four years as indicated in the new matrix.</p>	
<p>Orange County District Attorney Todd Spitzer</p> <p>Yolo County District Attorney Jeff Reisig</p>	<p>*These are the verbatim comments of the Orange County District Attorney, and nearly identical comments were submitted by the Yolo County District Attorney*</p> <p>Adopt the DJJ Category 1 Matrix for SYTF Category A [to include (11) Kidnapping with bodily harm (27) Kidnapping, as punishable in Penal Code section 209.5. (23) Torture, as described in Penal Code sections 206 and 206.1.] ... This will further the goals the SB 823 by decreasing the number of transfer hearings and providing the court both flexibility and sufficient time to address the rehabilitative needs of the youth. (Proposed changes typed in blue and highlighted in yellow – *See Appendix A which includes those three offenses in Category A*)</p> <p>I. There will be increased transfer hearings and a promotion of</p>	<p>The committee has adopted most of this suggestion and moved Torture as described in Penal Code sections 206 and 206.1 and Kidnapping with Bodily Harm which results in death or substantial injury into category A. This change will make category A consistent with DJJ category I and therefore reduce any incentive to seek transfer motions for these offenses as an unintended consequence of the adoption of the matrix. The committee has left all other kidnapping offenses in category B, also consistent with the DJJ categorization and in recognition that category A has a very high maximum term that should be reserved for the most serious offenses.</p>

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	<p>“net widening” due to the elimination of specific offenses from Category A.</p> <p>The primary goals of SB 823 and the Office of Youth and Community Restoration are the reduction of juvenile transfers and the prevention of "net widening". By narrowing the offense-based categories and eliminating what are arguably the most serious offenses a minor can commit, the committee is tying the hands of prosecutors, probation officers, and judicial officers when evaluating juvenile alternatives to transfer. For the purpose of this discussion we will be comparing the glaring differences between the existing expiring DJJ Matrix and the proposed SYTF matrix.</p> <p>A glaring change between SYTF Category A and DJJ expiring Category 1 are Kidnapping with Death of Victim, Kidnapping with Substantial Injury, and Torture, which have been eliminated from the category A - which details the most serious charges - in the proposed SYTF matrix and transferred to a lesser category in SYTF Category B.</p> <p>a. 3 to 5-year baseline period of incarceration at a SYTF for Category B offense may not meet the rehabilitative needs for a youth who has committed torture, kidnapping with death, or kidnapping with substantial injury.</p> <p>SYTF Category B Offenses carry a 3 to 5-year commitment where a Category A carries a 4-7-year commitment. The exclusion of these most serious and violent offenses from SYTF Category A limits the terms of commitment necessary for rehabilitation.</p> <p>When evaluating a case for potential transfer to a court of criminal jurisdiction prosecutors must determine whether the</p>	

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	<p>minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction. Welf. Inst. §707(a)(3)(B)(i). There is a high likelihood that a low 3 to 5-year baseline period of incarceration at a SYTF will not meet the rehabilitative needs for a youth who has committed torture, kidnapping with death, or kidnapping with substantial injury. As a result, our prosecutors may make a decision to transfer the youth to adult court if the prosecutor believes, based on the evidence, that the youth cannot be rehabilitated prior to the expiration of the juvenile court's jurisdiction in SYTF Category B baseline period. This will increase transfer hearings and "net widening" due to the elimination of specific offenses from SYTF Category A. Additionally, the discussion would be more fruitful if you can provide the empirical data relied upon by your Judicial Committee in the decision to re-categorize torture, kidnapping with death, or kidnapping to show why these youth do not need a higher baseline for rehabilitation and re-entry.</p> <p>Finally, the recategorization of these offenses seem inconsistent with the three articulated primary objectives laid out by the advisory committee: (1) positive youth development, (2) public and community safety, and (3) flexible and fair terms of commitment.</p> <ul style="list-style-type: none"> ▫ Positive Youth Development <p>The advisory council articulates "Positive Youth Development" as being rooted in promoting long-term prosocial behavior with targeted treatment needs to ensure healing and rehabilitation. With this in mind, it is fundamental to recognize that even the minor who perpetrates such violent offenses will likely be traumatized and grossly impacted by the nature of their conduct. This likely necessitates a lengthier baseline</p>	

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	<p>commitment only afforded by Category A.</p> <ul style="list-style-type: none"> ▫ Public Safety Additionally, as "Public Safety" is the second of three objectives outlined by the committee, it is our firm belief the re-categorization of Category A to include the eliminated offenses is fundamental to this stated objective. The committee affirms that, "protecting the public and the community is a central objective of the matrix" and further adds that the matrix is structured so that a commitment "is of sufficient length to assure the victim and the community that the harm committed can be redressed by the juvenile justice system ... and thus reduce the need for the youth to be transferred to criminal court." Consequently, including the eliminated offenses is consistent with the committee's stated objective and failing to do so may actually result in an increasing number of transfers of juveniles to adult court. ▫ Flexible and Fair Terms of Commitment Keeping in mind the principles of "flexible and fair terms of commitment" we are encouraged the criterion set forth in proposed Rule 5.806(b)(1-4). However, given the wide latitude for judicial discretion in setting a youth's baseline term of commitment, we again would implore this committee to include kidnapping with death of victim, kidnapping with substantial injury, and torture in Category A. This would increase the time available to meet the rehabilitative needs of these youth. (Please see attached "Proposed Matrix" – *See Appendix A) 	
<p>Jeff Rhoades Senior Deputy Probation Officer Sacramento County Probation</p>	<p>I'd also move Attempted Murder (664/187 PC) into *Category A*. An act severe enough to warrant this charge should be held with similar regard to a completed murder. 5.806(b)(1)</p>	<p>The committee determined that Attempted Murder should remain in category B consistent with its DJJ categorization in category II. This characterization will</p>

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	<p>could be applied to prevent an Attempted Murder case from receiving the maximum term. Additionally, the Court can seek to sustain a lesser, reasonably related charge (say 245 PC), when circumstances might be less severe.</p> <p>Category B 288(b) PC should be moved to this category. This category will then contain all 707(b) sexual offenses. See my above comment regarding adequate commitment for completion of treatment. Additionally, in my experience 288(b) charges encompass a broad range of circumstances that would be on equal footing to any other 707(b) sexual offense. Any 288(b) charges that are not serious in nature could be argued down to 288(a) PC.</p> <p>Category D: 1 – 2 years -->I have no issues with this category given the limited offenses that fall into it.</p>	<p>allow for an extended baseline term of up to 5 years for this offense and prevent incentives to overcharge lesser offenses to obtain a category A baseline term.</p> <p>The committee agrees that Penal Code section 288(b) charges can encompass a broad range of circumstances and that the range for category C adequately addresses that range. The committee notes that because the matrix in rule 5.806 has ranges, rather than set terms, the court can set a baseline term for this offense at up to 4 years, which is the same as the DJJ category II guideline. With this flexibility, the committee believes that the term for category C will allow for the court to address these cases appropriately, providing longer terms when needed and shorter terms in those cases that require less extensive interventions.</p> <p>No response required.</p>
<p>Summer Stephan San Diego County District Attorney</p>	<p>In the past, the most serious crimes, such as murder and forcible sex crimes, were frequently transferred to adult court where they were subject to adult sentencing schemes and not to the matrix of baseline terms. Recent legislation has restricted the ability to transfer youth to adult court, and legislation due to take effect next year will further restrict the transfer of cases to adult court. Therefore, more cases will remain within the jurisdiction of the juvenile courts. The proposed matrix of baseline terms must address and adapt to this change. As proposed, the baseline terms will not be adequate to allow a</p>	<p>The committee agrees that the 707(b) torture offense should be included in category A and has moved it there. The committee has also recategorized Kidnapping with bodily harm involving death or substantial injury as a category A offense consistent with the offense categorization for DJJ. The committee appreciates that forcible sex offenses are serious crimes and has included all of them in category B, which has a range of three to five years. The DJJ guidelines for these offenses provided a term of 4 years, so the committee has</p>

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	<p>judge to sentence youth for crimes such as murder, forcible rape, or a school shooting, in a way that protects the community. The baseline term for the most serious offenses, such as murder, torture and forcible sex crimes, should provide a wider range to allow the court the ability in appropriate cases to sentence a youth up until the time the juvenile justice system loses jurisdiction of the youth. Because WIC section 875(e)(1) requires the court review the youth’s progress every six months and allows the court to reduce the sentence by up to six months at each review hearing, providing a range of 5-11 years for these offenses would allow the court to frequently and regularly reduce the sentence if safe to do so.</p>	<p>concluded that the range for category B is sufficiently long to address the needs of these youth without creating an incentive to transfer them to criminal court. The committee does not consider it within the council’s purview to increase the terms for these offenses as a means to counteract the consequences of recent statutory changes on transfer of jurisdiction to criminal court as that is a policy decision outside the scope of the authority delegated to the council to develop and adopt the matrix.</p>
<p>Ventura County District Attorney Erik Nasarenko</p>	<p>I am writing on behalf of the Ventura County District Attorney's Office to urge the Juvenile Law Advisory Committee to include in the SYTF offense-based classification category A not only the crime of murder, but also kidnapping with bodily harm, kidnapping during the commission of carjacking, and torture. Also, the matrix baseline term for these violent crimes should be 5 to 11 years. The Committee's proposed category A offenses only includes murder and sets the matrix at a 4 to 7-year range.</p> <p>One of the primary goals of SB 823 was to reduce juvenile transfers to criminal court. However, by narrowing the offense-based categories, and decreasing the baseline, the opposite may occur as prosecutors see transfer hearings as the more appropriate mechanism for addressing the most violent crimes. The Committee's proposed SYTF offense-based classification matrix will create the possibility that a youth who commits a murder could serve a minimum of 4 years. Additionally, pursuant to Welfare and Institutions Code section 875(e)(1), the court has the discretion to reduce this 4-year minimum by 6 months at every SYTF review hearing. The proposed category</p>	<p>The committee has adopted most of this suggestion and moved Torture as described in Penal Code sections 206 and 206.1 and Kidnapping with Bodily Harm which results in death or substantial injury into category A. This change will make category A consistent with DJJ category I and therefore reduce any incentive to seek transfer motions for these offenses as an unintended consequence of the adoption of the matrix. The committee has left all other kidnapping offenses in category B, also consistent with the DJJ categorization and in recognition that category A has a very high maximum term that should be reserved for the most serious offenses.</p>

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	<p>A baseline matrix is too low, does not provide sufficient time for rehabilitation, and does not ensure the public's safety.</p> <p>I urge the Committee to increase the baseline term to a 5 to 11-year range, and include not only the crime of murder, but also kidnapping with bodily harm, kidnapping during the commission of carjacking, and torture.</p>	

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Rule 5.806(b) – Using Factors to Set the Baseline term		
Commenter	Comment	Committee Response
<p>California Alliance for Youth and Community Justice, by Israel Villa Deputy Director and 31 co-signatories</p> <p>Community Agency for Resources, Advocacy and Services (C.A.R.A.S.) By Marty Estrada, Director of Community Development, Gilroy</p>	<p>(3) A Court’s Determination of the Baseline Time should not be dependent on a SYTF’s capacity to provide suitable treatment and education for a youth.</p> <p><i>Overview:</i> Existing law already requires that a court’s determination to commit a young person to a SYTF considers whether the SYTF has appropriate programming, education, and treatment. Welf. Inst. Code 875(a)(3)(C) states the court should consider “whether the programming, treatment, and education offered and provided in a secure youth treatment facility is appropriate to meet the treatment and security needs” of the youth. Proposed Rule 5.806(b)(3)(B) would allow the court to consider the capacity of the SYTF to provide suitable treatment or education in setting the initial baseline confinement time. However, the rule does not address situations in which the SYTF have inadequate capacity that would delay provision of treatment. The Advisory Committee Comment states that “enumerated factors that are outside the youth’s control should not result in a longer baseline term”.</p> <p><i>Reason for Concern:</i> The proposed rule would allow the court to consider the capacity of the SYTF to provide suitable education or treatment in setting the initial baseline confinement time, a factor clearly outside the control of the young person. In cases where the SYTFs have inadequate capacity, the court may be inclined to set a minimum time that is at the upper side of the range. The existence of programming is a factor beyond the youth’s control, and we ask that this Committee make clear that inadequacy or delay of programming should not encourage a higher range imposed as the baseline term.</p> <p><i>Recommendation to address the concern:</i> Remove Proposed</p>	<p>The committee agrees that no youth should receive a longer baseline term because of a factor outside the youth’s control and has expressly added that to the rule in subdivision (b), thus inadequate capacity should not result in a longer baseline term. The committee believes that with this change this factor can be taken into account when appropriate without it extending the term of the person being committed to the SYTF.</p>

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	<p>Rule 5.806(b)(3)(B) and provide greater clarification to ensure that factors that are outside the youth’s control should not result in a longer baseline term.</p> <p>(4) Proposed Rule 5.806(b)(4) should clarify that the youth’s development history should only serve as mitigating factors and should not result in a longer baseline time.</p> <p><i>Overview:</i> Proposed Rule 5.806(b)(4) includes factors related to youth’s developmental history.</p> <p><i>Reason for Concern:</i> Courts could deem factors around a youths’ needs related to their developmental history and any harmful childhood experiences to weigh in favor of a longer baseline confinement time. These factors should mitigate a baseline time, not add to it.</p> <p><i>Recommendation to address the concern:</i> Proposed rules should clarify that youths’ developmental history (and as stated above, other factors outside the youths’ control) should be mitigating factors that do not result in a longer baseline term.</p>	<p>The committee concurs that this issue should be addressed in the rule of court and has moved the substance of the language included in the Advisory Committee Comment into the text of the rule in subdivision (b) to read: “The court must select a baseline term that is no longer than necessary to meet the developmental needs of the youth and to prepare the youth for discharge to a period of probation supervision in the community. Enumerated factors listed below that are outside the youth’s control must not result in a longer baseline term than otherwise needed to meet this objective.”</p>
<p>Chief Probation Officers of California By Rosemary Lamb McCool, Deputy Director</p>	<p>2. Section (b)(3): Selecting the baseline term with the range for the offense category</p> <p>We support the inclusion of language in (b)(1) that acknowledges the extent of harm to victims occurring as a result of the offense. As stated in the background information guiding the development of the matrix, a central element is assuring the victim and the community that the harm committed can be redressed by the juvenile justice system in a developmentally appropriate manner. In furtherance of this goal, we would ask that the Judicial Council consider an additional criteria in (b)(3), regarding the period of</p>	<p>The committee agrees that the harm to the victim is a critical factor in evaluating the baseline term for a youth committed to an SYTF, and that is why is it listed in 5.806(b)(1) as a factor to be considered when evaluating the circumstances and gravity of the offense. The committee believes that this is the appropriate criterion for this factor to be evaluated under and that it would be redundant and potentially confusing to list it again in subdivision (b)(3).</p>

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	confinement, to include criteria regarding the consideration of the harm to victims occurring as a result of the offense.	
Thomas Harp Sacramento	5.806(b)(4)(C)-(E): While harmful experiences such as domestic/community violence, poverty, or discrimination in childhood may affect a youth, it should not be a factor into sentencing. Many youth have experienced great degrees of harm from said experiences and do not turn to crime as a result. By including this language you are giving victims of abuse a green light to victimize and abuse others. Instead developmental history should be based on mental capacity of the offender, their maturity level, and their *brain* developmental and not the challenges in life they face.	The discretionary factors in rule 5.806(b) are included to assist the court in making a holistic assessment of the time needed to meet the developmental needs of the youth and believes that adverse childhood experiences of various kinds are relevant to that assessment. As noted above the committee has clarified the intent of these factors to ensure that they do not arbitrarily increase a youth’s baseline term.
Pacific Juvenile Defender Center By, Brooke Harris Executive Director & Laurel Arroyo President, on Behalf of the PJDC Board of Directors	Second, we ask the Committee to make more explicit that the presence of factors in proposed rule 5.806(b)(4)(B)-(b)(4)(D) are intended as mitigating factors supporting the lower end of the range. We acknowledge the final sentence of the Advisory Committee Comment, which states that “[e]numerated factors that are outside the youth’s control should not result in a longer baseline term.” However, we urge the Committee to clarify this sentence and place it directly in rule 5.806(b)(4). We otherwise commend the Committee for the strong language and clarity in this portion of the proposal.	The committee concurs that this issue should be addressed in the rule of court and has moved the substance of the language included in the Advisory Committee Comment into the text of the rule in subdivision (b) to read: “The court must select a baseline term that is no longer than necessary to meet the developmental needs of the youth and to prepare the youth for discharge to a period of probation supervision in the community. Enumerated factors listed below that are outside the youth’s control must not result in a longer baseline term than otherwise needed to meet this objective.”
Superior Court of Orange By Vivian Tran Operations Analyst	<ul style="list-style-type: none"> ▪ Are the enumerated criteria and factors for the court to consider when setting the baseline term appropriate and relevant, and will they assist the court in making an informed decision? <ul style="list-style-type: none"> ▫ Yes, the criteria and factors for the court to consider when setting the baseline term are appropriate and relevant for the court to make an informed decision. 	The committee appreciates the support for the proposed criteria and factors.

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Rule 5.806(d) – Limits on plea bargaining		
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<p>California Alliance for Youth and Community Justice, by Israel Villa Deputy Director and 31 co-signatories.</p> <p>Community Agency for Resources, Advocacy and Services (C.A.R.A.S.) By Marty Estrada, Director of Community Development, Gilroy</p>	<p>(1) Proposed Rule 5.806(d) on “Range of Baseline Term” should clarify that the determination of the baseline confinement time is a judicial function and not subject to a plea agreement.</p> <p><i>Overview:</i> Proposed Rule 5.806(d) creates the Secure Youth Treatment Facility (SYTF) offense-based classification matrix. It requires a court select a baseline term within the range set for the category that has been assigned to the Welf. Inst. Code 707(b) commitment offense. The selection of the baseline term is determined by the court’s consideration of four criteria and analysis of how to effectively accomplish the statutory mandate that the term represents the custody time necessary to meet the developmental and treatment needs of the youth and prepare them for release on supervision.</p> <p><i>Reason for Concern:</i> Plea bargaining would undermine the role of the court. No standard data exists on the number of cases in which a stipulated plea agreement is executed for cases that previously resulted in a commitment to the Division of Juvenile Justice (DJJ). However, there is anecdotal evidence from defense counsel throughout the state and research conducted by advocates that prosecutors routinely offer stipulations that remove strikes or withdraw motions to transfer a young person to adult court for an agreement to commit a youth to DJJ. Thus, there is reason to believe that without guidance clarifying that it is the court’s role to determine the initial baseline time, plea bargains will include stipulations to a baseline term.</p> <p>The determination of the baseline term is a judicial function, requiring a trier of fact to weigh the evidence and make a decision about how to best achieve the central mandate of the statute. If left to plea bargaining, the goal of ensuring that length of custody time is related to the developmental and</p>	<p>The committee appreciates that setting a baseline term is plainly a judicial function under section 875 but notes that the statute makes no reference to plea bargaining or any limitations on plea bargaining with regard to baseline terms. Existing case law allows plea bargains in juvenile matters, and thus the committee does not believe that it has the authority to prohibit them by rule of court in this context absent express statutory direction to do so. The committee notes that the court is never required to accept a plea bargain and that a youth and his counsel are under no obligation to agree to a plea bargain if they would prefer to seek a judicial resolution. The committee understands that transfer motions may be used as leverage by some prosecuting attorneys in order to secure an agreement to a longer baseline term but notes that these motions can only be brought for older youth and now require the prosecution to show by clear and convincing evidence that the youth cannot be rehabilitated under juvenile court jurisdiction and that determination must be made by the court. Thus, even youth subject to transfer have options other than a stipulation if they wish to have the juvenile court make these determinations. The committee also notes that if it is the intent of the legislature that plea bargains be restricted in this context, it can amend the statute to include that limitation.</p>

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Commenter	Comment	Committee Response
	treatment needs of the youth will likely be lost.	
<p>Pacific Juvenile Defender Center By, Brooke Harris Executive Director & Laurel Arroyo President, on Behalf of the PJDC Board of Directors</p>	<p>Third, the vast majority of juvenile cases are resolved by plea bargain. We are concerned that offers from the prosecution will be made contingent on the youth waiving certain rights granted by Welfare and Institutions Code section 875, or will be contingent on youth entering into certain stipulations. For example, a prosecution offer could be made contingent on the youth stipulating to a specified baseline term duration within the range, or it could require a waiver by the youth of the right to advocate for a step-down, or a reduction of the baseline term, at a six-month progress review hearing.</p> <p>PJDC’s membership of approximately 1600 juvenile defenders across California has substantial expertise with the juvenile court practices around the state. Although disposition plea-bargaining is disfavored by juvenile statutes and rules of court, and is arguably impermissible, it occurs routinely in multiple jurisdictions around the state. For example, in Los Angeles County, plea bargains <i>routinely</i> involve an agreed-upon disposition and are part of an “offer” from the prosecution. While a Court may reject an agreed-upon disposition by the parties, this method of case resolution is utilized in nearly all juvenile cases in Los Angeles County.</p> <p>We have heard from our membership that the SYTF bargaining techniques described above are already being used in some counties. But if plea bargains may be conditioned on stipulations to specified base terms or on forfeiture of the right to advocate for clients at review hearings, it will strip the ability of juvenile court judges to follow and benefit from the language that the Matrix Classification Working Group has worked so hard to create.</p>	<p>The committee appreciates that setting a baseline term is plainly a judicial function under section 875 but notes that the statute makes no reference to plea bargaining or any limitations on plea bargaining with regard to baseline terms. Existing case law allows plea bargains in juvenile matters, and thus the committee does not believe that it has the authority to prohibit them by rule of court in this context absent express statutory direction to do so. The committee notes that the court is never required to accept a plea bargain and that a youth and his counsel are under no obligation to agree to a plea bargain if they would prefer to seek a judicial resolution. The committee understands that transfer motions may be used as leverage by some prosecuting attorneys in order to secure an agreement to a longer baseline term but notes that these motions can only be brought for older youth and now require the prosecution to show by clear and convincing evidence that the youth cannot be rehabilitated under juvenile court jurisdiction and that determination must be made by the court. Thus, even youth subject to transfer have options other than a stipulation if they wish to have the juvenile court make these determinations. The committee also notes that if it is the intent of the legislature that plea bargains be restricted in this context, it can amend the statute to include that limitation.</p>

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Juvenile Law: Secure Youth Treatment Facility Offense Based Classification Matrix (Adopt Cal. Rules of Court, rule 5.806)

All comments are verbatim unless indicated by an asterisk (*).

Rule 5.806(d) – Limits on plea bargaining

Commenter	Comment	Committee Response
	We ask the Committee to add language specifying that selecting the baseline term, adjusting the baseline term at review hearings, and deciding whether to “step” youth down to less restrictive placements are exclusively <i>judicial</i> functions and not subject to plea bargaining by the parties.	

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All comments are verbatim unless indicated by an asterisk (*).

Rule 5.806(c) – Review hearings		
Commenter	Comment	Committee Response
<p>California Alliance for Youth and Community Justice, by Israel Villa Deputy Director and 31 co-signatories</p> <p>Community Agency for Resources, Advocacy and Services (C.A.R.A.S.) By Marty Estrada, Director of Community Development, Gilroy</p>	<p>(5) Proposed Rule 5.806(c) should not constrain the operation of an SYTF to Probation Departments</p> <p><i>Overview:</i> Proposed Rule 5.806(c) provides for adjusting the baseline term at review hearings. The rule provides that “each probation department operating a secure youth treatment facility must implement a system to track the positive behavior of youth...”</p> <p><i>Reason for Concern:</i> This proposed rule conflicts with existing law. Welf. Inst. Code 875(f)(1) describes an SYTF as a “secure facility that is operated, utilized or accessed by the county of commitment...” The law does not limit the operation of an SYTF to probation departments. Instead, existing law gives counties the authority to choose what agency or entity operates an SYTF. The proposed rule refers only to probation departments.</p> <p><i>Recommendation to address the concern:</i> Amend Proposed Rule 5.806(c) to acknowledge that agencies or entities other than probation departments may operate an SYTF.</p>	<p>The committee concurs that the statute does not restrict the operation of SYTF facilities to probation departments but does not agree that the rule as proposed would constrain the operation of SYTF facilities to probation departments. The provision of the rule cited here directs probation departments operating SYTF facilities to track the positive behavior of the youth in those facilities and report to the court at each review hearing. Because probation departments are tasked with making recommendations to the court in juvenile matters, the council has the authority to make this directive to the probation department via rule of court. If a county were to select another agency or entity to operate the SYTF, the provision of the rule requiring collection of this information would not apply, and the court would need to make specific orders to ensure that it obtains needed information about positive behavior for youth committed to those facilities, or, alternatively, the statute would need to be amended to provide clear authority for requiring any operator of such a facility to track behavior systematically and provide that information to probation and/or the court.</p>
<p>Chief Probation Officers of California By Rosemary Lamb McCool, Deputy Director</p>	<p>Section (c): Adjusting the baseline term at review hearings. Upon reviewing the draft rule of court 5.806, it does not appear the draft matrix will afford the court the option to reduce and/or increase the baseline term for a youth. Welfare and Institutions Code Section 875 (h)(1) provides that:</p> <p><i>“The classification matrix may provide for upward or downward deviations from the baseline term and may also provide for a system of positive incentives or credits for time served.”</i></p>	<p>The committee has considered this comment but does not agree that the statute provides authority for upward adjustments to the baseline term at review hearings. The provisions in the statute that reference upward adjustments are all focused on setting the baseline term at the time of commitment. The committee did not include such adjustments in the matrix rule because the matrix itself contains wide ranges for the baseline term and thus any additional room for adjustment would be redundant and confusing. The review hearing provision of the rule is constrained by the statute, which expressly</p>

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Rule 5.806(c) – Review hearings		
Commenter	Comment	Committee Response
	<p>Current Welfare and Institutions Code Section 875(b) grants courts the ability to modify the baseline term with a deviation of plus or minus six months pending the adoption of the Judicial Council guidelines:</p> <p><i>“The court may, pending the adoption of Judicial Council guidelines, modify the initial baseline term with a deviation of plus or minus six months. The baseline term shall also be subject to modification in progress review hearings as described in subdivision (e).”</i></p> <p>We ask that the Judicial Council consider establishing a process for review hearings to determine if a baseline term is in need of modification either downward or upward dependent upon a youth’s progress towards their Individual Rehabilitation Plan (IRP). Currently, the draft Rule of Court only allows for the baseline term to be modified down. Further, the Judicial Council could establish factors within Section (c) for the court to consider when determining modifications to the baseline term just as factors have been defined for consideration when setting the baseline term in Section (b). We have concerns that if youth are not able to complete their rehabilitative programming and/or are not actively engaging in their programming pursuant to their IRP, it will have adverse impacts to their success upon transition into a less restrictive program and/or their transition into the community. The ability to only shorten the baseline term may result in the unintended consequence of increased filings for transfer to adult court. It is also important to note the importance of Welfare and Institutions Code Section (e)(2) which states:</p> <p><i>“The ward’s confinement time, including time spent in a less restrictive program described in subdivision (f), shall not be extended beyond the baseline confinement term, or beyond a</i></p>	<p>provides: “At the conclusion of each review hearing, upon making a finding on the record, the court may order that the ward remain in custody for the remainder of the baseline term or may order that the ward’s baseline term or previously modified baseline term be modified downward by a reduction of confinement time not to exceed six months for each review hearing.” (Welf. & Inst. Code § 875(e)(1)). Moreover, the statute goes on to state: “The ward’s confinement time, including time spent in a less restrictive program described in subdivision (f), <i>shall not be extended beyond the baseline confinement term, or beyond a modified baseline term, for disciplinary infractions or other in-custody behaviors.</i>” (Welf. & Inst. Code (e)(2)(emphasis added)). Thus, while the committee appreciates the concern that the limits on the court’s ability to extend the baseline term when a youth is failing to make progress may pose a challenge for operators of SYTF facilities, the statute plainly does not authorize extension of the baseline term after it has been set.</p>

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Rule 5.806(c) – Review hearings		
Commenter	Comment	Committee Response
	<p><i>modified baseline term, for disciplinary infractions or other in-custody behaviors. Any infractions or behaviors shall be addressed by alternative means...apply to juvenile facilities generally.”</i></p> <p>The statute referenced above is important to note as we believe that it is important that upward deviations apply to one’s progress, or lack thereof, on their Individual Rehabilitation Plan and not specific to behaviors.</p> <p>3. Section (c): Adjusting the baseline term at review hearings Section (c) of the rule of court as currently drafted does not reference Welfare and Institutions Code Section 875(e)(3) whereby the court may retain a youth in custody in a SYTF for up to an additional year of confinement if the court finds that the youth constitutes a substantial risk of imminent harm to others. We request that the Judicial Council consider defining substantial risk of imminent harm within the framework of Rule of Court 5.806 to provide courts and probation departments more guidance in this area.</p>	<p>The committee recognizes that the court will have a challenge at the discharge hearing to determine whether additional confinement time is warranted, but does not agree that the statute is insufficiently specific. A substantial risk of imminent harm is a clear standard that courts should be able to apply in each case based on the evidence of the youth’s progress and behavior while in the SYTF and any potential danger to the community that it suggests.</p>
<p>Thomas Harp Sacramento</p>	<p>Offenders can have and should be required to have their baseline adjusted as they participate in their rehabilitation. This would in turn further advance the goal of Positive Youth Development as well as providing additional incentive for the sentenced individual to participate in counseling/rehabilitative services.</p>	<p>The statute and the rule of court do allow for a reduction of the baseline term if warranted for youth who are progressing in their rehabilitation, but there is no authority for the court to increase the baseline term after it has been set and thus the rule cannot include upward adjustments.</p>

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Require Data Collection		
Commenter	Comment	Committee Response
<p>California Alliance for Youth and Community Justice, by Israel Villa Deputy Director and 31 co-signatories</p> <p>Community Agency for Resources, Advocacy and Services (C.A.R.A.S.) By Marty Estrada, Director of Community Development, Gilroy</p>	<p>(6) There are no proposed rules requiring any data collection. In order to effectively monitor racial and ethnic disparities in confinement terms, data collection is essential.</p> <p><i>Overview:</i> There is no proposed requirement that data be collected on baseline confinement terms.</p> <p><i>Reason for Concern:</i> Significant racial and ethnic disparities persist in California’s criminal legal system. Historically, youth of color bear the brunt of the state’s most punitive justice system decisions, including commitments to DJJ. As SYTF serves as a local replacement for DJJ, careful monitoring of whether there are racial and ethnic disparities in the use of SYTFs, including data around the baseline confinement terms, is critical.</p> <p><i>Recommendation to address the concern:</i> Include language requiring data collection on baseline confinement terms that are disaggregated by commitment offense and race and ethnicity, age and gender.</p>	<p>The committee appreciates the vital role that data collection and analysis can play in ensuring that baseline terms are applied fairly across California, but the statute does not require any data collection and reporting and placing such a requirement on the courts, who are not part of a statewide data collection system, would be a significant workload burden beyond the statutory delegation, and for which the council would need to seek public comment from the courts. The committee is hopeful that existing efforts at the state level led by the Department of Justice will result in an effective and efficient means of collecting such data in a manner that can be used to assess the application of the matrix. In the meantime, the committee has tried to address this issue within its statutory purview by adding a sentence to the Advisory Committee Comment encouraging courts and probation to monitor implementation of this rule to ensure that it is fairly and consistently applied.</p>

Appendix A: Attachment to the Comments of the Orange County and Yolo County District Attorneys

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Juvenile Law: Secure Youth Treatment Facility Offense Based Classification Matrix (Adopt Cal. Rules of Court, rule 5.806)

All comments are verbatim unless indicated by an asterisk (*).

Proposed SYTF Matrix for Category A:

Category	Offense (Listed with reference to paragraph within section 707(b))	Term
A	(1) Murder	4 to 7 years

DJJ expiring Matrix Category 1:

DIVISION OF JUVENILE JUSTICE
CASE SERVICES SECTION
SUMMARY OF OFFENSES AND CATEGORIES AS LISTED IN TITLE 15

Baseline for Offenses Occurring on or After 11/14/96

<i>CATEGORY 1 SECTION #11</i>	<i>Offense</i>	<i>Penal Code</i>	<i>Baseline PCD</i>
	Murder, First Degree	187, 189, 190	7 years
	Murder, Second Degree	187, 189, 190	
	Kidnapping with Death of Victim	207, 209	
	Kidnapping (with Substantial Injury)	207, 208, 209	
	Torture	206, 206.1	
	Conspiracy to Commit Any Category 1 Offense	182	

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Category	Offense (Listed with reference to paragraph within section 707(b))	Term
A	<p>(1) Murder</p> <p>(11) Kidnapping with bodily harm.</p> <p>(27) Kidnapping, as punishable in Penal Code section 209.5</p> <p>(23) Torture, as described in Penal Code sections 206 and 206.1.</p>	5 to 11 years
B	<p>(4) Rape with force, violence, or threat of great bodily harm.</p> <p>(5) Sodomy by force, violence, duress, menace, or threat of great bodily harm.</p> <p>(7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm.</p> <p>(8) An offense specified in Penal Code section 289(a).</p> <p>(9) Kidnapping for ransom.</p> <p>(10) Kidnapping for purposes of robbery.</p> <p>(12) Attempted murder.</p> <p>(24) Aggravated mayhem, as described in Penal Code section 205.</p> <p>(26) Kidnapping for purposes of sexual assault, as punishable in Penal Code section 209(b).</p> <p>(29) The offense described in Penal Code section</p> <p>(30) Voluntary manslaughter, as described in Penal Code section 192(a). 187.45.</p>	3 to 5 years

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<p>B</p>	<p>(4) Rape with force, violence, or threat of great bodily harm. (5) Sodomy by force, violence, duress, menace, or threat of great bodily harm. (7) Oral copulation by force, violence, duress, menace, or threat of great bodily harm. (8) An offense specified in Penal Code section 289(a). (9) Kidnapping for ransom. (10) Kidnapping for purposes of robbery. (11) Kidnapping with bodily harm. (12) Attempted murder. (23) Torture, as described in Penal Code sections 206 and 206.1. (24) Aggravated mayhem, as described in Penal Code section 205. (26) Kidnapping for purposes of sexual assault, as punishable in Penal Code section 209(b). (27) Kidnapping, as punishable in Penal Code section 209.5. (29) The offense described in Penal Code section (30) Voluntary manslaughter, as described in Penal Code section 192(a). 18745.</p>	<p>3 to 5 years</p>
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Secure Youth Treatment Facility Offense-Based Classification Matrix
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