
Victim Compensation Board Meeting Agenda
July 15, 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 May 20, 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
No materials for this item | Information Item |
| Item 4. | Legislative Update
Legislative Report attached | Information Item |
| Item 5. | Contract Report
Contract Report attached | Information Item |
| Item 6. | William Richards (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |

ITEM 1

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California Victim Compensation Board Open Meeting Minutes May 20, 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, May 20, 2021, at 10:00 a.m. Also present via Zoom was Member Diana Becton, District Attorney. Member Richard Chivaro, Deputy State Controller and Chief Counsel, acting for, and in the absence of, Betty T. Yee, Controller was absent at the time the meeting was convened, but joined the meeting shortly thereafter.

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 March 18, 2021, Board Meeting

The Board approved the minutes of the March 18, 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.) Ms. Burrell stated that anyone wanting to comment on agenda item 7, the Trauma Recovery Center Grant awards, will have an opportunity to offer public comment when that item was taken up by the Board later in the meeting.

Nicky MacCallum, counseling services director for Youth Alive in Oakland, was first to speak. Ms. MacCallum stated that the mission of her organization is to prevent violence and create community leaders. She thanked the Board for removing barriers for victims seeking mental health services by allowing telehealth sessions without the normal limitations. During the stay-at-home orders it has proven invaluable, and she hopes the change becomes permanent even after the pandemic. In addition to regular clients, they have seen an increase in clients who have challenges accessing in-person services. For example, clients with major safety concerns that could put providers at risk, those with transportation challenges, childcare challenges, and those with emotional or physical trauma that prevents or limits in-person services. One example is their Circle of Care grief group, for parents who have lost a child to homicide. They have seen a 75% increase in new participants and a 50% increase in ongoing engagement. Many parents express their gratitude that telehealth has increased their ability to connect with others who understand

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their pain and experience. Youth Alive is committed to meeting clients where they are at, and was asking the Board to consider permanently removing the restrictions regarding telehealth. Ms. MacCallum explained that this continued adaptation would help many providers offer the most flexible, equitable services to support victims of crime on the path to healing. Ms. MacCallum thanked the Board for their time.

Margaret Petros asked if there would be a separate time to discuss a specific claim, or if she would need to discuss it during this public comment time. Ms. Burrell stated that now would be the proper time to offer her comments. Ms. Petros stated that she is the executive director for Mothers Against Murder, a community-based organization that assists families and survivors of murder. She indicated that item number 10 on the agenda [Victim Compensation Agenda] is a denial for an incident that happened in October 2019, that she believes should have been allowed. The incident is a homicide of an 18-year-old who lived in a gang-infested neighborhood. As a child he witnessed his mother being a victim of domestic violence and was disadvantaged in many ways. His mother sent him to get bread and he was stabbed and killed. The police allege that he confronted the suspect physically and “aggressively,” although they she stated she does not know what that means as she has been unable to access the records in order to advocate for this case.

Ms. Petros stated that the Board has finally received a crime report, however, refuses to share it with her or the claimant. She stated that the Board has the advantage of having attorneys that have worked on denying this claim, compared to a victim who has no legal representation, is a Spanish speaker, can barely speak English, is a domestic violence victim, who has had to take jobs as a babysitter and housekeeper, and is financially disadvantaged. There are many reasons why this woman needs help. According to Ms. Petros, this program is designed, and the legislation requires that every effort be made to help victims. Ms. Petros argued that the 18-year-old victim who allegedly “aggressively” approached the suspect had no weapons on him, was not wearing any gang related clothing, and there was no evidence he assaulted the suspect or did anything that was illegal. She further commented about a press release which said the suspect quickly pulled the knife and stabbed him, the victim ran for his life, collapsed and died. Ms. Petros went on to allege that the police only called the family one time to tell them the detective’s name. They never answered the mother’s calls for more information, and they believe the police are intervening with CalVCB eligibility because they are unhappy that, with their help, the family went to the media to complain about the police not talking to them. Ms. Petros stated that she met with the family ten days after the incident, has made numerous attempts to contact law enforcement, even up to the mayor’s office, begging for them to speak to the family who are wanting to cooperate. To date, the police have not spoken with the family, yet they are saying that the mother is not cooperative. No one from the Board’s management or the Chief Counsel have asked the police what the mother has

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done to be labeled as uncooperative. Ms. Petros believes the claim was denied without a copy of the crime report, in violation of the Government Code. She claims there have been many codes, regulations and policies violated on this claim. Ms. Petros pleaded with the Board to read the documents that she has provided, rather than just adopt the staff recommendation. Ms. Petros stated that this is not just about one case; it is about how much effort has been put into denying this claim incorrectly and illegally. There are guidelines and policies that say to look at the age of the victim - he was 18; and look at his medical and mental condition - she has submitted prescriptions for the victim's medication for post-traumatic stress. She stated no one has answered her or provided information about how the claimant was involved in the crime, and claims policies were not considered to find a way to allow this claim. Ms. Petros stated that when they did have a telephone hearing with the Hearing Officer, which was recorded, that she was asked to go out and find witnesses, putting the burden on her as the advocate as well as the mother. She felt this was the responsibility of the police department. Ms. Petros noted that no one has been arrested, identified or questioned in this case, yet, in her opinion, the victim is being found guilty just a few days after the crime. The family has been treated horribly, worsened by the victim being blamed. Again, she asked for the Board to review the documents submitted stating that she has 36 years of experience with this program, including managing the Santa Clara County Victim Assistance Center for 18 years. She stated that she knows the policies, has been trained, and would have allowed this claim with her eyes closed.

Chair Ravel asked for Ms. Petros to please wrap up her time due to many items on the agenda. She again asked for the Board to review all of the details, including the cost of denying this claim. She thanked the Board for their time. Ms. Gauthier, Chief Counsel, clarified to Chair Ravel that Ms. Petros was referring to line item 10 of the proposed decision items for the closed session and not item 10 on the agenda in the binders. Ms. Gauthier noted for the record Member Chivarro had joined the meeting via Zoom.

Eric Gallegos asked to also address the Board. Mr. Gallegos offered his comments via a sign language translator. He stated (signed) that he is a deaf/blind person who has filed a claim, application number A20-7909427. He was asking the Board to please reconsider the denial of his application, which he feels was inappropriately denied. He agreed with Ms. Petros that it is unfair to take the staff's recommendation, that they do not take into consideration what happens outside the box. He stated that he has been a victim for a long time and that this is the time to please stop denying claims. He understands that the CalVCB has their own lawyers, but other victims are unable to afford a lawyer. He asked what the point of the government policy and the Victim's Compensation Board is if they keep denying, denying the money which is letting the perpetrators win. Mr. Gallegos said that the perpetrators have sight and the ability to understand the policies of the Board. He explained that one of the Victim Crisis Centers just denied his claim and alleged they are

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discriminating against him because he is deaf/blind. He stated that they did not want to provide interpreters, which is wrong, that they are denying him because of his gender and sexuality, which is a violation of the U.S. Constitution and that he has the evidence of this today. He explained that the reason he is here today is to document this as well and indicated that he is going to share the evidence that CalVCB's staff denied the claim wrongly, with discrimination. He further noted that there are many university articles stating that deaf individuals are unable to get services due to the refusal to provide interpreter services. He asked the Board to please reconsider his claim, and since tomorrow is the last day to present his case, he wanted to present his comment. He is going to provide his information and he has every right to justice as it is part of the healing process. Mr. Gallegos thanked the Board.

Member Becton asked for clarification as to which meeting item was related to Mr. Gallegos' comments. Ms. Burrell stated that his claim was presented at the March Board meeting and a Proposed Decision was created then. Chair Ravel and Ms. Gauthier both confirmed that it was the previous meeting. Ms. Gauthier clarified that Mr. Gallegos was sharing that he is going to present new documentation to support his request for reconsideration of that decision. Mr. Gallegos stated that tomorrow is the last day for him to provide the information within the 60-day time period. Chair Ravel thanked everyone for appearing and sharing their comments.

Item 3. Executive Officer Statement

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

As mentioned previously, staff has been working to update the CalVCB strategic plan, as the previous version only ran until 2018. The 2021-24 CalVCB Strategic Framework, which is now on the website, outlines CalVCB's Mission, Vision, Core Values and Goals. These will be pivotal to CalVCB's work moving forward. The mission of CalVCB is to be a trusted partner in providing restorative financial assistance to victims of crime and the vision is to help victims of crime restore their lives. The values of Integrity, Respect, Compassion, Dedication, Collaboration and Innovation are at the heart of the work CalVCB does every day.

There are 3 distinct goals for the strategic plan:

- 1) Promote Access to CalVCB Services
- 2) Improve the CalVCB Experience
- 3) Develop and Engage Staff to Best Serve Victims

Detailed plans are being developed to achieve all of these goals, but these ideas have already been incorporated into much of CalVCB's work, including the new website, launched just two weeks ago, which helps to

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promote access to CalVCB and improve the CalVCB experience for victims.

Ms. Gledhill explained that the transformation of the website was one of her first priorities when she came to CalVCB. The old site was filled with text and difficult to navigate. It was not welcoming or easy to use for CalVCB's primary audience - victims. The new site is designed to be a place where victims can find the help they need. Ms. Gledhill expressed her gratitude to the team at CalVCB who worked so hard on this effort, which was led by Andrew LaMar and included Mandy Duron, Kimberly Keyes, and Jessica Jarretty.

Ms. Gledhill next described the quarterly CalVCB Advisory Committee meetings, one of which CalVCB hosted the previous week. She explained that these ongoing meetings are a chance to connect with those in the victim services community. At the meeting, CalVCB shared with them the on-line advocate portal, which will slowly be rolled out statewide. This is another example of improving the CalVCB experience for users. CalVCB is continuing to have conversations with committee members in small groups to talk more about CalVCB policies, the statutes governing victim compensation and how to best serve victims. She noted that CalVCB has been reviewing policies to make sure they align with the applicable statutes and regulations. In some cases, this has resulted in updating policies and CalVCB is working hard to make sure its partners understand the changes. As an organization, CalVCB is also always looking at opportunities for growth. That is why CalVCB will be applying for a federal Office of Victims of Crime grant to use technology to assist victims of crime, especially those in underserved communities. Ms. Gledhill promised to keep the Board updated on the status of this effort.

Finally, Ms. Gledhill described the ways CalVCB is finding ways to connect with staff as we continue to work remotely. In April, CalVCB marked Crime Victim's Rights Week and Denim Day utilizing its digital platforms. On Denim Day, CalVCB hosted Beth Hasset, the CEO of WEAVE, a Sacramento based organization helping victims of domestic violence and sexual assault. She spoke to staff about her work and the important role CalVCB plays in helping victims restore their lives.

Item 4. Legislative Update

The Legislative Update was provided by Andrew LaMar, Deputy Executive Officer.

Mr. LaMar noted that the agenda included a listing of all the legislation CalVCB is tracking, all the bills that could impact CalVCB, and where they are in the process. He noted that the Appropriations Committee in each house was meeting on May 20 to determine the fate of hundreds of bills. The legislation that clears that hurdle must also pass out of their houses of origin by June 4.

He further emphasized that the Governor recently issued his May Revise update to the budget, and that the legislative budget committees were hard at work finalizing a budget

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to be passed by June 15. He did note, however that in the May revise, there were no significant changes for CalVCB proposed.

Mr. LaMar also discussed the status of SB 299, the proposed legislation which would compensate victims of police violence, and indicated CalVCB is continuing to have an open dialogue with the sponsors of the bill. CalVCB has worked with them to answer questions about how the bill, as written, would be implemented and what the projected costs would be. In addition, CalVCB recently met with the sponsors of AB 1007, which would compensate victims of forced sterilization, to talk about how implementation of the bill might work and any barriers CalVCB might face in identifying and verifying the victims.

Item 5. Contract Report

Chief Executive Officer Lynda Gledhill updated the Board on several contracts CalVCB has executed in the last two months, as reflected on the Contract Report included in the Board materials.

First, CalVCB contracted with the California Prison Industry Authority to print first responder cards in Braille. These cards are given to Law Enforcement so they can give them to victims of crime. The cards contain information about CalVCB and how to contact us. Ms. Gledhill explained that this is part of our outreach effort which is funded through the CalOES grant. She noted that CalVCB is also replacing its mailing machines, which are currently at the end of their life and often go down for maintenance. Mailing letters to claimants is a critical function for CalVCB and replacing these machines has been a top priority. All other contracts listed in the materials are extensions of current contracts to meet ongoing needs.

Item 6. Demonstration of New CalVCB Website

The demonstration of the new CalVCB website was provided by Andrew LaMar, Deputy Executive Officer.

CalVCB recently launched its new website, which is a big improvement for everyone and especially for the victims served by CalVCB. Staff worked closely with the vendor, 10up, every step of the way in developing the site. He explained that 10up is a digital services company that has worked with several other state departments, including the DMV. Mr. LaMar expressed his appreciation to everyone who helped make the new website a reality. He then introduced Brian Bourn, 10up's Associate Director of Client Strategy, who provided an overview of the new site and explained how it was developed.

Mr. Bourn stated that 10up has been working with CalVCB since last fall, and a few months back 10up presented some design concepts to the board, outlining the overall project goals that they felt were successful in the final project. Mr. Bourn shared a few slides of the finished product, noting that the design is much cleaner, relaxed, easy to

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read, has a lowered cognitive load required to absorb the information, and has reorganized all of the content. 10up focused on performance, speed and accessibility for site users who may or may not be sighted, may use assistive technologies, and/or only use a mobile device as their primary means of accessing the information. He noted that one of the key features of the new design, besides being easier to read and use, is the local and online resources directory. 10up cataloged thousands of various resources that are available in specific counties, or online, and made them searchable using county filters and/or service types.

The new website was built on a source content management system called WordPress, which is the state's preferred CMS (content management system), and allows for highly flexible and customizable content management controls that the CalVCB public affairs office did not have previously. This provides CalVCB with the ability to edit nearly every piece of content through flexible page layouts and then global controls, as seen in the screenshot that he shared, in the content management system.

Chair Ravel thanked Mr. Bourn for the work 10up performed on this project and noted that the new website looks great.

Item 7. Proposal to Approve Trauma Recovery Center Grant Awards

The updated proposal to approve the Trauma Recovery Center grant awards was presented by Andrew LaMar, Deputy Executive Officer.

Mr. LaMar summarized by indicating that he was presenting the staff recommendation for awarding grants to Trauma Recovery Centers (TRCs) for the next two-year grant cycle, which begins on July 1.

Mr. LaMar started by explaining what a Trauma Recovery Center is and stated that it is a center that provides evidence-based mental health and case management services to victims of violent crime and their loved ones. He stated that TRCs are a model of care for victims which was pioneered by UC San Francisco and is now used across the country. TRCs must meet 10 core elements, as defined by statute, which include: providing assertive outreach and engagement to underserved populations, serving victims of all types of violent crimes, treating all clients with complex problems, regardless of their emotional or behavioral issues, and using a multidisciplinary treatment team that includes psychiatrists, psychologists, social workers and marriage and family therapists.

He explained that the TRC grant program began at CalVCB in 2013-14 and that each spring, CalVCB awards TRC grants that begin July 1 and run for two years. CalVCB awards these grants through a competitive grant application process that is spelled out in the Government Code. The process starts with CalVCB posting the Notice of Funds

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Available (NOFA) on its website. The NOFA provides explicit instructions on what is required for applications, including supporting documents, such as budget worksheets. Applicants must provide comprehensive answers to a long list of questions and explain and verify how they will meet the grant requirements required by law. All applications received by the deadline are scored by a committee. The scoring process is rigorous, and it often takes a scoring committee months to complete.

Mr. LaMar noted that TRC grants are funded by 10 percent of the annual savings the Department of Finance estimates are the result of Proposition 47, the Safe Neighborhoods and Schools Act, which voters passed in 2014, and by \$2 million from the Restitution Fund. He noted that the Department of Finance locked in its savings estimate the Friday before the Board meeting and, as a result, CalVCB has a total of \$13,003,850 to provide for the TRC grants in this cycle. He noted that CalVCB previously provided \$11.7 million in TRC grants in 2020 (for 7 grantees), \$9.4 million in 2019 (for 8 grantees) and \$8.1 million in 2018 (for 6 grantees).

He explained for this grant cycle, CalVCB amended the original NOFA and asked supplemental questions of all who applied and had applications scored. CalVCB issued the Amended NOFA on April 13 and requested the applicants provide additional information on the need for services in areas served by the proposed TRCs, the vulnerable populations they serve, and what they were doing to overcome obstacles created by the pandemic. The amended applications were due by April 26 and those amended applications were then scored.

Twelve applicants, including five new TRCs, received passing scores, met minimum qualifications and were eligible for funding. The total grant amount requested by the passing applicants was \$25.6 million compared to the \$13 million that was available for the grants. Mr. LaMar described some of the options staff considered to distribute the grant money. One option was to fully fund some of the TRCs. For instance, top scorers could have been awarded what they requested. However, that would have left nothing for TRCs that scored lower. The money would have run out after the top-scoring six or seven TRCs. Another option considered was fully funding the existing seven TRCs and not funding any new TRCs. Another option was to fund all 12 TRCs with passing scores and divide the money up in some reasonably equitable fashion, providing equal amounts to each of the 12 or providing slightly different amounts to each based on scores or some other metric.

In reviewing all the options, staff was cognizant of the need to do what was what best for victims while also maximizing the services available, and the number of victims reached. he explained that staff also considered what would be best for the TRC applicants, noting that it is made no sense to provide so little in grant money as to not allow individual TRCs to run their programs. Mr. LaMar noted that CalVCB has, historically, always funded all grant applications with passing scores and that in this instance, staff explored numerous different funding scenarios in search of the best approach. He referenced two other

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funding options, in addition to the recommended option, that were included with the Board materials for this item. Mr. LaMar recommended the Board fund all 12 TRCs with passing scores, consistent with CalVCB's historical actions.

Because the analysis of the applications was thorough and provides a good sense of the quality of the proposed program, the recommended funding option considers application scores in determining award amounts. The recommended funding option also takes into consideration the applicant's need or the amount the grantee requested. Applying this recommendation, all 12 applicants get grants, and the awards are based on what they requested, with the percentage determined based on their scores. Higher-scored applications received a higher percentage of what they requested, and that percentage gradually declined with application score.

Chair Ravel thanked Mr. LaMar for all of the work the staff has put into this issue following the concerns brought up at the previous meeting, the work to rectify some of the issues raised, and to make sure that items that were not considered on the first round were considered this time. Mr. Ravel noted that it is always tough when there are limited resources, however, he stated that he believed the staff recommendation was the fairest way to distribute the funds.

Member Becton shared her appreciation for staff and all of the work that went into making the recommendation. She stated her understanding that there was not an easy way to consider how to distribute the funds.

Public comment:

Mr. Macias thanked the Board for allowing him to speak today. He stated that the collective work that the TRCs do to preserve the dignity, humanity and rights of those impacted by crime is sacred work. He acknowledged that the Board did address the inequities that were in the original NOFA back in March, and that he was happy that the people of San Joaquin County will still have access to mental health services via the Stockton Trauma Recovery Center. He stated that he appreciated Mr. LaMar's work and the panel's work and understood it is not easy to determine how to distribute the limited funds. He analogized the recommended funding approach to the panel suggesting the award amount based on who is best dressed, which is inconsistent with the approach to this work. He stated that he felt that the recommendation was saying that the people of Orange County are more worthy than the people of Contra Costa County, or the people of Los Angeles County are more worthy than the people of San Joaquin County. Mr. Macias stated that he doesn't think that is what the Board was trying to do as it is his understanding that the Board was trying to ensure equitable access for all. He expressed his hope that the Board would consider looking at the other two options provided in the materials to ensure that there is not one program that must work from a further starting

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line, putting those counties at a disadvantage. He thanked the Board for their time and for listening to his thoughts.

Ms. Spellman echoed Mr. Macias' comments and acknowledged the complexities that the Board had to consider when making these decisions. She also urged a reconsideration of the other two options and noted her preference that the Board fund pre-existing TRCs at their previous levels and then distribute the remaining funds to new TRCs and to fund pre-existing TRCs at a higher level. She stated that there are reasons for her recommendation: (1) consideration of equity as several of the TRCs on the list are recommended for funding at 1.8 or 2.3 million while the requirements set by CalVCB are the same. Ms. Spellman explained that she is the executive director of Partnerships for Trauma Recovery, which is recommended for a lower amount of funds, and that her organization is still being asked to meet a high level of requirements. She noted the recommended funding is especially difficult given that her organization was originally recommended for funding at over a million dollars, and, with the new recommendation, they will receive half of that. She stated that trying to maintain current programs with that much of a cut in funding is unattainable and explained this will impact crime survivors, particularly on services like case management. In her opinion, this means that existing TRCs who have commitments to current crime survivors will not be able to fulfill their mandate, leaving a gap where there are no other service agencies who can provide the same population with these services. Ms. Spellman noted that CalVCB staff considered many ways to approach this, including options to fund only the highest scoring applicants or existing TRCs, which is consistent with her request. She also pointed out the historical precedence, and her understanding that new TRCs have been funded at a lower level in the past. She noted that some new TRCs were being funded at a high level under the recommended option for funding. She stated her belief that new TRCs need to be held accountable for their services provided by starting out at a lower level of funding, then having funding increase once they have proven they can meet their obligations. She thanked the Board for their consideration.

Dr. Alicia Boccellari, founder of the UCSF TRC model, which is the model used to be replicated throughout California and the rest of the country, addressed the Board next. She thanked the Board and CalVCB for all the support given to the TRCs over the last several years, particularly acknowledging the amount of thought and consideration that went into the funding. She stated that it is clear that staff has spent a lot of time on this. She noted that she is a big proponent of the TRCs and would love to see many more TRCs than we have now. She stated that looking at what is being considered right now for the seven current TRCs that are up for funding, six of them would end up having a budget cut, in some cases half of their budget, which would mean people would have to be laid off, cases that they are currently working on with patients would have to be closed, and the communities that have gotten used to having a TRC, would end up having less available. She also noted that in one case, the TRCs budget would be cut to \$482,000 over a two-year period, which would be \$241,000 per year, making it impossible for them

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to meet all the regulations around staffing. Dr. Boccellari, again noted that she knows that a lot of work has gone into this decision, she just suggested that the current TRCs be renewed for their funding at the same level that they were previously, or if they scored higher, at a higher level using the remaining funds for new TRCs. She did not feel it is reasonable to spend all this money the last few years to build these programs, only to cut their funding. She noted that she works with eight other states that are developing TRCs and she is a grant reviewer for most of these states. Typically, with competitive renewal applications, they have a format to look at the existing TRCs, fund them, then have a separate process for new TRCs. She also noted that the current TRCs should not be evaluated by just what is written on the grant, but on the quality of services being provided. She asked that the Board take all of this into consideration and thanked the Board.

The Board passed the motion to approve the TRC Grant award recommendation made by staff.

Item 8. PC 4900 Claim No. 21-ECO-06, Arturo Jimenez

Chief Counsel Ms. Gauthier presented the Penal Code Section 4900 claim.

On March 12, 2021, Arturo Jimenez submitted an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based upon Mr. Jimenez's 1995 murder conviction, for which he was found factually innocent by the Los Angeles Superior Court after serving 24 years in prison. Mr. Jimenez requested compensation for the entire duration of his post-conviction incarceration, which amounted to \$1,266,300 for 9,045 days. The Attorney General opposed this calculation for failing to deduct 105 days during which Mr. Jimenez was serving an overlapping sentence for a valid, 1994 robbery conviction. The Proposed Decision recommended the application be granted in part and the Legislature appropriate \$1,251,600 as payment to Mr. Jimenez, representing \$140 for each of the 8,940 days during which he was wrongfully imprisoned solely as a result of his erroneous murder conviction. The Proposed Decision recommended denying compensation for the remaining 105 days, during which Mr. Jimenez was concurrently serving a valid robbery sentence.

Mr. Jimenez was represented by David McLane of McLane, Bednarski & Litt LLP, along with co-counsel Caitlin Weisberg and Ellen Eggers. Mr. Jimenez was present via Zoom with his counsel David McLane from Pasadena, CA. Also, present was Mr. Jimenez's partner Megan Baca and counsel Ellen Eggers. Mr. McLane addressed the Board and acknowledged Ms. Eggers' contributions to this case. He explained that Mr. Jimenez was convicted in 1995, but his parents, who are immigrants from the state of Jalisco, Mexico always believed he was innocent. Working hard, they found Ellen Eggers, an attorney who is devoted to freeing and working on cases for wrongfully convicted persons, those in prison serving time for crimes they did not commit. Ms. Eggers took on Mr. Jimenez's case in 2012, working with him, investigating the case, interviewing all the witnesses,

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which was a difficult task. Ms. Eggers was able to uncover evidence that pointed to his innocence, witnesses recanted, and along with Paige Kaneb of the Northern California Innocence Project in Santa Clara, presented this to the court. On August 12, 2020, Mr. Jimenez was exonerated, and his criminal case was dismissed. Mr. McLane's office, along with Ms. Eggers and Ms. Kaneb worked on a motion for factual innocence that was granted by the Superior Court. Mr. McLane stated Mr. Jimenez spent 25 and a half years in prison for a murder he did not commit, and was able to serve those years while maintaining dignity and grace. The Los Angeles District Attorney's office did not oppose the motion for factual innocence. Mr. McLane noted that Mr. Jimenez was sitting right next to him, not having anger in his heart, and he is now working for Prisons for Peace, which is a program started by law professors at Pepperdine University working with people in prison to get restorative justice. Mr. Jimenez is trying to now give back to people in prison and the grant of compensation by the Board is appreciated. Mr. McLane noted that he and Mr. Jimenez accept the findings of the Board with the deduction, thanked CalVCB, the staff who worked on this case, and the Board for granting this claim.

Mr. Jimenez addressed the Board and expressed his thanks for approving his claim, noting that the compensation is going to help his family greatly to cover a lot of the financial losses due to his conviction. He stated that he is grateful.

The office of the Attorney General was represented by Deputy Attorney General Barton Bowers. Mr. Bowers stated that the Attorney General agreed with the Proposed Decision of the Hearing Officer and urged the Board to adopt the decision.

The Board passed the motion.

Item 9. PC 4900 Claim No. 21-ECO-08, Robert Fenenbock

Chief Counsel Ms. Gauthier presented the Penal Code Section 4900 claim.

On April 14, 2021, Robert Fenenbock submitted an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based upon Mr. Fenenbock's 1994 murder conviction, for which he was found factually innocent by the Solano County Superior Court after serving 27 years in prison. According to the Proposed Decision, Mr. Fenenbock was entitled to an automatic recommendation for compensation in the amount of \$1,425,060, representing \$140 for each day of the 10,179 days that he was wrongfully imprisoned.

Mr. Fenenbock was represented by George Harris of the Norton Law Firm. Mr. Harris thanked the Victim Compensation Board for acting promptly, accurately, and justly in this matter and indicated that both he and Mr. Fenenbock fully agreed with the recommendation to the Board. He also noted that throughout this process Mr. Fenenbock was also represented by the Northern California Innocence Project, particularly Paige

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Kaneb and Melissa O'Connell, also by Jim Bennett from the Morrison Foerster firm. He noted that Mr. Fenenbock did spend 10,179 days wrongfully convicted for a murder he did not commit and that the Solano Superior Court granted his habeas order on appeal, his conviction was dismissed based on outrageous government conduct which led to the wrongful conviction, and the court also found that he was factually innocent. Mr. Harris noted that Mr. Fenenbock is getting to know his grandchildren since his release, and expressed his appreciation to the Board and his support for the proposed decision.

The Attorney General was represented by Deputy Attorney General Barton Bowers. Mr. Bowers stated that the Attorney General agreed with the Proposed Decision of the Hearing Officer and asked that it be adopted.

The Board passed the motion.

Item 10. PC 4900 Claim No. 21-ECO-05, Andrew Wilson

Chief Counsel Ms. Gauthier presented the Penal Code Section 4900 claim.

On March 14, 2019, Andrew Wilson submitted an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based upon Mr. Wilson's imprisonment for a 1986 conviction for murder for which he was found factually innocent by the Los Angeles Superior in February 2021 after serving 32 years in prison. According to the proposed decision, Mr. Wilson was entitled to an automatic recommendation for compensation in the amount of \$1,650,880, representing \$140 per each day of the 11,792 days that he was wrongfully imprisoned.

Mr. Wilson was represented by Adam Grant of the Loyola Law School Project for the Innocent. Mr. Grant was with Paula Mitchell via phone and they were both counsel for Mr. Wilson during his post-conviction proceedings. Mr. Grant stated that through him, Mr. Wilson thanked the Victim Compensation Board for this decision. He explained that this has been a long ordeal beginning in 1984 for Mr. Wilson, and it is gratifying and meaningful to be found factually innocent by the Superior Court and CalVCB. They also thanked the lawyers from Munger, Tolles, and Olson, who also represented Mr. Wilson in the last round of post-conviction litigation. Mr. Grant stated that he and Mr. Wilson agreed with the Board's recommendation, asked that the decision be adopted and thanked all involved for their careful consideration.

Barton Bowers represented the Office of the Attorney General. Mr. Bowers stated that the Attorney General also agreed with the final version of the Proposed Decision and asked that the Board adopt the decision.

The Board passed the motion.

DRAFT

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 11:07 a.m., to deliberate on proposed decision numbers 1-88 of the Victim Compensation Program.

Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126(c)(3) at 11:24 a.m.

The Board adopted the hearing officers' recommendations for proposed decision numbers 1-88 of the Victim Compensation Program, with the exception of number 5 being recommended as an allow and number 10 which was referred back to the Hearing Officer for additional consideration.

Adjournment

The Board meeting adjourned at 11:26 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, July 15, 2021.

ITEM 2

ITEM 3

ITEM 4

**California Victim Compensation Board
Legislative Update
July 15, 2021**

SB 299 (Leyva) – Victim Compensation: Use of Force by Law Enforcement

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 require denial of a use of force claim for involvement when the victim is convicted of a violent crime, pursuant to Penal Code section 667.5, or a crime that caused the serious bodily injury or death of another person at the time and location of the incident, or if there is clear and convincing evidence that a victim who was killed by law enforcement committed such a crime. 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: Amended and referred to the Assembly Appropriations Committee

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

This bill would appropriate \$5,675,880 from the General Fund to pay five erroneous conviction claims approved by CalVCB for Derrick Harris, Jeremy Puckett, Arturo Jimenez, Robert Fenenbock, and Andrew Wilson. The bill would also appropriate \$1,146 to the Department of General Services for the payment of claims accepted by the Government Claims Program.

Status: Returned to the Assembly for Concurrence

AB 128 (Ting) – Budget Act of 2021

The Budget Act transfers \$33 million from the General Fund to the Restitution Fund. Provisional language specifies that upon order of the Director of Finance, the amount available for transfer in this item may be increased by an amount sufficient to backfill the Restitution Fund if a determination is made that revenues are insufficient to support CalVCB.

Status: Signed by the Governor (Chapter 21, Statutes of 2021)

SB 129 (Skinner) – Budget Act of 2021

This bill, known as Budget Bill Jr., would amend the Budget Act of 2021, AB 128 (Ting), to appropriate \$7.5 million to CalVCB to fund the Forced or Involuntary Sterilization Compensation Program through September 30, 2024. Up to \$2 million shall be used for agency implementation and outreach costs, up to \$1 million shall be used for establishment of plaques and markers, and the remaining amount shall be used for reparation payments to eligible survivors.

Status: On the Governor’s Desk

AB 137 (Ting) – State Government

This Budget Trailer Bill on State Government 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: On the Governor’s Desk

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

This bill would establish the Forced or Involuntary Sterilization Compensation Program, upon an appropriation of not less than \$7,500,000 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: Scheduled to be heard in the Senate Judiciary Committee on July 13

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 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. If the Attorney General declines to object within the allotted period of time, then CalVCB shall issue its recommendation within 60 days thereafter. 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: Scheduled for the Assembly Public Safety Committee on July 13

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: Scheduled for the Assembly Public Safety Committee on July 13

AB 1171 (Garcia, Christina) – 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: Scheduled to be heard in the Senate Public Safety Committee on July 13

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: Enrolled and will be sent to the Governor

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: In the Senate Appropriations Committee

ITEM 5

California Victim Compensation Board
Contract Report
July 15, 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: StateStore PO Number: 0000002423	Contract Amount: \$197,925.06 Term: N/A	Purchase of 110 HP laptops, docking stations and laptop bags. This was procured through the Department of General Services' Statewide Contract #1-17-70-02B.
Contractor Name: Ablegov Inc PO Number: 0000002437	Contract Amount: \$94,060.00 Term: 6/21/21 – 12/20/22	Purchase of Microsoft Advanced Support for 18 months. Contractor shall provide advisory support, built-in proactive services, services delivery management, on-demand assessment, on-demand education and online support. This was procured through the Department of General Services' Software Licensing Program #SLP-20-70-0090Y.
Contractor Name: US Postal Service PO Number: 0000002458	Contract Amount: \$50,000.00 Term: N/A	Funds to replenish CalVCB's postage account. Postage needed to continue daily mailings from CalVCB to claimants and stakeholders.

ITEM 6

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

8
9 In the Matter of:

10 **William Richards**

11 PC 4900 Claim No. 18-ECO-17

Proposed Decision

(Penal Code §§ 4900 et seq.)

12 **I. Introduction**

13 On June 13, 2018, William Richards (Richards) 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 Richards' imprisonment for a 1997 conviction
16 for murder, for which he was found to be factually innocent after 19 years of incarceration. Richards is
17 represented by Caitlin Weisberg (Weisberg) of Mclane, Bednarski & Litt, LLP and Wendy Koen (Koen)
18 of the Law Offices of Wendy Koen. No appearance has been requested from the Office of the Attorney
19 General. CalVCB Senior Attorney Sara Harbarger was assigned to this matter. After reviewing the
20 application and supporting documentation, CalVCB recommends, in accordance with the automatic
21 compensation provision of Penal Code section 1485.55, that the Legislature appropriate \$1,165,920
22 as payment to Richards for being wrongfully imprisoned for 8,328 days.

23 **II. Factual Background**

24 **A. Trial Proceedings**

25 On September 3, 1993, deputies arrested Richards for Pamela R.'s murder. The San
26 Bernardino County District Attorney's Office charged and prosecuted Richards for the murder.
27
28

1 Richards' first two full trials ended in mistrials with hung juries.¹ A third trial ended in a mistrial because
2 the trial court recused itself during jury selection.² A fourth trial was held and the following facts are
3 from this trial, as summarized by the California Supreme Court.

4 **i. Initial Investigation**

5 On August 10, 1993, Pamela R., Richards' wife, was murdered on their property.³ That night,
6 Pamela R.'s friend with whom she had a sexual relationship, Eugene Price (Price), attempted to call
7 Pamela R. at 9:30 p.m. and received a busy signal.⁴ Price continued to call Pamela R. without
8 success.⁵ At 11:55 p.m., Price called again and Richards answered.⁶ Richards told him that Pamela
9 R. was dead, her head was bashed in, and her eye was hanging out of its socket.⁷ Price told Richards
10 to call 9-1-1.⁸ At 11:58 p.m., Richards called 9-1-1 and told dispatchers that he came home from work
11 and discovered Pamela R.'s deceased body.⁹ Richards told dispatchers that Pamela R.'s pants had
12 been removed and there was blood at multiple locations on the property.¹⁰ Dispatchers asked Richards
13 to not touch anything.¹¹ Sheriff's Deputy Nourse arrived at Richards' and Pamela R.'s property at 12:30
14 a.m., examined the scene, and believed Pamela R. had recently died.¹² Richards told Deputy Nourse
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17 ¹ *In re Richards* (2016) 63 Cal.4th at 291, 293.

18 ² *Ibid.*

19 ³ *In re Richards, supra*, 63 Cal.4th at p. 295.

20 ⁴ *Ibid.*

21 ⁵ *Ibid.*

22 ⁶ *Ibid.*

23 ⁷ *Ibid.*

24 ⁸ *Ibid.*

25 ⁹ *Ibid.*

26 ¹⁰ *Ibid.*

27 ¹¹ *Ibid.*

28 ¹² *In re Richards, supra*, 63 Cal.4th at p. 296.

1 that he touched and moved the evidence at the scene to determine how the crime occurred.¹³
2 Detectives determined a cinder block and a steppingstone were used to smash Pamela R.'s head.¹⁴
3 At the scene, Detectives did not locate any unaccounted for tire tracks or shoe prints.¹⁵ Detectives did
4 not observe fresh wounds, injuries, or marks to Richards' body, arms, or hands.¹⁶

5 Investigators determined that Richards' time clock at work showed he left at 11:03 p.m. on the
6 night of Pamela R.'s death.¹⁷ An investigator went to Richard's work, left the workplace at 11:03 p.m.,
7 left the parking lot at 11:06 p.m., drove approximately 75 miles per hour (mph) with the flow of traffic in
8 a 55 mph zone, and arrived at Richards' residence at 11:47 p.m.¹⁸ A defense investigator drove the
9 same route at 60, 65, and 70 mph and arrived in 52, 48, and 44 minutes respectively.¹⁹

10 **ii. Prosecution Witnesses**

11 a. Chief Medical Examiner's Testimony

12 During the trial, Dr. Frank Sheridan (Sheridan), chief medical examiner for the Coroner's Office
13 of San Bernardino County, determined Pamela R. was manually strangled, and the strangulation was
14 sufficient to cause her death.²⁰ In addition, the left side of her skull was smashed, which crushed her
15 brain and was also sufficient to cause her death.²¹ Sheridan believed the strangulation occurred first
16 and Pamela R. was either dead or nearly dead when the blunt force trauma was inflicted.²² Pamela
17 R.'s body had several defensive wounds, bruising across her body, and lacerations and abrasions to
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19 ¹³ *Ibid.*.

20 ¹⁴ *In re Richards, supra*, 63 Cal.4th at p. 297.

21 ¹⁵ *In re Richards, supra*, 63 Cal.4th at p. 298.

22 ¹⁶ *In re Richards, supra*, 63 Cal.4th at p. 299.

23 ¹⁷ *In re Richards, supra*, 63 Cal.4th at p. 302.

24 ¹⁸ *Ibid.*

25 ¹⁹ *Ibid.*

26 ²⁰ *In re Richards, , supra*, 63 Cal.4th at p. 298.

27 ²¹ *Ibid.*

28 ²² *Ibid.*

1 her face.²³ There was no sign of sexual assault, and it appeared her pants were removed after the
2 blunt force trauma to her head.²⁴ Sheridan gave no opinion as to the time of death.²⁵

3 b. Criminalist's Testimony

4 Criminalist Gregonis (Gregonis) examined the shirt and jeans that Richards wore the night of
5 Pamela R.'s death.²⁶ Gregonis did not observe any blood splatter on Richards' shirt and found blood
6 transfer stains on his shirt consistent with cradling Pamela R.'s head at the crime scene.²⁷ Gregonis
7 testified he would have expected to see more blood transferred onto Richards' shirt and blood dripped
8 onto his jeans.²⁸ The jeans contained no drip patterns but did have three small bloodstains consistent
9 with blood splatter.²⁹ Gregonis surmised the cinder block may have shielded Richards from significant
10 blood splatter due to its size.³⁰

11 Gregonis examined Pamela R.'s fingertips and located blue cotton fibers wedged deep in a
12 crack of one of Pamela R.'s broken fingernails.³¹ Gregonis examined the shirt Richards wore the night
13 of Pamela R.'s death and concluded the shirt's blue fibers were indistinguishable from the fibers
14 removed from Pamela R.'s broken fingernail.³² Gregonis acknowledged that the cotton fiber is the most
15 common fiber in the world and there was nothing particularly unique about Richards' blue cotton shirt.³³

18 ²³ *In re Richards, supra*, 63 Cal.4th at p. 298.

19 ²⁴ *In re Richards, supra*, 63 Cal.4th at p. 299.

20 ²⁵ *Ibid.*

21 ²⁶ *In re Richards, supra*, 63 Cal.4th at p. 299.

22 ²⁷ *Ibid.*

23 ²⁸ *Ibid.*

24 ²⁹ *Ibid.*

25 ³⁰ *Ibid.*

26 ³¹ *In re Richards, supra*, 63 Cal.4th at p. 300.

27 ³² *Ibid.*

28 ³³ *Ibid.*

1 c. Forensic Odontologist's Testimony

2 During the fourth trial, the prosecutor called Dr. Norman Sperber (Sperber) a dentist and
3 forensic odontologist to testify as an expert for the first time in this case.³⁴ Sperber concluded that a
4 mark located on Pamela R.'s hand was a bite mark of human origin and was consistent with Richards'
5 teeth.³⁵ Sperber classified the match of the mark and Richards' teeth as consistent, meaning that
6 defendant could have left the lesion and could not be ruled out.³⁶

7 **iii. Richards' Witnesses**

8 a. Pamela R.'s Brother's Testimony

9 Pamela R.'s brother stated he spoke to her at approximately 7:15 p.m. to 7:30 p.m. on the night
10 of her death.³⁷

11 b. Forensic Pathologist's Testimony

12 Dr. Griffith Thomas (Thomas), a physician specializing in forensic pathology, testified a time of
13 death could not be determined due to the delay in the coroner's examination.³⁸ Thomas believed
14 several of the wounds and bruises on Pamela R.'s body were inflicted several hours prior to death due
15 to the coloring of the contusions.³⁹

16 c. Chief Odontologist's Testimony

17 Dr. Gregory Golden (Golden), a dentist and chief odontologist for San Bernardino County,
18 determined five randomly selected dental molds from his office were as consistent with the lesion as
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23 ³⁴ *In re Richards, supra*, 63 Cal.4th at p. 301.

24 ³⁵ *Ibid.*

25 ³⁶ *In re Richards, supra*, 63 Cal.4th at p. 302.

26 ³⁷ *In re Richards, supra*, 63 Cal.4th at p. 302.

27 ³⁸ *In re Richards, supra*, 63 Cal.4th at p. 303.

28 ³⁹ *Ibid.*

1 Richards' teeth.⁴⁰ Golden believed the bite mark evidence should be disregarded because of the
2 generic nature of the bite and low quality of the photograph.⁴¹

3 d. Senior Criminalist's Testimony

4 Dean Gialamas (Gialamas), senior criminalist with the Los Angeles County Sheriff's
5 Department, testified he would have expected to see multiple blood spatters on the person who
6 dropped the cinder block on Pamela R.'s head.⁴² Additionally, during his experiments, the rough edges
7 of the cinder block cut his hand.⁴³ Gialamas stated the blood located on Richards' jeans appeared to
8 be a transfer stain.⁴⁴ Gialamas stated the blood on Richards' shirt was more consistent with cradling
9 a bloodied head.⁴⁵ Gialamas concluded Richards' clothing was not consistent with him being the
10 perpetrator.⁴⁶

11 **iv. Jury Verdict and Sentencing**

12 At the conclusion of the fourth jury trial, the jury deliberated and announced it was deadlocked.⁴⁷
13 The jury received further instruction on reasonable doubt, after which the jury returned a verdict of guilty
14 for first-degree murder.⁴⁸ On December 4, 1998, the court sentenced Richards to the indeterminate
15 term of 25 years to life for the offense of premeditated murder, a felony.⁴⁹ The court determined
16 Richards was arrested on September 3, 1993 and had 1,918 actual days of custodial credits.⁵⁰

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18 ⁴⁰ *In re Richards, supra*, 63 Cal.4th at p. 303.

19 ⁴¹ *Ibid.*

20 ⁴² *In re Richards, supra*, 63 Cal.4th at p. 304.

21 ⁴³ *Ibid.*

22 ⁴⁴ *Ibid.*

23 ⁴⁵ *Ibid.*

24 ⁴⁶ *Ibid.*

25 ⁴⁷ *In re Richards, supra*, 63 Cal.4th at p. 302.

26 ⁴⁸ *In re Richards, supra*, 63 Cal.4th at p. 293; Richards Exhibit at p. WR02095-WR02096.

27 ⁴⁹ Richards Exhibit at p. WR02124.

28 ⁵⁰ *Ibid.*

1 **B. Appellate / Habeas Proceedings**

2 In 2007, Richards sought a writ of habeas corpus claiming his 1997 murder conviction was
3 based on false evidence.⁵¹ Richards presented evidence challenging the blue cotton fibers found under
4 Pamela R.'s fingernail and presented new DNA evidence taken from the cinder block and from a hair
5 found under her fingernails.⁵² Additionally, Sperber submitted a declaration that stated he would not
6 testify as he did in 1997 based on all the photographs and his added experience.⁵³ Sperber stated "I
7 cannot now say with certainty that the injury on the victim's hand is a human bite mark injury."⁵⁴
8 Richards submitted additional declarations from forensic experts that stated, based on updated
9 technology, the evidence tended to exclude Richards as the suspected biter and there was significant
10 doubt the hand injury was a actually bitemark.⁵⁵ The superior court held an evidentiary hearing in which
11 the experts testified consistently with their declarations and, at the conclusion of the hearing, the court
12 granted habeas corpus relief.⁵⁶ The court concluded the new evidence unerringly established Richards'
13 innocence and ordered he be remanded for a new trial.⁵⁷

14 The People appealed the trial court's decision, and the Court of Appeal vacated the superior
15 court's order granting the petition for a writ of habeas corpus.⁵⁸ The California Supreme Court granted
16 Richards' petition for review in 2011, and *In re Richards* (2012) 55 Cal.4th 948, affirmed the appellate
17 court's decision.

18 Subsequently, after the decision in *In re Richards* (2012) 55 Cal.4th 948, the 2014 the Legislature
19 amended Penal Code section 1473 (Senate Bill 1058) to include subdivision (e)(1) which states, "for
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21 ⁵¹ *In re Richards, supra*, 63 Cal.4th at p. 305.

22 ⁵² *Ibid.*

23 ⁵³ *Ibid.*

24 ⁵⁴ *Ibid.*

25 ⁵⁵ *Ibid.*

26 ⁵⁶ *In re Richards, supra*, 63 Cal.4th at p. 306.

27 ⁵⁷ *In re Richards, supra*, 63 Cal.4th at p. 307.

28 ⁵⁸ *In re Richards, supra*, 63 Cal.4th at p. 307.

1 the purposes of this section, false evidence shall include opinions of experts that have either been
2 repudiated by the expert who originally provided the opinion at a hearing or trial or that have been
3 undermined by later scientific research or technological advances.”⁵⁹

4 Richards filed a new petition for writ of habeas corpus in which he contended under the 2014
5 legislative revision of section 1473 of the Penal Code, he was entitled to relief and the conviction should
6 be overturned.⁶⁰ The California Supreme Court agreed and concluded under this amendment to
7 section 1473 of the Penal Code, Richards met his burden to show Sperber’s trial testimony constituted
8 false evidence.⁶¹ Specifically, as established in the previous habeas corpus proceeding, Sperber
9 repudiated his trial testimony and his opinion was undermined by later scientific research or
10 technological advances.⁶² Further, the court found it was reasonably probable that the false evidence
11 presented in Sperber’s testimony affected the outcome of the proceeding.⁶³

12 The San Bernardino County District Attorney’s Office declined to retry Richards for the murder
13 of Pamela R.⁶⁴

14 **C. Finding of Factual Innocence**

15 Richards petitioned for a finding of factual innocence pursuant to Penal Code section 1485.55,
16 subdivision (b) in San Bernardino Superior Court.⁶⁵ In its decision, the court emphasized that post-
17 conviction DNA testing on evidence collected at the scene of the crime, i.e. a hair, cinder block, and
18 paving stone, revealed that the hair and several small bloodstains on the block and stone were not
19 deposited by Richards or Pamela R.⁶⁶ Further, the court took note that the prosecution presented the

21 ⁵⁹ *In re Richards, supra*, 63 Cal.4th at p. 309.

22 ⁶⁰ *In re Richards, supra*, 63 Cal.4th at p. 293.

23 ⁶¹ *In re Richards, supra*, 63 Cal.4th at p. 309.

24 ⁶² *In re Richards, supra*, 63 Cal.4th at p. 310.

25 ⁶³ *In re Richards, supra*, 63 Cal.4th at p. 315.

26 ⁶⁴ Memorandum of Decision filed June 18, 2021, at p. 1.

27 ⁶⁵ Memorandum of Decision filed June 18, 2021, at p. 1.

28 ⁶⁶ Memorandum of Decision filed June 18, 2021, at p. 2.

1 same evidence in the first three jury trials and the sole difference at the fourth trial was the bite mark
2 evidence, which showed the bite mark evidence was enough to sway the fourth jury.⁶⁷ On June 18,
3 2021, based on all the evidence, the court found Richards met his burden and granted his Penal code
4 section 1485.55, subdivision (b) petition.

5 **D. CalVCB Proceedings**

6 On June 13, 2018, Richards submitted the underlying application for compensation under Penal
7 Code section 4900. Upon an agreement of the parties, the proceedings were stayed to allow Richards
8 to seek a Penal Code section 1485.55 petition. On June 21, 2021, Richards submitted to the Hearing
9 Officer a copy of the Memorandum of Decision signed June 18, 2021, which showed the court granted
10 his Penal Code section 1495.55, subdivision (b) petition. The Hearing Officer asked Weisberg to
11 confirm Richards' custodial dates and the amount of compensation requested. Weisberg confirmed
12 Richards was arrested on September 3, 1993, and held continuously in custody from that date until his
13 release on June 21, 2016. While in custody, Richards did not suffer any additional convictions, nor did
14 he serve any concurrent time. Based upon the superior court's finding of factual innocence, Richards
15 requests an automatic recommendation of compensation in the amount of \$1,165,920, representing
16 \$140 for each of the 8,328 days that he was wrongfully imprisoned for Pamela R.'s murder.

17 **III. Determination of Issues**

18 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
19 for a felony offense, to apply for compensation from CalVCB.⁶⁸ The application must be submitted at
20 least 60 days following reversal of a conviction or grant of habeas relief, and no more than 10 years after
21 release from custody or dismissal of charges.⁶⁹

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

25 _____
26 ⁶⁷ Memorandum of Decision filed June 18, 2021, at p. 2.

27 ⁶⁸ Pen. Code, § 4900.

28 ⁶⁹ Pen. Code, § 4901.

1 ensues in accordance with Penal Code section 4903.⁷⁰ 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.⁷¹ 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.⁷²

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.⁷³

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 (b) of Penal Code section 1485.55:

14 In a contested or uncontested proceeding, if the court has granted a writ of habeas corpus
15 or vacated a judgment pursuant to Section 1473.6 or paragraph (2) of subdivision (a) of
16 section 1473.7, 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, was not committed by the petitioner.⁷⁴

17 Subdivision (c) provides that if “the court makes a finding that the petitioner has proven their factual
18 innocence by a preponderance of the evidence pursuant to subdivision (b), the board shall, without a
19 hearing, recommend” payment “pursuant to Section 4904.”⁷⁵ In effect, these provisions of section
20 1485.55 compel CalVCB to assume both requisite elements of innocence and injury for a successful
21 claim under Penal Code section 4900 and to recommend compensation accordingly.
22

23
24 ⁷⁰ Pen. Code, §§ 4902, subs. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

25 ⁷¹ Pen. Code, § 1485.5, subd. (c).

26 ⁷² Pen. Code, §§ 4903, subd. (a), 4904.

27 ⁷³ Pen. Code, § 4904, added by Stats.2015, c. 422 (S.B.635), § 1, eff. Jan. 1, 2016.

28 ⁷⁴ Pen. Code, § 1485.55, subd. (b).

⁷⁵ 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.”⁷⁶

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.⁷⁷

9 Here, Richards timely submitted his application for compensation. At the time of his release,
10 Richards had been continuously confined for 8,328 days. This confinement included pre-conviction and
11 post-conviction custodial days starting from the date of Richards’ arrest on September 3, 1993, until
12 Richards’ release on June 21, 2016. The entire duration of Richards’ confinement, both pre- and post-
13 conviction, was solely attributable to his erroneous conviction for Pamela R.’s murder, as no other
14 convictions or sentences were imposed at any time.

15 The San Bernardino County Superior Court expressly found, by a preponderance of the evidence,
16 that Richards was factually innocent pursuant to Penal Code section 1485.55. This determination was
17 based on the entire record of the case, and the court emphasized the post-conviction DNA testing on a
18 hair, cinder block, and paving stone which revealed the hair and several small bloodstains on the block
19 and stone were not deposited by Richards or Pamela R. Further, the false bite mark evidence appeared
20 to sway the fourth jury to convict Richards of the murder.

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⁷⁶ Pen. Code, § 4902, subd. (a).

25 ⁷⁷ *People v. Caldwell* (2018) 29 Cal.App.5th 180, 188-89 (concluding that “a defendant may appeal denial
26 of a factual innocence motion” despite the People’s inability to do so); *In re Anthony* (2015) 236
27 Cal.App.4th 204, 215 (holding that “section 1485.55 order is not appealable by the People”); *see also*
28 Pen. Code, § 1485.55 (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 Richards' innocence binds CalVCB in this administrative
2 proceeding.⁷⁸ CalVCB unequivocally accepts that Richards is factually innocent of Pamela R.'s murder,
3 for which he was erroneously incarcerated over 19 years. CalVCB recognizes that, but for this conviction,
4 Richards would not have spent 8,328 days "illegally behind bars, away from society, employment, and
5 [his] loved ones."⁷⁹ Therefore, Richards is entitled to a recommendation of compensation in the amount
6 of \$1,165,920, representing \$140 for each day of his erroneous incarceration.

7 **IV. Conclusion**

8 CalVCB hereby grants Richards' application for compensation under Penal Code section 4900
9 as mandated by Penal Code section 1485.55 and, therefore, recommends that the Legislature
10 appropriate \$1,165,920 as payment to Richards for his 8,328 days of erroneous incarceration.

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12 Date: June 30, 2021



13 Sara Harbarger
14 Senior Attorney
15 California Victim Compensation Board

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27 ⁷⁸ Pen. Code, §§ 1485.55, subds. (b) & (c); 4903, subd. (b).

28 ⁷⁹ *Holmes v. Cal. Victim Comp. & Gov't Claims Bd.* (2015) 239 Cal.App.4th 1400, 1405.