

Victim Compensation Board Meeting
May 20, 2021
10:00 a.m.
400 R Street
Sacramento, CA 95812

BOARD MEETING MATERIALS

- | | | |
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| Item 1. | Approval of Minutes
Minutes of the March 18, 2021, Board Meeting
DRAFT Minutes attached | Action Item |
| Item 2. | Public Comment on Items Not on the Agenda
The Board will receive comments from the public on matters that are not on the agenda. The Board may not discuss or take any action on any item raised during public comment except to decide whether to place the matter on a subsequent agenda. (Gov. Code, § 11125.7.)
No materials for this item | |
| Item 3. | Executive Officer Statement
Strategic Framework attached | Information Item |
| Item 4. | Legislative Update
Legislative Report attached | Information Item |
| Item 5. | Contract Report
Contract Report attached | Information Item |
| Item 6. | Demonstration of New CalVCB Website
PowerPoint Presentation attached | Information Item |
| Item 7. | Proposal to Approve Trauma Recovery Center Grant Awards
Copy of Proposal to be provided | Action Item |
| Item 8. | Arturo Jimenez (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |

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| Item 9. | Robert Fenenbock (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |
| Item 10. | Andrew Wilson (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |

ITEM 1

California Victim Compensation Board
Open Meeting Minutes
March 18, 2021, Board Meeting

The California Victim Compensation Board (Board) convened its meeting in open session upon the call of the Chair, Gabriel Ravel, General Counsel of the Government Operations Agency, acting for, and in the absence of Yolanda Richardson, Secretary of the Government Operations Agency, via Zoom, on Thursday, March 18, 2021 at 10:00 a.m. Also present via Zoom was Member Diana Becton, District Attorney and Member Richard Chivaro, Deputy State Controller and Chief Counsel, acting for, and in the absence of, Betty T. Yee, Controller.

Executive Officer Lynda Gledhill, and Chief Counsel Kim Gauthier, attended in person at 400 R Street, Sacramento, California. Legal Secretary and acting Board Liaison, Andrea Burrell, was also present and recorded the meeting.

Item 1. Approval of the Minutes of the January 21, 2021, Board Meeting

The Board approved the minutes of the January 21, 2021, Board meeting.

Item 2. Public Comment

The Board opened the meeting for public comment and Ms. Burrell reminded everyone that, consistent with the Bagley-Keene Open Meeting Act, items not on the agenda may not be discussed at this time but may be put on a future agenda. (Gov. Code, § 11125.7.)

Eric Gallegos spoke via phone. Mr. Gallegos explained that as a deaf and blind individual, he requires the assistance of support personnel, known as an SSP. SSPs are trained to provide in-person support to deaf/blind people. He requires a SSP to complete certain tasks such as gathering paperwork and certain forms; however, this pandemic situation makes it difficult to arrange for such assistance. It is difficult to complete tasks and meet deadlines on time. Mr. Gallegos is struggling to get the necessary medical care and pursue justice. At the same time, it is unfair that perpetrators are taking advantage of him because of his disability, and he requested acceptance of his appeal. Mr. Gallegos thanked the Board for considering his request.

Margaret Petros appeared via Zoom. Ms. Petros is the Executive Director of Mothers Against Murder, a non-profit organization in the Bay area. Ms. Petros has lengthy experience with the Victim Compensation Board. Mothers Against Murder helps families of murdered victims with care and with the belief that crime victims have a fundamental right to justice. Victim compensation is one of those rights. Ms. Petros expressed her opinion to the Board Members that some Victim Compensation staff and some staff at the local victim witness offices around the state are incredibly careless when making decisions on victim compensation eligibility decisions. Ms. Petros went on to assert that

claims are being denied without the mandated due process, especially when the murdered victims are children or very young adults who may lack the ability to make the correct decisions and exercise sound judgment. Ms. Petros further conveyed her concern that the legal team at the headquarters' office is allowing denials to move forward and participating in further violations of victim's rights.

Ms. Petros offered comments specific to claim number A20-8065450, included on the Board's agenda. She stated that there was no hearing given to the family, even though one was requested. It is her belief that applicants have that right. Ms. Petros went on to describe her belief that parties and/or their advocates are entitled to receive a copy of a Proposed Decision before it is considered by the Board. Ms. Petros requested that the Board consider this before making a final decision today. She explained that she is not an attorney; but that she is an experienced victim advocate with common sense, and she knows that Marcy's law allows victims to be at all public hearings.

Gauri Sanchez appeared via Zoom. Mr. Sanchez is a Licensed Marriage and Family Therapist and the Clinical Director for the Stockton Trauma Recovery Center (TRC), one that CalVCB, has funded since 2015. Mr. Sanchez provided public comment because the Stockton TRC received information that their center will not continue to be funded. Mr. Sanchez explained that it is heartbreaking for the community, as they are the only TRC in the Central Valley area that offers free mental health services to victims of crime, especially those who are very vulnerable during the pandemic. He expressed his interest in appealing the recent funding decision and inquired whether there is any additional funding for existing TRCs. He explained that they are not the only TRC, but three other existing TRCs are also recommended to not receive funding. He discussed the impact the pandemic has had on his community and explained that taking away this grant would mean an end to a lot of healing services in the community.

Masha Chernyak appeared via Zoom. Ms. Chernyak explained she is a very concerned Board Member of Fathers and Families of San Joaquin and Stockton. She wanted to let all the CalVCB Board Members know they are in a mental health crisis, an economic crisis, and they are just beginning to recover from a global pandemic that has affected the working poor hardest of all. She expressed her concern that CalVCB was considering not continuing funding to the only Central Valley TRC operated by Fathers and Families of San Joaquin, without a clear explanation and also without an opportunity to appeal. Ms. Chernyak went on to explain the center is one of a kind in the Central Valley and operates in a community that is truly hurting right now. She respectfully requested that CalVCB reconsider the proposed decision to discontinue funding for the Stockton TRC.

Hiram Santisteban appeared via Zoom. Mr. Santisteban is the Co-Executive Director of Fathers and Families in San Joaquin. He expressed his alarm and concern that some existing TRCs might lose funding. Mr. Santisteban went on to explain that his organization has been working with CalVCB since 2015, doing remarkable work. Their numbers indicate that, due to their work, crime has decreased by 40% in Stockton. He explained there is also an unmet need in Fresno for similar services, which is why they

submitted a TRC application to expand their program in that community. Before the pandemic, farmers and community members were driving from Fresno to obtain services in Stockton free of charge. He noted that the necessity and need is there and the drastic and dire harm this will cost the community is immeasurable. He stated they have made enormous strides, progress and improvement over the years. Mr. Santisteban asked the Board to reconsider and partner with them. He reiterated that he is shocked and heartbroken that we are in the middle of a pandemic and this is the only center, only avenue in the entire Central Valley that these folks have access to, and it will be non-existent as of July if the TRC is not approved for continued funding.

Mr. Macias appeared via Zoom. Mr. Macias echoed the sentiments that his team in terms of services in the Central Valley. Mr. Macias explained that his organization operates the only TRC in central California. The recommended TRC grants will create a budget that is inequitable across the state and contribute to historic marginalization and oppression of the communities that are served. Mr. Macias expressed his hope that the Board can reconsider and lift these communities they have been working with, because they already know the statistics. He noted that only one in ten seek access to social services and that nine TRCs will be pushed into survival mode until the next funding cycle and that seems wholly unfair and inequitable. Mr. Macias thanked the Board and asked for reconsideration of its decision and requested the TRC be provided with another opportunity to receive funding as they have demonstrated success and commitment to the community.

There were no more public comments. Chair Ravel thanked everyone for speaking before the Board. He stated that the Board appreciates all the concerns and, with respect to the TRC awards, acknowledged that item would be taken up by the Board later in the agenda.

Item 3. Executive Officer Statement

Chief Executive Officer Ms. Gledhill updated the Board on a few items:

Ms. Gledhill started by thanking the Cannabis Control Appeals Panel, which is allowing CalVCB use its boardroom since CalVCB relinquished the space on the first floor. Ms. Gledhill mentioned that the Board will continue to convene virtually until in person meetings are, once again, permissible. Ms. Gledhill noted her appreciation for the partnership with the Cannabis Control Appeals Panel.

Ms. Gledhill thanked the Board members for their support over the past year as CalVCB has coped with the immense challenges of moving all staff to telework and supporting its employees during the pandemic. Ms. Gledhill acknowledged in an email to all staff how she continues to be impressed by staffs' commitment to the victims of California. CalVCB is committed to carrying out its important mission, to support victims of violent crime, while keeping its employees safe and healthy. Ms. Gledhill also noted that there may be victims who are unable to access CalVCB services during the pandemic and

that we are exploring ways of letting them know we are available to assist victims access benefits for any crime activities that has happened over the past year.

Ms. Gledhill explained that she recently concluded meeting with every unit at CalVCB to check in with all CalVCB's employees to see how they are doing; answer any questions and make sure they are getting the support and resources they need to do their jobs.

Ms. Gledhill heard questions and concerns about a variety of topics, but mostly positive reinforcement regarding the direction of the organization and the steps CalVCB is taking to engage employees, foster teamwork and accomplish its goals.

Ms. Gledhill summarized the work the executive team has been doing to develop a new Strategic Plan and a new Employee Recognition Program and reported that CalVCB will be implementing those soon. Ms. Gledhill noted these are part of her ongoing efforts to improve employee engagement, organizational performance and transparency.

Finally, Ms. Gledhill reminded everyone that in April we will mark National Crime Victim's Rights Week and Denim Day, both opportunities for CalVCB to highlight the work it does to help victims.

Chair Ravel thanked Ms. Gledhill and stated that he is excited to hear about the new strategic plan when that is available.

Item 4. Legislative Update

The Legislative Update was provided by Chief Counsel Kim Gauthier.

Ms. Gauthier reminded the Board the state legislative session is underway. The deadline for introducing bills passed in February, and there are several new pieces of legislation that could, if passed, significantly impact CalVCB.

- Legislation to compensate victims of police violence, a follow-up to the bill that stalled last summer, has been introduced. It is SB 299 by Senator Leyva. The new legislation proposes to compensate any individual who sustains serious bodily injury or is killed by police. CalVCB legislative staff is working on analyzing the bill and will continue working with the bill's sponsors and providing feedback when requested.
- AB 1007 by Assembly Member Carrillo would compensate survivors of state-sponsored sterilization.
- AB 446 by Senator Glazer would change the standard for determining if compensation should be paid for an erroneous conviction claim.
- SB 586 by Senator Bradford would eliminate many fees that agencies and courts impose and that are used to fund the criminal legal system, including the cost of collecting restitution.

Ms. Gauthier reminded the Board that we are in the early stages of the legislative process and none of these bills have had a hearing. CalVCB will provide additional updates as the bills move through the Legislature.

Item 5. Trauma Recovery Center Grant Recommendation

This presentation was given by Anita Ahuja, manager of the Grant Acquisition and Grant Program section.

Ms. Ahuja presented staff's recommendation to approve seven Trauma Recovery Center (TRC) grant awards. These awards are funded by the Restitution Fund and the Safe Neighborhood and Schools Fund for a two-year grant cycle beginning July 1, 2021. The TRC Program originally began in the 2013-14 Fiscal Year.

To be selected for a grant award, applicants needed to reach a minimum score of 75 points and must have met very specific qualifications in nine areas that are based on statutory requirements. The awards have strict standards that are laid out in statute. Applicants must meet these minimum qualifications to be eligible for a grant award.

The minimum qualifications cover:

- Outreach and services to crime victims who typically are unable to access traditional services.
- Serving victims of a wide range of crimes.
- Offering evidence-based and evidence-informed mental health services.
- Staff that includes a multidisciplinary team.
- Offering mental health services and case management that are coordinated through a single point of contact for the victim, with support from an integrated multidisciplinary treatment team.
- Delivery of services that include assertive outreach and case management.
- Ensuring that no person is excluded from services solely based on emotional or behavioral issues resulting from trauma, including, but not limited to, substance abuse problems, low initial motivation, or high levels of anxiety.
- Utilizing established, evidence-based, and evidence-informed practices in treatment.
- And, ensuring that no person is excluded from services based on immigration status.

Ms. Ahuja noted it is important that every grant cycle is a new process and applicants must demonstrate their compliance with all statutory requirements, even if an existing organization has a history of providing services as a funded TRC.

Ms. Ahuja acknowledged that three trauma recovery centers who had previously been funded did not qualify for continued funding in this grant cycle. She explained that CalVCB held phone and video conferences with the applicants to review their

applications and the scoring criteria. CalVCB will also continue working with those organizations to file CalVCB applications for the victims they serve and will follow up with these organizations to strategize on other potential sources of funding.

Twenty-six applications were received in response to the Notice of Funds Available posted on November 30, 2020, which included a grant template and, after careful evaluation of the applications by the scoring committee, seven Trauma Recovery Centers were recommended for funding. The funding recommendation is for a combined award of \$12,868,000. The recommended awards were:

1. A Quarter Blue (Orange): \$817,864
2. Amanecer Community Counseling Service (Los Angeles): \$3,852,000
3. Olive View (Sylmar): \$3,686,677
4. Partnership for Trauma Recovery (Berkeley): \$1,031,615
5. Rady's Children's Hospital – San Diego: \$1,066,422
6. Special Service for Groups / HOPICS (Los Angeles): \$1,388,354
7. Strength United / The University Corporation (Northridge): \$1,025,067

Through this grant cycle, three new TRCs would be established - A Quarter Blue, Amanecer, and Olive View, and funding would continue for four existing TRCs.

Ms. Ahuja asked for the Board's approval of these proposed grant awards. Chair Ravel asked Ms. Ahuja if all the TRCs that met the minimum scores were granted an award. Ms. Ahuja replied yes.

Member Chivaro inquired about the existing TRCs that are not being proposed for continued funding and questioned why they did not qualify this grant cycle. Ms. Ahuja explained that every grant cycle is a new process and new applications are required for each cycle. In the case of some of the existing TRCs, the grant applications they submitted did not meet minimum qualifications as there was information missing from the grant application. Member Chivaro asked if they were not able to provide that information. Ms. Ahuja indicated it was not in the grant application that was presented to the scoring committee. Member Chivaro asked if the scoring committee reached out to them to get that information. Ms. Ahuja stated that was not part of the scoring committee process as set forth in the Notice of Funds Available. She explained that when a grant comes to the scoring committee, the committee reviews the applications as they are submitted to them and the committee does not request additional or clarifying information. Member Chivaro noted that the Board Members have heard from several groups, including Fresno, who have stated that they are the only providers that provide this type of service, and he expressed his concern that they may not continue to receive funding. Ms. Ahuja responded that they did meet with the Stockton and Fresno team that filed their grant applications to talk about what happened with their applications and where the minimum qualifications were not met, and the scoring committee does not have the authority under the current Notice of Funds Available to change those scores. Those are final scores based on the applications that were

presented. Member Chivaro asked if the team could look at the scoring criteria. Ms. Ahuja replied that the process that is in place does not allow for a subsequent review. Mr. Chivaro asked if she was saying that there is no way that they can be considered. Ms. Ahuja replied that once those scoring committee recommendations were made, there is not currently process to go back and re-review the applications.

Member Becton also followed up on the questions asked by Member Chivaro. She expressed her concerns about the potential lack of services, because of the scoring process, and whether based on what happened with the chapter in Fresno and Stockton if there is now a lack of services in that area and how can we possibly compensate for that if that is accurate? Ms. Ahuja replied, in terms of how we compensate for filling in those services, CalVCB would work with the Stockton team to see what CalVCB might be able to do to help provide some of these ongoing services.

Dorit Saberi, from Harbor UCLA Medical Center, The S.A.F.E. (Securing Attachments for Emerging) Harbor TRC asked to address the Board concerning refunding, the process, and the application. Ms. Saberi explained that SAFE was funded in 2019 and has been functioning since July of 2019. They are serving many patients. SAFE is the only level one trauma center in Los Angeles that provides these services for patients, and they have experienced a significant growth in the number and in staff. She noted that their application scored almost ninety, where 75 is the minimum score required. She noted that, after a conversation with CalVCB, their application was not approved due to a minimum requirement regarding not excluding certain populations. She explained that her organization was very thorough in saying how it would include the population, but was not explicit that it would not exclude them. She indicated that it would be devastating for her team and the clients they serve to lose TRC funding, especially since Harbor UCLA is the first trauma center if you are heading north from the south border.

Mr. Macias from Stockton Trauma Recovery Center spoke next. Mr. Macias echoed Ms. Saberi's comments about the technical language, particularly around the idea of serving populations. He explained that he went back and looked at their grant narrative and not only do they serve victims of crime, but they reference undocumented communities, indigenous communities that speak Hmong and native Guatemalan or Aztec languages. He acknowledged that the language may not be explicit, but indicated that the history of the Stockton TRC demonstrates that they provide these services to this community. Mr. Macias apologized by verbalizing that he does not feel like this conversation around how they might exist is sufficient to the thousands of victims of crime who will be left unassisted if they lose this funding. Mr. Macias ended by expressing his hope that the Board can reconsider where they are or look at additional funds that might exist to keep this funding because from Sacramento all the way to Los Angeles, there are no TRCs for historically marginalized communities at this time when they are experiencing the systemic racism and lack of services.

Member Chivaro agreed with Mr. Macias and thanked him for his presentation.

Ms. Sanchez spoke next and echoed what Mr. Macias and Ms. Saberi shared, mainly that the TRCs have been practicing the items that did not meet the minimum criteria in this funding cycle. They have Healing the Healers events for their own staff, to ensure they are not having vicarious trauma, even during this pandemic - they have made sure that they were providing service but also taking care of themselves. They pivoted quickly to providing teletherapy to their community, providing iPads and everything that they can, they look at a removing barriers approach because mental health services are something that is a luxury for their community. To potentially remove that, would be to set them back to where they were. She discussed how recipients of their services are often undocumented people who would not normally access haven services because they are afraid of speaking up to law enforcement, afraid of saying that they have been victimized. She mentioned that most of the community they serve does not have access to physical health care because of barriers to insurance and, therefore, they offer health services and case management to everybody. She further stated the TRC is made up of dynamic, multi-disciplinary staff that has been in practice since 2015 and should have more weight than what was written, even if they did not technically use the terms correctly. Ms. Sanchez ended by explaining that removing this resource would negatively affect all of the Central Valley.

Ms. Chernyak indicated that if they do not receive funding, they will be forced to lay off staff who are offering life critical services to the poorest residents of our state due to technicalities with their application. Ms. Chernyak urged the Board and leaders of our community to look at the process and to amend it, to create a new one, and to fix this situation. She shared that they have traveled the nation sharing the success of the TRC in Stockton and that it is a national model that is being lifted by communities of color, who have been disproportionately locked out of mental health services.

Dr. Santisteban emphasized that his TRC provides services in seven different languages. The TRC is vital to the community and, even though they are in Stockton, they serve clients from Fresno, Stanislaus and other counties that would not otherwise be served because other organizations have closed their doors due to this pandemic. The TRC has been in existence since 2015 and they have the data and reports demonstrating the work that they can do. Dr. Santisteban explained that they are a trusted partner and the best part about this is that they are nationally known because they not only use the best practices model, but also use a model called La Cultura, which means the culture heals, where they understand and internalize what is going on with the individual. Honoring their culture and their ancestry because trauma involves everyone, and it is cyclical. As a result of their work, they have seen a 40% drop in crime in Stockton and now in Fresno, it is going up by 80% according to the most recent report. Dr. Santisteban asked again for CalVCB to lead because the people they serve do not have a voice and the program is the front line for them. He also explained how, with the Covid pandemic, they changed the way they deliver services, and he believes

that more time should be invested in understanding their culture, their language, and the struggle and that the grant application process should be revamped.

Ms. Saberi highlighted the multi-generational trauma and the specific impact on the children. She indicated that her TRC is one of the few that serves children and adolescents as well as adults. They have expanded their pediatric population by reaching out to the peds unit and the pediatric ER at Harbor UCLA and are getting a larger and larger number of children seeking services. They are working with many partners to offer these important services.

Chair Ravel thanked all of those who spoke for their comments and testimony. He acknowledged the passion that all who offered comments have for serving their communities and the important role they all play in their communities. Chair Ravel suggested that the Board not take a vote on the TRC grant awards and that the Board have further discussion at a future board meeting on this item. Member Chivaro seconded that suggestion. Ms. Gledhill thanked Chair Ravel and noted that CalVCB will look at the available options for awarding and administering the TRC grants.

Item 6. PC 4900 Claim No. 21-ECO-05, Jeremy Puckett

This presentation was given by Chief Counsel, Kim Gauthier. Ms. Gauthier gave a brief summary of the Penal Code section 4900 claim filed by Jeremy Puckett.

On February 16, 2021, Jeremy Puckett applied for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based upon Mr. Puckett's almost nineteen-year imprisonment for his 2002 convictions for the robbery and murder of Anthony Galati.

Mr. Puckett's convictions were vacated on habeas in 2020, based upon the prosecutor's failure to disclose exculpatory evidence and defense counsel's ineffective assistance. The district attorney subsequently dismissed the charges. On January 15, 2021, the superior court found Mr. Puckett to be factually innocent of both convictions pursuant to Penal Code section 1485.55. The court noted the absence of any physical evidence implicating Mr. Puckett, the lack of credibility of the sole witness against Puckett, who had since recanted and identified a different suspect, as well as Mr. Puckett's credible alibi defense.

Ms. Gauthier noted that the Proposed Decision recommends that the Legislature appropriate \$968,800 as payment to Mr. Puckett, representing \$140 for each of the 6,920 days that he was wrongfully imprisoned for these erroneous convictions.

Counsel for Mr. Puckett, Jordan Lamothe, addressed the Board and thanked them and staff for consideration of Mr. Puckett's application for compensation. Mr. Lamothe noted that the application follows the Court's Board's grant of Mr. Puckett's habeas petition and order finding him factually innocent of the crimes for which he had been

incarcerated, a result that would not have been possible without the invaluable assistance of the Northern California Innocence Project. Mr. Lamothe stated he had reviewed the Board's proposed decision and agreed with its recitation of the facts, its recitation of the law, and the proposed compensation amount. He urged the Board to grant the application, and offered to answer any questions.

Mr. Barton Bowers from the Attorney General's appeared via telephone and indicated that he had also reviewed the proposed decision and had no corrections or comments to make.

Mr. Ravel added that all the cases that come before the CalVCB are very difficult cases, but these are particularly difficult with somebody who has been wrongfully incarcerated. The compensation only goes so far, and he thanked Mr. Puckett for appearing before the Board.

The Board adopted the Proposed Decision..

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:50 a.m., to deliberate on proposed decision numbers 1-93 of the Victim Compensation Program.

Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126(c)(3) at 10:55 a.m.

The Board adopted the hearing officers' recommendations for proposed decision numbers 1-93 of the Victim Compensation Program.

Adjournment

The Board meeting adjourned at 10:57 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, May 20, 2021.

ITEM 2

ITEM 3

The background of the cover is a photograph of Yosemite Valley. In the foreground, a river with white water rapids flows from the bottom center towards the right. The river is flanked by dense evergreen forests. In the middle ground, several tall, slender evergreen trees stand prominently. In the background, a large, flat-topped granite mountain (El Capitan) rises majestically against a clear, light blue sky. The overall scene is serene and natural.

STRATEGIC FRAMEWORK

2021-2024

Contents

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- 06 Goals
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A scenic view of a mountain range with a waterfall, overlaid with a semi-transparent blue box containing text.

OUR MISSION:

CalVCB is a trusted partner in providing restorative financial assistance to victims of crime.

OUR VISION:

CalVCB helps victims of crime restore their lives.

OUR VALUES:

INTEGRITY We are honest and ethical.

RESPECT We treat everyone with courtesy and decency.

COMPASSION We care about victims and their well-being.

DEDICATION We serve with devotion and professionalism.

COLLABORATION We create an atmosphere of teamwork.

INNOVATION We find creative ways to solve problems and provide support.

Strategic Framework

2021 - 2024

Introduction

The California Victim Compensation Board's (CalVCB) strategic plan reaffirms our commitment to helping the state's victims of crime. Our mission and values are focused on this basic service, providing compensation and support to people who are recovering from the pain and injuries caused by violent crime.

This is no small task, as our mandate is to serve those hurt by domestic violence, child abuse, sexual and physical assault, homicide, human trafficking, robbery and vehicular manslaughter, among other crimes. CalVCB provides up to

\$70,000 in reimbursement of expenses as a payor of last resort to cover needed assistance, such as medical and dental care, mental health services, income loss, funeral expenses, relocation costs and residential security.

At CalVCB, we are driven by this important and meaningful calling that each year helps tens of thousands of Californians to recover and move on with their lives. This strategic plan is a statement of our values and goals and provides a roadmap for how to pursue them and fulfill our mission.



Strategic Plan

CalVCB assessed the strengths and weaknesses of its organization as part of the process of developing a new Strategic Plan. That assessment included doing an in-depth survey of employees and using other tools to identify the organization's opportunities and challenges.

STRENGTHS

- Strong and clear mission and goals
- Knowledgeable and skilled staff
- High level of staff engagement and commitment

WEAKNESSES

- Inefficient organizational processes
- Tight deadlines that impact the ability to complete work
- Insufficient processes and procedures to fully support teamwork and collaboration

OPPORTUNITIES

- Creating stronger partnerships with other agencies and advocacy groups
- Capitalizing on new technology and online services to expand access for victims
- Improving public awareness and support for CalVCB

CHALLENGES

- Untimely responses from other agencies
- Lack of awareness about CalVCB and its positive role in assisting victims
- Isolation and difficulties created by pandemic and economic downturn



Goals

GOAL I:

PROMOTE ACCESS TO CALVCB SERVICES

ACTION ITEMS

1. Inform Californians about CalVCB.
2. Pursue opportunities to partner with stakeholders.
3. Expand outreach to under-served populations.

GOAL II:

IMPROVE THE CALVCB EXPERIENCE

ACTION ITEMS


1. Use technology to enhance service delivery.
2. Identify and maximize efficiencies.
3. Communicate clearly and concisely.

GOAL III:

DEVELOP AND ENGAGE STAFF TO BEST SERVE VICTIMS

ACTION ITEMS

1. Recruit and invest in a skilled workforce.
2. Encourage a shared vision and strategy through teamwork.
3. Foster a high-performing and diverse workforce.



California's victims of violent crime are counting on us to support them. It's imperative that as an organization we strive for excellence, hold ourselves accountable to our goals and constantly work to best meet the needs of victims.



Lynda Gledhill
Executive Officer

California Victim
Compensation Board

ITEM 4

**California Victim Compensation Board
Legislative Update
May 20, 2021**

SB 299 (Leyva) – Use of Force by a Law Enforcement Officer

This bill would add to the definition of a crime compensable by CalVCB an incident occurring on or after January 1, 2022 in which an individual sustains serious bodily injury, pursuant to Penal Code section 243, or death as a result of use of force by a law enforcement officer, as defined, regardless of whether the officer is arrested for, charged with, or convicted of committing a crime. It would prohibit CalVCB from denying a claim based on a law enforcement officer's use of force due to the victim's involvement in the crime or failure to cooperate with law enforcement. It would prohibit CalVCB from denying a claim based on a law enforcement officer's use of force based solely upon the contents of a police report, or because a police report was not made, and it would require CalVCB to consider other forms of evidence, as specified, to establish that a qualifying crime occurred. Further, the bill would prohibit CalVCB from denying a claim, based on any crime that caused the death of the victim, due to the deceased victim's involvement of the crime or the victim's or a derivative victim's failure to cooperate with law enforcement. It would also prohibit CalVCB from denying a claim for mental health counseling services or for funeral and burial expenses, based on any crime, due to a victim's or derivative victim's involvement of the crime or failure to cooperate with law enforcement. Finally, it would specify that CalVCB's determination on a claim is not to be considered in an action against a law enforcement officer.

Status: Placed on the Suspense File in the Senate Appropriations Committee

AB 1593 (Gonzalez, Lorena) – Erroneous Conviction Claims Bill

This bill would appropriate \$1,348,340 from the General Fund to pay two erroneous conviction claims approved by CalVCB for Derrick Harris and Jeremy Puckett.

Status: Referred to the Assembly Appropriations Committee

AB 1007 (Carrillo) – Forced or Involuntary Sterilization Compensation Program

This bill would establish the Forced or Involuntary Sterilization Compensation Program, upon an appropriation by the Legislature for that purpose, to be administered by CalVCB. The Program would provide compensation to survivors of state-sponsored sterilization conducted pursuant to eugenics laws that existed in the State of California between 1909 and 1979 and to survivors of coerced sterilizations of people in prisons after 1979.

Status: Placed on the Suspense File in the Assembly Appropriations Committee

SB 446 (Glazer) – Factual Innocence

This bill would create a new procedure that reassigns the burden of proof for granting compensation to an erroneously convicted person under Penal Code section 4900 when the underlying conviction was vacated. For this particular class of claimants, a recommendation for compensation by CalVCB is mandated within 60 days and without a hearing, unless the Attorney General timely objects within 45 days and provides clear and convincing evidence of the claimant's guilt. The Attorney General is strictly limited to a single 45-day extension of time to object, and the trial record is per se inadequate to satisfy the Attorney General's burden of proof. For all other claimants, the standard procedure for section 4900 claims still applies, whereby the claimant bears the burden to prove actual innocence by a preponderance of evidence.

Status: Placed on the Suspense File in the Senate Appropriations Committee

SB 586 (Bradford) – Criminal Fees

This bill would eliminate a range of fees that agencies and courts are authorized to impose to fund elements of the criminal legal system, including administrative fees that fund the cost of collecting restitution. It would also eliminate all outstanding debt incurred as a result of the imposition of those fees.

Status: Placed on the Suspense File in the Senate Appropriations Committee

AB 29 (Cooper) – State Bodies: Meetings

This bill would require that notice of a meeting subject to the Bagley-Keene Open Meeting Act include all writings or materials provided for the noticed meeting to a member of the state body by the staff of a state agency, board, or commission, or another member of the state body that are in connection with a matter subject to discussion or consideration at the meeting. It would require those writings or materials to be made available on the state body's internet website, and to any person who requests the writings or materials in writing, on the same day as the dissemination of the writings and materials to members of the state body or at least 72 hours in advance of the meeting, whichever is earlier. It would prohibit a state body from discussing those writings or materials, or from taking action on an item to which those writings or materials pertain, at a meeting of the state body unless the state body has complied with these provisions.

Status: Placed on the Suspense File in the Assembly Appropriations Committee

AB 812 (Christina Garcia) – Rape of a Spouse

This bill would expand the crime of rape pursuant to Penal Code section 261 to include spousal rape, and it would repeal the current spousal rape statute, Penal Code section 262. The bill would make conforming changes to Government Code section 13956 regarding CalVCB eligibility, which references the statute that is to be repealed. It also would make technical changes to meet Legislative Counsel's current drafting style.

Status: Failed the policy committee deadline

AB 885 (Quirk) – Bagley-Keene Open Meeting Act: Teleconferencing

This bill would require a state body subject to the Bagley-Keene Open Meeting Act that elects to conduct a meeting or proceeding by teleconference to make the portion that is required to be open to the public both audibly and visually observable. The bill would extend certain requirements of meetings of multimember advisory bodies that are held by teleconference to meetings of all multimember state bodies. The bill would require a multimember state body to provide a means by which the public may both audibly and visually remotely observe a meeting if a member of that body participates remotely. The bill would further require any body that is to adjourn and reconvene a meeting on the same day to communicate how a member of the public may both audibly and visually observe the meeting.

Status: Failed the policy committee deadline

AB 947 (Nazarian) – Victim Compensation

This is a spot bill that currently would make non-substantive changes to CalVCB eligibility statutes.

Status: Introduced

AB 1291 (Frazier) – State Bodies: Open Meetings

This bill would require a state body subject to the Bagley-Keene Open Meeting Act, when it limits time for public comment, to provide at least twice the allotted time to a member of the public who utilizes translating technology to address the state body.

Status: In the Senate

SB 530 (Cortese) – Rape of a Spouse

This bill would expand the crime of rape pursuant to Penal Code section 261 to include spousal rape, and it would repeal the current spousal rape statute, Penal Code section 262. The bill would make conforming changes to Government Code section 13956 regarding CalVCB eligibility, which references the statute that is to be repealed. It also would make technical changes to meet Legislative Counsel's current drafting style.

Status: Failed the policy committee deadline

SB 631 (Portantino) – Erroneous Conviction Claims Bill

This bill would make an appropriation from the General Fund to pay erroneous conviction claims approved by CalVCB.

Status: Referred to the Senate Appropriations Committee

ITEM 5

California Victim Compensation Board
Contract Report
May 20, 2021

The Board has delegated to the Executive Officer the authority to execute contracts with county victim centers for the verification of victim compensation program applications; contracts with counties for assistance in the effective collection of restitution from offenders; contracts for the review and adjustment of medical bills received by the California Victim Compensation Program; and contracts for the maintenance of the Board's information technology system.

Further, the Board has delegated to the Executive Officer the authority to execute all other contracts in an amount not to exceed \$200,000. All contracts in excess of \$200,000 require Board approval prior to execution.

For all contracts for which the Executive Officer has delegated authority, the Executive Officer reports to the Board the substance and amount of the contract at the meeting following execution of the contract.

Contractor Name and PO/Contract Number	Contract Amount and Contract Term	Good or Service Provided
Informational		
Contractor Name: Prison Industry Authority PO Number: 0000002392	Contract Amount: \$93,840.00 Term: 04/01/2021 – 06/30/2021	The Contractor shall provide to CalVCB braille transcription and print 8750 of the first responder cards in braille. This was procured through an inter-agency agreement.
Contractor Name: Pitney Bowes Inc PO Number: 0000002407	Contract Amount: \$72,786.72 Term: N/A	Purchase of mailing machine, the Pitney Bowes Relay 7000 Inserting System plus SendPro P3000 Series Postage Meter. Machine will enable CalVCB to prepare thousands of mail pieces quickly and cost-effectively. It folds and process up to 5,400 pieces per hour and stamps a stack of mixed size and weight mail at up to 205 letters per minute. This was procured through the Department of General Services' Cooperative Agreement #7-17-70-41-03.
Contractor Name: West Publishing Corporation, dba West, a Thomson Reuters Business	Contract Amount: \$82,155.89 Term:	Amendment to change contract termination date from 6/30/21 to 6/30/22 and add additional funds to change the Total Contract Amount from \$60,999.89 to \$82,155.89. Contractor shall provide on-

Contract Number: VC-8008 A1	07/01/2018 – 06/30/2022	<p>line access to legal research database - Government National Core with Premium Analytical plus the Litigation Collection and Drafting Assistant add-ons.</p> <p>This was procured through the Department of General Services' Master Services Agreement 5-17-70-11.</p>
Contractor Name: Intelligent Medical Solutions Inc Contract Number: VC-8032 A1	Contract Amount: \$3,026,250.00 Term: 10/22/2018 – 06/30/2022	<p>Amendment to change contract termination date from 6/30/21 to 6/30/2022. Contractor shall provide medical, dental and mental health bill review and reduction services.</p> <p>This was procured through a Request for Proposal (RFP).</p>
Contractor Name: ATS Communications Inc Contract Number: VC-9009 A1	Contract Amount: \$94,268.20 Term: 07/01/2019 – 06/30/2022	<p>Amendment to change contract termination date from 6/30/2021 to 6/30/2022 and add additional funds to change the Total Contract Amount from \$62,845.20 to \$94,268.20. Contractor shall provide support and maintenance for the Toshiba telephone system used for all telephone needs including voicemail and call recording.</p> <p>This was procured through a Non-Competitive Bid as Contractor is the only known vendor servicing Toshiba in the area.</p>

ITEM 6



CalVCB Board Meeting

Website Redesign

Objective:

CalVCB should be the destination for any California citizen seeking victim assistance.

PROJECT GOALS

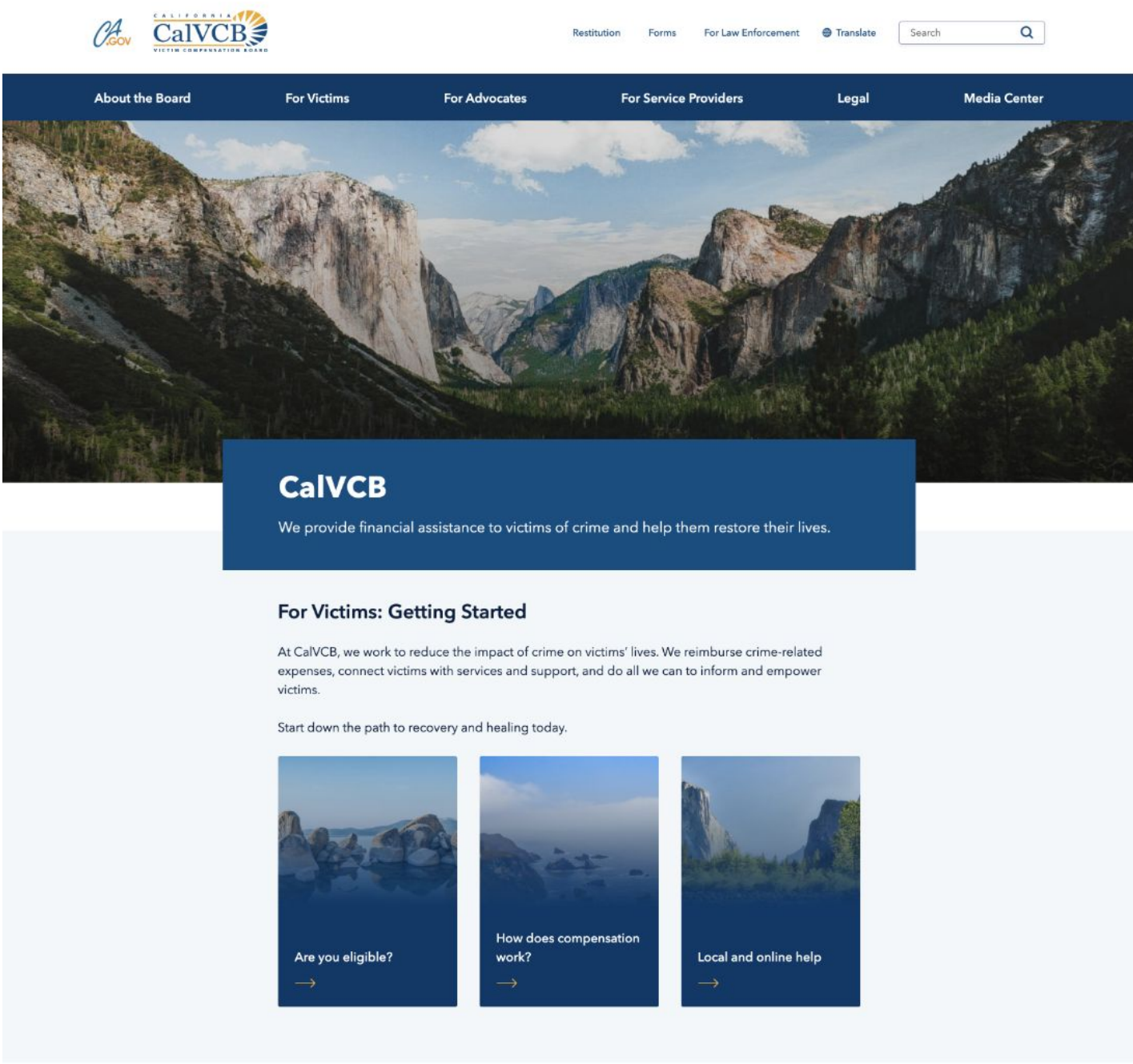
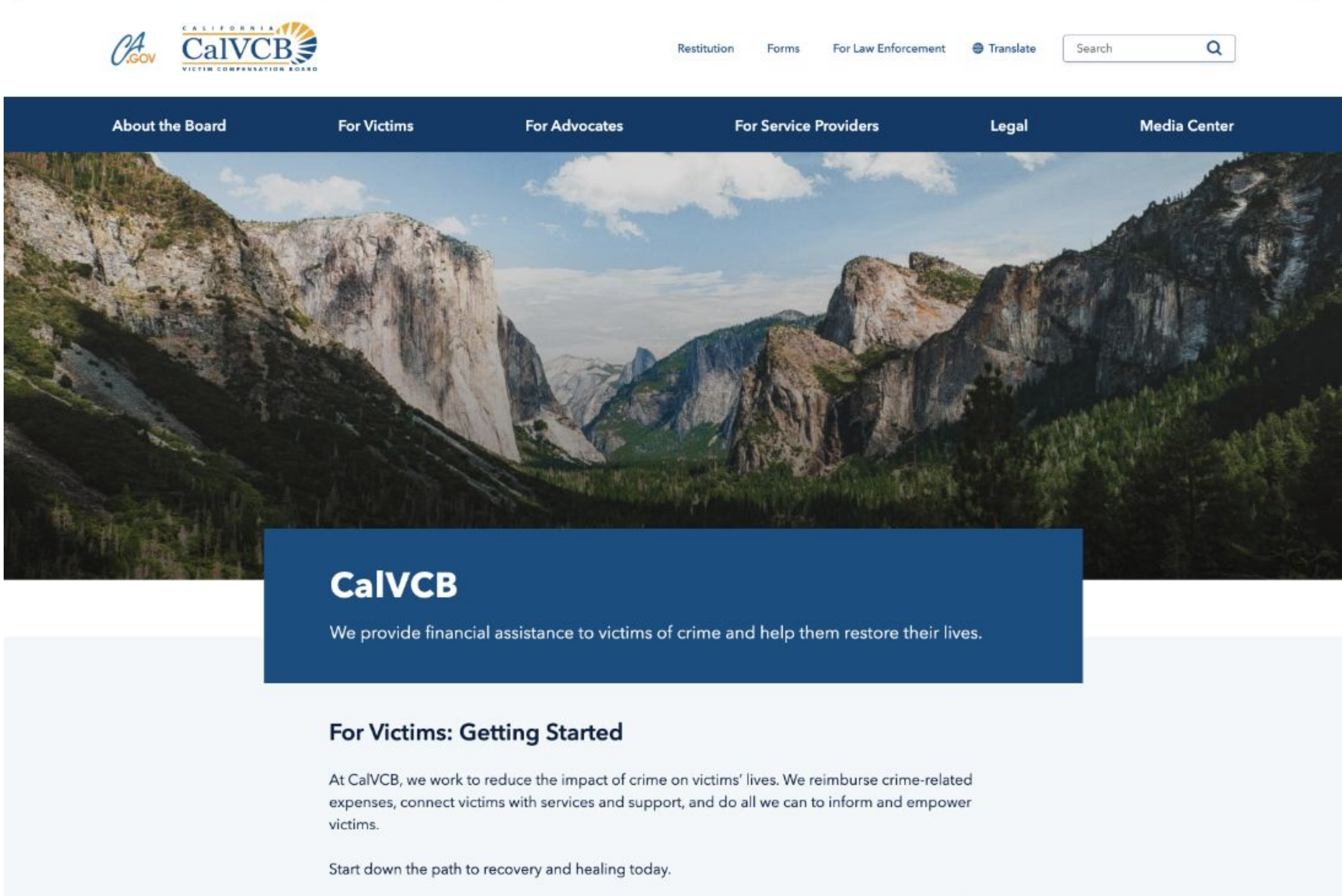
Broaden CalVCB's resource listings to also include those for victims of non-violent crimes or circumstances

Organize information to allow users to find information more intuitively and in fewer clicks

Present information in plain language, eliminating technical terms and professional jargon



Live Site





Local & Online Help

Help is closer than you think. Many resources exist, both near you and online, that can give you the help you need.

HOME » RESOURCES

I live in

County...

and I'm looking for help with

Situation...

Submit



Local & Online Help

Help is closer than you think. Many resources exist, both near you and online, that can give you the help you need.

HOME » ONLINE HARASSMENT

I live in

Trinity

and I'm looking for help with

Online Harassment

Submit

LOCAL RESOURCESONLINE RESOURCES

District Attorney Offices

DAOs offer CalVCB claims processing, crisis intervention, emergency assistance, counseling referrals, court escort and orientation, restitution assistance, returning of property, assistance with employees, and case status notification.

There are no DAOs in your county.

Trauma Recovery Centers

Trauma Recovery Centers work with the homeless, youth, immigrants, disabled, and those with mental health issues to provide clinical case management, assistance with law enforcement, and trauma-informed therapy.

There are no TRCs in your county.

Witness Assistance Centers

Victim Witness Assistance Centers work directly with CalVCB to assist victims. A victim advocate at the center in your area will be able to help you complete and submit and application and to learn more about the criminal justice system.

There are no VWACs in your county.

Community-Based Organizations

There are many other kinds of organizations in your community and online that offer one-on-one support and assistance for victims of violent crime, from support groups and shelters to legal services and crisis counseling.

Access to Justice and Family Law Center

11 Court Street
Weaverville, CA 96093
530-623-5461

Community Food Cupboard Trinity Congregational Church

735 Main Street
Weaverville, CA 96093
(530) 623-3101

Human Response Network

111 Mountain View St
Weaverville, CA 96093
530-623-2024

Milestone Wellness Center

1450 Main Street
Weaverville, CA 96093
(530) 623-1362 (office)
(530) 628-4111 (hotline)

The Senior Farmers' Market Program

Call for Address
530-628-4692 (office)
530-623-4692 (hotline)

Trinity County Adult Services

51 Industrial Park Way
Weaverville, CA 96093
530-623-8209 (office)
24 Hour Helpline: 530-623-1314 (hotline)

Alcohol and Other Drug Services

1450 Main St
Weaverville, CA 96093
(530) 623-1362

Fresh Start Food Bank

130 Texas Avenue
(530) 778-3222

Human Response Network

111 Mountain View St
Weaverville, CA 96093
530-623-2024

Southern Trinity Health Services

321 Van Duzen Road
(707) 574-6616

Tribal TANF

Call for Address
530-623-5006 (office)
866-720-8263 (hotline)

Trinity County Behavior Health

1450 Main St
Weaverville, CA 96093
530-623-5708



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Thank you!

ITEM 7

COPY OF PROPOSAL TO BE PROVIDED

ITEM 8

1
2
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4
5
6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of:

10 **Arturo Jimenez**

11 Claim No. 21-ECO-06

Proposed Decision

(Penal Code § 4900)

12 **I. Introduction**

13 On March 12, 2021, Arturo Jimenez (Jimenez) submitted an application for compensation as
14 an erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to
15 Penal Code section 4900. The application is based upon Jimenez's 1995 conviction for murder, for
16 which he was incarcerated over 24 years and has since been found factually innocent. It requests
17 compensation in the amount of \$1,266,300 for having been imprisoned, post-sentencing, for 9,045
18 days. Jimenez is represented by Caitlin Weisberg of McLane, Bednarski & Litt, LLP. The Office of
19 the Attorney General is represented by Deputy Attorney General Barton Bowers, who concedes that
20 Jimenez is entitled to compensation but only in the amount of \$1,251,600 for having been confined
21 just 8,940 days as a result of the erroneous murder conviction. This calculation excludes 105 days,
22 during which Jimenez was concurrently serving an overlapping sentence for a valid, 1994 robbery
23 conviction. On April 7, 2021, Jimenez objected to any deduction in compensation but waived his right
24 to an informal hearing, and the record closed. The matter was assigned to CalVCB Senior Attorney
25 Laura Simpton. After considering all of the evidence, along with the binding determination of factual
26 innocence, it is recommended the Board partially grant Jimenez's application and the Legislature
27 appropriate \$1,251,600 as payment to Jimenez for being wrongfully imprisoned for 8,940 days.
28

II. Factual Background

At approximately 2:00 a.m. on September 18, 1994, 14-year-old Hugo Colmenarez (Colmenarez) was fatally shot at a gas station in Los Angeles. Moments before, Colmenarez had stepped out of a 1982 Firebird, in which he and his four friends had been riding, and shouted the name of his gang, “Reseda.” The four friends with Colmenarez that night were Jose M., Gabriel C., Mayra M., and Llamily C.¹

In response to Colmenarez’s “Reseda” proclamation, two members of a rival gang called the “Harpys” walked across the street and confronted him. Jimenez’s brother, Armando A., was one of those two Harpys members.² They were soon joined by approximately 15 to 20 more Harpys and at least four vehicles. The crowd congregated around Colmenarez, who remained standing outside of the Firebird with three of his friends nearby. Mayra M. stayed in the back seat of the Firebird.³

One of the Harpys emerged from the crowd, drew his gun, and fired three times, fatally striking Colmenarez.⁴ The shooter, as described by Llamily C., was male, approximately 5’5” to 5’6” tall, and wearing a dark shirt with three-quarter length sleeves.⁵ As Llamily C. tended to Colmenarez, the driver of a blue Blazer yelled at her to “take him to the hospital.” Llamily C. was sure that the driver of the Blazer was not the shooter. Llamily C. was also sure that she would be able to identify the shooter if she saw him again.⁶

Significantly, Jimenez was the driver of the Blazer. Jimenez, who is approximately 5’9” tall, was wearing a white t-shirt that night. Jimenez was spotted by responding officers driving away from the gas station. By then, Jimenez’s brother, Armando A., and another Harpys member were also inside the Blazer, along with Jimenez’s other brother Pedro A. Both Jimenez and Pedro A. insisted that they

¹ Jimenez Ex. B. at p. 4. In an effort to preserve their privacy, the last names of all witnesses are omitted.

² *Id.* at pp. 5, 11.

³ *Id.* at pp. 4, 9, 12, 14.

⁴ *Id.* at p. 14.

⁵ *Id.* at pp. 6, 7.

⁶ *Id.* at pp. 6-9.

1 arrived at the gas station from a nearby bar only after hearing the gunshots, which was corroborated by
2 another bar patron who was also a family friend.⁷

3 When shown a photographic lineup that included Jimenez, Llamily C. did not identify him as the
4 shooter. Officers also showed the lineup to Jose M., who stated that Jimenez's photograph "most looks
5 like" the shooter, but then he noted several differences between the two, including skin tone and
6 weight. Gabriel C. separately viewed the lineup but did not identify Jimenez as the shooter. Finally,
7 Mayra M. was shown the lineup and, based upon her limited view through the side window of the
8 Firebird, eventually selected Jimenez's photograph as the shooter.⁸

9 **A. Trial Proceedings for Murder**

10 Two months later, or about November 17, 1994, Jimenez was charged with first-degree murder
11 in Los Angeles County Superior Court case number BA104511.⁹ A jury trial ensued. Llamily C. was
12 not called as a witness. Solely based upon Mayra M.'s identification, without any other physical
13 evidence connecting Jimenez to the shooting, the jury returned a guilty verdict on May 5, 1995. The
14 jury rejected Jimenez's alibi defense.¹⁰

15 **B. Overlapping Sentences for Murder and Robbery**

16 On July 7, 1995, Jimenez was sentenced for Colmenarez's murder in case number BA104511
17 to an indeterminate term of 30 years to life. The sentence was concurrently imposed with any prior,
18 uncompleted sentences. Jimenez did not receive any custody credits for pre-sentencing
19 confinement.¹¹

20 Previously, on October 18, 1994, Jimenez was charged in Los Angeles County Superior Court
21 case number LA018879 with two counts of second-degree robbery. Following a plea to one count and
22 dismissal of the other, Jimenez was sentenced on November 10, 1994, to the low term of two years
23 imprisonment. He received 28 days credit for actual time served, plus an additional 14 days for good
24

25 ⁷ *Id.* at pp. 4-5, 6, 11-12.

26 ⁸ *Id.* at pp. 8, 9, 12-13.

27 ⁹ Jimenez App. at p. 1.

28 ¹⁰ Jimenez Ex. B at pp. 4-5, 8, 12-14; AG Ex. 7.

¹¹ AG Ex. 7.

1 conduct, for a total of 42 days custody credit.¹² Assuming Jimenez continued to receive good conduct
2 credits throughout his incarceration under former Penal Code section 2933, then Jimenez would have
3 completed his robbery sentence no later than October 19, 1995.¹³

4 Thus, for 105 days after the imposition of sentence for murder in case number BA104511 on
5 July 7, 1995, until the completion of his robbery sentence in case number LA018879 on October 19,
6 1995, Jimenez was concurrently imprisoned for both of these convictions. Starting on October 20,
7 1995, Jimenez's custody was solely attributable to his erroneous murder conviction in case number
8 BA104511. Jimenez's erroneous imprisonment continued for 8,940 days between October 20, 1995
9 and April 10, 2020,¹⁴ when he was released on parole.

10 **C. Appellate Review**

11 Jimenez challenged his murder conviction on appeal, which was affirmed by the Second
12 Appellate District on September 4, 1996, and the California Supreme Court denied review on
13 November 20, 1996.¹⁵

14 **D. Habeas Proceedings**

15 Decades later on January 15, 2020, with the assistance of the Northern California Innocence
16 Project, Jimenez filed a petition for writ of habeas corpus in the Los Angeles County Superior Court.
17 The petition sought to vacate Jimenez's murder conviction on multiple grounds, including new evidence
18 of actual innocence and ineffective assistance of counsel for failing to call Llamily C. as a witness.

19 On August 11, 2020, the Los Angeles District Attorney conceded that Jimenez's counsel was
20 ineffective. On August 12, 2020, the court granted the habeas petition solely on that basis and vacated
21 the underlying murder conviction. Immediately thereafter, the court granted the prosecution's motion to
22

23
24 ¹² AG Response Letter (RL); AG Exs. 1-7.

25 ¹³ AG RL at 2 (calculating date); Email reply from counsel Weisberg, dated April 7, 2021 at 2:22 p.m.
26 (agreeing with AG's date calculation); see also former Pen. Code, § 2933, subd. (a) (West 1995),
added by Stats. 1994, c. 90 (A.B. 511), § 1, eff. June 6, 1994 (allowing full half-time credits).

27 ¹⁴ See Pen. Code, § 2900 (including partial days when calculating sentencing credits).

28 ¹⁵ *People v. Arturo Aceves Jimenez*, Court of Appeal case number B094779; California Supreme Court
case number S056643.

1 dismiss the case with prejudice.¹⁶ By then, Jimenez had already been released on parole several
2 months earlier on April 10, 2020.

3 **E. Finding of Factual Innocence**

4 Six months later on February 1, 2021, after conducting additional investigation, the Los Angeles
5 District Attorney joined Jimenez's motion for a finding of factual innocence. Both parties agreed that
6 "credible, corroborated evidence of innocence establishes by a preponderance of the evidence that Mr.
7 Jimenez did not commit the 1994 shooting for which he was convicted."¹⁷

8 The exculpatory evidence included Llamily C.'s consistent exclusion of Jimenez as the shooter.
9 Unfortunately, the official police report had incorrectly attributed Llamily C.s' description of the shooter
10 to Mayra M., and Llamily C.'s insistence that the driver of the Blazer was not the shooter only appeared
11 in a detective's raw handwritten note that was appended to the report.¹⁸

12 The exculpatory evidence also included statements from three persons that identified the
13 shooter as Oscar "Sneaky" Sanchez, a member of the Harpys street gang who had since passed away.
14 First, Jimenez's brother Armando A. declared that he had personally observed "Sneaky" fire the fatal
15 shots, after Armando A. had confronted Colmenarez and yanked a gold chain from his neck. Armando
16 A. added that he did not come forward initially because he believed Jimenez would not be convicted for
17 a crime that he did not commit, but he later disclosed the culprit's identity to habeas counsel.¹⁹
18 Second, former Harpys member Carlos G., who was serving a life sentence, also declared that
19 "Sneaky" had confessed to him that he was the shooter and Jimenez was "doing my time." Third,
20 Sanchez's former girlfriend Diana V. declared that Sanchez had confessed to her in 1998 that he was

21
22 ¹⁶ Order, dated August 12, 2020, submitted via email by counsel Weisberg on March 15, 2021.

23 ¹⁷ Jimenez Ex. B at pp. 20-21.

24 ¹⁸ Jimenez Ex. B at pp. 6-8.

25 ¹⁹ *Id.* at p. 11. The record does not reveal when Jimenez first learned of the real culprit's identity, either
26 from his brother Armando A. or other sources. But the timing is ultimately inconsequential for purposes
27 of compensation under the current version of Penal Code section 4900, given that Jimenez proceeded
28 to trial and did not "plead guilty with the specific intent to protect another from prosecution." (Pen.
Code, § 4903, subd. (c); cf. former Pen. Code, § 4903 (West 2013), added by Stats.2009, c. 432 (A.B.
316), § 6 (prohibiting compensation if claimant, "by any act or omission ... intentionally contribute[d] to
the bringing about of his or her arrest or conviction").

1 the shooter and then Sanchez reaffirmed his guilt years later shortly before he died. Notably, the
2 District Attorney interviewed Diana V. and found her credible. Both Diana V. and Carlos G. described
3 “Sneaky” as 5’5” to 5’6” tall, which matched the height description of the shooter given by Llamily C.²⁰

4 Finally, the exculpatory evidence included a statement from Mayra M., explaining that she did
5 not immediately recognize anyone in the photographs and only selected one after the detective
6 repeatedly instructed her to look again. As a result, Mayra M. felt pressed into making a selection.²¹

7 On February 2, 2021, the court granted the parties’ motion. As explained by the court,

8 “After reviewing the motion for finding factual innocence jointly submitted by the People
9 of the State of California and Arturo Jimenez, this Court further finds by a preponderance
10 of the evidence that Arturo Jimenez is factually innocent of the murder of Hugo
Colmenarez under Penal Code section 1485.55, subdivision (b).”²²

11 **F. CalVCB Proceedings**

12 Jimenez submitted the underlying application under Penal Code section 4900 on March 12,
13 2021, and provided supplemental information on March 15 and 19, 2021. Jimenez requested an
14 automatic recommendation for compensation, within 30 days and without a hearing, pursuant to Penal
15 Code sections 1485.55, subdivision (c), and 4902, subdivision (a). Jimenez further requested
16 compensation in the amount of \$1,266,300 for all 9,045 days of his post-sentencing imprisonment,
17 starting on July 7, 1995, through his parole release on April 10, 2020, despite his overlapping sentence
18 for an unrelated robbery conviction.²³

19 CalVCB denied both requests, as Jimenez lacked a finding of factual innocence for each and
20 every conviction underlying his erroneous imprisonment as required to trigger the statutory provisions
21 for an automatic recommendation for compensation.²⁴ Instead, CalVCB requested a response letter

22
23 ²⁰ Jimenez Ex. B at pp. 10-12.

24 ²¹ *Id.* at pp. 13, 16.

25 ²² Jimenez Ex. A at p. 2; see also Pen. Code, § 1485.55, subd. (b) (“...if the court has granted a writ of
26 habeas corpus ..., the person may move for a finding of factual innocence by a preponderance of the
evidence that the crime with which they were charged was either not committed at all or, if committed,
27 was not committed by the petitioner”).

27 ²³ Email from counsel Weisberg, dated March 15, 2021.

28 ²⁴ CalVCB letter to counsel Weisberg, dated March 18, 2021.

1 from the Attorney General that addressed the amount of compensation to be recommended given
2 Jimenez's binding declaration of factual innocence for murder.

3 The Attorney General timely responded on April 6, 2021. The Attorney General conceded that
4 Jimenez is entitled to compensation, but only in the amount of \$1,251,600, for the 8,940 days of
5 imprisonment between October 20, 1995, and April 10, 2020, that were solely attributable to the
6 erroneous murder conviction. Contrary to Jimenez's request, the Attorney General deducted 105 days
7 between July 7, 1995 and October 19, 1995, during which Jimenez was concurrently serving a
8 sentence for his valid robbery conviction.²⁵

9 On April 7, 2021, Jimenez agreed with the accuracy of the Attorney General's calculations
10 concerning the dates of his incarceration for robbery and murder, but objected to any deduction for the
11 overlapping period. Jimenez waived further proceedings before a hearing officer to expedite the
12 process.²⁶ As a result, the record closed that same day.

13 **III. Determination of Issues**

14 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
15 for a felony offense, to apply for compensation from CalVCB.²⁷ CalVCB typically requests a written
16 response from the Attorney General pursuant to Penal Code section 4902, and then an informal
17 evidentiary hearing ensues in accordance with Penal Code section 4903.²⁸ The claimant bears the
18 burden to prove, by a preponderance of the evidence, that (1) the crime with which he was charged
19 was either not committed at all, or, if committed, was not committed by him, and (2) he sustained injury
20 through his erroneous conviction and imprisonment.²⁹ To that end, CalVCB is bound by any "express
21 factual findings" rendered by a court when granting habeas relief, vacating a conviction, or issuing a
22 certificate of factual innocence.³⁰ If the claimant satisfies his burden of persuasion for both elements,

23
24 ²⁵ AG RL; Exhibits 1-7.

25 ²⁶ Email reply from counsel Weisberg, dated April 7, 2021 at 2:22 p.m.

26 ²⁷ Pen. Code, § 4900.

27 ²⁸ Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

28 ²⁹ Pen. Code, §§ 4903, subd. (a), 4904.

³⁰ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (b).

1 then pursuant to Penal Code section 4904, CalVCB shall recommend to the Legislature an award of
2 compensation. Compensation is calculated at the rate of \$140 per day for pre- and post-conviction
3 confinement.³¹

4 **A. Automatic Compensation Provisions Do Not Apply**

5 An exception to CalVCB's standard procedure occurs when a claimant has obtained a finding of
6 factual innocence for each and every conviction underlying his incarceration. In that case, subdivision
7 (c) of Penal Code section 1485.55 effectively compels CalVCB to assume both requisite elements of
8 innocence and injury for a successful claim under Penal Code section 4900 and to recommend
9 compensation accordingly.³² Penal Code section 4902, subdivision (a), further requires CalVCB to
10 recommend payment within 30 days after the application is filed, without a hearing or any response
11 from the Attorney General.³³

12 Although Jimenez invokes these statutory provisions, they do not apply to his case
13 because he received a finding of factual innocence for just one of the two convictions underlying
14 his incarceration. Specifically, Jimenez obtained a finding of factual innocence for murder in
15 case number BA104511, but not robbery in case number LA018879. Because he concurrently
16 served overlapping sentences of 105 days for both the invalid murder conviction and still valid
17 robbery conviction, the automatic compensation provisions do not apply.³⁴ Accordingly,
18

19
20 ³¹ Pen. Code, § 4904.

21 ³² Pen. Code, § 1485.55, subd. (c) ("If the court makes a finding that the petitioner has proven their
22 factual innocence by a preponderance of the evidence..., the board shall, without a hearing,
23 recommend to the Legislature that an appropriation be made and any claim filed shall be paid pursuant
24 to Section 4904").

25 ³³ Pen. Code, § 4902, subd. (a).

26 ³⁴ See CalVCB letter to counsel Weisberg, dated March 18, 2021; see also Proposed Decisions for
27 Contreras (17-ECO-11), adopted October 19, 2018; Martin (19-ECO-26), adopted April 16, 2020;
28 Poulos (19-ECO-02), adopted April 20, 2020; and Shull (16-ECO-11), adopted September 21, 2017,
located on CalVCB website at <https://victims.ca.gov/board/pc4900.aspx>. As detailed in the cited
authority, construing the ambiguous, automatic compensation provision in Penal Code section 1485.55
to apply only when a claimant obtains a finding of factual innocence for all convictions underlying their
incarceration best ensures that the hearing officer will be able to accurately complete the often-complex
compensation calculations in an expeditious manner. This narrow construction is consistent with the
Legislature's stated intent for section 1485.55 to "streamline" the compensation process for "innocent"

1 Jimenez continues to bear the burden to demonstrate both innocence and injury in this
2 administrative proceeding.

3 **B. Jimenez Has Demonstrated Actual Innocence for Murder**

4 On the issue of innocence, Jimenez is significantly aided by the superior court's findings. By
5 statute, CalVCB is bound by the court's finding of factual innocence.³⁵ CalVCB unequivocally accepts,
6 as found by the court, that Jimenez is actually innocent of Colmenarez's murder. Indeed, from the
7 documents provided, it does appear that Jimenez was not the shooter. Thus, Jimenez has proven that
8 he is more likely innocent than not of his murder conviction in case number BA104511.

9 Nonetheless, Jimenez remains guilty of robbery in case number LA018879, which is not
10 disputed in this proceeding. Accordingly, Jimenez has satisfied his burden to demonstrate actual
11 innocence for murder, but not robbery.

12 **C. Jimenez's Demonstrated Injury is Limited to 8,940 Days**

13 In addition to innocence, Jimenez must also prove injury. Notably, "injury" is twice referenced in
14 Penal Code section 4904 as a requisite condition for compensation, which is calculated at a rate of
15 \$140 per day.³⁶ The injury need not be pecuniary, as this particular requirement was expressly
16 removed by the Legislature.³⁷ Instead, given the manner by which compensation is calculated, the
17 injury contemplated by section 4904 is "each day ... spent illegally behind bars, away from society,
18 employment, and [] loved ones."³⁸

21 and "exonerated" persons. (Assem. Floor, Analysis of Sen. Bill No. 618 (2013-2014 Reg. Sess.), at pp.
22 1, 6-7, Sept. 5, 2013; Senate Floor, Analysis of Sen. Bill No. 618 (2013-2014 Reg. Sess.), at p. 4.)

23 ³⁵ Pen. Code, §§ 1485.5, subd. (c), 4903, subd. (b).

24 ³⁶ Pen. Code, § 4904 ("If the evidence shows that ... the claimant has *sustained injury* through his or
25 her erroneous conviction and imprisonment, the California Victim Compensation Board shall report the
26 facts of the case and its conclusions to the next Legislature, with a recommendation that the Legislature
27 make an appropriation for the purpose of indemnifying the claimant for *the injury*"), emphasis added.

28 ³⁷ Pen. Code, § 4904, amended by Stats.2015, c. 422 (S.B. 635), §1, eff. Jan. 1, 2016; Senate Floor
Analysis of Sen. Bill No. 635 (2015-2016), as amended Sept. 3, 2015, at p. 4 (striking "pecuniary injury"
as "an unfortunate and unsound description of the unique harm suffered when factually innocent
persons are imprisoned").

³⁸ *Holmes v. Calif. Victim Comp. & Gov't Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

1 Thus, injury occurs within the meaning of Penal Code section 4904 upon a showing that, but-for
2 the erroneous conviction and imprisonment, the claimant would have been free.³⁹ Injury is therefore
3 lacking if the erroneously convicted “claimant remained incarcerated on a separate, unrelated
4 conviction” that was valid.⁴⁰ In that scenario, the sentence for the valid conviction “vitiates any claim of
5 damage attributable to the [erroneous] conviction.”⁴¹

6 Here, Jimenez’s application defines his injury as the entire duration of his post-sentencing
7 incarceration for murder, which amounts to 9,045 days between July 7, 1995 and April 10, 2020.
8 Jimenez acknowledges that he was concurrently incarcerated for 105 of these days due to his still-valid
9 robbery conviction. He nevertheless objects to any deduction because “it was not the controlling
10 conviction....” Jimenez invokes Penal Code sections 1485.55, subdivision (c), and 4904 as support.⁴²

11 But Jimenez’s position conflicts with the statutory language of Penal Code section 4904, which
12 requires demonstration of some “injury” to qualify for compensation as an erroneously convicted
13 offender. Injury cannot be presumed solely based upon the imposition of sentence for an erroneous
14 conviction. Otherwise, an individual, who was wrongfully convicted of two offenses for which
15 concurrent sentences were imposed, would be entitled to double the amount of compensation for each
16 day of imprisonment. Moreover, Jimenez’s approach would preclude compensation for pre-sentencing
17 confinement, despite the express directive in section 4904 to include compensation for “any time spent
18 in custody, including in a county jail, that is considered to be part of the term of incarceration.”⁴³ The
19

20 ³⁹ See Assembly Floor Analysis of Sen. Bill No. 636 (2015-2016), as amended April 29, 2015, at p. 4
21 (noting author’s intent to provide compensation “when our own justice system erroneously takes those
22 precious rights from an individual,” which are “enshrined in the Declaration of Independence” as “life,
liberty, and the pursuit of happiness”).

23 ⁴⁰ *Fudger v. State* (N.Y. 1987) 131 A.D.2d 136, 141 (denying compensation under New York statute for
24 erroneous offenders because claimant’s valid conviction “vitiates any claim of damage attributable to
the [erroneous] conviction”).

25 ⁴¹ *Ibid.*

26 ⁴² Jimenez App. at p. 2; see also counsel Weisberg emails, dated March 15, 2021, and April 7, 2021.

27 ⁴³ Pen. Code, § 4904; see also Senate Floor Analysis of Sen. Bill No. 635 (2015-2016), as amended
28 Sept. 3, 2015, at pp. 4-5 (extending compensation to include pre-sentencing confinement for claimants
who “cannot afford bail” because “whatever harm is suffered by a person who is wrongly imprisoned
extends to the time in jail custody prior to sentencing”).

1 automatic compensation provision in Penal Code section 1485.55, subdivision (c), does not compel a
2 contrary result because, even when applicable, it nevertheless directs CalVCB to recommend
3 compensation "pursuant to Section 4904." Ultimately, compensation under section 4904 is required for
4 each day that the claimant would have been free but for the erroneous conviction, regardless of
5 whether that day occurs pre- or post-sentencing.


6 Applying this standard here, Jimenez's demonstrated injury is limited to 8,940 days. Jimenez
7 was incarcerated for his erroneous murder conviction between July 7, 1995, and April 10, 2020, for a
8 total of 9,045 days. Nonetheless, Jimenez was lawfully incarcerated for 105 of those days between
9 July 7, 1995, and October 19, 1995, as a result of his valid robbery conviction. Thus, Jimenez has
10 failed to demonstrate that, but for his erroneous murder conviction, he would have been free for all
11 9,045 days of his confinement. Rather, as urged by the Attorney General, Jimenez would have been
12 free for just 8,940 days from October 20, 1995 to April 10, 2020. Jimenez would have remained
13 incarcerated for robbery until October 19, 1995, even if he had not been sentenced on July 7, 1995, for
14 his erroneous murder conviction. As such, Jimenez's injury amounts to 8,940 days imprisonment.

15 Overall, Jimenez has satisfied his burden to prove, by a preponderance, that he did not commit
16 the murder with which he was charged and convicted in case number BA104511 and that he sustained
17 injury in the amount of 8,940 days imprisonment as a result of this erroneous conviction. Jimenez is
18 therefore entitled to a recommendation for compensation in the amount of \$1,251,600, representing
19 \$140 for each day of his erroneous imprisonment.

20 **IV. Conclusion**

21 CalVCB grants, in part, Jimenez's application for compensation under Penal Code section 4900
22 and, therefore, recommends that the Legislature appropriate \$1,251,600 as payment for his 8,940 days
23 of incarceration that were solely attributable his erroneous conviction for murder. CalVCB denies
24 Jimenez's request for compensation for the additional 105 days, during which he concurrently served a
25 valid sentence for robbery.

26
27 Date: April 21, 2021

28 

Laura Simpton
Senior Attorney
California Victim Compensation Board

ITEM 9

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5 **BEFORE THE VICTIM COMPENSATION BOARD**
6 **OF THE STATE OF CALIFORNIA**
7

8 In the Matter of:

9 **Robert Fenenbock**

10 PC 4900 Claim No. 21-ECO-08

Proposed Decision

(Penal Code §§ 4900 et seq.)

11 **I. Introduction**

12 On April 14, 2021, Robert Fenenbock (Fenenbock) submitted an application for compensation
13 as an erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant
14 to Penal Code section 4900. The application is based upon Fenenbock's imprisonment for a 1994
15 conviction for murder, for which he was found to be factually innocent after 27 years of incarceration.
16 Fenenbock is represented by George Harris of the Norton Law Firm. No appearance has been
17 requested from the Office of the Attorney General. CalVCB Senior Attorney Laura Simpton was
18 assigned to this matter. After reviewing the application and supporting documentation, CalVCB
19 recommends, in accordance with the automatic compensation provision of Penal Code section
20 1485.55, that the Legislature appropriate \$1,425,060 as payment to Fenenbock for being wrongfully
21 imprisoned for 10,179 days.

22 **II. Factual Background**

23 On October 6, 1991, the body of Gary "Hop" Summar (Summar) was found at a logging site in
24 Trinity County, partially covered with dirt. He had been bludgeoned and stabbed over 70 times. A knife
25 with Summar's blood was discovered nearby. Summar was last seen alive on October 2, 1991, in the
26 small community of Hawkins Bar, where he was confronted by a group of residents while traveling on
27 a road leading to a campground. The group included Bernard MacCarlie (MacCarlie) and his live-in
28 girlfriend Barbara Adcock (Adcock), who were riding together in her white Ford Ranchero. Anthony

1 Lockley (Lockley) was also present with his red truck, as were Robert Bond (Bond) and Fenenbock.
2 The confrontation involved an unsubstantiated accusation against Summar involving Adcock's five-
3 year old daughter.

4 Earlier that day at the campground, MacCarlie had stabbed one of the campers, Bert J., who
5 had expressed disbelief at Adcock's accusation. The assault was witnessed by Adcock's nine-year old
6 son Randy H., who was in the back of the Ranchero, lying on a mattress with some blankets.¹ Later
7 that night, at some point after Summar's murder, Randy H. was in the Ranchero when MacCarlie
8 dropped off Fenenbock and Bond at Fenenbock's trailer.²

9 **A. Trial Proceedings**

10 Several weeks later on October 18, 1991, Fenenbock was arrested and charged in a ten-count
11 complaint with premeditated murder, conspiracy to murder, and other offenses related to Summar's
12 death in Trinity County Superior Court case number 91CM364.³ Nine residents of Hawkins Bar were
13 ultimately charged in connection with Summar's murder, including MacCarlie, Adcock, Lockley, Bond,
14 and Fenenbock. The court granted the defendants' motion for a change in venue, which resulted in
15 two separate trials before dual juries in Solano County Superior Court for five of the defendants, and a
16 third trial in Contra Costa County for two other defendants, while the ninth remaining defendant was
17 dismissed entirely. All three trials were prosecuted by a specially appointed prosecutor from Trinity
18 County.⁴

20
21 ¹ Witnesses are referred to solely by their first name in an effort to preserve their privacy.

22 ² This factual summary is based upon the application and supporting documents, as well as portions of
23 the decisions in *People v. Fenenbock*, California Court of Appeal, First District, case number A065195,
24 47 Cal.App.4th 1688, opinion filed July 31, 1996; *Fenenbock v. Director of Dept. of Corrections*, U.S.
25 District Court, case number CIV-S-97-1731 LKK DAD (E.D. Cal.), 2007 Westlaw 2016764, opinion filed
26 July 6, 2007, and *Fenenbock v. Director of Dept. of Corrections* (9th Cir. 2012) 692 F.3d 910, to the
27 extent they are consistent with the finding of factual innocence. (See Cal. Code Reg., tit. 2, § 617.8,
28 subd. (b) (permitting hearing officer to take judicial notice under Evidence Code section 452 of any federal
or state court record).

³ Fenenbock App. at p. 2; see also Complaint and First Amended Information, submitted via email by
counsel Harris on April 18, 2021.

⁴ *Fenenbock*, *supra*, 2007 WL 2016764, *1-2; *Bond v. Rimmer*, U.S. District Court, case number CIV-S-
99-2150-LKK DAD (E.D. Cal.), 2007 WL 2009810, opinion filed July 6, 2007.

1 In November 1993, Fenenbock's trial proceeded first in Solano County Superior Court case
2 number C35712. By then, the prosecutor had dismissed all but two counts for murder and conspiracy
3 to murder with an enhancement for personal use of a weapon.⁵ No physical evidence connected
4 Fenenbock to Summar's death. Instead, the knife with Summar's blood at the crime scene was the
5 same knife used by MacCarlie to stab Bert J., and a shovel found in Lockley's red truck contained blood
6 matching both MacCarlie and Summar. Also, Summar's blood was found spattered and smeared inside
7 the red truck belonging to Lockley. No blood was found inside the Ranchero. The primary evidence
8 implicating Fenenbock consisted of testimony from Adcock's son Randy H., who claimed to have
9 witnessed all of the men stabbing Summar before dropping off Bond and Fenenbock at his trailer.⁶

10 Fenenbock testified in his defense. He admitted confronting Summar as part of the group but
11 denied any involvement in the subsequent murder. Fenenbock insisted that, after the confrontation,
12 he had proceeded to the campground, where he remained, until MacCarlie arrived sometime later in
13 the Ranchero and gave him and Bond a ride home.⁷

14 On February 4, 1994, the jury found Fenenbock guilty of murder with an enhancement for
15 personal use of a weapon. The jury acquitted Fenenbock of conspiracy to murder. Accordingly,
16 Fenenbock was sentenced on March 16, 1994, to an indeterminate term of 26 years to life
17 imprisonment for murder in case number C35712.⁸

18 In September 1994, the second trial against MacCarlie, Bond, and a third codefendant
19 commenced in Solano County Superior Court. Significantly, MacCarlie testified that he had an out-of-
20 body experience where he watched himself stabbing Summar, unable to control his actions, and did
21 not observe anyone else present during the attack. The jury found MacCarlie guilty of conspiracy to
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25 ⁵ Pen. Code, §§ 182 (conspiracy), 187, subd. (a) (murder), 12022, subd. (b) (personal use).

26 ⁶ *Fenenbock, supra*, 46 Cal.App.4th at pp. 1692-99; *Fenenbock, supra*, 2007 WL 2016764, at pp. *1-2.

27 ⁷ *Fenenbock, supra*, 46 Cal.App.4th at pp. 1699-1700.

28 ⁸ *Fenenbock, supra*, 46 Cal.App.4th at p. 1692; *Fenenbock, supra*, 2007 WL 2016764, at p. *2; Abstract
of Judgment, submitted via email by counsel Harris on April 18, 2021.

1 murder but deadlocked on the murder charge. The jury similarly found Bond guilty of conspiracy to
2 murder but deadlocked on the murder charge. The jury acquitted the third codefendant entirely.⁹

3 In 1995, the third trial ensued against Adcock and Lockley in Contra Costa County Superior
4 Court. The jury found Adcock guilty of both murder and conspiracy to commit murder, although her
5 murder conviction was subsequently reversed on appeal. Adcock's conviction for conspiracy to murder
6 was affirmed. The jury found Lockley guilty only of conspiracy to commit murder.¹⁰

7 **B. Appellate / Habeas Proceedings**

8 Fenenbock appealed his murder conviction, which was affirmed by the First District Court of
9 Appeal, and the California Supreme Court denied review on October 2, 1996.¹¹ Thereafter, Fenenbock
10 pursued habeas relief in state and federal court, which was ultimately denied by the Ninth Circuit in
11 2012.¹²

12 On August 17, 2017, Fenenbock filed another habeas petition in Solano County Superior Court
13 case number FCR332245, seeking to vacate his murder conviction in case number C35712.
14 Fenenbock was represented by counsel Harris and the Northern California Innocence Project. Over
15 the prosecution's objection, the court granted the petition on August 23, 2019, and ordered a new trial
16 pursuant to Penal Code section 1473, subdivision (b)(3)(B).¹³ The court expressly found that
17 MacCarlie's trial testimony, which implicated only himself in Summar's murder, constituted new and
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20 ⁹ *Fenenbock, supra*, 2007 WL 2016764, at pp. *2, *8; *Bond, supra*, 2007 WL 2009810, at p. *3; *People*
21 *v. Bond, et al.*, California Court of Appeal, First District, case number A070024, opinion filed March 16,
22 1999; *MacCarlie v. Lewis*, U.S. District Court, case number CIV-S-00-1830 LKK CHS (E.D. Cal.), 2010
23 WL 2089515, opinion filed May 21, 2010.

24 ¹⁰ *Fenenbock, supra*, 2007 WL 2016764, at p. *3; *People v. Lockley, et al.*, California Court of Appeal,
25 First District, case number A073277, opinion filed March 16, 1999; *Adcock v. Farmon*, (9th Cir. 2002) 51
26 F. App'x 634, 2002 WL 31396446; *MacCarlie, supra*, 2010 WL 2089515 at p. *3.

27 ¹¹ *People v. Fenenbock* (1996) 47 Cal.App.4th 1167, review denied Oct. 2, 1996, in California Supreme
28 Court case number S055264; *Adcock, supra*, 2002 WL 31396446.

¹² *In re Fenenbock*, California Supreme Court case number S102760, denying habeas on June 25, 2003;
Fenenbock, supra, 2007 Westlaw 2016764; *Fenenbock, supra*, 692 F.3d 910.

¹³ Pen. Code, § 1473, subd. (b)(3)(B) (authorizing habeas relief for "new evidence" that "could not have
been discovered prior to trial by the exercise of due diligence" and that is "admissible and not merely
cumulative ... or impeaching.")

1 credible evidence that likely would have changed the outcome of Fenenbock's trial. As support, the
2 court noted that neither of MacCarlie's codefendants in the second trial was found guilty of murder.¹⁴

3 Shortly thereafter on August 31, 2019, Fenenbock was released from custody on bail pending
4 retrial on the original murder charge in case C35712. By then, he had been incarcerated a total of
5 10,179 days for Summar's murder, from the date of his arrest on October 18, 1991, to and including
6 his release on August 31, 2019.¹⁵

7 The Trinity County District Attorney appealed the habeas decision on September 18, 2019. One
8 year later on October 6, 2020, the prosecution voluntarily moved to dismiss the appeal, which was
9 granted on October 14, 2020.¹⁶

10 **C. Dismissal for Outrageous Government Misconduct**

11 Meanwhile, on September 13, 2019, Fenenbock filed a motion to dismiss on the basis of
12 outrageous government misconduct in Solano County Superior Court case number FC35712. The
13 motion alleged that law enforcement had pressured Randy H. to inculcate Fenenbock, as evidenced
14 by Randy H.'s initial statements to police in which he had denied witnessing the murder. As a sanction
15 for such misconduct, Fenenbock urged the court to dismiss with prejudice the pending murder charges
16 in case number C35712. The Trinity County District Attorney opposed the motion to dismiss and further
17 moved to return venue to the Trinity County Superior Court for retrial proceedings.¹⁷

18 A lengthy evidentiary hearing ensued, at which Randy H. and several members of law
19 enforcement testified. Randy H. insisted that he did not observe Summar's stabbing or see a red truck
20 on the day of the murder. Randy H. did observe MacCarlie assault Bert J. with a knife. Randy H. also
21 recalled travelling in the Ranchero later that night to drop off Fenenbock and Bond. Randy H. explained
22 that he had inculcated the defendants after law enforcement told him that, without his statement, they
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24 ¹⁴ Fenenbock Ex. A at pp. 1-2.

25 ¹⁵ Fenenbock App. at p. 2; email from counsel Harris, dated April 18, 2021; see also Pen. Code, § 2900.5
26 (calculating jail credits by including partial days).

27 ¹⁶ Fenenbock Ex. B; *In re Fenenbock*, California Court of Appeal, First District, case number A158354,
order filed October 14, 2020.

28 ¹⁷ Fenenbock Ex. C at pp. 5-6.

1 would be released from jail and kill him. Randy H., who was only nine years old at that time, felt scared
2 and came to believe he did observe the stabbing. His statements against the defendants included
3 details of the murder that had been suggested to him by law enforcement. Now an adult, Randy H.
4 filed a civil suit against Trinity County for, inter alia, coercing his statements to implicate the
5 defendants.¹⁸

6 On August 24, 2020, the superior court granted Fenenbock's motion to dismiss. The court
7 found that Randy H. had been "manipulated by those in authority" and that law enforcement had
8 "implanted into Randy's mind" a false version of Summar's murder. The court rejected the
9 prosecution's theory that the Ranchero had embarked on a single, three-hour trip that evening,
10 spanning from the confrontation on the campsite road, to the commission of Summar's murder, and
11 concluding with dropping off Bond and Fenenbock. Instead, the court determined that two separate
12 trips had occurred, neither of which included the murder. The court further found that law enforcement's
13 actions to "implant a memory in a nine-year-old child" were "grossly shocking" and "outrageous" in
14 violation of Fenenbock's constitutional right to due process. Dismissal of all charges was warranted
15 because Fenenbock "would be prevented from obtaining a fair trial in the future if he were to be
16 retried...."¹⁹ Accordingly, the court rejected the prosecution's motion for a change in venue as moot
17 and ordered Fenenbock unconditionally released from bail.²⁰

18 **D. Finding of Factual Innocence**

19 On February 8, 2021, Fenenbock moved the Solano County Superior Court for a finding of
20 factual innocence of the dismissed murder charges in case number C35712. The proffered exculpatory
21 evidence included MacCarlie's trial testimony that he alone had stabbed Summar. It also included
22 Randy H.'s evidentiary hearing testimony, in which he had credibly denied witnessing Summar's
23 murder. It further included new information that Fenenbock had been interviewed by police on the night
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26 ¹⁸ Fenenbock Ex. C at pp. 7-16.

27 ¹⁹ Fenenbock Ex. C at pp. 17-21.

28 ²⁰ Fenenbock Exs. C at pp. 20-21; D at p. 1.

1 of the murder and the next morning, while wearing the same clothes as the day before, and those
2 clothes “were free of any evidence of him having been involved in the murder specifically.”²¹

3 The Trinity County District Attorney was timely served with the motion but did not file any
4 response or appear at the scheduled hearing on March 30, 2021. At the conclusion of the hearing, the
5 superior court granted Fenenbock’s unopposed motion pursuant to Penal Code section 1485.55, after
6 noting its findings when granting habeas relief and dismissing the charges for outrageous government
7 misconduct. The court expressly found “that the defendant has established by a preponderance of the
8 evidence that he is, in fact, factually innocent of the charges against him and grants the motion and
9 declares the defendant factually innocent of all charges.”²²

10 **E. CalVCB Proceedings**

11 On April 14, 2021, Fenenbock submitted the underlying application for compensation under
12 Penal Code section 4900. Upon request, Fenenbock provided additional information on April 18, 2021,
13 and April 19, 2021. Based upon the superior court’s finding of factual innocence, Fenenbock requests
14 an automatic recommendation of compensation in the amount of \$1,425,060, representing \$140 for
15 each of the 10,179 days that he was wrongfully imprisoned for Summar’s murder.

16 **III. Determination of Issues**

17 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
18 for a felony offense, to apply for compensation from CalVCB.²³ The application must be submitted at
19 least 60 days following reversal of a conviction or grant of habeas relief, and no more than 10 years after
20 release from custody or dismissal of charges.²⁴

21 Once an application has been properly filed, CalVCB typically requests a written response from
22 the Attorney General pursuant to Penal Code section 4902, and then an informal evidentiary hearing
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24

25 ²¹ Fenenbock Ex. E at pp. 1, 4-7.

26 ²² Fenenbock Exs. E at pp. 8-9; F.

27 ²³ Pen. Code, § 4900.

28 ²⁴ Pen. Code, § 4901.

1 ensues in accordance with Penal Code section 4903.²⁵ Under Penal Code section 1485.5, CalVCB is
2 bound by any “express factual findings” rendered by a court when granting habeas relief, vacating a
3 conviction, or issuing a certificate of factual innocence.²⁶ Nonetheless, the claimant bears the burden to
4 prove, by a preponderance of the evidence, that (1) the crime with which he was charged was either not
5 committed at all, or, if committed, was not committed by him, and (2) he sustained injury through his
6 erroneous conviction and imprisonment.²⁷

7 If the claimant satisfies his burden of persuasion for both elements, then pursuant to Penal Code
8 section 4904, CalVCB shall recommend to the Legislature an award of compensation. Under Penal Code
9 section 4904, compensation is calculated at the rate of \$140 per day for pre-and post-conviction
10 confinement.²⁸

11 An exception to CalVCB’s standard procedure occurs when a claimant has obtained a
12 finding of factual innocence for each and every conviction underlying his incarceration. As set
13 forth in subdivision (a) of Penal Code section 1485.55:

14 In a contested proceeding, if the court has granted a writ of habeas corpus or when,
15 pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that
16 the person is factually innocent, that finding shall be binding on the California Victim
17 Compensation Board for a claim presented to the board, and upon application by the
18 person, the board shall, without a hearing, recommend to the Legislature that an
19 appropriation be made and the claim paid pursuant to Section 4904.²⁹

20 Subdivision (c) similarly provides that if “the court makes a finding that the petitioner has proven their
21 factual innocence by a preponderance of the evidence..., the board shall, without a hearing, recommend”
22 payment “pursuant to Section 4904.”³⁰ In effect, these provisions of section 1485.55 compel CalVCB to
23 assume both requisite elements of innocence and injury for a successful claim under Penal Code section
24 4900 and to recommend compensation accordingly.

25 ²⁵ Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

26 ²⁶ Pen. Code, § 1485.5, subd. (c).

27 ²⁷ Pen. Code, §§ 4903, subd. (a), 4904.

28 ²⁸ Pen. Code, § 4904, added by Stats.2015, c. 422 (S.B.635), § 1, eff. Jan. 1, 2016.

29 ²⁹ Pen. Code, § 1485.55, subd. (a).

30 ³⁰ Pen. Code, § 1485.55, subd. (c).

1 This construction is confirmed by Penal Code section 4902, which provides in relevant part:

2 “If the provisions of Sections 851.865 or 1485.55 apply in any claim, the California Victim
3 Compensation Board shall, within 30 days of the presentation of the claim, calculate the
4 compensation for the claimant pursuant to Section 4904 and recommend to the
Legislature payment of that sum.”³¹

5 Consequently, not only must CalVCB automatically recommend payment without a hearing or response
6 from the Attorney General whenever a claimant has obtained the requisite findings of factual innocence,
7 but CalVCB must do so within 30 days thereafter. Moreover, a finding of factual innocence issued
8 pursuant to section 1485.55 is not appealable by the prosecution.³²

9 Here, Fenenbock timely submitted his application for compensation on April 14, 2021, more than
10 60 days but less than 10 years after his conviction was reversed on August 23, 2019, he was released
11 from custody on August 30, 2019, and the charges dismissed on August 24, 2020. At the time of his
12 release, Fenenbock had been continuously confined for 10,179 days. This confinement included 841
13 days pre-conviction from Fenenbock’s arrest on October 18, 1991, until the jury’s guilty verdict on
14 February 4, 1994. It additionally included 9,338 days post-conviction from February 4, 1994, until
15 Fenenbock’s release on August 30, 2019. The entire duration of Fenenbock’s confinement, both pre-
16 and post-conviction, was solely attributable to his erroneous conviction for Summar’s murder, as no other
17 convictions or sentences were imposed at any time.

18 The Solano County Superior Court expressly found, by a preponderance of the evidence, that
19 Fenenbock was factually innocent. This determination was based upon the absence of any physical
20 evidence implicating Fenenbock in Summar’s brutal and bloody death, MacCarlie’s testimony that he
21 alone stabbed Summar, and Randy H.’s repudiation of his prior statements implicating Fenenbock and
22 the other defendants in Summar’s murder. No contrary evidence or argument was offered by the
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25 ³¹ Pen. Code, § 4902, subd. (a).

26 ³² *People v. Caldwell* (2018) 29 Cal.App.5th 180, 188-89 (concluding that “a defendant may appeal denial
27 of a factual innocence motion” despite the People’s inability to do so); *In re Anthony* (2015) 236
28 Cal.App.4th 204, 215 (holding that “section 1485.55 order is not appealable by the People”); *see also*
Pen. Code, § 1485.5 (omitting any right of appeal of factual innocence determination rendered post-
conviction); *cf.* Pen. Code, § 851.8, subd. (o) (expressly authorizing right of appeal by either party of
factual innocence determination rendered pre-conviction).


1 prosecution. In accordance with its prior findings to grant habeas relief and dismiss the charges in case
2 number C35712, the court declared Fenenbock to be factually innocent pursuant to Penal Code section
3 1485.55.³³

4 The superior court's declaration of Fenenbock's innocence binds CalVCB in this administrative
5 proceeding.³⁴ CalVCB unequivocally accepts that Fenenbock is actually innocent of Summar's murder,
6 for which he was erroneously incarcerated over 27 years. CalVCB recognizes that, but for this conviction,
7 Fenenbock would not have spent 10,179 days "illegally behind bars, away from society, employment,
8 and [his] loved ones."³⁵ Therefore, Fenenbock is entitled to a recommendation of compensation in the
9 amount of \$1,425,060, representing \$140 for each day of his erroneous incarceration.

10 IV. Conclusion

11 CalVCB hereby grants Fenenbock's application for compensation under Penal Code section 4900
12 as mandated by Penal Code section 1485.55 and, therefore, recommends that the Legislature
13 appropriate \$1,425,060 as payment to Fenenbock for his 10,179 days of erroneous incarceration.

14
15 Date: April 27, 2021

16 
17 _____
18 Laura Simpton
19 Senior Attorney
20 California Victim Compensation Board

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26 _____
27 ³³ Fenenbock Exs. E at pp. 8-9; F.

28 ³⁴ Pen. Code, §§ 1485.55, subds. (a) & (c); 4903, subd. (b).

³⁵ *Holmes v. Cal. Victim Comp. & Gov't Claims Bd.* (2015) 239 Cal.App.4th 1400, 1405.

ITEM 10

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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of the Claim of:

10 **Andrew Wilson**

11 PC 4900 Claim No.: 19-ECO-06

Proposed Decision

(Penal Code §§ 4900 et seq.)

12 **INTRODUCTION**

13 On March 14, 2019, Andrew Wilson (Wilson) submitted an application for compensation as an
14 erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to Penal
15 Code section 4900. The application is based upon Wilson's imprisonment for a 1986 conviction for
16 murder for which he was sentenced to life without the possibility of parole, plus one year. On March 17,
17 2017, the Los Angeles Superior Court granted Wilson's petition for habeas relief and vacated his
18 conviction on due process grounds, with the express concession of the District Attorney. The charges
19 were simultaneously dismissed and Wilson was released from prison, after thirty-two years, on March
20 16, 2017. On March 13, 2019, Wilson filed a motion for a finding of factual innocence under Penal
21 Code section 1485.55, subdivision (b). In a letter filed February 16, 2021, Los Angeles County District
22 Attorneys, Erika Jerez and Islam Ramadan, conceded Wilson's motion should be granted. On
23 February 22, 2021, the Los Angeles Superior Court granted Wilson's motion.¹ Wilson is
24 Represented by Adam Grant of the Loyola Law School Project for the Innocent. Barton Bowers
25 represents the Office of the Attorney General. CalVCB Senior Attorney Michelle D. Phillips was
26 assigned to this matter.

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29 ¹ The parties agreed to waive the 30-day automatic compensation provision and have this matter heard
by the Board during the May 2021 meeting.

1 After reviewing the application and supporting documentation, CalVCB recommends, in
2 accordance with the automatic compensation provision of Penal Code section 4902, that the
3 Legislature appropriate \$1,650,880 in compensation to Wilson for being wrongfully imprisoned for
4 11,792 days.

5 BACKGROUND

6 On October 23, 1984, Chris Hanson (Hanson) and his girlfriend, Saladena Bishop (Bishop),
7 were asleep in their vehicle on Hobert Boulevard in Los Angeles. According to Bishop, she awoke at
8 around 9:30 p.m. to find two men attacking Hanson on the driver's side of the vehicle. By the time the
9 attackers fled, Hanson had suffered nine puncture wounds. Although the wounds were superficial and
10 would not have ordinarily been fatal, Hanson suffered from the blood clotting disorder Von Willebrand
11 disease, and died within minutes. The Los Angeles Police discovered a knife tip east of the pickup that
12 was consistent with the stab wound on Hanson's cheek and matched the broken blade found on the
13 floorboard of the truck. No physical evidence was discovered on the knife tip. Wilson's fingerprints
14 were not found on the knife. Officers found 14 identifiable fingerprints in Hanson's truck. None
15 matched Wilson's fingerprints.

16 Los Angeles Police Department (LAPD) Detective Richard Marks (Marks) was assigned to
17 investigate Hanson's murder. Marks interviewed Bishop the following morning. Bishop reviewed three
18 mug shot books, which contained more than 1500 images.² She selected several photographs of the
19 same suspect, who was later eliminated due to the suspect's incarceration at the time of Hanson's
20 murder.³

21 Clarence Pace (Pace) was interviewed on November 27, 1984 and remembered that he was
22 walking north on LaSalle Street with his cousin, Donald Brim and friend, Norval Gully. Pace saw two
23 men jogging towards him. Pace's description of the men did not match Bishop's description.⁴ Pace
24 stated that the only person who looked like one of the men who ran past him was "A.D." Pace
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27 ² Wilson Ex. A at p. 41.

28 ³ Wilson Ex. A at p. 40.

29 ⁴ Wilson, Ex. A at pp. 31-32.

1 subsequently identified Wilson as A.D.⁵ Pace told Marks he was not certain it was A.D. he saw on
2 October 26, 1984.⁶ Nevertheless, Marks wrote a statement stating Pace was “80% sure” he saw A.D.⁷

3 On November 26, 1984, Mark Brown (Brown) told law enforcement that, a week after Hanson’s
4 murder, Albert Ware (Ware) confessed to “gigging” the person on Hobart.⁸ LAPD detectives
5 recognized that Ware was a member of the Westside Rollin 20s criminal street gang and known as
6 “Sweaty Teddy.”⁹ There is no evidence that Marks investigated or questioned Ware about the crime.

7 Over the following six weeks, Bishop identified several other individuals as possible suspects. It
8 was not until November 29, 1984, when Marks constructed a 16-photo lineup and showed it to Bishop
9 that she identified Wilson. The photo array included photographs of Wilson, Frederick Terrell (Terrell),
10 Pace, Vincent Sanders (Sanders) and Marshaunt “Freddie” Jackson.¹⁰ Initially, Bishop did not identify
11 anyone in the lineup. In an affidavit, Marks admitted that he “directed Bishop’s attention” to Wilson’s
12 photograph.¹¹ Marks further admitted he routinely used this improper practice throughout his career,
13 despite knowing the practice was not part of departmental policies and did not conform with his law
14 enforcement training. Marks stated he would make a notation next to an improper identification
15 because he knew it was an item to be litigated.¹² Following Marks’s direction, Bishop identified Wilson.
16 She also independently identified Terrell as a suspect in Hanson’s murder. Marks arrested Terrell on
17 December 2, 1984.

18 The same day Terrell was arrested, Marks said Sanders voluntarily agreed to go to the station
19 for an interview regarding a new suspect. Sanders and Terrell were first cousins and lived across the
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22 ⁵ Wilson Ex. 3(B) at p. 2.

23 ⁶ Wilson Ex. 8 at p. 2.

24 ⁷ Ibid.

25 ⁸ A “gig” is an instrument that makes puncture wounds similar to those inflicted on Hanson.

26 ⁹ Wilson Ex. A at p. 38.

27 ¹⁰ Wilson Ex. A at p. 46.

28 ¹¹ Wilson Ex. 20 at p. 18.

29 ¹² Wilson Ex.20 at p.24

1 street from one another. Marks admitted to recording Sanders's statement without his knowledge.
2 Sanders stated Terrell was not involved and he overheard Wilson and another man named Ricky
3 Wilson, confess to Hanson's murder the same night it occurred.¹³ According to Sanders, the
4 confession occurred in an apartment full of other people. However, Sanders testified at trial that Marks
5 persuaded him go to the police station to make a statement by threatening to "F Sanders up with his
6 parole and send him back to the pen, unless he gave a statement."¹⁴ Sanders further testified Marks
7 threatened his mother.¹⁵

8 After learning Marks was seeking to question him, Wilson surrendered himself to the LAPD, who
9 picked him up on December 3, 1984.¹⁶ He was booked at 12:05 a.m. on December 4, 1984.

10 On November 10, 1986, a jury returned verdicts finding Wilson guilty of first-degree murder and
11 robbery and finding the special circumstance and weapon allegations to be true. The evidence against
12 Wilson consisted of eyewitness identification by Bishop and Pace, and statements by Sanders made to
13 Marks during his interview on December 2, 1984.¹⁷

14 At the probation and sentencing proceedings on February 6, 1987, the court denied Wilson's
15 motion for a new trial and sentenced him to life in prison without the possibility of parole plus one year
16 for the murder and accompanying weapon finding. Sentence on the robbery was stayed pursuant to
17 Penal Code section 654.¹⁸

18 The court of appeal affirmed Wilson's conviction and sentence on June 22, 1988. On May 7,
19 1990, Wilson filed a pro se petition for writ of habeas corpus in the United State District Court, which
20 the court denied. He filed a timely appeal, which the Ninth Circuit Court of Appeals affirmed in 1993.
21 Wilson filed pro se petitions in the California Supreme Court on March 22, 1994, July 18, 1994, and
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24 ¹³ Wilson Ex. A at p. 16.

25 ¹⁴ Wilson Ex. A at p. 47.

26 ¹⁵ Id.

27 ¹⁶ Wilson Ex. A at p. 51.

28 ¹⁷ Wilson Ex. A at p. 54.

29 ¹⁸ Id.

1 May 16, 2001, which were all summarily denied. He filed a pro se petition in the Court of Appeal on
2 January 8, 2001, which was summarily denied.¹⁹

3 On September 23, 2013, after the Superior Court granted Wilson's section 1054.9 motion for
4 discovery, he filed a Pro Se petition claiming "newly discovered evidence" as the sole ground. The
5 court denied the petition. On October 25, 2015, Wilson filed another pro se petition with the superior
6 court. After counsel was retained, Wilson filed an Amended Petition for a Writ of Habeas Corpus on
7 August 1, 2016. The superior court granted the motion on March 15, 2017.²⁰

8 The court vacated Wilson's conviction on March 15, 2017, based upon the Los Angeles County
9 District Attorney's Office concession that numerous constitutional errors were committed during pre-trial
10 and trial proceedings, which deprived Wilson of a fair trial. Wilson was released from custody on March
11 16, 2017. By then, Wilson had been continuously imprisoned for 11,792 days, from the date of his
12 arrest on December 3, 1984, to and including the date of his release on May 16, 2017.²¹ The entire
13 duration of Wilson's imprisonment resulted solely from his vacated conviction for Hanson's murder.

14 On March 14, 2019, Wilson, by and through his counsel, submitted an application to CalVCB
15 seeking compensation pursuant to Penal Code section 4900. The application was timely submitted and
16 requested \$1,650,880 in compensation as a result of his erroneous conviction. Wilson also requested
17 a stay of the CalVCB proceeding pending the result of his Motion for a finding of factual innocence, filed
18 on March 13, 2019, and pending before the Los Angeles Superior Court.

19 On February 22, 2021, the Los Angeles Superior Court granted Wilson's motion and found
20 Wilson met his burden to demonstrate factual innocence by a preponderance of the evidence under
21 Penal Code section 1485.55. The court relied on the People's concession, filed on February 19, 2021,
22 which stated: "Upon further review of Mr. Wilson's factual innocence claim and evidence presented in
23 support of his claim, Respondent believes Mr. Wilson has met his legal burden to prove his claim by a
24 preponderance of the evidence."

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27 ¹⁹ Id.

28 ²⁰ Id.

29 ²¹ Marks advised Wilson of his Miranda Rights at 10: 20 p.m. on December 3, 1984, therefore Wilson
was in custody as of this date.

DETERMINATION OF ISSUES

Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned for a felony offense, to apply for compensation from CalVCB.²² The application must be submitted at least 60 days following reversal of a conviction or grant of habeas relief, and no more than 10 years after release from custody or dismissal of charges.²³

Once an application has been properly filed, CalVCB typically requests a written response from the Attorney General pursuant to Penal Code section 4902, and then an informal evidentiary hearing ensues in accordance with Penal Code section 4903.²⁴ Under Penal Code section 1485.5, CalVCB is bound by any “express factual findings” rendered by a court when granting habeas relief, vacating a conviction, or issuing a certificate of factual innocence.²⁵ Nonetheless, the claimant bears the burden to prove, by a preponderance of the evidence, that (1) the crime with which he was charged was either not committed at all, or, if committed, was not committed by him, and (2) he sustained injury through his erroneous conviction and imprisonment.²⁶

If the claimant satisfies his burden of persuasion for both elements, then pursuant to Penal Code section 4904, CalVCB shall recommend to the Legislature an award of compensation. Under Penal Code section 4904, compensation is calculated at the rate of \$140 per day for pre-and post-conviction confinement.²⁷

An exception to CalVCB’s standard procedure occurs when a claimant has obtained a finding of factual innocence for each and every conviction underlying his incarceration. As set forth in Penal Code section 1485.55:

In a contested proceeding, if the court has granted a writ of habeas corpus or when, pursuant to Section 1473.6, the court vacates a judgment, and if the court has found that the person is factually innocent, that finding shall be binding on the California Victim Compensation Board for a claim presented to the board, and upon application by the

²² Pen. Code, § 4900.

²³ Pen. Code, § 4901.

²⁴ Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

²⁵ Pen. Code, § 1485.5, subd. (c).

²⁶ Pen. Code, §§ 4903, subd. (a), 4904.

²⁷ Pen. Code, § 4904, added by Stats.2015, c. 422 (S.B.635), § 1, eff. Jan. 1, 2016.

1 person, the board shall, without a hearing, recommend to the Legislature that an
2 appropriation be made and the claim paid pursuant to Section 4904.²⁸

3 Subdivision (c) similarly provides that if “the court makes a finding that the petitioner has proven their
4 factual innocence by a preponderance of the evidence..., the board shall, without a hearing,
5 recommend” payment “pursuant to Section 4904.”²⁹ In effect, these provisions of section 1485.55
6 compel CalVCB to assume both requisite elements of innocence and injury for a successful claim under
7 Penal Code section 4900 and to recommend compensation accordingly.

8 This construction is confirmed by Penal Code section 4902, which provides in relevant part:

9 “If the provisions of Sections 851.865 or 1485.55 apply in any claim, the California Victim
10 Compensation Board shall, within 30 days of the presentation of the claim, calculate the
11 compensation for the claimant pursuant to Section 4904 and recommend to the
12 Legislature payment of that sum.”³⁰

13 Consequently, not only must CalVCB automatically recommend payment without a hearing or response
14 from the Attorney General whenever a claimant has obtained the requisite findings of factual
15 innocence, but CalVCB must do so within 30 days thereafter. Moreover, a finding of factual innocence
16 issued pursuant to section 1485.55 is not appealable by the prosecution.³¹

17 Wilson timely submitted his application for compensation on March 14, 2019, more than 60 days
18 but less than 10 years after his convictions were vacated on March 15, 2017, and he was released from
19 custody on March 16, 2017. At the time of his release, Wilson had been confined for a total of 11,792
20 days. The entire duration of Wilson’s incarceration was solely attributable to his erroneous conviction
21 for murder, as no other convictions or sentences were imposed at any time.

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24 ²⁸ Pen. Code, § 1485.55, subd. (a).

25 ²⁹ Pen. Code, § 1485.55, subd. (c).

26 ³⁰ Pen. Code, § 4902, subd. (a).

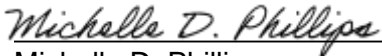
27 ³¹ *People v. Caldwell* (2018) 29 Cal.App.5th 180, 188-89 (concluding that “a defendant may appeal
28 denial of a factual innocence motion” despite the People’s inability to do so); *In re Anthony* (2015) 236
29 Cal.App.4th 204, 215 (holding that “section 1485.55 order is not appealable by the People”); see also
Pen. Code, § 1485.5 (omitting any right of appeal of factual innocence determination rendered post-
conviction); cf. Pen. Code, § 851.8, subd. (o) (expressly authorizing right of appeal by either party of
factual innocence determination rendered pre-conviction).

1 The superior court's declaration of Wilson's innocence binds CalVCB in this administrative
2 proceeding.³² CalVCB unequivocally accepts that Wilson is actually innocent of the murder of Hanson,
3 for which he was erroneously incarcerated for 32 years. CalVCB recognizes that, but for these
4 convictions, Wilson would not have spent 11,792 days "illegally behind bars, away from society,
5 employment, and [his] loved ones."³³ Therefore, Wilson is entitled to a recommendation of
6 compensation in the amount of \$1,650,880, representing \$140 for each day of his erroneous
7 incarceration.

8 Conclusion

9 CalVCB hereby grants Wilson's application for compensation under Penal Code section 4900
10 as mandated by Penal Code section 1485.55 and recommends the Legislature appropriate \$1,650,880
11 as payment to Wilson for his 11,792 days of erroneous incarceration.

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13 Dated: April 8, 2021


14 Michelle D. Phillips
15 Hearing Officer
16 California Victim Compensation Board
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28 ³² Pen. Code, §§ 1485.55, subd. (c); 4903, subd. (b).

29 ³³ *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400.