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**Victim Compensation Board Meeting Agenda**  
**March 17, 2022**  
**10:00 a.m.**  
**400 R Street**  
**Sacramento, CA 95812**

**BOARD MEETING MATERIALS**

- |                |  |                  |
|----------------|--|------------------|
| <b>Item 1.</b> | Approval of Minutes<br>Minutes of the January 20, 2022, Board Meeting<br><a href="#">DRAFT Minutes attached</a>  | Action Item      |
| <b>Item 2.</b> | Public Comment on Items Not on the Agenda<br>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.)<br><a href="#">No materials for this item</a> |                  |
| <b>Item 3.</b> | Executive Officer Statement<br><a href="#">No materials for this item</a>  | Information Item |
| <b>Item 4.</b> | Legislative Update<br><a href="#">Copy of Legislative Update attached</a>  | Action Item      |
| <b>Item 5.</b> | Proposal to Approve Trauma Recovery Center Grant Awards<br><a href="#">Copy of agenda item attached</a>  | Action Item      |
| <b>Item 6.</b> | Request for Authority to Begin Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 640, et seq.)<br><a href="#">Copy of agenda item attached</a>  | Action Item      |
| <b>Item 7.</b> | Edward Dumbrique (Pen. Code, §§ 4900, et seq.)<br><a href="#">Copy of Proposed Decision attached</a>   | Action Item      |
| <b>Item 8.</b> | Jonathan Hampton (Pen. Code, §§ 4900, et seq.)<br><a href="#">Copy of Proposed Decision attached</a>   | Action Item      |
| <b>Item 9.</b> | John Klene (Pen. Code, §§ 4900, et seq.)<br><a href="#">Copy of Proposed Decision attached</a>   | Action Item      |

# ITEM 1

# DRAFT

## California Victim Compensation Board Open Meeting Minutes January 20, 2022, 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, January 20, 2022, at 10:08 a.m. Also present via Zoom was Member Diana Becton, District Attorney, and Member Shawn Silva, 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. Board Liaison, Michelle Greer, was also present and recorded the meeting.

### Item 1. Approval of the Minutes of the November 18, 2021, Board Meeting

The Board approved the minutes of the November 18, 2021, Board meeting.

### Item 2. Public Comment

The Board opened the meeting for public comment and Ms. Greer 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.)

Gina Loretelli asked to address the Board. She expressed her appreciation of being able to address the Board and to make a public comment.

Ms. Loretelli explained that she is not only a victim advocate, but a survivor as well. She expressed how grateful survivors are for organizations such as CalVCB and others that are available for victims in their time of need; however, she noted there is much more work to be done.

What many do not understand, Ms. Loretelli continued, is when someone leaves a violent relationship it does not mean the violence ends. This is especially relevant when there are kids involved and unsupervised visits are ordered with the abusive and controlling parent. The violence does not end when a victim is forced into co-parenting with the abusive, coercive, and controlling parent. Abusers are master manipulators who are often able to inflict fear in the minds of their victims and their children with a simple covert text message. Ms. Loretelli stated that she wished that the Board would understand that the violence does not end; it has not for her or her children, and she is no different than millions of other victims and children across the state.

# DRAFT

Ms. Loretelli continued by noting that abusers often use covert tactics that don't leave bruises or destroy property. Intimidation, threats and domination strike terror in homes across the state, and through something that is supposed to protect victims like third party communication applications. Police often are not trained to recognize the nuances. Therefore, victims do not have access to the support and protection they and their children need. As more is learned about coercive and controlling abusers, we are learning that this type of partner violence is the precursor to physical violence, gun violence, and in many cases murder.

Ms. Loretelli share her hope that CalVCB will continue its good work by expanding the criteria and definition of family violence, as well as educating the victim witnesses who help victims fill out applications, so that more victims can get it right the first time and get the help that they need as soon as possible.

Chairperson Ravel thanked Ms. Loretelli for her comments to the Board.

There was no additional public comment.

## Item 3. Executive Officer Statement

Executive Officer Gledhill updated the Board on several items:

Ms. Gledhill updated the Board on CalVCB's long-term hybrid telework plan, which began at the beginning of the January. For most employees, she explained, that means coming into the office one day a week with their unit for team building and training. Given that so many employees started their job during the pandemic, and most have not been to the building in 22 months, it has been great to see staff in person again. CalVCB's executive team held an open house each day of that first week to greet returning staff, and many talked about how happy they are to be in the office and to have the chance to work in person with their teams.

Ms. Gledhill expressed her belief that this hybrid approach strikes the right balance, capitalizing on all the advantages of teleworking, while maintaining regular in-person contact in the office to foster a strong organizational culture. She also emphasized that CalVCB continues to take every precaution possible and is closely following the latest state and public health guidelines.

In other big news, Ms. Gledhill continued, Governor Newsom unveiled his proposed budget for 2022-23, and it includes additional funding and important updates for CalVCB. The budget proposal proposes increasing CalVCB's federal authority and benefit limit adjustment to accommodate the increase in our federal Victims of Crime Act reimbursement rate from 60 percent to 75 percent.

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The additional federal funding will be used, in part, to support a proposed increase in benefit limits for crime scene cleanup costs from \$1,000 to \$1,700, funeral and burial costs from \$7,500 to \$12,800, and relocation reimbursement from \$2,000 to \$3,400. Ms. Gledhill expressed her support for this overdue adjustment for limits that were set in 2000.

Ms. Gledhill also explained that the budget also proposes changing the way CalVCB pays those who have been found by the Board to have been erroneously convicted. Currently, once the Board approves a payment to someone who has been erroneously convicted, these payment requests are sent to the Legislature and then must go through the entire Legislative process. This often means a delay of many months after the Board approves the payment, and in many cases, the claimants may be elderly or infirm. The budget proposal would provide CalVCB with the statutory authority and corresponding appropriation to pay the claims directly once they are approved the Board. This would allow the claimants to receive their compensation much more quickly.

In addition, to bolster CalVCB's information technology (IT) infrastructure and meet state information security requirements, the budget includes \$2.4 million in 2022-23 and recommends \$808,000 in 2023-24 for IT infrastructure upgrades. Finally, to assist CalVCB in processing what is expected to be an increase in erroneous conviction claims under SB 446 – the new law that took effect on January 1, 2022 – the budget proposal includes \$535,000 in 2022-23 and \$471,000 ongoing for additional attorneys to process the expected increased claims. Ms. Gledhill reminded the Board and those in the audience that the Governor's proposed budget is the starting point of the budget process and that each of these proposals would require legislative approval. CalVCB is grateful to have the strong support of the administration on these proposals and looks forward to the Legislature's deliberation.

Next, Ms. Gledhill updated the Board about an audit by the Federal US Department of Justice, Office of the Inspector General, which she previously discussed with them. She noted the audit covered CalVCB's federal grants for fiscal years 2016 to 2018. The audit made 11 specific recommendations. Ms. Gledhill advised the Board that the audit was officially closed on December 2, 2021, and that no further action is required by CalVCB.

Ms. Gledhill next updated the Board on her efforts to convene the first ever California Statewide Victim Services Coordination Council, which stems from her interest and goal of improving coordination among state agencies that help victims. The Council is anticipated to increase collaboration and information sharing among state agencies and improve coordination of services to crime victims and their families. More than a dozen different state agencies and departments play some significant role in assisting crime victims and, by working more closely together, efforts can be amplified, and victims will be better served.

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Ms. Gledhill next provided an updated on the Forced or Involuntary Sterilization Compensation Program, which began accepting applications on January 1. She noted the Legislature created the program as part of the 2021-22 budget and it provides 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 involuntary sterilizations performed in California prisons after 1979.

CalVCB has created a web page with information on the program and how to apply, which also includes the downloadable application. In addition, the Governor issued a press release announcing the start of the program. CalVCB has received dozens of requests for applications and two have already been submitted. It is estimated that 600 survivors of forced sterilization remain alive and are eligible for the program. CalVCB will continue its work to get the word out about the existence of the program, which runs through Dec. 31, 2023.

Chairperson Ravel thanked Ms. Gledhill for the updates.

## Item 4. Contract Update

The contract update was provided by Deputy Executive Officer of the Administration and Finance Division, Sarah Keck.

Ms. Keck reminded the Board that it has delegated to the Executive Officer the authority to execute contracts for the maintenance of the Board's information technology system, as well as contracts in an amount not to exceed \$200,000. 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.

Ms. Keck described the first two contract items, which were contracts for the maintenance of the CalVCB IT technology system. The first contract was for \$53,715.65 with Kovaris. This contract provides hardware and software support for CalVCB's network storage, as well as support for the onsite switches. This was procured through a Department of General Services approved Leverage Procurement Agreement. The second contract was for \$55,575 with Migration Technologies. This contract is for Cherwell licensing and implementation services to provide a unified service management system at CalVCB. This was procured through the small business option.

The third and final contract, which was an action item for Board vote, was a contract with Crayon Software in the amount of \$396,862.71, which provides software licenses for Microsoft server, database, and development tools that are critical for the support of CalVCB's technical infrastructure and applications. This contract is proposed to be

# DRAFT

procured through a Department of General Services approved Leverage Procurement Agreement.

The Board approved Ms. Gledhill to execute the contract with Crayon Software in the amount of \$396,862.71.

## Item 5. Proposal to Approve Redistribution of Funds for Trauma Recovery Center Grant Awards

The redistribution of funds proposal was presented by Deputy Executive Officer of the External Affairs Division, Andrew LaMar.

Mr. LaMar reminded everyone that in May of last year, the Board awarded \$13 million in grants to 12 Trauma Recovery Centers (TRC) for the two-year period beginning July 1, 2021.

The month after, Mr. LaMar continued, CalVCB learned that one of the TRCs receiving the grants would be shutting down – Fathers and Families of San Joaquin in Stockton. The TRC closed its doors on September 3, 2021, and as a result only spent \$61,449 of its \$967,103 grant award.

Mr. LaMar requested that the Board approve the redistribution of the unspent grant money to the other 11 TRCs that were awarded grants for this two-year cycle.

Chairperson Ravel thanked Mr. LaMar for his presentation and recognized the very important services that all TRCs provide for victims.

Member Silva asked if there were any other qualified TRCs, specifically TRCs that are located in California's Central Valley, that had applied but were not selected to receive funding, that could receive these funds instead in an effort to ensure that services remained available in the Central Valley. Mr. LaMar responded that all qualified TRCs had been approved to receive funding, so there were no other TRCs that could receive the funds. Mr. LaMar also reminded the Board that CalVCB is already receiving applications for the next grant cycle for the upcoming spring selection and that there may be TRCs in that service area in the next cycle.

The Board approved the proposal to redistribute funds for the TRC grant award money.

## Closed Session

Pursuant to Government Code section 11126 (a), the Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:29 a.m., to deliberate on a personnel matter, and pursuant to Government Code section 11126, subdivision

# DRAFT

(c)(3) to deliberate on proposed decision numbers 1-101 of the Victim Compensation Program

## Open Session

The Board reconvened in Open Session pursuant to Government Code sections 11126(a) and 11126(c)(3) at 10:40 a.m.

During closed session the Board considered and approved an amendment to the resolution defining the power and duties of the Executive Officer to include the authority to adopt staff recommendations on appeals filed by Forced or Involuntary Sterilization Compensation Program victims.

The Board also adopted the hearing officers' recommendations for proposed decision numbers 1-101 of the Victim Compensation Program.

## Adjournment

The Board meeting adjourned at 10:43 a.m.

## Next Board Meeting

The next Board meeting is scheduled for Thursday, March 17, 2022.



# ITEM 2

# Public Comment

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.)

# ITEM 3

# **Executive Officer's Statement Information Item**

# ITEM 4

**California Victim Compensation Board  
Legislative Update  
March 17, 2022**

**SB 877 (Eggman) – Health Services: Reimbursement.**

This bill would authorize CalVCB to reimburse mental health providers who are licensed in states outside of California.

**Status: Scheduled to be heard in the Senate Public Safety Committee on March 15**

**SB 993 (Skinner) – California Victim Compensation Board**

This is a spot bill that states the intent to “modernize and reform the California Victim Compensation Board to further serve the needs of victims.”

**Status: Introduced**

**AB 2126 (Flora) – Controlled Substances**

This bill would impose a fine not exceeding \$2,000 on certain crimes involving controlled substances and would create the Fentanyl Overdose Victim Compensation Fund into which those fines would be deposited. It would also authorize CalVCB to accept applications for reimbursement for funeral and burial expenses arising from a fentanyl overdose and for costs from cleaning the scene of death resulting from a fentanyl overdose, if those applications are submitted by a surviving parent, grandparent, sibling, child, grandchild, spouse, or fiancé of the deceased. CalVCB would be authorized to reimburse those expenses upon an appropriation of funds from the Fentanyl Overdose Victim Compensation Fund by the Legislature for this purpose.

**Status: Referred to the Assembly Public Safety Committee**

**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. 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: On the Assembly Inactive File**

**SB 632 (Portantino) – Erroneous Conviction Claims Bill**

This bill would appropriate \$1,807,120 from the General Fund to pay two erroneous conviction claims approved by CalVCB for George Souliotes and Guy Miles.

**Status: Passed off the Senate Floor and referred to the Assembly**

**SB 115 (Skinner) – Budget Act of 2021**

This bill amends the Budget Act of 2021, which appropriated \$300,000 to CalVCB for a contract with the Alliance for a Better Community for study and additional outreach to eligible claimants for the Forced or Involuntary Sterilization Compensation Program. The amendment removes the requirement that the outreach be to “eligible claimants” of the program.

**Status: Signed by the Governor (Chapter 2, Statutes of 2022)**

**SB 981 (Glazer) – Criminal Procedure: Factual Innocence**

This bill would expand the grounds for which an automatic recommendation for compensation of an erroneous conviction claim by CalVCB is required under subdivision (a) of Penal Code section 1485.55. It would also reduce the standard to obtain a court-issued finding of factual innocence under subdivision (b) of section 1485.55.

**Status: Scheduled to be heard in the Senate Public Safety Committee on March 29**

**AB 1599 (Kiley) – Proposition 47: Repeal**

This bill would repeal the changes and additions made by Proposition 47, except those related to reducing the penalty for possession of concentrated cannabis. The bill would become effective only upon approval of the voters at the next statewide general election. The Safe Neighborhoods and Schools Act, as enacted by Proposition 47, reduced the penalty for certain crimes and requires the Director of Finance to calculate the savings to the state as a result of the act. The amount of the savings is transferred from the General Fund to the Safe Neighborhoods and Schools Fund, to be used for specified purposes. Ten percent of those funds are administered by CalVCB to provide grants to Trauma Recovery Centers.

**Status: Scheduled for the Assembly Public Safety Committee on March 8**

**SB 1106 (Wiener) – Criminal Resentencing: Restitution**

This bill would prohibit a petition for relief from being denied due to an unfulfilled order of restitution or restitution fine. The bill would also remove the prohibition against a parolee or inmate from being released on parole to reside in another receiving state if the parolee or inmate is subject to an unsatisfied order for restitution to a victim or a restitution fine with the sending state.

**Status: Referred to the Senate Public Safety Committee**

**AB 1733 (Quirk) – State Bodies: Open Meetings**

This bill would specify that a “meeting” under the Bagley-Keene Open Meeting Act, includes a meeting held entirely by teleconference.

**Status: Referred to the Assembly Governmental Organization Committee**

**AB 1795 (Fong) – Open Meetings: Remote Participation**

This bill would require state bodies to provide all persons the ability to participate both in-person and remotely in any meeting subject to the Bagley-Keene Open Meeting Act and to address the body remotely.

**Status: Referred to the Assembly Governmental Organization Committee**

# ITEM 5



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**California Victim Compensation Board  
Proposal to Approve Trauma Recovery Center Grant Awards**

**March 17, 2022**

**BACKGROUND**

A Trauma Recovery Center (TRC) is an organization that helps victims of violent crime by providing trauma-informed services that include assertive outreach to underserved populations, comprehensive evidence-based mental health services, and coordinated care tailored to each victim's needs. TRCs serve victims of all types of violent crime, including those with complex needs, with a multidisciplinary team to promote resiliency and recovery. TRCs also provide training to local law enforcement and other community partners on the identification and effects of violent crime.

***Authority***

Government Code section 13963.1 was enacted on July 1, 2013 and directed the California Victim Compensation Board to administer a program to evaluate applications for and award grants to Trauma Recovery Centers (TRCs) in California to provide services to victims of crime.

Government Code sections 13963.1 and 13963.2 contain requirements for how TRCs must operate and who they must serve, and they direct that CalVCB award the grants through a competitive grant application process.

A grantee is not guaranteed continued funding but may apply for a consecutive grant to prevent a lapse in funding.

In this cycle, grantees will provide services consistent with the Notice of Funds Available (NOFA) released January 3, 2022. The grant awards provide funding for a two-year period beginning July 1, 2022. A copy of the NOFA for this year's cycle of funding is attached for reference.

***Funding***

Pursuant to statute, the sources from which funds are appropriated for the TRC program are the Restitution Fund and the Safe Neighborhood and Schools Fund.

For Fiscal Year 2022-23:

- The Restitution Fund will provide \$2,000,000.
- The Safe Neighborhood and Schools Fund (SNSF) will provide an estimated \$13,961,200. The SNSF is an annual appropriation calculated by the Department of Finance. The January 2022 Governor's Budget estimates the appropriation for TRCs will be \$14,696,000. Per the statute, five percent of the allocated funds may be utilized for administrative costs. After applying this deduction, the estimated available funds for 2022 is \$13,961,200. If the SNSF appropriation in the final Governor's Budget is more or less than originally estimated, the proposed award amounts must be adjusted accordingly.

CalVCB has no obligation to grant a specific amount to each grant applicant. TRCs can also receive funding from other sources. Once a recommendation is made by staff and adopted by the Board, grantees are advised of what amount has been approved. Given that approved amounts may be less than requested, applicants have the option to either accept or decline the grant. Once an agreement is

made, grant agreements are executed between the grantee and CalVCB. These contractual agreements obligate the grantee to deliver the outcomes set forth in the agreement for managing all grant funds appropriately.

### **Scoring**

In keeping with statute, which requires CalVCB to award TRC grants through a competitive application process, grant applications were carefully evaluated and scored. A determination was made as to whether applicants could meet the minimum qualifications, as detailed in the statutory requirements. The scoring this year added weight to the ability to serve the greatest number of victims based on geographic location and need in the area served. That accounted for 10 percent of the application score.

Scoring was also made more transparent by explicitly stating in the NOFA how answers to narrative questions would be scored and how the points would be awarded in each category of the application.

These considerations were assessed using a point system that provided values consistent with the following level of responses to narrative questions:

- **Not Qualified** (zero points, disqualified)
- **Less Qualified** (1-2 points) Responses provide little to no direct experience or understanding of how qualifications have or will be met.
- **Qualified** (3-6 points) Responses provide direct experience and complete knowledge of how qualifications have or will be met with comprehensive examples.
- **Highly Qualified** (7-10 points) Responses meet the 'Qualified' standard and additionally, provide direct experience and comprehensive examples of qualification and ability to begin providing services within 30 days of receiving award.

Applicants with responses that were ranked as "Not Qualified" were given zero points for the question and disqualified, as each question represented a statutory requirement. The criteria and point values are listed in the NOFA. The maximum point value for an application was 100 points.

Each year, there is a finite amount of funding available to grant to TRCs. Early in the program, CalVCB was able to fund all qualified applicants at a high level. However, in more recent years, the applications and correlating funds requested for grants have gone up disproportionately to the funding available.

There is no limit as to the amount of funding that can be requested by an applicant and no statutory limitation on what may be granted. Scoring the applications allows for an assessment of the ability to perform statutorily required functions. While the lower-scoring applications demonstrated that the applicants could meet the minimum statutory requirements for operating a TRC, they lacked the details, examples and clarity provided by higher-scoring applications.

The differences in score were significant, with scores ranging from 29 to 82 points.

## **CaIVCB ANALYSIS AND RECOMMENDATION**

### **Staff Analysis**

In the current grant cycle, a total of 17 applications were received in response to the NOFA. Two applications were disqualified as they were incomplete and three were disqualified for receiving a zero score on at least one statutorily required component. Twelve demonstrated they could meet minimum qualifications with varying degrees of proficiency.

Given that CalVCB has been able to award TRC grants to all applicants with passing scores in the past, an initial analysis was completed to determine whether that was a feasible option this cycle. However, as previously noted, the number of applicants and their associated funding requests have begun to far outnumber the dollars available to grant. In years prior to 2021, grant awards to TRCs averaged 89.7 percent of what they requested.

The goal is to fund the most prepared and qualified candidates with as much of the funding they have requested to support their success. Funding at significantly lower levels (less than 60 percent) can result in decreased staffing, delays in program launch and decreased ability to offer victim services.

To fund each of the 12 candidates that had ‘qualifying’ responses would result in significantly less funding for the more qualified candidates and would in some instances, based on the amounts requested, provide more funding to less qualified applicants than those who scored higher.

In order to best support the TRCs in any given cycle, CalVCB recommends awarding grants at near 90 percent or more of what the most qualified applicants requested.

**Staff Recommendation**

For 2022, staff recommends funding the seven top applicants, which all scored above 60 points on their applications and can be funded at 89 percent or above of what they requested. The percentage of funding would be tied to the score received on the application. Of those seven, six are existing TRCs. Using the \$15,961,200 available in grant funding, staff recommends the following award amounts as depicted in the chart below.

Staff Recommendation – Fund Top Seven Applications  
*Funding amount tied to application score.*

Top 7 Scored Applications						
Code	Agency	County	Original Funds Requested	Score Tier	% of Requested Amount	Award Amount
ALA	Alameda County District Attorney's Office	Alameda	\$2,600,000.00	1	97%	\$2,515,834
CCS	Citrus Counseling Services, Inc.	San Bernardino	\$2,000,000.00	2	93%	\$1,860,000
CLB	CSU Long Beach Research Foundation	Los Angeles	\$3,447,897.00	2	93%	\$3,206,544
MCC	MIRACLES Counseling Center, Inc.	Los Angeles	\$2,488,257.22	3	89%	\$2,214,549
SFO	The Regents on the UCSF	San Francisco	\$2,836,992.99	3	89%	\$2,524,924
USC	University of Southern California (USC), Suzanne Dworak-Peck School of Social Work	Los Angeles	\$1,593,954.30	3	89%	\$1,418,619
DWC	Downtown Women's Center	Los Angeles	\$2,495,202.80	3	89%	\$2,220,730
						\$15,961,200

5B



**2022 CalVCB Trauma Recovery  
Center  
Grant Notice of Funds Available  
(NOFA)**

# Table of Contents

- I. Overview..... 2
  - A. Introduction..... 2
  - B. Key NOFA Dates..... 2
  - C. Authorizing Legislation ..... 2
  - D. State Pilot TRC Model Link ..... 4
- II. Application Requirements..... 4
  - A. Eligible Applicants ..... 4
  - B. Funding Amounts and Terms ..... 4
  - C. Application Package Components..... 4
  - D. Formatting Requirements..... 5
- III. Application Submission and Review Procedures..... 5
  - A. Application Submission ..... 5
  - B. Initial Application Review..... 5
  - C. Application Scoring..... 5
- IV. Budget Requirements ..... 6
  - A. Personnel Services ..... 6
  - B. Contracted Personnel..... 7
  - C. Operating Costs ..... 8
- V. General Terms and Conditions..... 8
- VI. Post-NOFA Award Recommendation ..... 9
  - A. Contract Negotiations..... 9
  - B. Invoicing and Payment ..... 9
  - C. Data Collection Reporting Requirements ..... 10

# I. Overview

## A. Introduction

The California Victim Compensation Board (CalVCB) provides reimbursement to eligible victims of crime for many crime-related expenses. CalVCB funding comes from restitution paid by criminal offenders through fines, orders and penalty assessments, and federal grant funds. Government Code sections 13963.1 and 13963.2 mandate that CalVCB administer a program to evaluate applications and award grants to Trauma Recovery Centers (TRC) in California to provide services to victims of crime.

The grant program awards funding for TRCs to provide trauma-informed services to victims of crime. Grantees will serve all victims of crime, whether or not they meet CalVCB's eligibility requirements, provided the services are consistent with California Government Code sections 13963.1 and 13963.2 and this Notice of Funds Available (NOFA).

## B. Key NOFA Dates

NOFA Release Date	Monday, January 3, 2022
Final Date to Submit Questions	Monday, January 10, 2022 5:00 p.m. PST
Response to Questions Posted	Thursday, January 13, 2022 by 5:00 p.m. PST
Final Application Submission Date	Wednesday, February 2, 2022 by 2:00 p.m. PST
Tentative Board Award Approval Date	Thursday, March 17, 2022

## C. Authorizing Legislation

The CalVCB TRC Grant program is mandated by California Government Code sections 13963.1 and 13963.2. Available funds are subject to compliance with state statute and CalVCB TRC grant program rules. California Government Code section 13963.2 states:

The Trauma Recovery Center at the San Francisco General Hospital, University of California, San Francisco, is recognized as the State Pilot Trauma Recovery Center (State Pilot TRC). The California Victim Compensation Board shall use the evidence-informed Integrated Trauma Recovery Services (ITRS) model developed by the State Pilot TRC when it selects, establishes, and implements Trauma Recovery Centers (TRCs) pursuant to Section 13963.1. All TRCs funded through the Restitution Fund or Safe Neighborhoods and Schools Fund shall do all of the following:

(a) Provide outreach and services to crime victims who typically are unable to access traditional services, including, but not limited to, victims who are homeless, chronically mentally ill, members of immigrant and refugee groups, disabled, who have severe trauma-related symptoms or complex psychological issues, are of diverse ethnicity or origin, or are juvenile victims, including minors who have had contact with the juvenile dependency or justice system.



(b) Serve victims of a wide range of crimes, including, but not limited to, victims of sexual assault, domestic violence, battery, crimes of violence, vehicular assault, and human trafficking, as well as family members of homicide victims.

(c) Offer evidence-based and evidence-informed mental health services and support services that include individual and group treatment, medication management, substance abuse treatment, case management, and assertive outreach. This care shall be provided in a manner that increases access to services and removes barriers to care for victims of violent crime and may include providing services to a victim in his or her home, in the community, or at other locations conducive to maintaining quality treatment and confidentiality.

(d) Be comprised of a staff that includes a multidisciplinary team of clinicians made up of at least one psychologist, one social worker, and additional staff. Clinicians are not required to work full-time as a member of the multidisciplinary team. At least one psychiatrist shall be available to the team to assist with medication management, provide consultation, and assist with treatment to meet the clinical needs of the victim. The psychiatrist may be on staff or on contract. A clinician shall be either a licensed clinician or a supervised clinician engaged in completion of the applicable licensure process. Clinical supervision and other supports shall be provided to staff regularly to ensure the highest quality of care and to help staff constructively manage vicarious trauma they experience as service providers to victims of violent crime. Clinicians shall meet the training or certification requirements for the evidence-based practices they use.

(e) Offer 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. Each client receiving mental health services shall have a treatment plan in place, which is periodically reviewed by the multidisciplinary team. Examples of primary treatment goals include, but are not limited to, a decrease in psychosocial distress, minimizing long-term disability, improving overall quality of life, reducing the risk of future victimization, and promoting post-traumatic growth.

(f) Deliver services that include assertive outreach and case management including, but not limited to, accompanying a client to court proceedings, medical appointments, or other appointments as needed, assistance with filing an application for assistance to the California Victim Compensation Board, filing police reports or filing restraining orders, assistance with obtaining safe housing and financial benefits, helping a client obtain medical care, providing assistance securing employment, and working as a liaison to other community agencies, law enforcement, or other supportive service providers as needed. TRCs shall offer outreach and case management services to clients without regard to whether clients choose to access mental health services.

(g) Ensure that no person is excluded from services solely on the basis of emotional or behavioral issues resulting from trauma, including, but not limited to, substance abuse problems, low initial motivation, or high levels of anxiety.

(h) Utilize established, evidence-based, and evidence-informed practices in treatment. These practices may include, but are not limited to, motivational interviewing, harm reduction, seeking safety, cognitive behavioral therapy, and trauma-focused cognitive processing therapy.

(i) Ensure that no person is excluded from services based on immigration status.

#### **D. State Pilot TRC Model Link**

The SFO TRC model, referenced in the legislation as the ITRS model, is linked below for your reference.

<http://traumarecoverycenter.org/wp-content/uploads/2020/04/TRC-Manual.pdf>

## **II. Application Requirements**

### **A. Eligible Applicants**

Applicants must be able to meet requirements pursuant to Government Code section 13963.2 and have the ability to carry out all direct services from the main location of operation. Provision of virtual services is permissible to accommodate social distancing guidelines.

### **B. Funding Amounts and Terms**

CalVCB TRC grant awards are funded by an annual appropriation of \$2,000,000 from the Restitution Fund with additional funding from the Safe Neighborhood and Schools Act. The number of grants awarded will be determined by a variety of factors, including the number of qualified applicants, the amount of funds requested, and the amount of funds available. Program expenses are reimbursed after they have been incurred and invoiced monthly. Grant awards made under the 2022/23 NOFA will be for a two-year cycle effective July 1, 2022, through June 30, 2024.

A grantee is not guaranteed continued funding and may apply for a consecutive grant to prevent a lapse in funding.

### **C. Application Package Components**

A complete application package shall include all items from the first three bullet points listed below. Failure to submit any section of bullets one through three will result in disqualification of the application.

- Title Page (attached)
- Numbered Responses to Narrative Questions 1-6 (attached)
- Budget Worksheet(attached), Budget Narrative, Flow Chart, Organizational Chart, Time Task Plan

- Letters of Recommendation (maximum of three (3) from agencies your program is currently working with including a Law Enforcement agency and a Community Based Organization)

#### **D. Formatting Requirements**

Responses to narrative questions 1-6 shall be no longer than two (2) pages each and must specify the number of the question being answered. Formatting requirements of responses to narrative questions 1-6 and the Budget Narrative are as follows:

- 11 pt. font Arial
- 1-inch margins
- Double spaced

### **III. Application Submission and Review Procedures**

#### **A. Application Submission**

Grant application packages should be submitted in the form of a single PDF file and must be submitted via email to [Grants@victims.ca.gov](mailto:Grants@victims.ca.gov) no later than 2:00 p.m. PST on Wednesday, February 2, 2022. Applicants will receive an email confirming receipt of their application. If confirmation is not received within one (1) hour of email submission Monday through Friday during the regular business hours of 8:00 a.m. – 5:00 p.m. PST, applicants should call Elizabeth Schmahl at (916) 491-3682 or Kara Poteat at (916) 491-3553. Applications received after 2:00 p.m. PST on Wednesday, February 2, 2022, will be rejected.

#### **B. Initial Application Review**

Application packages will be reviewed to ensure all required sections are present and complete and to ensure formatting requirements were followed. Applications missing any required components will be disqualified. Applications that don't follow formatting instructions will have points deducted.

#### **C. Application Scoring**

- Total application package worth 100 points
- 6 questions – 60 available points
- Budget Worksheet, Budget Narrative, Flow Chart, Organizational Chart and Time Task Plan, Letters of Recommendation – 40 available points

Responses to narrative questions will be scored using the following rubric:

- 0 – Not Qualified; Does not provide demonstrated ability to meet requirement. DISQUALIFIED.

- 1-2 – Less Qualified answers are not easy to follow or understand, provide little or no direct experience or understanding of how qualifications have or will be met.
- 3-6 – Qualified; answers the question, provides direct experience and complete knowledge of how qualifications have or will be met with comprehensive examples.
- 7-10 – Highly Qualified; in addition to meeting the Qualified standard above, provides direct experience and comprehensive examples of qualification and ability to begin providing services within 30 days of receiving award.

Acceptance of an application does not constitute a grant award and does not obligate CalVCB to award funds. CalVCB reserves the right to partially fund selected applications. An applicant may request a specific dollar amount; however, CalVCB will make the final determination of the dollar amounts awarded. Any portion of a grant that a TRC does not use within the specified grant period shall revert to the funding source.

## IV. Budget Requirements

### A. Personnel Services

Personnel Services (salaries, wages, and fringe benefits) must constitute a minimum of 75% of the total grant amount (for the 2-year grant cycle) as described in CalVCB TRC grant agreement/contract. If a position is not allocated at 100% reimbursable by the grant, indicate at what percentage will be invoiced for reimbursement on the Budget Drawdown Worksheet.

- A minimum of 60% of the funds budgeted to personnel services must be for clinical staff who provide Direct Client Services. Direct client services are services provided to a client by a licensed clinician or services provided with a licensed clinician present. Direct client service providers can be either TRC budgeted staff or contracted for services.
- A maximum of 40% of the funds budgeted to the personnel services can account for Indirect Client Services. Indirect client services are services provided by non-licensed staff that supports direct services of a treatment plan. Indirect client service providers can be either TRC budgeted staff or contracted for services.
- CalVCB TRC Functional Timesheets are required to be completed by all TRC budgeted staff and contracted personnel.
- Paid Time Off (PTO)/Leave accrual during the grant period is paid as part of the normal costs of salary and wages and will not be reimbursed as a separate line item. The Grantee will provide CalVCB with the information

- required to determine an hourly rate that includes the employee's wage and accrual for PTO/Leave time offered. This hourly rate will be used to reimburse the time an employee spends on TRC activities to the employer. The Grantee is responsible for maintaining the accrual and usage of this time.
- Any request for reimbursement for PTO/Leave when used, will not be eligible for reimbursement. The Grantee is responsible for managing the PTO/Leave time bank.
  - The Grantee will provide CalVCB with the calculation for the accrual and policies that dictate the accrual, payment, and usage of PTO/Leave.
- If fringe benefits are offered, they will be specifically identified to each employee and are charged individually and identified in the budget associated for personnel salary and wages and benefits total.
    - Reimbursement for fringe benefits must be proportional to the amount of time spent by the employee working on the TRC Grant.
    - Fringe benefits such as FICA, disability insurance, workers' compensation, retirement, and health care/dental/vision/life insurance will include the description, and the amounts of benefits will be displayed by category, position, and class.
    - Contracted staff will only be reimbursed for their hourly rate, and requests for reimbursement of fringe benefits are not considered an eligible expense.

## **B. Contracted Personnel**

Contracted personnel will only be reimbursed for their hourly rate for the TRC services provided.

- Grantees may contract for personnel services as set forth in the approved budget of the grant agreement/contract or with prior written approval from CalVCB submitted as a Budget Modification Request.
- Contractor services must be for the purpose of achieving the grant objectives for direct or indirect client services.
- Grantees are responsible for ensuring that each contractor complies with the grant agreement, including, if applicable, collecting and reporting of data.
- Contracting out shall not affect the grantee's overall responsibility for the management of the grant, and the grantee shall reserve sufficient rights and control to enable it to fulfill its responsibilities for the grant.
- Grantees shall have a written agreement with each contractor and shall submit a copy of the agreement to CalVCB to include hourly rate of pay, dates and times of service, and any and all negotiated budget agreements for approval.

### **C. Operating Costs**

Operating costs can be allocated up to 25% of the total grant award. All items submitted must include a description or explanation of the expense on the Invoice Worksheet (Attachment 7).

If you are receiving additional grant funds or financial support for any of the budgeted line items, please include all corresponding documentation and reduce your reimbursement request by that percentage. Rent may be included in your operating costs. Reimbursement of rent is for facility rental. Indicate the number of square feet specified in the lease agreement as well as the rental amount. Rental cost must be in alignment with similar market costs.

### **v. General Terms and Conditions**

All applications shall become the property of CalVCB. All submitted applications are public record and therefore subject to disclosure under the California Public Records Act.

CalVCB reserves the right to withdraw the NOFA at any time. Further, CalVCB makes no representation that any funding will be awarded to any applicant responding to the NOFA.

Both parties reserve the right to terminate the Grant Agreement upon thirty (30) days written notice to the other party. CalVCB may reduce or terminate grant funds for reasons that may include, but are not limited to, the following:

- a. If the project fails to comply with any term or condition of the grant award.
- b. If during the term of the grant award, the state funds appropriated for the purposes of the grant award are reduced or eliminated, or, in the event revenues are not collected at the level appropriated, CalVCB may immediately terminate or reduce the grant award.

Should CalVCB deem it necessary to reduce or terminate grant funds, the grantee shall be notified in writing. No such termination or reduction shall apply to allowable costs already incurred by the grantee to the extent that state funds are available for payment of such costs up to, and including, the date of the notice. The grantee shall be reimbursed all reasonable expenses incurred per the approved budget up to the date of termination.

Grant funds must be used to increase the total amount of funds used to provide services to victims of crime and may not be used to supplant current sources of funding that would, in the absence of these grant funds, be available or forthcoming.

In addition, grant funds may not be used to defray any costs that the grantee was already obligated to pay at the time the grant was awarded. To prevent the supplanting of grant funds, CalVCB will carefully review all applications, and will conduct post-award monitoring and auditing of any funding and expenditures.

Any supplantation of existing funding with these grant funds constitutes grounds for suspension or termination of grant funding and recovery of funds already provided.

## **VI. Post-NOFA Award Recommendation**

Once a funding recommendation is approved by the Board, CalVCB will notify all applicants of the results of the submitted applications. Each applicant will receive an approval or denial letter notifying them of individual results.

CalVCB may request additional information or clarification or may contact the project lead listed on the application to discuss budget adjustments or required revisions.

The TRC Grant Liaison will request adjustments or updates to the following items:

- Goals and outcomes based on new funding recommendation
- Updated Budget Drawdown Worksheet
- Std. 204 form

### **A. Contract Negotiations**

Grant agreements/contracts are legal agreements between the Grantee and CalVCB, and Grantees are responsible for delivering the outcomes set forth in the contract and for managing all grant funds appropriately.

CalVCB will coordinate the review and approval of agreement/contract language. Upon approval of the language, CalVCB will facilitate the signature process to fully execute the grant agreement/contract. CalVCB will then distribute a copy of the fully executed grant contract and approved budget to the Grantee.

### **B. Invoicing and Payment**

The TRC shall submit itemized invoices that include supporting documentation detailing program expenditures and database export files on a monthly basis. Invoices are due to CalVCB the last business day of the following month. The TRC Grantee must submit the database export files monthly prior to, or with, monthly invoices.

Invoices shall include the following files and supporting documentation:



- Invoice Worksheet
  - Attach additional Microsoft Excel file detailing all expenses on the Invoice Worksheet
- Budget Drawdown Worksheet
  - Budget Tab
  - Drawdown Request Tab
  - Staffing Tab
  - Emergency Expenditure Tab
- CalVCB TRC Functional Timesheets for each employee must be completed, signed, and dated for each TRC staff being billed to the grant
- TRC specific timesheets for all employees including contracted staff
- Payroll records for employees and contracted staff including the employee's or contracted staff person's name, position/classification, time base, breakdown of salary and wages/fringe benefits, and PTO/Leave accrual calculation
- Invoice(s) for contracted services
- All supporting documentation for fringe benefit claims
- All supporting documentation for Operating Expenses:
  - Supporting documentation such as bills, invoices, statements, and/or receipts must include all pages
- TRC Certification of Reports signed by the person named as having signature authority, stating that all information reported is correct and grant expenditures are in accordance with eligible costs

### C. Data Collection Reporting Requirements

Using the Microsoft Access database provided by CalVCB, the Grantee shall collect data and submit data export files monthly to [Grants@victims.ca.gov](mailto:Grants@victims.ca.gov) unless stipulated differently in the TRC's grant agreement/contract. Export files are due to CalVCB the last business day of the month following service.

In compliance with federal statutes and rules governing federal matching funds for victims' services, the Grantee shall submit any forms and data requested by CalVCB per Government Code section 13963.1(g)(2).

#### **Data export files shall include, but are not limited to:**

- Client resources
- Demographic information
- Crime information
- Services provided and referred to the client
- Session and case management information
- Assessment data



- Training provided
- Community outreach provided
- Collaborative activities

The Grantee must keep accurate records as source documentation to support the information in the reports. Records must be retained by the Grantee for at least three years from the end of the grant period. During programmatic monitoring and site visits, CalVCB may review these records for accuracy and compare data to the reports submitted by the Grantee.

The Grantee will only record data in the Microsoft Access database for treatment, case management, training, outreach, and collaboration activities that are funded by the grant.

The Grantee will only be reimbursed for services to victims for whom data has been reported to the Board.

Software requirements for data entry and export:

- Microsoft Excel, 2010 version or newer
- Microsoft Access, 2010 version or newer (may require the use of a PC as this product may not be compatible with Macs)

# ITEM 6

6A

**California Victim Compensation Board  
Request for Approval to Begin the Rulemaking Process for  
California Code of Regulations, Title 2, Sections 640 – 646**

**March 17, 2022**

**Action Requested**

Staff propose to amend and adopt the regulations located at sections 640 through 646 of Title 2 for processing claims by erroneously convicted felons under Penal Code sections 4900, et seq.

It is requested that the Board authorize staff to begin the rulemaking process for these proposed regulatory changes. This request includes submission of the Proposed Regulations and Initial Statement of Reasons to the California Office of Administrative Law (OAL). This also includes publication of the Notice of Rulemaking Action, followed by a public comment period.

**Background**

CalVCB processes claims from persons seeking compensation as an erroneously convicted felon pursuant to California Penal Code sections 4900 through 4906. Typically, the claimant must prove, by a preponderance of the evidence, that (1) they did not commit the crime that resulted in their incarceration and (2) they sustained injury as a result of their erroneous conviction. (Pen. Code, § 4900, subd. (a).) If a claim is approved, it results in a recommendation by the Board to the Legislature to make an appropriation for the claimant's sustained injury in the amount of \$140 per day of the claimant's wrongful imprisonment. The regulations governing this process have not been revised since 2012.

However, over the past decade, the statutory scheme for processing these claims has been revised several times. Most recently, in 2021, SB 446 (Glazer, Chapter 490, Statutes of 2021), reassigned and increased the burden of proof for deciding claims in which the underlying conviction was vacated by a grant of habeas corpus or motion under Penal Code section 1473.6 or 1473.7, subd. (a)(2), while also limiting the type of evidence that may satisfy that burden. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4903, subds. (b) & (d), 4904.) SB 446 further expanded the definition for a finding of factual innocence, as well as the circumstances under which such a finding may be rendered. (Pen. Code, § 1485.5, subd. (c), 1485.55, subd. (a).) In 2019, SB 269 (Bradford, Chapter 473, Statutes of 2019) extended the deadline for filing a claim with CalVCB from two years to ten years after acquittal, pardon, dismissal of charges, or release from custody. (Pen. Code, § 4901.) In 2016, SB 1134 (Leno, Chapter 785, Statutes of 2016) mandated an automatic recommendation for claimants who received a court finding of factual innocence for all convictions underlying their incarceration. In 2015, SB 635 (Nielsen, Chapter 422, Statutes of 2015) revised the definition of injury to no longer require a showing of pecuniary harm. And in 2013, SB 618 (Leno, Chapter 800, Statutes of 2013) rendered court findings binding upon CalVCB and barred any presumption for failing to obtain a finding of factual innocence.

As a result of these legislative changes, many of the current regulations are outdated, incomplete, or contrary to current law. This proposed regulatory action is intended to resolve all of these issues. It is also intended to provide clear guidance to the parties when appearing before the Board and to enable the Board to decide these claims in a consistent and efficient manner.

A copy of the draft Proposed Regulations and Initial Statement of Reasons, as well as the Notice of Rulemaking Action are attached. In the Proposed Regulations, deleted text appears in strikethrough and new text is underlined.

**Recommendation**

It is recommended that the Board authorize staff to begin the rulemaking process. This includes authorization for the Executive Officer to submit the Proposed Regulations and Initial Statement of Reasons to OAL. This also includes authorization to publish the Notice of Rulemaking Action, followed by a public comment period.

**Certification**

I certify that at its March 17, 2022 Board Meeting, the California Victim Compensation Board adopted the proposed recommendation.

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Michelle Greer  
Board Liaison

6B

**PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTIONS 640 – 646**

As Submitted by California Victim Compensation Board on April 1, 2022

**§ 640. Presentation of Claim.**

(a) Claims on behalf of persons erroneously convicted of felonies shall be filed on an “Erroneously Convicted Person Claim Form,” Rev. ~~September 2014~~ Rev. March 2022, hereby incorporated by reference, and provided by the Board or obtained on the Board’s website.

(a) Claimants must include ~~an original and one copy~~ of the following:

- (1) completed claim form with a detailed factual summary signed under penalty of perjury, and;
- (2) supporting documentation.

(b) The claim and supporting documentation may be submitted in electronic format as a PDF attachment to the Board’s designated email address. Claims emailed after business hours will be deemed received the next regular business day. Alternatively, the claim and supporting documentation may be sent by mail to the Board’s physical address and will be deemed received upon the date of arrival within the Board’s Legal Division. If the claim and supporting documentation are submitted in hardcopy only, an original and one copy are required.

(c) The supporting documentation must confirm the claimant was convicted of a felony in a California court, for which they served a term of imprisonment in either a state prison or county jail pursuant to subdivision (h) of Penal Code section 1170, and the claimant is no longer incarcerated for that felony conviction. The supporting documentation must also confirm the claim was timely submitted under Penal Code section 4901.

(d) Once received, a hearing officer will review the claim to determine whether all requisite elements for jurisdiction are satisfied and, upon such a determination, deem the claim filed.

(~~b~~e) Upon receipt of a claim filing, the Board will ~~provide the forward a complete~~ copy of the claim and one ~~(1) copy of the supporting evidence and documentation~~ to the California Attorney General in either hardcopy or electronic PDF format. ~~The Attorney General may offer evidence in support of or in opposition to the claim. If the Attorney General provides any evidence to the Board, it shall also provide a copy to the Claimant.~~

(1) Unless the automatic recommendation provision in either Penal Code section 851.865 or Penal Code section 1485.55 applies, the Board will request a response from the Attorney General. The response may offer evidence in support of or in opposition to the claim. The Attorney General’s response shall be submitted to both the Board and the claimant in hardcopy form with an electronic version in PDF format.

(2) The automatic recommendation provisions in section 851.865 and section 1485.55 do not apply if the claimant lacks a court finding of factual innocence for each and every conviction underlying their incarceration. A court finding of factual innocence for any individual conviction is binding upon the Board.

(~~e~~f) Pecuniary injury may be established by showing that, ~~the claimant was gainfully employed prior to being incarcerated; the claimant could have been gainfully employed if not for being incarcerated; or by other evidence showing that, as a result of being incarcerated, the claimant suffered a monetary loss but for the erroneous conviction, the claimant would not have been in custody.~~

Note: Authority cited: Section 13920, Government Code, Section 4906, Penal Code. Reference: Sections 851.865, 1485.55, 4900-4906~~4904~~, Penal Code.

**§ 641. Admissible Evidence in Support of Claim.**

(a) In reaching its determination of the merits of the claim, claimant’s denial of the commission of the crime; reversal of the judgment of conviction; acquittal of claimant on retrial; or, the decision of the prosecuting authority not to retry claimant for the crime, may be considered by the Board ~~but will not be~~

~~deemed sufficient evidence to warrant the Board's recommendation that claimant be indemnified in the absence of substantial independent corroborating evidence that claimant is innocent of the crime charged.~~

(b) The Board may consider as substantive evidence the prior testimony of witnesses claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for which claimant had an opportunity to object.

(c) All relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs. Evidence is relevant if it has any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the claim.

(d) Evidence that qualifies under subdivision (c) may be admitted even though there is a common law or statutory rule which might make its admission improper over objection in any other proceeding.

(e) Objections to and arguments about evidence may be considered when determining the weight to be given to the evidence.

(f) The Board may also consider any other information that it deems relevant to the issue before it.

Note: Authority cited: Section 13920, Government Code-, Section 4906, Penal Code. Reference: Sections ~~4900-4906~~4904, Penal Code-, Section 210, Evidence Code.

#### **§ 642. Rejection of Claim.**

(a) Claims that are untimely or are otherwise not in compliance with Penal Code sections 4900 and 4901 will be rejected for lack of jurisdiction and will not be heard or considered by the Board.

(1) Successive or duplicative claims are not in compliance with Penal Code section 4900 or 4901. The Board will consider on the merits only a single claim by a claimant challenging the same underlying conviction.

(2) A claim solely based upon a vacated conviction pursuant to Penal Code section 1170.95 is not in compliance with Penal Code section 4900 or 4901. To be cognizable, the claim must allege that the claimant was erroneously convicted under the law in effect at the time the charged crime occurred.

~~(b) Prior to denying a hearing rejecting for failure to timely file a claim or for failure to state facts constituting a claim under~~ comply with the jurisdictional requirements of Penal Code sections 4900 and 4901, the claimant shall be:

(1) notified of the reason for rejecting the claim and,

(2) given thirty (30) calendar days to present evidence that will overcome the rejection.

(c) If the claimant's response provides sufficient evidence to prove that the claim was timely ~~filed~~ submitted and is otherwise compliant with the requirements of Penal Code sections 4900 and 4901, the claim will be ~~timely scheduled for a hearing~~ deemed filed as of the date the additional evidence was received.

(d) If the claimant's response does not provide sufficient evidence to prove that the claim was timely ~~filed~~ submitted and is otherwise compliant with the requirements of Penal Code sections 4900 and 4901, the claim will be rejected without a hearing and will not be considered by the Board.

Note: Authority cited: Section 13920, Government Code-, Section 4906, Penal Code. Reference: Sections 1170.95, 4900-49064904, Penal Code.

#### **§ 643. Pre-Hearing Conference Procedure.**

(a) At the discretion of the hearing officer, the parties may submit a pre-hearing brief addressing the merits of the claim. The parties shall receive reasonable notice of the time to submit a pre-hearing brief. Either party may waive submission of a pre-hearing brief.

(b) Each party shall submit a pre-hearing statement that discloses (1) the name of every person the party intends to call as a witness at the hearing, (2) any exhibits to be proffered as evidence at the



hearing, and (3) an estimate of the amount of time needed by the party to present their case at the hearing. The pre-hearing statement must be submitted at least seven days before the hearing or as otherwise directed by the hearing officer.

(~~a~~c) The hearing officer may conduct a pre-hearing conference in person or by electronic means.

(~~b~~d) The parties shall receive reasonable notice of the time and location of a pre-hearing conference.

(~~e~~e) A pre-hearing conference may address any of the following:

- (1) clarification of issues;
- (2) identity of witnesses;
- (3) exchange of witness lists;
- (4) limitation of the number of witnesses;
- (5) limitation of the scope of a witness' testimony;
- (6) limitation of time allocated to a party's presentation of evidence;
- (7) limitation of time allocated to a party's cross-examination of witnesses;
- (8) exchange of exhibits;
- (9) objections to evidence;
- (10) order of presentation of evidence;
- (11) order of cross-examination of witnesses;
- (12) stipulations;
- (13) pre-hearing motions; and
- (14) any other matters that will promote the orderly and efficient conduct of the hearing.

Note: Authority cited: Section 13920, Government Code-, Section 4906, Penal Code. Reference: Sections 4900-49064904, Penal Code.

#### **§ 644. Conduct of Hearing Before Hearing Officer.**

(a) Upon receipt of a response from the Attorney General, a hearing on the claim will be scheduled, taking into consideration the availability of the parties, witnesses, and hearing officer. The hearing officer shall provide at least 15 days' notice to the parties of the date and location of the hearing. The claimant may waive the hearing and elect to proceed on the written record. For claims proceeding under subdivision (b) of Penal Code section 4900, the hearing may be waived only if both the claimant and Attorney General agree to proceed on the written record.

(~~a~~b) Hearings shall be open to public observation, unless otherwise provided by law.

(~~b~~c) Hearings will be conducted in Sacramento unless the Board the hearing officer agrees to an alternative location or appearance by electronic means.

(~~e~~d) ~~The~~ Except for claims proceeding under subdivision (b) of Penal Code section 4900, the claimant has the burden of proof on all issues necessary to establish eligibility, including innocence and injury.

(1) The standard of proof is a preponderance of the evidence.

(~~e~~2) The parties shall present evidence in the following order:

\_\_ (1A) the claimant;

\_\_ (2B) the Attorney General;

\_\_ (3C) the claimant, if ~~he or she~~ they desires to offer any evidence or testimony to rebut the Attorney General's evidence or argument.

(e) For claims proceeding under subdivision (b) of Penal Code section 4900, the Attorney General has the burden of proof, by clear and convincing evidence, to prove the claimant committed the acts constituting the offense for which the claimant was convicted. The claimant continues to bear the burden to prove injury by a preponderance of the evidence.

(1) The parties shall present evidence in the following order:

(A) the Attorney General;

(B) the claimant;

(C) the Attorney General, if they desire to offer any evidence or testimony to rebut the claimant's evidence or argument.

(D) the claimant, if they desire to offer any evidence or testimony on the issue of injury.  
(2) The claimant's burden to prove injury is satisfied upon a showing that each and every conviction underlying their incarceration was vacated by either a writ of habeas corpus or motion pursuant to Penal Code section 1473.6 or subdivision (a)(2) of section 1473.7, and all charges were subsequently dismissed or ended in acquittal without any new conviction for a lesser offense. If the claimant sustained a new conviction upon remand for a lesser offense, then the claimant's injury is presumptively calculated as the difference in length between the sentence served for the original conviction and the sentence imposed for the new conviction.

(ef) The hearing officer may determine the amount of time allotted to present a claim for compensation. The determination made under this subsection shall be based on the following factors:

- (1) complexity of legal or factual issues;
- (2) necessity to evaluate credibility of witnesses for a proper determination of issues;
- (3) parties' representation by legal counsel;
- (4) necessity of witnesses being subject to cross examination for the proper determination of issues; and
- (5) any other factor likely to affect a just and proper determination of issues.

(fg) If a claimant fails to appear at the hearing or fails to proceed, the Board may base its decision on previously submitted evidence.

(gh) A party that requests that all or part of a hearing be conducted by electronic means under California Code of Regulations section 617.4 may be responsible for providing, operating, and paying for all necessary equipment.

(hi) The hearing will be recorded by electronic means at the expense of the Board.

(ij) Any party may request the Board to arrange for the preparation of a hearing transcript. The party requesting the preparation of a hearing transcript shall bear all costs for its preparation and shall provide one copy of the transcript to the Board at no cost to the Board.

(jk) The hearing officer may allow or request the parties to submit post-hearing briefs.

- (1) Post-hearing briefs shall be limited to legal and factual arguments related to relevant issues under section Penal Code sections 4900 et seq. or identified by the hearing officer.
- (2) The hearing officer shall inform the parties of the deadline for the submission of a post-hearing brief.

(kl) In a hearing in which post-hearing briefs were not allowed or permitted, the hearing record shall be closed upon the conclusion of testimony and presentation of any oral argument by the parties, unless the hearing officer orders otherwise.

(lm) In a hearing in which post-hearing briefs were allowed or permitted, the hearing record shall close at the deadline for the submission of post-hearing briefs, unless the hearing officer orders otherwise or grants an extension.

(mn) No argument will be considered by the hearing officer after the close of the hearing record, except as allowed in California Code of Regulations section 619.4, unless the hearing officer orders otherwise.

(no) The hearing officer retains the discretion to reopen the hearing record for good cause.

(op) The formal hearing provision of the Administrative Procedure Act (Government Code §§ 11500-11529) do not apply.

(pq) If there is any inconsistency or conflict between the provisions of California Code of Regulations Article 2.5 and this article, the provisions of this article shall apply.

(qr) At the request of the claimant, the Attorney General, or other interested party, the Board will provide information about the hearing rules and procedures.

Note: Authority cited: Section 13920, Government Code-, Section 4906, Penal Code. Reference: Sections 4900-4906, Penal Code; Diola v. Board of Control (1982) 135 Cal.App.3d 580, 588, fn 7; and Tennison v. Victim Compensation and Government Claims Board (2007) 152 Cal. App. 4th 1164.

**§ 645. Proposed Decision by Hearing Officer.**

(a) The hearing officer shall take the matter under submission at the conclusion of the hearing once the administrative record is closed.

(b) The hearing officer shall prepare a proposed decision that is written and contains a statement of the factual and legal bases for the proposed decision.

(c) If the factual basis for the proposed decision includes a determination based substantially on the credibility of a witness, the proposed decision shall identify specific evidence that supports the credibility determination, which may include but is not limited to demeanor, manner or attitude.

(d) The proposed decision shall be based on evidence in the hearing record and on matters subject to official notice under California Code of Regulations section 617.8.

(e) The hearing officer may use relevant experience, technical competence and specialized knowledge to evaluate the evidence.

(f) The proposed decision may not deny a claim solely because the claimant failed to obtain a court finding of factual innocence.

Note: Authority cited: Section 13920, Government Code, Section 4906, Penal Code. Reference: Sections 1485.55, 4900-4906, 4904, Penal Code.

**§ 646 Contempt and Sanctions.**

(a) Any party, representative, or witness in a proceeding under Penal Code section 4900 may be subject to a contempt sanction as set forth in California Code of Regulations section 618.3. A contempt sanction may be based upon any threat of violence directed toward any participant in the proceeding under section 4900, including the hearing officer, Board, or any other staff member, whether made during or after the proceeding has concluded.

(b) Any party, representative, or witness in a proceeding under Penal Code section 4900 may be subject to sanctions as set forth in California Code of Regulations section 618.4.

Note: Authority cited: Section 13920, Government Code, Section 4906, Penal Code. Reference: Sections 11455.10, 11455.20, 11455.30, Government Code.

6C

**California Victim Compensation Board  
Claims of Persons Erroneously Convicted of Felonies  
Title 2, §§ 640-646**

**INITIAL STATEMENT OF REASONS**

**PROBLEM STATEMENT**

The California Victim Compensation Board (CalVCB) processes claims from persons seeking compensation as an erroneously convicted felon pursuant to California Penal Code sections 4900 through 4906. A successful claim results in a recommendation by CalVCB to the Legislature to make an appropriation for the claimant's sustained injury in the amount of \$140 per day of the claimant's wrongful imprisonment. (Pen. Code, § 4904.)

The statutory scheme for processing these claims has been revised several times over the past decade. Recently, in 2021, SB 446 (Glazer, Chapter 490, Statutes of 2021), reassigned and increased the burden of proof for deciding claims in which the underlying conviction was vacated by a grant of habeas corpus or motion under Penal Code section 1473.6 or 1473.7, subd. (a)(2), while also limiting the type of evidence that may satisfy that burden. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4903, subds. (b) and (d), 4904.) SB 446 further expanded the definition for a finding of factual innocence, as well as the circumstances under which such a finding may be rendered. (Pen. Code, §§ 1485.5, subd. (c), 1485.55, subd. (a).) In 2019, SB 269 (Bradford, Chapter 473, Statutes of 2019) extended the deadline for filing a claim with CalVCB from two years to ten years after acquittal, pardon, dismissal of charges, or release from custody. (Pen. Code, § 4901.) In 2016, SB 1134 (Leno, Chapter 785, Statutes of 2016) mandated an automatic recommendation for claimants who received a court finding of factual innocence for all convictions underlying their incarceration. In 2015, SB 635 (Nielsen, Chapter 422, Statutes of 2015) revised the definition of injury to no longer require a showing of pecuniary harm, increased the rate of compensation from \$100 to \$140 per day, and added pre-conviction custody to that calculation. In 2013, SB 618 (Leno, Chapter 800, Statutes of 2013), rendered court findings binding upon CalVCB and barred any presumption for failing to obtain a finding of factual innocence.

Despite these significant changes, CalVCB's regulations governing Penal Code section 4900 claims have not been revised since 2012. As a result, many provisions are outdated, incomplete, or contrary to current law. This proposed regulatory action is intended to resolve all of these issues.

**BENEFITS**

The proposed regulations will comply with the current law governing Penal Code section 4900 claims in accordance with SB 446, as well as SB 269, SB 1134, SB 635, and SB 618. The regulations will also interpret and implement general aspects of the law as applied to specific circumstances. By doing so, the revised regulations will provide clear guidance to the parties when appearing before the Board and will enable the Board to decide these claims in a consistent and efficient manner.

## PURPOSE

**Section 640:** The purpose of this revised regulation is to clarify the process for submitting a claim to CalVCB and referring that claim to the Attorney General for a response. It also updates the definition for injury in accordance with current law.

The specific purpose of each subdivision follows.

- **Section 640, subdivision (a):** While retaining the requirement for claimants to submit a completed “Erroneously Convicted Person Claim Form,” the revised subdivision replaces the required form from an outdated 2011 version to a current 2022 version. CalVCB will therefore be able to furnish claimants with an updated form that is consistent with the current law for processing claims under Penal Code section 4900. The revised regulation also explains that the completed form must include a detailed factual summary signed under penalty of perjury, in accordance with the requirement for a “verified” claim with a “statement of facts” in Penal Code section 4901.
- **Section 640, subdivision (b):** This subdivision expands the process for submitting a claim to CalVCB to include electronic submission via email, while retaining the ability to submit a claim via regular mail. This subdivision further explains the method for calculating the date of submission.
- **Section 640, subdivision (c):** This subdivision describes the substance of information required for inclusion in the supporting documentation, relying upon the elements for a cognizable claim as set forth in Penal Code section 4900.
- **Section 640, subdivision (d):** This subdivision explains that a submitted claim is deemed to be filed once a hearing officer confirms that it satisfies the requisite elements for jurisdiction. The date of filing is significant, as it triggers the Board’s 30-day deadline to recommend compensation under Penal Code section 4902, subdivision (a), as well as the Attorney General’s 45-day deadline to oppose a claim under section 4902, subdivision (d).
- **Section 640, subdivision (e):** This subdivision describes the process by which CalVCB will refer a claim to the Attorney General for a response, confirming that the referral may be via electronic mail only. It further specifies the format of the response to be delivered by the Attorney General in both hardcopy and electronic format, as some claimants are not represented and may lack computer access. In accordance with Penal Code section 4902, subdivision (a), it confirms that a response will not be requested in those matters for which an automatic recommendation for compensation is mandated by Penal Code section 851.865 or Penal Code section 1485.55 due to a court finding of factual innocence for the challenged conviction. It further clarifies that sections 851.865 and 1485.55 do not mandate an automatic recommendation when the court issues a finding of factual innocence for only some, but not all, of the challenged convictions. It confirms that, even if an automatic recommendation is not mandated, the finding of factual innocence for any individual conviction is nevertheless binding upon the Board, in accordance with other provisions of Penal Code section 1485.55,

as well as Penal Code section 1485.5, and Penal Code section 4903, subdivision (c).

- **Section 640, subdivision (f):** This subdivision redefines the requisite element of injury in accordance with the current version of Penal Code section 4904, which no longer requires pecuniary harm.

**Section 641:** The purpose of this revised regulation is to clarify the broad nature of admissible evidence in an administrative hearing on a Penal Code section 4900 claim and eliminate inconsistent limitations in accordance with current law.

The specific purpose of each subdivision follows.

- **Section 641, subdivision (a):** This subdivision eliminates the need for “substantial independent corroborating evidence” of innocence before the Board may recommend compensation, as such a requirement conflicts with the Board’ obligation to recommend compensation for claimants under Penal Code section 4900, subdivision (b), unless the Attorney General proves guilt by clear and convincing evidence.
- **Section 641, subdivision (b):** No changes are proposed to this subdivision.
- **Section 641, subdivisions (c):** This subdivision retains the existing standard that admits all relevant evidence if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, which is the standard for formal administrative hearings set forth in Government Code section 11513, subdivision (c). The subdivision solely adds a definition for relevant evidence in accordance with Evidence Code section 210.
- **Section 641, subdivisions (d), (e), and (f):** No changes are proposed to these subdivisions.

**Section 642:** This revised regulation explains the process by which claims may be rejected for lack of jurisdiction without consideration by the Board, and it provides specific examples of claims for which jurisdiction is lacking.

The specific purpose of each subdivision follows.

- **Section 642, subdivision (a):** This subdivision explains that the Board lacks jurisdiction to consider claims that are not submitted in compliance with Penal Code sections 4900 and 4901. As an example, the subdivision confirms that second or successive claims by a claimant challenging the same conviction fail to comply with sections 4900 and 4901, as these statutes contemplate “a claim,” rather than multiple claims. In another example, the subdivision confirms that a conviction is not “erroneous” within the meaning of Penal Code section 4900 solely because it was vacated pursuant to Penal Code section 1170.95 due to a subsequent change in the law defining felony-murder or accomplice liability. Rather, as the subdivision explains, the claim must allege that the conviction was erroneous under the law in effect at the time the charged crime was committed.

- **Section 642, subdivision (b):** This subdivision details the process by which a submitted claim may be rejected for lack of jurisdiction. Specifically, it confirms that no claim will be rejected without notifying the claimant of the jurisdictional deficiency and allowing the claimant 30 days to cure that deficiency.
- **Section 642, subdivision (c):** This subdivision clarifies that the filing date for a submitted claim that appears to lack jurisdiction is calculated based upon the date the jurisdictional deficiency is cured. The date of filing is significant, as it triggers the Board's 30-day deadline to recommend compensation under Penal Code section 4902, subdivision (a), as well as the Attorney General's 45-day deadline to oppose a claim under section 4902, subdivision (d).
- **Section 642, subdivision (d):** The revision in this subdivision merely replaces the term "filed" with "submitted" for consistency throughout the applicable regulations.

**Section 643:** The purpose of this revised regulation is to clarify the procedures that apply in advance of a hearing and to classify which procedures are obligatory and which may be waived under specified circumstances.

The specific purpose of each subdivision follows.

- **Section 643, subdivision (a):** This subdivision recognizes the hearing officer's discretion to request pre-hearing briefs from the parties on the merits of the claim. It also allows either party to waive submission of a brief.
- **Section 643, subdivision (b):** This subdivision requires each party to submit a pre-hearing statement that identifies anticipated witnesses and exhibits to be presented at the hearing and estimates the amount of time necessary to present this evidence at the hearing. It imposes a seven-day deadline in advance of the hearing to submit the pre-hearing statement unless the hearing officer directs otherwise.
- **Section 643, subdivisions (c) through (e):** The revisions solely update the lettering of each subdivision to consecutively follow the previous subdivisions without any substantive changes.

**Section 644:** The purpose of this revised regulation is to clarify the process for scheduling an administrative hearing, specify the applicable burden of proof in conformity with current law, and detail the procedure for presenting evidence at the hearing.

The specific purpose of each subdivision follows.

- **Section 644, subdivision (a):** This subdivision explains the process for scheduling an administrative hearing, which takes into consideration the availability of the parties and witnesses and guarantees at least 15 days' notice, in accordance with Penal Code section 4902, subdivisions (b) and (c). This subdivision authorizes the claimant to waive a hearing and proceed solely on the written record, unless the claim falls within subdivision (b) of Penal Code section



4900, in which case both parties must waive the hearing to proceed on the written record.

- **Section 644, subdivision (b):** The revision solely updates the lettering of this subdivision to consecutively follow the previous subdivision without any substantive change.
- **Section 644, subdivision (c):** This subdivision confirms that hearings will continue to occur in Sacramento, unless the hearing officer agrees to a different location. This subdivision recognizes the hearing officer's discretionary authority to allow appearance by electronic means.
- **Section 644, subdivision (d):** This subdivision clarifies that the claimant's burden of proof to present a preponderance of evidence showing both innocence and injury continues to apply for all claims except those proceeding under subdivision (b) of Penal Code section 4900. The subdivision specifies the order for presenting evidence at such a hearing, starting with the claimant.
- **Section 644, subdivision (e):** This subdivision explains the parties' respective burden of proof for claims proceeding under subdivision (b) of Penal Code section 4900. Specifically, the Attorney General bears the burden to prove by clear and convincing evidence that the claimant committed the acts constituting the offense for which the claimant was convicted, as currently required by Penal Code sections 4902, subdivision (d), 4903, subdivision (b), and 4904. By comparison, the claimant continues to bear the burden to prove injury by a preponderance, in accordance with Penal Code section 4904. As clarified by subdivision (e)(2), the claimant's burden to prove injury is satisfied whenever all charges underlying their incarceration were dismissed without any new convictions upon remand. But in the event of a conviction upon remand, the claimant's injury is presumptively calculated as the difference in length between the sentence served and the sentence imposed for the new conviction. Finally, this subdivision specifies the order for presenting evidence at the hearing for claims under subdivision (b) of section 4900, starting with the Attorney General.
- **Section 644, subdivisions (f) through (r):** The revisions solely update the lettering of each subdivision to consecutively follow the previous subdivisions without any substantive change.

**Section 645:** The purpose of this revised regulation is to clarify the timing for a hearing officer to take the pending Penal Code section claim under submission and the appropriate considerations upon which the proposed decision may be based.

The specific purpose of each subdivision follows.

- **Section 645, subdivision (a):** This subdivision clarifies that a matter will be taken under submission by the hearing officer once the administrative record closes, which may or may not be at the conclusion of the hearing if a post-hearing brief is permitted.

- **Section 645, subdivisions (b) through (e):** There are no revisions to the remaining subdivisions (b) through (e) concerning the hearing officer’s proposed decision.
- **Section 645, subdivision (f):** This subdivision clarifies that the proposed decision may not deny a claim solely because the claimant failed to obtain a court finding of factual innocence in accordance with Penal Code section 1485.55, subdivision (d).

**Section 646:** The purpose of this new regulation is to expand the existing provisions for contempt and sanctions in the specific context of Penal Code section 4900 claims.

The specific purpose of each subdivision follows.

- **Section 646, subdivision (a):** This subdivision expands the general contempt provision that applies in all CalVCB proceedings as set forth in California Code of Regulations, title 2, section 618.3. Currently, section 618.3 applies to any person who, inter alia, obstructs or interrupts a hearing with insolent behavior toward the Board or hearing officer. This subdivision adds that contempt may also be based upon any threat of violence directed at any staff member or participant in the proceeding, whether made during or after the proceeding has concluded.
- **Section 646, subdivision (b):** This subdivision expands the general sanction provision that applies in all CalVCB proceedings as set forth in California Code of Regulations, title 2, section 618.4. Currently, section 618.4 allows sanctions against any party or representative who engages in bad faith or frivolous tactics. This subdivision adds that sanctions may be ordered against any party, representative, or witness in a proceeding under Penal Code section 4900.

## NECESSITY

As detailed below, the proposed regulations and revisions are needed to comply with the current law governing Penal Code section 4900 claims in accordance with SB 446, as well as SB 269, SB 1134, SB 635, and SB 618. The regulations are also needed to interpret and implement general aspects of the law, which will provide clear guidance to the parties and ensure consistent decisions by the Board.

**Section 640:** This revised regulation is needed to clarify the process for submitting a claim to CalVCB and referring that claim to the Attorney General for a response. It is also needed to update the definition for injury in accordance with current law.

The specific need for each subdivision follows.

- **Section 640, subdivision (a):** The proposed revision will enable CalVCB to furnish claimants with an updated version of the required form that is consistent with the current law for processing claims under Penal Code section 4900. In addition, the proposed revision will clarify that the claim must include a detailed factual summary signed under penalty of perjury. Together, these provisions will

assist claimants by advising them at the outset of the requirements for submitting a claim which, in turn, will promote efficiency when processing these claims.

- **Section 640, subdivision (b):** The proposed revision expands the process for submitting a claim to CalVCB to include electronic submission via email, which may be preferred by some claimants in order to increase delivery speed and reduce mailing costs. The proposed revision also explains the method for calculating the date of submission, whether by electronic means or regular mail, to ensure clarity and consistency.
- **Section 640, subdivision (c):** The proposed revision describes the substance of information required for inclusion in the supporting documentation, which will provide helpful guidance to claimants when submitting a claim and promote efficiency when processing the claim.
- **Section 640, subdivision (d):** The proposed revision explains that a submitted claim is deemed to be filed once a hearing officer confirms that it satisfies the requisite elements for jurisdiction. Clarification on the method for calculating the date of filing is needed, as this event triggers the Board's 30-day deadline to recommend compensation under Penal Code section 4902, subdivision (a), as well as the Attorney General's 45-day deadline to oppose a claim under section 4902, subdivision (d).
- **Section 640, subdivision (e):** The proposed revision describes the process by which CalVCB will refer a claim to the Attorney General for a response, confirming that the referral may be via electronic mail only, which in turn may reduce mailing costs and increase delivery speed. It further specifies the format of the response to be delivered by the Attorney General in both hardcopy and electronic format, as some claimants are not represented and may lack computer access. In accordance with Penal Code section 4902, subdivision (a), it confirms that a response will not be requested in those matters for which an automatic recommendation for compensation is mandated by Penal Code section 851.865 or Penal Code section 1485.55 due to a court finding of factual innocence for the challenged conviction. It further clarifies that sections 851.865 and 1485.55 do not mandate an automatic recommendation when the court issues a finding of factual innocence for only some, but not all, of the challenged convictions. It confirms that, even if an automatic recommendation is not mandated, the finding of factual innocence for any individual conviction is nevertheless binding upon the Board, in accordance with other provisions of Penal Code section 1485.55, as well as Penal Code section 1485.5, and Penal Code section 4903, subdivision (c). All of these proposed revisions are needed to provide clarity to both claimants and the Attorney General and promote an efficient and consistent resolution of claims.
- **Section 640, subdivision (f):** The proposed revision redefines the requisite element of injury in accordance with the current version of Penal Code section 4904, which no longer requires pecuniary harm.

**Section 641:** This revised regulation is needed to clarify the broad nature of admissible evidence in an administrative hearing on a Penal Code section 4900 claim and eliminate inconsistent limitations in accordance with current law.

The specific need for each subdivision follows.

- **Section 641, subdivision (a):** The proposed revision eliminates the need for “substantial independent corroborating evidence” of innocence before the Board may recommend compensation, as such a requirement conflicts with the Board’s obligation to recommend compensation for claimants under Penal Code section 4900, subdivision (b), unless the Attorney General proves guilt by clear and convincing evidence.
- **Section 641, subdivision (b):** No changes are proposed to this subdivision, which provides a specific example of admissible evidence.
- **Section 641, subdivision (c):** No change is proposed to the current standard that generally admits all relevant evidence if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, which has applied to hearings under Penal Code section 4903 since at least 2010. The proposed revision only adds a definition for relevant evidence in order to provide clarity to the parties, as some claimants are not represented by counsel.
- **Section 641, subdivisions (d) through (f):** No changes are proposed to these subdivisions.

**Section 642:** This revised regulation is needed to explain the process by which claims may be rejected for lack of jurisdiction without consideration by the Board and provide specific examples of claims for which jurisdiction is lacking.

The specific need for each subdivision follows.

- **Section 642, subdivision (a):** The proposed revision explains that the Board lacks jurisdiction to consider claims that are not submitted in compliance with Penal Code sections 4900 and 4901, which is needed to provide clarity to claimants as to what claims may be considered. In addition, the proposed revision provides two specific examples for which jurisdiction is lacking. This fact-specific clarification of law is needed to ensure an efficient and consistent resolution of duplicative claims submitted by claimants after their original claim was denied. It is similarly needed to expeditiously resolve claims that are solely based upon a new statutory definition of a crime when the claimant had been properly charged and convicted under the former definition of that crime.
- **Section 642, subdivision (b):** The proposed revision clarifies the existing process by which a submitted claim may be rejected for lack of jurisdiction.
- **Section 642, subdivision (c):** The proposed revision clarifies the method for calculating the filing date for a submitted claim when the jurisdictional deficiency is cured. Clarity on the method for calculating this date is needed, as this event

triggers the Board's 30-day deadline to recommend compensation under Penal Code section 4902, subdivision (a), as well as the Attorney General's 45-day deadline to oppose a claim under section 4902, subdivision (d).

- **Section 642, subdivision (d):** The proposed revision replaces the term "filed" with "submitted" for consistency throughout the applicable regulations.

**Section 643:** This revised regulation is needed to clarify the procedures that apply in advance of a hearing to ensure an orderly and fair process.

The specific need for each subdivision follows.

- **Section 643, subdivision (a):** This proposed revision is needed to confirm the hearing officer's discretion to request pre-hearing briefs from the parties on the merits of the claim and the right by either party to waive submission of that brief.
- **Section 643, subdivision (b):** This proposed revision is needed to confirm the mandatory submission of pre-hearing statements, as well as specify the required content and timing for submission, in order to promote a fair hearing for both parties.
- **Section 643, subdivisions (c) through (e):** The proposed revisions are needed to update the lettering of each subdivision to consecutively follow the previous subdivisions without any substantive changes.

**Section 644:** This revised regulation is needed to clarify the process for scheduling an administrative hearing, specify the applicable burden of proof in conformity with current law, and detail the procedure for presenting evidence at the hearing. By doing so, the revised regulation will ensure both parties receive a fair and full hearing on the claim in accordance with current law.

The specific need for each subdivision follows.

- **Section 644, subdivision (a):** The proposed revision explains the process for scheduling an administrative hearing and the circumstances under which it may be waived by the parties.
- **Section 644, subdivision (b):** The proposed revision is needed to update the lettering of this subdivision to consecutively follow the previous subdivision without any substantive change.
- **Section 644, subdivision (c):** The proposed revision confirms that hearings will continue to occur in Sacramento, unless the hearing officer agrees to a different location. It further confirms the hearing officer's discretionary authority to allow appearance by electronic means.
- **Section 644, subdivision (d):** The proposed revision clarifies that the claimant's burden of proof to present a preponderance of evidence demonstrating both innocence and injury continues to apply for all claims, except those proceeding under subdivision (b) of Penal Code section 4900.

- **Section 644, subdivision (e):** The proposed revision specifies the parties' respective burden of proof for claims proceeding under subdivision (b) of Penal Code section 4900. Specifically, the Attorney General bears the burden to prove by clear and convincing evidence that the claimant committed the acts constituting the offense for which the claimant was convicted, as currently required by Penal Code sections 4902, subdivision (d), 4903, subdivision (b), and 4904. By comparison, the claimant continues to bear the burden to prove injury by a preponderance, in accordance with Penal Code section 4904. The proposed revision further clarifies, in subdivision (e)(2), that the claimant's burden to prove injury is satisfied whenever all charges underlying their incarceration were dismissed without any new convictions upon remand. But in the event of a conviction upon remand, the claimant's injury is presumptively calculated as the difference between the sentence served and the sentence imposed for the new conviction. Finally, the proposed revision specifies the order for presenting evidence at the hearing for claims under subdivision (b) of section 4900, starting with the Attorney General. Combined, these revisions are needed to ensure the parties receive a fair hearing for these types of claims, and as well as a consistent and effective resolution of these claims by CalVCB.
- **Section 644, subdivisions (f) through (r):** The proposed revisions are needed to update the lettering of each subdivision to consecutively follow the previous subdivisions without any substantive change.

**Section 645:** The revised regulation is needed to clarify the timing for a hearing officer to take the pending Penal Code section 4900 claim under submission and the appropriate considerations upon which the proposed decision may be based.

The specific need for each subdivision follows.

- **Section 645, subdivision (a):** The proposed revision is needed to clarify the timing when a matter will be taken under submission by the hearing officer.
- **Section 645, subdivisions (b) through (e):** There are no revisions to subdivisions (b) through (e) concerning the hearing officer's proposed decision.
- **Section 645, subdivision (f):** This proposed revision confirms that the proposed decision may not deny a claim solely because the claimant failed to obtain a court finding of factual innocence in accordance with Penal Code section 1485.55, subdivision (d).

**Section 646:** This new regulation is needed to expand the existing provisions for contempt and sanctions in the specific context of Penal Code section 4900 claims.

The specific need for each subdivision follows.

- **Section 646, subdivision (a):** This proposed subdivision expands the general contempt provision that applies in all CalVCB proceedings as set forth in California Code of Regulations, title 2, section 618.3. Currently, section 618.3 applies to any person who, inter alia, obstructs or interrupts a hearing with insolent behavior toward the Board or hearing officer. This subdivision adds that

contempt may also be based upon any threat of violence directed at any staff member or participant in the proceeding, whether made during or after the proceeding has concluded.

- **Section 646, subdivision (b):** This proposed subdivision expands the general sanction provision that applies in all CalVCB proceedings as set forth in California Code of Regulations, title 2, section 618.4. Currently, section 618.4 allows sanctions against any party or representative who engages in bad faith or frivolous tactics. This subdivision adds that sanctions may be ordered against any party, representative, or witness in a proceeding under Penal Code section 4900.

#### TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of these regulations.

#### ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to revise, interpret, and implement the current law governing Penal Code section 4900 claims. When a claim is approved, it solely results in a recommendation for the Legislature to appropriate funds to compensate the claimant for the injury sustained by their erroneous conviction. Even then, compensation is awarded to a limited group of individuals, historically less than 10 per year on average, although that figure is expected to increase under SB 446. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

*The Board has determined that the selected alternative will not affect:*

(A) The creation or elimination of jobs within the State of California,

The proposed regulations do not impact jobs as they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

(B) The creation of new businesses or the elimination of existing businesses within the State of California, and

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

(C) The expansion of businesses currently doing business within the State of California.

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of

individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

*The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:*

The Board has determined that the proposed regulations do not impact worker safety or the state's environment because they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

#### EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has no evidence indicating any potential significant adverse impact on business as a result of this proposed action. The Board has determined that the proposed regulations do not affect business because they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

#### REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has determined that there are no other reasonable alternatives to this rulemaking action.

#### REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has no evidence indicating any potential adverse impacts to small business are expected as a result of this proposed action. The Board has determined that the proposed regulations do not affect small businesses because they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.



6D

TITLE 2. CALIFORNIA VICTIM COMPENSATION BOARD  
ARTICLE 5. CLAIMS OF PERSONS ERRONEOUSLY CONVICTED OF FELONIES

Title 2, §§ 640 - 646

[Notice Published April 1, 2022]

The California Victim Compensation Board (CaIVCB) proposes to adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

CaIVCB has not scheduled a public hearing on this proposed action; however, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested individual, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to CaIVCB. The written comment period closes at 5:00 p.m. on May 16, 2022. CaIVCB will consider only comments received at its office by that time. Submit written comments to:

Neil Ennes, Legislative Manager  
California Victim Compensation Board  
P.O. Box 48  
Sacramento, CA 95812-0048

Comments may also be submitted by facsimile (FAX) at (916) 491-6441 or by e-mail to [regulations@victims.ca.gov](mailto:regulations@victims.ca.gov).

## AUTHORITY AND REFERENCE

Penal Code section 4906 authorizes CalVCB to adopt these proposed regulations, as does Government Code section 13920. The proposed regulatory action is intended to implement, interpret, and make specific Penal Code sections 4900 through 4904, which in turn cross-reference Penal Code sections 861.865, 1485.5 and 1485.55.

## INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

CalVCB processes claims from persons seeking compensation as an erroneously convicted felon pursuant to California Penal Code sections 4900 through 4906. A successful claim results in a recommendation by CalVCB to the Legislature to make an appropriation for the claimant's sustained injury in the amount of \$140 per day of the claimant's wrongful imprisonment. (Pen. Code, § 4904.) To be eligible for consideration, the claimant must have been convicted of a felony under California law, for which a prison sentence was imposed, and the claimant must no longer be imprisoned for that offense. In addition, the claimant must timely submit a verified Erroneous Conviction Claim Form, with supporting documentation, within ten years after release from custody, dismissal of charges, judgment of acquittal, or pardon granted, whichever is later. (Pen. Code, § 4901.)

Generally, the claimant must prove, by a preponderance of the evidence, that (1) they did not commit the crime that resulted in their incarceration and (2) they sustained injury as a result of their erroneous conviction. (Pen. Code, § 4900, subd. (a).) The claimant is entitled to a hearing to prove both of these elements, at which the Attorney General may appear to oppose the claim. (Pen. Code, § 4903, subd. (a).) The Attorney General, as well as CalVCB, are bound by any express factual findings rendered by a court during a habeas proceeding or motion to vacate, including a finding of factual innocence under any standard in that proceeding. (Pen. Code, §§ 851.865, 1485.5, 1485.55, 4903, subd. (c).) If a court has found the claimant to be factually innocent of the challenged conviction, then both innocence and injury are presumed and CalVCB's recommendation for compensation is automatically mandated, within 30 days and without a hearing. (Pen. Code, §§ 851.865, 1485.55, subds. (a) & (c), 4902, subd. (a).) No adverse presumption exists for a claimant's failure to obtain a court finding of factual innocence. (Pen. Code, § 1485.55, subd. (d).)

Alternatively, if the conviction was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subd. (a)(2), a recommendation for compensation is required unless the Attorney General timely objects with clear and convincing proof that the claimant is not entitled to compensation. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).) At a hearing on the claim, the Attorney General bears the burden to prove by clear and convincing evidence that the claimant committed the acts constituting the offense. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4903, subd. (b).) The Attorney General may not rely solely upon the trial court record to establish that the claimant is not entitled to compensation. (Pen. Code, § 4903, subd. (d).)

This statutory scheme for processing claims under Penal Code section 4900 has been revised several times over the past decade. In 2021, SB 446 (Glazer, Chapter 490, Statutes of 2021), reassigned and increased the burden of proof for deciding claims in which the underlying conviction was vacated by a grant of habeas corpus or motion under Penal Code section 1473.6 or 1473.7, subd. (a)(2), while also limiting the type of evidence that may satisfy that burden. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4903, subds. (b) & (d), 4904.) SB 446 further expanded the definition for a finding of factual innocence, as well as the circumstances under which such a finding may be rendered. (Pen. Code, §§ 1485.5, subd. (c), 1485.55, subd. (a).)

In 2019, SB 269 (Bradford, Chapter 473, Statutes of 2019) extended the deadline for filing a claim with CalVCB from two years to ten years after acquittal, pardon, dismissal of charges, or release from custody. (Pen. Code, § 4901.) In 2016, SB 1134 (Leno, Chapter 785, Statutes of 2016) mandated an automatic recommendation for claimants who received a court finding of factual innocence for all convictions underlying their incarceration. In 2015, SB 635 (Nielsen, Chapter 422, Statutes of 2015) revised the definition of injury to no longer require a showing of pecuniary harm, increased the rate of compensation from \$100 to \$140 per day, and added pre-conviction custodial time to that calculation. In 2013, SB 618 (Leno, Chapter 800, Statutes of 2013), rendered court findings binding upon CalVCB and barred any presumption for failing to obtain a finding of factual innocence.

Despite these significant changes, CalVCB's regulations governing Penal Code section 4900 claims have not been revised since 2012. As a result, many provisions are outdated, incomplete, or contrary to current law. The proposed regulatory action is intended to resolve all of these issues.

*Anticipated Benefits of the Proposed Regulation:*

The proposed regulations will comply with the current law governing Penal Code section 4900 claims in accordance with SB 446, as well as SB 269, SB 1134, SB 635, and SB 618. The regulations will also interpret and implement general aspects of the law as applicable to specific circumstances. By doing so, it will provide clear guidance to the parties and enable the Board to decide these claims in a consistent and efficient manner.

*Evaluation of Inconsistency/Incompatibility with Existing State Regulations:*

The proposed regulations are not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

*The Board has made the following initial determinations:*

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative private individual or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None

## RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to revise, interpret, and implement the current law governing Penal Code section 4900 claims. When a claim is approved, it solely results in a recommendation for the Legislature to appropriate funds to compensate the claimant for the injury sustained by their erroneous conviction. Even then, compensation is awarded to a limited group of individuals, historically less than 10 per year on average, although that figure is expected to increase under SB 446. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

*The Board has determined that the selected alternative will not affect:*

(A) The creation or elimination of jobs within the State of California,

The proposed regulations do not impact jobs as they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

(B) The creation of new businesses or the elimination of existing businesses within the State of California, and

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

(C) The expansion of businesses currently doing business within the State of California.

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

*The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:*

The Board has determined that the proposed regulations do not impact worker safety or the state's environment because they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

## SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulations do not affect small businesses because they apply to a limited group of individuals seeking a recommendation for compensation as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

## CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private individuals than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Board invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

## CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Neil Ennes  
California Victim Compensation Board  
P.O. Box 48  
Sacramento, CA 95812-0048  
Telephone: (916) 491-3728

The backup contact person concerning the proposed administrative action may be directed to:

Kim Gauthier  
California Victim Compensation Board  
P.O. Box 48  
Sacramento, CA 95812-0048  
Telephone: (916) 491-3754

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Neil Ennes at the above address.

## AVAILABILITY OF STATEMENT OF REASONS, TEXT PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation and the Initial Statement of Reasons. Copies may be obtained by contacting Neil Ennes at the P.O. Box or the phone number listed above.

## AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the original proposed text, it will make the modified text available to the public at least 15 days before the Board

adopts the regulation as revised. Please send requests for copies of the modified regulation to the attention of Neil Ennes at the P.O. Box indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

#### AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Neil Ennes at the above P.O. Box address.

#### AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline and strikeout can be accessed through our website at [www.victims.ca.gov](http://www.victims.ca.gov).

\* \* \* \* \* END \* \* \* \* \*

# ITEM 7



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

8 In the Matter of:

9 **Edward Dumbrique**

10 Claim No. 22-ECO-02

**Proposed Decision**

**(Penal Code § 4900, subd. (b))**

11 **I. Introduction**

12 On January 3, 2022, Edward Dumbrique (Dumbrique) submitted a claim for compensation as  
13 an erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to  
14 Penal Code section 4900. The claim is based upon Dumbrique’s 1998 murder conviction in Los  
15 Angeles County, which was vacated and dismissed during a state habeas proceeding on March 19,  
16 2021. Dumbrique was unconditionally released that same day after having served over 8,654 days  
17 imprisonment solely for this vacated conviction. Dumbrique seeks compensation in the amount of  
18 \$1,211,560, representing \$140 for each day of his imprisonment. Dumbrique is represented by  
19 Deirdre O’Connor of Seamus Law.

20 The Office of the Attorney General is represented by Deputies Attorney General Jessica Leal  
21 and Dina Petrushenko. By letter received February 16, 2022, the Attorney General declined to object  
22 to Dumbrique’s claim. The administrative record closed that same day, and the matter was assigned  
23 to CalVCB Senior Attorney Laura Simpton. As required by subdivision (b) of Penal Code section  
24 4900,<sup>1</sup> CalVCB is mandated to grant Dumbrique’s unopposed claim and recommend that the  
25 Legislature appropriate \$1,211,560 to Dumbrique for the injury sustained for his vacated murder  
26 conviction.

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28 <sup>1</sup> Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

1 **II. Procedural History**

2 On July 10, 1997, 15-year-old Dumbrique was arrested for murder in Los Angeles County  
3 Superior Court case number YA033562.<sup>2</sup> A joint jury trial ensued with codefendant John Klene  
4 (Klene). On December 4, 1998, Dumbrique was found guilty of first-degree murder, along with an  
5 enhancement for personal use of a firearm.<sup>3</sup> Klene was similarly convicted of first-degree murder,  
6 with a special circumstance for drive-by shooting, along with an enhancement for being armed with a  
7 firearm.<sup>4</sup> On January 22, 1999, Dumbrique was sentenced to 29-years-to-life imprisonment.<sup>5</sup>

8 Dumbrique appealed to the California Court of Appeal, Second District, which affirmed the  
9 judgment in a written decision issued on April 19, 2002.<sup>6</sup> The California Supreme Court subsequently  
10 denied review.<sup>7</sup>

11 In March 2013, Dumbrique joined in codefendant Klene’s habeas petition, which had been  
12 pending in the Los Angeles County Superior Court since October 2012.<sup>8</sup> Following additional  
13 investigation by both Klene and the Los Angeles County District Attorney (LADA), Klene filed an  
14 amended petition on June 19, 2020, which Dumbrique also joined.<sup>9</sup> Klene’s amended petition, which  
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16 <sup>2</sup> Dumbrique Application (“App.”) at pp. 4. The pagination for Dumbrique’s application refers to the  
17 continuous page numbers for the entire, 53-page PDF file, starting with the Erroneously Convicted  
18 Person Claim Form (App. at pp. 1-2), the supporting memorandum (*id.* at pp. 3-6), followed by the  
19 supporting exhibits, including the amended petition for writ of habeas corpus (*id.* at pp. 7-43), the  
20 district attorney’s letter (*id.* at pp. 44-45), and the trial court’s order (*id.* at pp. 46-53).

21 <sup>3</sup> Pen. Code, §§ 187, subd. (a) (murder); 12022.5, subd. (a)(1) (use of a firearm); see also Dumbrique  
22 Abstract of Judgment (AOJ), submitted via separate email on January 3, 2022.

23 <sup>4</sup> *People v. John Gavin Klene and Edward Trinidad Dumbrique*, California Court of Appeal, Second  
24 District, case number B129481, opinion filed April 19, 2002, available at 2002 WL 599076, \*1. (See  
25 Cal. Code Reg., tit. 2, § 617.8, subd. (b) (permitting hearing officer to take judicial notice under  
26 Evidence Code section 452 of any federal or state court record); see also Cal. Code Reg., tit. 2, §  
27 641, subd. (f) (allowing Board’s consideration of any information that it deems relevant).)

28 <sup>5</sup> Dumbrique App. at p. 1, 4; Dumbrique AOJ.

<sup>6</sup> *People v. Klene*, *supra*, 2002 WL 599076.

<sup>7</sup> *People v. John Gavin Klene and Edward Trinidad Dumbrique*, California Supreme Court case  
number S106839, accessible online at California Court Appellate Case Information,  
<https://appellatecases.courtinfo.ca.gov>.

<sup>8</sup> Dumbrique App. at p. 18.

<sup>9</sup> Dumbrique App. at p. 18.

1 raised 17 claims for relief, was granted solely on the basis of cumulative error on February 19,  
2 2021.<sup>10</sup>

3 On March 8, 2021, Dumbrique filed a supplemental habeas petition that raised the same, 17  
4 claims for relief as in Klene’s amended petition. The claims included prosecutorial misconduct for  
5 eliciting false evidence and failing to disclose exculpatory evidence, ineffective assistance of counsel,  
6 actual innocence, and cumulative error.<sup>11</sup> The LADA responded to Dumbrique’s amended petition by  
7 letter dated March 18, 2021. It acknowledged that, “as a result of the cumulative impact of several  
8 errors that occurred before and during Mr. Dumbrique’s trial, LADA can no longer maintain  
9 confidence in the conviction.” As a result, LADA conceded the “verdict is unreliable and must be  
10 reversed.” LADA further “elect[ed] not to retry Petitioner” and requested the court “dismiss the  
11 charges in the interest of justice.”<sup>12</sup>

12 On March 19, 2021, the court found that Dumbrique “did not receive a fair trial” and granted  
13 habeas relief “on the basis of cumulative error.” The court vacated Dumbrique’s conviction in case  
14 number YA033562 and dismissed the entire case with prejudice pursuant to Penal Code section  
15 1385.<sup>13</sup> Consequently, the court did not address Dumbrique’s substantive claim of factual innocence  
16 or otherwise determine whether Dumbrique was entitled to a finding of factual innocence under Penal  
17 Code section 1485.55.

18 Later that day, Dumbrique was released from prison on March 19, 2021. By then, he had  
19 been continuously confined for 8,654 days solely as a result of his vacated murder conviction in case  
20 number YA033562.<sup>14</sup>

21 On January 3, 2022, Dumbrique submitted his claim to CalVCB seeking compensation as an  
22 erroneously convicted person under the recently enacted provision of Penal Code section 4900,  
23 subdivision (b). That same day, after reviewing the claim for jurisdiction, CalVCB requested a  
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25 <sup>10</sup> Dumbrique App. at pp. 50-51.

26 <sup>11</sup> Dumbrique App. at pp. 7-43.

27 <sup>12</sup> Dumbrique App. at pp. 44-45.

28 <sup>13</sup> Dumbrique App. at pp. 48-49.

<sup>14</sup> Dumbrique App. at pp. 1, 4-5; Dumbrique AOJ.

1 response from the Attorney General within 45 days pursuant to Penal Code section 4902, subdivision  
2 (d). The Attorney General timely submitted a declination to object to the claim on February 16, 2022,  
3 and the administrative record closed the same day.

### 4 **III. Factual Background**<sup>15</sup>

5 Around 11:00 p.m. on June 28, 1997, Antonio Alarcon (Alarcon) was shot several times,  
6 including one fatal bullet to the head. At the time of the shooting, Alarcon was near a payphone, in  
7 front of an autobody shop, located in the city of Hawthorne in Los Angeles County. Alarcon died of  
8 his injuries, which were caused by gunshots fired from a nine-millimeter firearm. Alarcon was a  
9 member of the Lil' Watts gang, which was enemies with the Lawndale 13 gang.<sup>16</sup>

10 Minutes earlier, Alarcon had been inside the autobody shop speaking to the owner Daniel C.<sup>17</sup>  
11 Upon hearing the gunshots, Daniel C. spotted a dark colored car, possibly with three to five  
12 occupants. Daniel C. heard the front seat passenger shout, "Fuck Lil' Watts," while the rear  
13 passenger leaned out the window holding a firearm. Daniel C., who was not wearing his glasses,  
14 initially told responding officers that he could not identify any of the Hispanic male occupants.<sup>18</sup>

15 Shortly after Alarcon's death, Santos Alvarez (Alvarez), who was a member of the Lawndale  
16 13 gang, implicated Dumbrique and Klene in Alarcon's murder. Alvarez had been in jail at the time of  
17 this disclosure and hoped to gain early release. Alvarez told law enforcement that, on the afternoon  
18 of the shooting, he saw Dumbrique and Klene hanging out with other Lawndale 13 gang members,  
19 when Klene stated they were "going to go look for some Twats," which was a derogatory term used  
20 for Lil' Watts gang members. Alvarez added that he heard Dumbrique carried a nine-millimeter

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22 <sup>15</sup> This factual summary is based upon Dumbrique's application and supporting documents, as well as  
23 portions of the decision in *People v. Klene, supra*, 2002 WL 599076, that are consistent with the most  
24 recent habeas decision to vacate the underlying conviction. It is also based upon Klene's related  
25 habeas petition, which is cross-referenced by Dumbrique, and included in Klene's separate  
26 application to CalVCB for the same underlying offense. (Klene Application ("App.") at pp. 7-109  
27 (habeas petition).)

28 <sup>16</sup> Dumbrique App. at pp. 13-14; Klene App. at pp. 14, 21; see also *People v. Klene, supra*, 2002 WL  
599076, \*1.

<sup>17</sup> Witnesses are referred to solely by their first name in an effort to preserve their privacy.

<sup>18</sup> Dumbrique App. at pp. 13-14; Klene App. at pp. 14-15, 23, 98; see also *People v. Klene, supra*,  
2002 WL 599076, \*1.

1 firearm. Alvarez claimed that Dumbrique and Klene were seated in a dark green Ford Escort  
2 supposedly owned by fellow Lawndale 13 gang member Robert C. According to Alvarez, the search  
3 for Lil' Watts gang members was in retaliation for a shooting of two Lawndale 13 gang members that  
4 had occurred the day before on June 27, 1997. Alvarez claimed that Klene was close friends with  
5 one of those victims, Luis M. Alvarez added that, after the shooting, he heard Klene announce that  
6 he had "blasted some fool."<sup>19</sup>

7 Law enforcement showed Daniel C. several photographic lineups of various Lawndale 13  
8 gang members. The lineups included Dumbrique and Klene, but not Alvarez or fellow Lawndale 13  
9 gang member Chad "Ghost" Landrum (Landrum). According to the officer, Daniel C. immediately  
10 identified Dumbrique as the shooter and Klene as the front seat passenger. However, Daniel C. later  
11 recanted both identifications and insisted he had been pressured by police into identifying both  
12 men.<sup>20</sup>

13 Law enforcement arrested Dumbrique and Klene for Alarcon's murder. They were tried  
14 together, and neither testified. Instead, multiple alibi witnesses testified that both defendants spent  
15 the evening of the shooting at Klene's home watching the infamous boxing match between Mike  
16 Tyson and Evander Holyfield, which occurred on June 28, 1997. Klene's defense included his  
17 mother's testimony, who insisted that Klene remained with her throughout the day, except for a quick  
18 trip to the grocery store, and he did not leave her sight from 5:00 p.m. to midnight for more than ten  
19 minutes.<sup>21</sup>

20 However, Klene's counsel failed to present evidence to corroborate the veracity of Klene's  
21 alibi witnesses, most of whom were impeached either by their inherent bias as a family member or by  
22 their gang membership. Counsel also failed to present Luis M.'s testimony that he was not a gang  
23 member and did not know Klene and, therefore, Klene had no motive to avenge his shooting. In

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25 <sup>19</sup> Dumbrique App. at pp. 14-15, 25, 28; Klene App. at pp. 16, 22, 45, 50, 83; see also *People v. Klene, supra*, 2002 WL 599076, \*2.

26 <sup>20</sup> Dumbrique App. at p. 14; Klene App. at pp. 23, 49-50; see also *People v. Klene, supra*, 2002 WL  
27 599076, \*2.

28 <sup>21</sup> Dumbrique App. at pp. 23-24; Klene App. at pp. 15, 21, 90-91; see also *People v. Klene, supra*,  
2002 WL 599076, 2.

1 addition, counsel failed to present records showing that Robert C. had sold his green Escort months  
2 before the shooting. Finally, Klene had purposefully altered his appearance, at his counsel's urging,  
3 by growing out his hair for a live lineup, which was cited by the prosecutor as evidence of Klene's  
4 consciousness of guilt.<sup>22</sup> Dumbrique's counsel shared the same investigator with Klene's counsel  
5 and both defendants presented a joint defense. As such, these deficiencies by Klene's counsel  
6 likewise applied to Dumbrique's counsel.<sup>23</sup>

7 Perhaps more importantly, the prosecution failed to disclose that, several weeks after  
8 Alarcon's murder, Landrum beat to death a homeless man while Alvarez was present, and then  
9 Alvarez disposed of the victim's body. Also undisclosed was the decision by police not to pursue  
10 Alvarez in connection with the homeless man's murder, despite obtaining a warrant for his arrest,  
11 after learning of Alvarez's role as a witness against Dumbrique and Klene. The prosecution further  
12 argued in closing, without any evidence, that Dumbrique was friends with Louis M.<sup>24</sup>

13 In March 2012, Dumbrique learned that Landrum had prepared an affidavit in which he  
14 confessed to murdering Alarcon without any involvement from Klene or Dumbrique.<sup>25</sup> By then,  
15 Landrum was terminally ill and serving a life sentence without possibility of parole for the murder of  
16 the homeless man. According to Landrum, he shot Alarcon in retribution for Alarcon supposedly  
17 killing Landrum's friend in 1996. On the night of June 28, 1997, Landrum tracked down Alarcon to  
18 the autobody shop that Alarcon frequented, where Landrum spotted Alarcon talking on the payphone.  
19 Landrum instructed his driver, whose identity is not disclosed, to stop alongside Alarcon. At that  
20 point, Landrum stepped out of the car, fired 12 shots from his nine-millimeter Berretta at Alarcon, and  
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23 <sup>22</sup> Dumbrique App. at pp. 27-32; Klene App. at p. 69-70 (motive), 70-75 (alibi), 80-82 (altered  
appearance), 82-83 (car ownership); see also *People v. Klene, supra*, 2002 WL 599076, \*3.

24 <sup>23</sup> Dumbrique App. at pp. 30-33.

25 <sup>24</sup> Dumbrique App. at pp. 15, 29-30; Klene App. at pp. 56-60 (prior killing involvement), 60-61 (non-  
prosecution for prior killing).

26 <sup>25</sup> Dumbrique App. at p. 17. Although Dumbrique's application does not disclose when he first  
27 learned that Landrum was the killer, he presumably knew before trial in 1998, when Landrum "got  
28 word to Dumbrique's family that he was prepared to confess his role in the Alarcon killing and, in  
doing so, completely exonerate Klene and Dumbrique." (Klene App. at p. 75.)

1 shouted, "Fuck Lil Watts."<sup>26</sup> Landrum stated that he had been willing to testify in favor of Dumbrique  
2 and Klene at their trial in 1998, and he was even scheduled for a pretrial interview with Klene's  
3 counsel, but the meeting was canceled after Landrum stabbed another inmate, and Klene's counsel  
4 never rescheduled.<sup>27</sup>

5 A polygraph examiner did not detect any deception when Klene's mother insisted that Klene  
6 remained at home the entire evening.<sup>28</sup> The polygraph examiner further opined that Klene was not  
7 attempting deception when he denied being in the car during Alarcon's fatal shooting or firing one of  
8 the shots and, similarly, Daniel C. was not deceptive when he insisted the detective had pointed out a  
9 person in the photographic lineup as the culprit.<sup>29</sup> No polygraph evidence was offered to support  
10 Dumbrique's alibi that he was with Klene.

11 Dumbrique maintains his innocence.<sup>30</sup> At the time of his arrest in 1997, Dumbrique was just  
12 15 years old. He spent his teen years housed with hardened adult criminals. Over the next two  
13 decades, he lost the opportunity to seek higher education, establish a career, or create a family of his  
14 own. Upon his release at the age of almost 40 years old, Dumbrique was forced to rely on family for  
15 loans to cover his living expenses.<sup>31</sup>

#### 16 **IV. Determination of Issues**

17 Penal Code section 4900 allows a person, who has been erroneously convicted and  
18 imprisoned for a felony offense, to submit a claim for compensation to CalVCB.<sup>32</sup> Typically, claimants  
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20 <sup>26</sup> By claiming to have fired while standing outside the car, Landrum's version of events avoided  
21 culpability for the special circumstance of murder by drive-by-shooting, which carries a mandatory  
22 sentence of either death or life without possibility of parole. (See Pen. Code, 190.2, subd. (a)(21).)  
23 Landrum's version of events was consistent with statements from "two independent witnesses" who  
described to police "that the person who killed Alarcon was standing outside of the car when he shot  
and killed Alarcon." (Dumbrique App. at p. 35.)

24 <sup>27</sup> Klene App. at pp. 75-77, 96-100.

25 <sup>28</sup> Dumbrique App. at p. 37.

26 <sup>29</sup> Klene App. at pp. 91-95.

27 <sup>30</sup> Dumbrique App. at p. at 33.

28 <sup>31</sup> Dumbrique App. at pp. 5.

<sup>32</sup> Pen. Code, § 4900.

1 bear the burden to prove by a preponderance of evidence that (1) the crime with which they were  
2 convicted either did not occur or was not committed by them and (2) they suffered injury as a result of  
3 their erroneous conviction.<sup>33</sup> If the claim is ultimately approved, it results in a recommendation by  
4 CalVCB to the Legislature to make an appropriation for compensation for the person's sustained  
5 injury, which is calculated at the rate of \$140 per day of imprisonment that resulted from the  
6 erroneous conviction.<sup>34</sup>

7 In limited circumstances, both of the elements for innocence and injury may be presumed, if a  
8 court has found the claimant factually innocent under any standard applicable in a proceeding to  
9 grant habeas relief or vacate a conviction pursuant to Penal Code section 1473.6.<sup>35</sup> To obtain such a  
10 finding, the claimant may move for a finding of factual innocence by a preponderance of the evidence  
11 that the crime with which they were charged was either not committed at all or, if committed, was not  
12 committed by the claimant.<sup>36</sup> If the claimant received a finding of factual innocence for each and  
13 every conviction underlying the period of their incarceration, CalVCB must automatically recommend  
14 compensation, within 30 days and without a hearing.<sup>37</sup>

15 Alternatively, under recently enacted subdivision (b) of Penal Code section 4900, a  
16 recommendation for compensation is mandated for certain claimants, even without a preponderance  
17 of evidence that the claimant did not commit the crime for which they were convicted.<sup>38</sup> Specifically,  
18 subdivision (b) compels a recommendation for compensation, within 60 days of filing the claim and  
19 without a hearing, when all three of the following elements are met. First, the claimant's conviction  
20 must have been vacated by a writ of habeas corpus or motion to vacate pursuant to Penal Code  
21 section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated conviction  
22 must have been dismissed on remand, or the claimant must have been acquitted upon retrial. Third,  
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24 <sup>33</sup> Pen. Code, § 4900, subd. (a); 4903, subd. (a).

25 <sup>34</sup> Pen. Code, § 4904.

26 <sup>35</sup> Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).

27 <sup>36</sup> Pen. Code, §§ 1485.55, subd. (b).

28 <sup>37</sup> Pen. Code, §§ 861.865; 1485.55, subd. (a), 4902, subd. (a).

<sup>38</sup> Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.



1 the Attorney General must decline to object to the claim.<sup>39</sup> If all three of these elements are satisfied,  
2 and CalVCB finds that the claimant sustained injury through their erroneous conviction, then CalVCB  
3 shall recommend that the Legislature make an appropriation for the purpose of indemnifying the  
4 claimant for the injury.<sup>40</sup> The recommendation for compensation is required, regardless of whether or  
5 not the evidence proves the claimant is more likely innocent than guilty.

6 If the claim is ultimately approved, it results in a recommendation by CalVCB to the  
7 Legislature to make an appropriation for compensation for the claimant's sustained injury. Injury is  
8 calculated at the rate of \$140 per day for the pre- and post-conviction confinement that resulted from  
9 the erroneous conviction.<sup>41</sup> Compensation is disbursed to the claimant if the Legislature passes a bill  
10 to appropriate the funds that is then signed by the Governor.<sup>42</sup>

11 Here, Dumbrique's claim falls within the mandatory recommendation provision of subdivision  
12 (b) of Penal Code section 4900, as all three of the required elements are met. First, Dumbrique's  
13 conviction for Alarcon's murder and related enhancements in case number YA033562 were vacated  
14 by a writ of habeas corpus issued by the Los Angeles Superior Court on March 19, 2021.<sup>43</sup> Second,  
15 all charges against Dumbrique in case number YA033562 were dismissed that same day.<sup>44</sup> Third,  
16 the Attorney General declined to object to Dumbrique's claim in this administrative proceeding.<sup>45</sup>

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20 <sup>39</sup> Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

21 <sup>40</sup> Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4904.

22 <sup>41</sup> Pen. Code, § 4904.

23 <sup>42</sup> Pen. Code, § 4904; see also Assembly Bill 1593 (2020-2021) (appropriating compensation for  
24 multiple PC 4900 claimants); (Senate Bill 417 (2019-2020) (appropriating compensation over minority  
25 dissent for PC 4900 claimant); *cf.* Assembly Bill 1273 (2007-2008) (declining to appropriate  
26 compensation for PC 4900 claimant); Capitol Weekly, *GOP Senators Targeting Mods on Criminal  
27 Justice*, posted July 12, 2007, accessible at [https://capitolweekly.net/gop-senators-targeting-mods-  
28 on-criminal-justice/](https://capitolweekly.net/gop-senators-targeting-mods-on-criminal-justice/) (explaining AB 1273).

<sup>43</sup> Dumbrique App. at pp. 52-53.

<sup>44</sup> Klene App. at pp. 52-53.

<sup>45</sup> AG Declination Letter, dated February 15, 2022, submitted via email on February 16, 2022.

1 Consequently, CalVCB is required by subdivision (b) to recommend compensation for the injury  
2 sustained by Dumbrique.<sup>46</sup>

3 The injury sustained by Dumbrique amounts to 8,654 days imprisonment for his vacated  
4 conviction in case number YA033562. Given the manner by which compensation is calculated, the  
5 requisite injury contemplated by Penal Code section 4904 is “each day ... spent illegally behind bars,  
6 away from society, employment, and [ ] loved ones.”<sup>47</sup> But-for his vacated conviction for murder,  
7 Dumbrique would have been free for all 8,654 days from the date of his arrest on July 10, 1997, to  
8 and including the date of his release on March 19, 2021.<sup>48</sup> Dumbrique is therefore entitled to a  
9 recommendation for compensation in the amount of \$1,211,650, representing \$140 per day of his  
10 erroneous incarceration.

11 **V. Conclusion**

12 CalVCB hereby grants Dumbrique’s unopposed application for compensation as mandated  
13 by subdivision (b) of Penal Code section 4900 and, therefore, recommends that the Legislature  
14 appropriate \$1,211,560 as payment for his 8,654 days of incarceration that were solely attributable  
15 his vacated conviction for murder.

16  
17 Date: February 23, 2022



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18 Laura Simpton  
19 Senior Attorney  
20 California Victim Compensation Board

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25 <sup>46</sup> Pen. Code, §§ 4900, subd. (b), 4904.

26 <sup>47</sup> *Holmes v. Calif. Victim Comp. & Gov’t Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

27 <sup>48</sup> Dumbrique App. at p. 5 (dates of incarceration); see also Pen. Code, § 2900.5 (credit for days  
28 spent in custody); *People v. King* (1992) 3 Cal.App.4th 882, 886 (construing “days” for custody credit  
to include partial days).

# ITEM 8

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

8 In the Matter of:

9 **Jonathan Hampton**

10 Claim No. 21-ECO-24

**Proposed Decision**

**(Penal Code § 4900, subd. (b))**

11 **I. Introduction**

12 On October 21, 2021, Jonathan Hampton (Hampton) submitted a claim for compensation as  
13 an erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to  
14 Penal Code section 4900. The claim is based upon Hampton's 2009 murder conviction in  
15 Sacramento County, which was vacated on state habeas. Following retrial, Hampton was acquitted  
16 of murder but found guilty of involuntary manslaughter as a lesser-included offense. Hampton was  
17 resentenced to eight years imprisonment for manslaughter, after having been imprisoned for over  
18 thirteen years for murder. Hampton seeks compensation in the amount of \$297,200, representing  
19 \$140 for each of the 2,123 additional days that he was imprisoned beyond his valid conviction for  
20 manslaughter. Hampton is appearing pro se without counsel.

21 The Office of the Attorney General is represented by Deputy Attorney General Ross  
22 Naughton. On February 16, 2022, the Attorney General expressly declined to object to Hampton's  
23 claim, and the matter was assigned to CalVCB Senior Attorney Laura Simpton. As required by  
24 subdivision (b) of Penal Code section 4900,<sup>1</sup> CalVCB is mandated to grant Hampton's unopposed  
25 claim and recommend that the Legislature appropriate \$297,220 to Hampton for the injury sustained  
26 by his vacated murder conviction.

27 \_\_\_\_\_  
28 <sup>1</sup> Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

1 I. Procedural History

2 On February 17, 2007, 19-year old Hampton was arrested and subsequently charged with  
3 murder in Sacramento Superior Court case number 07F01659.<sup>2</sup> A jury trial ensued, at which  
4 Hampton testified and claimed self-defense.<sup>3</sup> On February 10, 2009, the jury found Hampton guilty of  
5 second-degree murder with an enhancement for personal use of a firearm but acquitted him of first-  
6 degree murder.<sup>4</sup> On April 2, 2009, the court sentenced Hampton to an aggregate term of 25 years to  
7 life imprisonment.<sup>5</sup>

8 Hampton appealed to the Third District Court of Appeal, which affirmed the judgment on  
9 October 26, 2010.<sup>6</sup> Hampton subsequently pursued state habeas, asserting that his appellate  
10 counsel rendered ineffective assistance by failing to raise a claim of instructional error. In a published  
11 decision, the appellate court agreed and vacated his conviction on April 3, 2020.<sup>7</sup>

12 Hampton was retried in case number 07F01659. On December 7, 2020, the jury acquitted  
13 Hampton of second-degree murder but found him guilty of involuntary manslaughter as a lesser-  
14 included offense, along with a gun-use enhancement.<sup>8</sup> Hampton was released from custody that  
15 same day.<sup>9</sup> The court resentenced Hampton on February 19, 2021, to the midterm of four years for

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17 <sup>2</sup> Hampton Application (“App.”) at pp. 1, 6, 9-10, 25, 32. The pagination for Hampton’s application  
18 refers to the continuous page numbers for documents received from Hampton (App. at pp. 1-20),  
19 followed by the Third District Court of Appeal’s published decision granting habeas relief in *In re*  
20 *Jonathan Hampton* (2020) 48 Cal.App.5th 463 (*id.* at pp. 20-30), and the online docket entries for  
21 *People v. Jonathan Hampton*, Sacramento County Superior Court case number 07F01659 (*id.* at pp.  
22 31-37). The date of Hampton’s arrest was calculated by deducting the actual custody credits  
23 reflected on the 2021 Abstract of Judgment (AOOJ) from the date of the second jury’s verdict.  
24 (Hampton App. at p. 6.)

25 <sup>3</sup> Hampton App. at p. 23.

26 <sup>4</sup> Pen. Code, §§ 187, 12022.53, subd. (b).

27 <sup>5</sup> Hampton App. at pp. 7-9.

28 <sup>6</sup> *People v. Jonathan Andrew Hampton*, California Court of Appeal, Third District, case number  
C061681, opinion filed October 26, 2010, available at 2010 WL 4201741. (See Cal. Code Regs., tit.  
2, §§ 617.8 (official notice), 641 (allowing Board’s consideration of all relevant evidence).

<sup>7</sup> *In re Hampton*, *supra*, 48 Cal.App.5th 463.

<sup>8</sup> Pen. Code, §§192, subd. (b); 12022.5, subd. (a); see also Hampton App. at pp. 6, 32, 37.

<sup>9</sup> Hampton’s application mistakenly refers to December 7, 2021, instead of December 7, 2020, as the  
date of his release from prison. (Hampton App. at p. 1.)

1 involuntary manslaughter, plus four years for the gun enhancement, for an aggregate term of eight  
2 years imprisonment (i.e., 2,920 days).<sup>10</sup> By then, Hampton had been imprisoned for a total of 5,043  
3 days (i.e., almost 14 years).<sup>11</sup>

4 On October 21, 2021, Hampton submitted a claim to CalVCB seeking compensation as an  
5 erroneously convicted person under Penal Code section 4900. Hampton specifically requested  
6 compensation for the “almost 6 additional years” that he was imprisoned beyond his valid eight-year  
7 sentence for manslaughter.<sup>12</sup> Thus, Hampton seeks compensation for the difference in the amount of  
8 \$297,220, representing \$140 for each of the 2,123 days that he served beyond his valid eight-year  
9 sentence for manslaughter.<sup>13</sup>

10 On October 26, 2021, after reviewing the claim for jurisdiction, CalVCB requested a response  
11 letter from the Attorney General within 60 days pursuant to Penal Code section 4902, subdivision (a).  
12 Following a timely request for an extension of time, the Attorney General’s response was due on  
13 February 25, 2022.

14 Meanwhile, on January 1, 2022, Senate Bill (SB) 446 amended several statutory provisions  
15 for processing claims under Penal Code section 4900. In particular, SB 446 added subdivision (b),  
16 which compels CalVCB to recommend compensation for a claimant whose conviction was reversed  
17 on habeas and subsequently acquitted of the charges on a retrial, unless the Attorney General timely  
18 objects.<sup>14</sup> As set forth in newly added subdivision (d) to Penal Code section 4902, the Attorney  
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22 <sup>10</sup> Hampton App. at p. 6. The number of days was calculated by multiplying 365 days by 8 years.

23 <sup>11</sup> Hampton’s claim mistakenly calculates the total number of days incarcerated as 5,799, rather than  
24 5,043. (Hampton App. at p. 1.) But as the 2021 AOJ confirms, Hampton was incarcerated for 5,043  
25 actual days in custody. (Hampton App. at p. 6.)

26 <sup>12</sup> Hampton App. at p. 4.

27 <sup>13</sup> Although Hampton’s application omits a particular sum, this calculation was included in CalVCB’s  
28 October 26, 2021, letter requesting a response from the Attorney General, which neither party  
disputed. The calculation subtracted the number of days imposed as a sentence for Hampton’s valid  
manslaughter conviction (i.e., 2,920) from the number of days Hampton was incarcerated for his  
vacated murder conviction (i.e., 5,043).

<sup>14</sup> Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

1 General's written objection is due within 45 days and must include clear and convincing evidence the  
2 claimant committed the acts constituting the offense.<sup>15</sup>

3 On February 16, 2022, the Attorney General's Office expressly declined to object to  
4 Hampton's claim for compensation in the amount of \$297,220 for 2,123 days of incarceration. As it  
5 explained, "The Attorney General's Office investigated the claim and, within the meaning of Penal  
6 Code section 4902, subdivision (d), does not object to compensation."<sup>16</sup> The Attorney General did  
7 not address SB 446 but necessarily concluded that the new statutory amendments applied to  
8 Hampton's previously pending claim, regardless of his conviction upon retrial for a lesser-included  
9 offense.

## 10 **II. Factual Background<sup>17</sup>**

11 Around noon on February 15, 2007, Hampton shot and killed Jonathan Giurbino. Both  
12 Hampton and Giurbino were 19 years old. Hampton was a drug dealer, and Giurbino was seeking  
13 marijuana and Ecstasy pills. The shooting occurred inside a car, driven by Hampton, on a residential  
14 street in Sacramento County. A resident, who heard the shooting, encountered Giurbino lying in the  
15 street, bleeding from a gunshot wound to the head, just as Hampton sped away. Giurbino died from  
16 his injury.<sup>18</sup>

17 No wallet or money was found on Giurbino's body. But less than an hour before the shooting,  
18 at a nearby gas station, Giurbino retrieved \$15 from a wallet to pay for gas for Hampton's car. A day  
19 or two earlier, Giurbino had received \$350, consisting of three \$100 bills and a \$50 bill. After the  
20 shooting, a second wallet belonging to Giurbino was located at his home, and it contained \$330,

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24 <sup>15</sup> Pen. Code, § 4902, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 4, eff. Jan. 1, 2022.

25 <sup>16</sup> Letter from Deputy Attorney General Ross Naughton, dated February 16, 2022, submitted via  
26 email.

27 <sup>17</sup> This factual summary is based upon the application and supporting documents, including portions  
28 of appellate court decisions on direct appeal and habeas that are consistent with the second jury's  
verdict. No transcript of the second trial was provided.

<sup>18</sup> Hampton App. at pp. 10-12, 15-17, 22; *In re Hampton, supra*, 48 Cal.App.5th at pp. 469-471;  
*People v. Hampton, supra*, 2010 WL 4201741, \*1-2.

1 consisting of a \$50 bill and fourteen \$20 bills, as well as a piece of paper with Hampton's nickname  
2 and phone number.<sup>19</sup>

3 After the shooting, Hampton visited his friend "S."<sup>20</sup> Hampton gave S. a \$100 bill to buy some  
4 food. When questioned by police, S. initially denied that Hampton had told him anything about the  
5 shooting, but S. later claimed that Hampton had stated that someone tried to rob him. In a separate  
6 interview, Hampton's girlfriend "R." told law enforcement that she saw Hampton with a handgun the  
7 day before the shooting occurred. While awaiting trial, Hampton wrote letters urging R.'s brother "to  
8 kidnap and 'tuct' R. away, even though Giurbino, as Hampton put it, 'got smacked with his own  
9 banger [gun].'"<sup>21</sup>

10 When interrogated by police, Hampton initially denied any involvement in the shooting. He  
11 later admitted to shooting Giurbino but only in self-defense.<sup>22</sup>

12 Hampton similarly testified at trial that he shot Giurbino in self-defense. According to  
13 Hampton, he met with Giurbino to sell him some marijuana and Ecstasy, but when Hampton told  
14 Giurbino that he could only deliver the drugs later that evening, Giurbino asked Hampton to drive him  
15 to another seller's home to complete the transaction. Just as Hampton parked in the driveway,  
16 Giurbino held a gun to Hampton's head and demanded money. Giurbino continued aiming the gun at  
17 Hampton with his left hand and used his right hand to reach into Hampton's left pocket and pull out a  
18 wad of money. Still aiming the gun at Hampton, Giurbino opened the passenger door with his right  
19 hand and stepped outside, while continuing to lean inside the car to retrieve his wallet, cell phone,  
20 and sweater. At that moment, Hampton slammed the car into reverse, causing Giurbino's arm to jerk  
21 and the gun to drop onto Hampton's lap. Hampton backed out of the driveway and Giurbino followed.  
22 Once Hampton stopped in order to shift gears, Giurbino lunged inside the car and reached for the  
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25 <sup>19</sup> Hampton App. at pp. 10, 14; *In re Hampton, supra*, 48 Cal.App.5th at p. 469-470; *People v.*  
*Hampton, supra*, 2010 WL 4201741, \*2-3.

26 <sup>20</sup> Consistent with the court's habeas decision, witnesses are referred to by a single initial only.

27 <sup>21</sup> *In re Hampton, supra*, 48 Cal.App.5th at p. 470; see also Hampton App. at pp. 13-14, 18; *People v.*  
*Hampton, supra*, 2010 WL 4201741, \*2.

28 <sup>22</sup> *In re Hampton, supra*, 48 Cal.App.5th at p. 470.



1 gun on Hampton's lap. Afraid, Hampton picked up the gun and swung his arm out towards Giurbino,  
2 at which point the gun fired, striking Giurbino in the head. Giurbino fell backwards, landing outside of  
3 the car onto the street. Hampton drove off without looking back. While on the freeway, Hampton  
4 disposed of the firearm by tossing it out the window. He also washed and vacuumed the car, but  
5 traces of hair, blood, human tissue, and a shell casing were left behind. While cleaning the car,  
6 Hampton picked up Giurbino's wallet, cell phone, and sweater and placed them in a garbage bag.<sup>23</sup>

7 According to the defense, Hampton was acting in self-defense and, therefore, he was not  
8 guilty of any crime when he fatally shot Giurbino. The defense alternatively argued that Hampton  
9 was acting in imperfect self-defense and, therefore, might be guilty of voluntary manslaughter but not  
10 murder.<sup>24</sup> By comparison, the prosecution argued that Hampton was robbing Giurbino when the fatal  
11 shot was fired and, therefore, Hampton was guilty of murder in the first- or second-degree.<sup>25</sup>

12 The jury in Hampton's first trial largely sided with the prosecution by returning a guilty verdict  
13 for second-degree murder with an acquittal for first-degree murder.<sup>26</sup> However, the jury was not  
14 instructed on heat of passion for voluntary manslaughter, which the appellate court found to be a  
15 prejudicial omission.<sup>27</sup>

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17 <sup>23</sup> Hampton App. at pp. 16-18; *In re Hampton, supra*, 48 Cal.App.5th at pp. 470-472; *People v.*  
18 *Hampton, supra*, 2010 WL 4201741, \*3-4.

19 <sup>24</sup> *In re Hampton, supra*, 48 Cal.App.5th at pp. 480-481; see CALCRIM No. 505 (defining self-defense  
20 as the reasonable use of force to defend against reasonable belief of imminent danger); CALCRIM  
21 No. 571 (defining imperfect self-defense for voluntary manslaughter as the unreasonable use of force  
22 to defend against an actual but unreasonable belief of imminent danger).

23 <sup>25</sup> *In re Hampton, supra*, 48 Cal.App.5th at pp. 469, 482; see CALCRIM No. 520 (defining second-  
24 degree murder as an unjustified killing with malice aforethought); Former Pen. Code, 189 (broadly  
25 defining first-degree murder as any killing committed during the commission of a robbery), as added  
26 by Stats.2002, c. 606 (A.B. 1838), § 1, eff. Sept. 17, 2002.

27 <sup>26</sup> *In re Hampton, supra*, 48 Cal.App.5th at p. 482.

28 <sup>27</sup> *Id.* at p. 482 (finding "reasonable possibility" the jury may have believed enough of Hampton's  
testimony to conclude that, even though he was not acting in self-defense or imperfect self-defense,  
he nevertheless shot Giurbino while "his judgment was so obscured by intense emotion that he fired  
the gun without thinking, acting from passion rather than judgment" as required for voluntary  
manslaughter); see CALCRIM No. 570 (defining heat of passion for voluntary manslaughter as a  
killing that occurs during a sudden quarrel, during which the defendant was provoked, the defendant  
acted rashly due to the provocation, and the provocation would have caused a reasonable person to  
act rashly without due deliberation).

1 Upon retrial, Hampton’s second jury acquitted Hampton of second-degree murder and found  
2 him guilty solely of involuntary manslaughter.<sup>28</sup>

3 **III. Determination of Issues**

4 Penal Code section 4900 allows a person, who has been erroneously convicted and  
5 imprisoned for a felony offense, to submit a claim for compensation to CalVCB.<sup>29</sup> Typically, claimants  
6 bear the burden to prove by a preponderance of evidence that (1) the crime with which they were  
7 convicted either did not occur or was not committed by them and (2) they suffered injury as a result of  
8 their erroneous conviction.<sup>30</sup> If the claim is ultimately approved, it results in a recommendation by  
9 CalVCB to the Legislature to make an appropriation for compensation for the person’s sustained  
10 injury, which is calculated at the rate of \$140 per day of imprisonment that resulted from the  
11 erroneous conviction.<sup>31</sup>

12 In limited circumstances, both of the elements for innocence and injury may be presumed, if a  
13 court has found the claimant factually innocent under any standard applicable in a proceeding to  
14 grant habeas relief or vacate a conviction pursuant to Penal Code section 1473.6.<sup>32</sup> To obtain such a  
15 finding, the claimant may move for a finding of factual innocence by a preponderance of the evidence  
16 that the crime with which they were charged was either not committed at all or, if committed, was not  
17 committed by the claimant.<sup>33</sup> If the claimant received a finding of factual innocence for each and  
18 every conviction underlying the period of their incarceration, CalVCB must automatically recommend  
19 compensation, within 30 days and without a hearing.<sup>34</sup>

20 Alternatively, under recently enacted subdivision (b) of Penal Code section 4900, a  
21 recommendation for compensation is mandated for certain claimants, even without a preponderance

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23 <sup>28</sup> Hampton App. at p. 6; see also CALCRIM No. 580 (defining involuntary manslaughter as a killing  
committed by the defendant with criminal negligence and without malice).

24 <sup>29</sup> Pen. Code, § 4900.

25 <sup>30</sup> Pen. Code, § 4900, subd. (a); 4903, subd. (a).

26 <sup>31</sup> Pen. Code, § 4904.

27 <sup>32</sup> Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).

28 <sup>33</sup> Pen. Code, §§ 1485.55, subd. (b).

<sup>34</sup> Pen. Code, §§ 861.865; 1485.55, subd. (a), 4902, subd. (a).

1 of evidence that the claimant did not commit the crime for which they were convicted. Specifically,  
2 subdivision (b) provides:

3 If a state or federal court has granted a writ of habeas corpus or if a state court has  
4 granted a motion to vacate pursuant to Section 1473.6 or paragraph 2 of subdivision (a)  
5 of Section 1473.7, and the charges were subsequently dismissed, or the person was  
6 acquitted of the charges on a retrial, the California Victim Compensation Board shall,  
7 upon application by the person, and without a hearing, recommend to the Legislature  
8 that an appropriation be made and the claim paid pursuant to Section 4904, unless the  
9 Attorney General establishes pursuant to subdivision (d) of Section 4902, that the  
10 claimant is not entitled to compensation.<sup>35</sup>

11 In turn, recently amended section 4904 provides, in relevant part:

12 If ... for claims pursuant to subdivision (b) of Section 4900, the Attorney General's office  
13 has not met their burden of proving by clear and convincing evidence that the claimant  
14 committed the acts constituting the offense, and the California Victim Compensation  
15 Board has found that the claimant has sustained injury through their erroneous  
16 conviction and imprisonment, the California Victim Compensation Board shall report the  
17 facts of the case and its conclusions to the next Legislature, with a recommendation that  
18 the Legislature make an appropriation for the purpose of indemnifying the claimant for  
19 the injury. The amount of the appropriation recommended shall be a sum equivalent to  
20 one hundred forty dollars (\$140) per day of incarceration served....<sup>36</sup>

21 Plainly understood, subdivision (b) of Penal Code section 4900 compels a recommendation  
22 for compensation when all three of the following elements are met. First, the claimant's conviction  
23 must have been vacated by a writ of habeas corpus or motion to vacate pursuant to Penal Code  
24 section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated conviction  
25 must have been dismissed on remand, or the claimant must have been acquitted upon retrial. Third,  
26 the Attorney General must decline to object to the claim.<sup>37</sup> If all three of these elements are satisfied,  
27 and CalVCB also finds that the claimant sustained injury through their erroneous conviction, then  
28 CalVCB shall recommend that the Legislature make an appropriation for the purpose of indemnifying  
the claimant for the injury.<sup>38</sup> The recommendation for compensation is required under these

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35 Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

36 Pen. Code, § 4904, added by Stats.2021, c. 490 (S.B. 446), § 6, eff. Jan. 1, 2022.

37 Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

38 Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

1 circumstances, regardless of whether or not the evidence proves the claimant is more likely innocent  
2 than guilty.

3 If the claim is ultimately approved under any of these methods, it results in a recommendation  
4 by CalVCB to the Legislature to make an appropriation for compensation for the claimant's sustained  
5 injury. Injury is calculated at the rate of \$140 per day for the pre- and post-conviction confinement  
6 that resulted from the erroneous conviction.<sup>39</sup> Compensation is disbursed to the claimant if the  
7 Legislature passes a bill to appropriate the funds that is then signed by the Governor.<sup>40</sup>

### 8 **A. Recent Amendments Apply to Hampton's Pending Claim**

9 As implicitly conceded by the Attorney General,<sup>41</sup> the new statutory amendments for  
10 processing claims under Penal Code section 4900 apply to Hampton's pending claim for  
11 compensation. Generally, a law may not be retroactively applied if it would change the legal  
12 consequences of past conduct by imposing new or different liabilities based upon such conduct.<sup>42</sup>  
13 By comparison, a law may be prospectively applied, even if it draws upon facts existing prior to its  
14 enactment, so long as it relates to the procedure to be followed in the future.<sup>43</sup> For example, "the  
15 legislature may change rules of procedure, or remedies, and [ ] such changes may be made  
16 applicable to pending actions, provided, of course, that under the guise of a mere change of  
17 procedure or substitution of remedies vested rights are not destroyed or the obligation of contracts  
18 impaired [citations omitted], and so long as a reasonably efficient remedy remains."<sup>44</sup>

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19  
20 <sup>39</sup> Pen. Code, § 4904.

21 <sup>40</sup> Pen. Code, § 4904; see also Assembly Bill 1593 (2020-2021) (appropriating compensation for  
22 multiple PC 4900 claimants); (Senate Bill 417 (2019-2020) (appropriating compensation over minority  
23 dissent for PC 4900 claimant); *cf.* Assembly Bill 1273 (2007-2008) (declining to appropriate  
24 compensation for PC 4900 claimant); Capitol Weekly, *GOP Senators Targeting Mods on Criminal  
Justice*, posted July 12, 2007, accessible at [https://capitolweekly.net/gop-senators-targeting-mods-  
on-criminal-justice/](https://capitolweekly.net/gop-senators-targeting-mods-on-criminal-justice/) (explaining AB 1273).

25 <sup>41</sup> Letter from Deputy Attorney General Ross Naughton, dated February 16, 2022, submitted via  
email.

26 <sup>42</sup> *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 290.

27 <sup>43</sup> *Id.* at p.288.

28 <sup>44</sup> *San Bernardino County v. State Indus. Acc. Commission* (1933) 217 Cal. 618, 629 (citing *City of  
Los Angeles v. Oliver* (1929) 102 Cal.App. 299, 315.)

1 Hampton submitted his claim to CalVCB on October 21, 2021, several months before SB 446  
2 amended Penal Code sections 4900 et seq. concerning the process for resolving claims submitted by  
3 erroneously convicted persons. Once those amendments took effect on January 1, 2022, Hampton's  
4 claim was still pending, as the Board had not yet voted on whether to grant or deny it.<sup>45</sup> Notably,  
5 Hampton's claim under Penal Code section 4900 does not implicate a fundamental vested right, nor  
6 does it impair an existing contract, and a reasonably efficient remedy remains in this administrative  
7 proceeding.<sup>46</sup> Accordingly, the recent amendments<sup>46</sup> by SB 446 to the statutory procedures for  
8 resolving claims under section 4900 prospectively apply to Hampton's pending claim, regardless of  
9 when he submitted it to CalVCB.<sup>47</sup>

10 This approach is consistent with past CalVCB decisions. For instance, in the Penal Code  
11 section 4900 claim of Rafael Madrigal, CalVCB's final decision took into consideration procedural  
12 statutes which were enacted and amended while Madrigal's claim was pending with CalVCB.<sup>48</sup>  
13 Although Government Code section 13959 requires the Board to apply the law in effect as of the date  
14 an application was submitted, this statute solely applies to victim compensation applications filed  
15 pursuant to Government Code sections 13950 et seq., and not to claims under Penal Code section  
16 4900. Accordingly, the current version of sections 4900 et seq., which include the recent  
17 amendments by SB 446, prospectively apply to Hampton's pending claim.

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24 <sup>45</sup> Cal. Code Regs., tit. 2, §§ 618.1, subd. (f)(1) ("a final decision is made by the board upon adoption  
25 of a decision under sections 619.2 or 619.5"), 619.2, subd. (e) ("decision of the board is effective  
upon its vote").

26 <sup>46</sup> *Tennison v. California Victim Comp. & Gov.'t Claims Bd.* (2007) 152 Cal.App.4th 1164, 1182  
(holding that a claim under Penal Code section 4900 "does not implicate a fundamental vested right").

27 <sup>47</sup> See *Tapia, supra*, 53 Cal.3d at 290; *San Bernardino County, supra*, 217 Cal. at p. 629.

28 <sup>48</sup> See *Madrigal v. California Victim Compensation and Government Claims Board* (2016) 6  
Cal.App.5th 1108.

1                   **B. Subdivision (b) of Penal Code section 4900 Applies Even if a Claimant Is**  
2                   **Convicted upon Remand of a Lesser-Included Offense**

3                   As further conceded by the Attorney General,<sup>49</sup> Hampton’s claim for compensation falls within  
4 subdivision (b) of Penal Code section 4900, even though he was convicted upon remand of a lesser-  
5 included offense. The task of interpreting a statute commences with the plain meaning of the law, “as  
6 the words the Legislature chose to enact are the most reliable indicator of intent.”<sup>50</sup> If the statutory  
7 language is ambiguous, then extrinsic aids, such as legislative history, public policy, and the statutory  
8 scheme as a whole, may be considered.<sup>51</sup> While some weight is given to an agency’s construction of  
9 a statute that it purports to implement, the proper interpretation of a statute is ultimately resolved by  
10 the court.<sup>52</sup>

11                  Penal Code section 4900, subdivision (b), applies when, inter alia, “a state or federal court has  
12 granted a writ of habeas corpus” and “the charges were subsequently dismissed, or the person was  
13 acquitted of the charges on a retrial...”<sup>53</sup> This subdivision does not except, or otherwise address, the  
14 scenario of a conviction upon remand solely for a lesser-included offense. When applicable,  
15 subdivision (b) compels CalVCB to recommend compensation pursuant to Penal Code section 4904,  
16 which in turn requires a finding of “sustained injury through [the claimant’s] erroneous conviction and  
17 imprisonment...”<sup>54</sup>

18                  Plainly understood, subdivision (b) applies to any charges that were vacated by a grant of  
19 habeas corpus and later resulted in an acquittal, regardless of whether the claimant was convicted  
20 upon remand of a lesser-included offense. Rather than barring application of subdivision (b), the  
21 conviction for a lesser-included offense simply reduces the amount of injury sustained by the claimant

22 \_\_\_\_\_  
23 <sup>49</sup> Letter from Deputy Attorney General Ross Naughton, dated February 16, 2022, submitted via  
24 email.

25 <sup>50</sup> *California Manufacturers & Technology Assn. v. State Water Resources Control Bd.* (2021) 64  
26 Cal.App.5th 266, 280 (quoting *In re Corrine W.* (2009) 45 Cal.4th 522, 529.)

27 <sup>51</sup> *California Manufacturers & Technology Assn.*, *supra*, 64 Cal.App.5th at p. 280.

28 <sup>52</sup> *California Manufacturers & Technology Assn.*, *supra*, 64 Cal.App.5th at pp. 279-280.

<sup>53</sup> Pen. Code, § 4900, subdivision (b).

<sup>54</sup> Pen. Code, §§ 4900, subdivision (b), 4904.

1 for their erroneous conviction and imprisonment on the original charges. In that case, the claimant's  
2 demonstrated injury under section 4904 amounts to the difference between the total days of  
3 imprisonment solely attributed to the vacated conviction for which the underlying charges were either  
4 dismissed or acquitted upon remand, and the total days of imprisonment imposed for the new and  
5 lesser-included conviction upon remand.

6 This construction, which the Attorney General implicitly urges by its declination letter,<sup>55</sup>  
7 appears to be most consistent with the Legislature's intent. According to the author of SB 446, this  
8 "bill removes barriers to compensation for those who have been proven to be wrongfully convicted"  
9 and "would make the standard for compensation essentially the same as the standard that the court  
10 applied when it found the person was wrongfully convicted."<sup>56</sup> To that end, SB 446 "recognizes that  
11 the wrongfully convicted are once again presumed innocent" and "shifts the burden of proof to the  
12 State to determine whether compensation should be granted."<sup>57</sup> All of these stated goals are best  
13 promoted by construing subdivision (b) of Penal Code section 4900 to apply even when a claimant is  
14 convicted upon remand for a lesser offense.

15 Under this construction, the mandatory recommendation provision of subdivision (b) of Penal  
16 Code section 4900 applies to Hampton's claim. First, Hampton's conviction for Giurbino's murder  
17 (Pen. Code, § 189) with a gun-use enhancement (Pen. Code, § 12022.53) in case number 07F01659  
18 was vacated by a writ of habeas corpus issued by the Third District Court of Appeal on April 3,  
19 2020.<sup>58</sup> Second, Hampton was subsequently acquitted of both of these charges upon retrial on  
20 December 7, 2020, when he was found guilty, instead, of involuntary manslaughter (Pen. Code, §  
21 192) with a reduced gun-use enhancement (Pen. Code, § 12022.5).<sup>59</sup> Third, the Attorney General

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24 <sup>55</sup> Letter from Deputy Attorney General Ross Naughton, dated February 16, 2022, submitted via email.

25 <sup>56</sup> Sen. Rules Com., Off. Of Sen. Floor Analyses, Unfinished Business for Sen. Bill No. 446 (2021-  
26 2022 Reg. Sess.), as amended June 23, 2021, for September 2, 2021 hearing, pp. 6-7, accessible  
online at [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=202120220SB446](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220SB446).

27 <sup>57</sup> *Ibid.*

28 <sup>58</sup> *In re Hampton, supra*, 48 Cal.App.5th 463.

<sup>59</sup> Hampton App. at p. 6, 32, 37.

1 declined to object to Hampton’s claim in this administrative proceeding.<sup>60</sup> Consequently, CalVCB is  
2 required by subdivision (b) to recommend compensation pursuant to Penal Code section 4904 for the  
3 injury sustained by Hampton.<sup>61</sup>

4 **C. Injury Under Penal Code Section 4904 Excludes Sentence Imposed for Lesser-**  
5 **Included Offense**

6 Penal Code section 4904 twice refers to “injury” as a prerequisite for compensation, which is  
7 calculated at a rate of \$140 per day.<sup>62</sup> Given the manner by which compensation is calculated, the  
8 requisite injury contemplated by Penal Code section 4904 is “each day ... spent illegally behind bars,  
9 away from society, employment, and [ ] loved ones.”<sup>63</sup> Injury is therefore lacking if, for example, the  
10 erroneously convicted “claimant remained incarcerated on a separate, unrelated conviction” that was  
11 valid.<sup>64</sup> In that scenario, the sentence for the valid conviction “vitiates any claim of damage  
12 attributable to the [erroneous] conviction.”<sup>65</sup>

13 Based upon this reasoning, Hampton’s demonstrated injury is limited to 2,123 days. Hampton  
14 was incarcerated for his erroneous murder conviction in case number 07F01659 for a total of 5,032  
15 days (i.e., almost 14 years).<sup>66</sup> Nonetheless, when convicted upon remand of involuntary  
16 manslaughter as a lesser-included offense in case number 07F01659, Hampton received an  
17 aggregate sentence of eight years (i.e., 2,920 days).<sup>67</sup> But for Hampton’s vacated murder conviction,  
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21 <sup>60</sup> Letter from Deputy Attorney General Ross K. Naughton, dated February 16, 2022, submitted via  
22 email.

23 <sup>61</sup> Pen. Code, §§ 4900, subd. (b), 4904.

24 <sup>62</sup> Pen. Code, §§ 4900, subd. (b), 4904.

25 <sup>63</sup> *Holmes v. Calif. Victim Comp. & Gov’t Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

26 <sup>64</sup> *Fudger v. State* (N.Y. 1987) 131 A.D.2d 136, 141 (denying compensation under New York statute  
27 for erroneous offenders because claimant’s valid conviction “vitiates any claim of damage attributable  
28 to the [erroneous] conviction”).

<sup>65</sup> *Ibid.*

<sup>66</sup> Hampton App. at pp. 6-8.

<sup>67</sup> Hampton App. at p. 6.



1 he would have been free for the remaining 2,123 days (i.e., almost six years).<sup>68</sup> As Hampton  
2 maintains, he “has wrongfully spent almost 6 additional years imprisoned” for an “invalid conviction”  
3 for murder.<sup>69</sup> Notably, Hampton’s claim does not request compensation for any portion of the eight-  
4 year sentence imposed for his valid manslaughter conviction, and the Attorney General’s declination  
5 is limited to Hampton’s claim in the amount of \$297,220 for 2,123 days.<sup>70</sup>

6 Overall, Hampton’s demonstrated and undisputed injury amounts to 2,123 days imprisonment,  
7 as he was validly imprisoned for 2,920 days for involuntary manslaughter out of the total 5,043 days  
8 that he served for his vacated murder conviction. Hampton is therefore entitled to a recommendation  
9 for compensation in the amount of \$297,220, representing \$140 per day of his erroneous  
10 incarceration.

11 **IV. Conclusion**

12 CalVCB hereby grants Hampton’s unopposed claim for compensation as mandated by  
13 subdivision (b) of Penal Code section 4900 and, recommends that the Legislature appropriate  
14 \$297,200 as payment for the 2,123 additional days that he was incarcerated beyond his valid  
15 conviction for involuntary manslaughter as a result of his vacated murder conviction.

16  
17 Date: February 25, 2022



\_\_\_\_\_  
18 Laura Simpton  
19 Senior Attorney  
20 California Victim Compensation Board

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26 <sup>68</sup> Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3 Cal.App.4th 882,  
886 (construing “days” for custody credit to include partial days).

27 <sup>69</sup> Hampton App. at p. 4.

28 <sup>70</sup> Hampton App. at pp. 1-4; Letter from Deputy Attorney General Ross Naughton, dated February 16,  
2022, submitted via email.

# ITEM 9

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

8  
9 In the Matter of:

10 **John Klene**

11 Claim No. 22-ECO-01

**Proposed Decision**

**(Penal Code § 4900, subd. (b))**

12 **I. Introduction**

13 On January 3, 2022, John Klene (Klene) submitted a claim for compensation as an  
14 erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to  
15 Penal Code section 4900. The claim is based upon Klene's 1998 murder conviction in Los Angeles  
16 County, which was vacated and dismissed during a state habeas proceeding on February 19, 2021.  
17 Klene was unconditionally released that same day after having served 8,591 days imprisonment  
18 solely for this vacated conviction. Klene seeks compensation in the amount of \$1,202,740,  
19 representing \$140 for each day of his imprisonment. Klene is represented by Deirdre O'Connor of  
20 Seamus Law.

21 The Office of the Attorney General is represented by Deputies Attorney General Jessica Leal  
22 and Dina Petrushenko. By letter received February 16, 2022, the Attorney General declined to object  
23 to Klene's claim. The administrative record closed that same day, and the matter was assigned to  
24 CalVCB Senior Attorney Laura Simpton. As required by subdivision (b) of Penal Code section 4900,<sup>1</sup>  
25 CalVCB is mandated to grant Klene's unopposed claim and recommend that the Legislature  
26 appropriate \$1,202,740 to Klene for the injury sustained by his vacated murder conviction.

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28 <sup>1</sup> Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

1 **II. Procedural History**

2 On August 14, 1997, 19-year-old Klene was arrested for murder in Los Angeles County  
3 Superior Court case number YA033562.<sup>2</sup> A joint jury trial ensued with codefendant Edward  
4 Dumbrique (Dumbrique). On December 4, 1998, Klene was found guilty of first-degree murder, with  
5 a special circumstance for shooting from within a motor vehicle, along with an enhancement for being  
6 armed with a firearm.<sup>3</sup> Dumbrique was likewise convicted of first-degree murder with an  
7 enhancement for personal use of a firearm.<sup>4</sup> On January 22, 1999, Klene was sentenced to life  
8 without the possibility of parole.<sup>5</sup>

9 Klene appealed to the California Court of Appeal, Second District, which affirmed the  
10 judgment in a written decision issued on April 19, 2002.<sup>6</sup> The California Supreme Court subsequently  
11 denied review.<sup>7</sup> Klene pursued habeas relief in federal court, which was denied on February 23,  
12 2006.<sup>8</sup>

13 In 2012, with the assistance of attorney O'Connor, Klene filed a state habeas petition in the  
14 Los Angeles County Superior Court. Following additional investigation by both Klene and the Los  
15 Angeles County District Attorney (LADA), an amended petition was filed on June 19, 2020. In it,  
16 Klene raised 17 separate claims, including prosecutorial misconduct for eliciting false evidence and  
17

18 <sup>2</sup> Klene Application (“App.”) at p. 4. The pagination for Klene’s application refers to the continuous page  
19 numbers for the entire, 115-page PDF file, starting with the Erroneously Convicted Person Claim Form  
20 (App. at pp. 1-2), the supporting memorandum (*id.* at pp. 3-6), followed by the supporting exhibits,  
21 including the amended petition for writ of habeas corpus (*id.* at pp. 7-109), the trial court’s order (*id.* at  
22 pp. 110-113), and the district attorney’s letter (*id.* at pp. 114-115).

23 <sup>3</sup> Pen. Code, §§ 187, subd. (a) (murder); 190.2, subd. (a)(21) (drive-by shooting), 12022, subd. (a)(1)  
24 (firearm).

25 <sup>4</sup> *People v. John Gavin Klene, et al.*, California Court of Appeal, Second District, case number  
26 B129481, opinion filed April 19, 2002, available at 2002 WL 599076. (See Cal. Code Reg., tit. 2, §  
27 617.8, subd. (b) (permitting hearing officer to take judicial notice under Evidence Code section 452 of  
28 any federal or state court record); see also Cal. Code Reg., tit. 2, § 641, subd. (f) (allowing Board’s  
consideration of any information that it deems relevant).)

<sup>5</sup> Klene Abstract of Judgment (AOJ), submitted via separate email on January 3, 2022.

<sup>6</sup> *People v. Klene, supra*, at 2002 WL 599076.

<sup>7</sup> *People v. John Gavin Klene*, California Supreme Court case number S106839, accessible online at  
California Court Appellate Case Information, <https://appellatecases.courtinfo.ca.gov>.

<sup>8</sup> Klene App. at p. 19.

1 failing to disclose exculpatory evidence, ineffective assistance of counsel, actual innocence, and  
2 cumulative error.<sup>9</sup> The court issued an order to show cause on November 2, 2020.<sup>10</sup>

3 The LADA responded by letter dated February 18, 2021. It acknowledged that, “as a result of  
4 the cumulative impact of several errors that occurred before and during Mr. Klene’s trial, LADA can  
5 no longer maintain confidence in the conviction.” As a result, LADA conceded the “verdict is  
6 unreliable and must be reversed.” LADA further “elect[ed] not to retry Petitioner” and requested the  
7 court “dismiss the charges in the interest of justice.”<sup>11</sup>

8 On February 19, 2021, the court found that Klene “did not receive a fair trial” and granted  
9 habeas relief “on the basis of cumulative error.” The court vacated Klene’s conviction in case number  
10 YA033562 and dismissed the entire case with prejudice pursuant to Penal Code section 1385.<sup>12</sup>  
11 Consequently, the court did not address Klene’s substantive claim of factual innocence or otherwise  
12 determine whether Klene was entitled to a finding of factual innocence under Penal Code section  
13 1485.55.

14 Klene was released from prison on the evening of February 19, 2021. By then, he had been  
15 continuously confined for 8,591 days solely as a result of his vacated murder conviction in case  
16 number YA033562.<sup>13</sup>

17 On January 3, 2022, Klene submitted his claim to CalVCB seeking compensation as an  
18 erroneously convicted person under the recently enacted provision of Penal Code section 4900,  
19 subdivision (b). That same day, after reviewing the claim for jurisdiction, CalVCB requested a  
20 response from the Attorney General within 45 days pursuant to Penal Code section 4902, subdivision  
21 (d). The Attorney General timely submitted a declination to object to the claim on February 16, 2022,  
22 and the administrative record closed the same day.

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25 <sup>9</sup> Klene App. at pp. 4, 7-109.

26 <sup>10</sup> Klene App. at p. 114.

27 <sup>11</sup> Klene App. at pp. 114-115.

28 <sup>12</sup> Klene App. at pp. 112-113.

<sup>13</sup> Klene App. at pp. 1, 5-6, 111; Klene AOJ.

1 **III. Factual Background**<sup>14</sup>

2 Around 11:00 p.m. on June 28, 1997, Antonio Alarcon (Alarcon) was shot several times,  
3 including one fatal bullet to the head. At the time of the shooting, Alarcon was near a payphone, in  
4 front of an autobody shop, located in the city of Hawthorne in Los Angeles County. Alarcon died of  
5 his injuries, which were caused by gunshots fired from a nine-millimeter firearm. Alarcon was a  
6 member of the Lil' Watts gang, which was enemies with the Lawndale 13 gang.<sup>15</sup>

7 Minutes earlier, Alarcon had been inside the autobody shop speaking to the owner Daniel C.<sup>16</sup>  
8 Upon hearing the gunshots, Daniel C. spotted a dark colored car, possibly with three to five  
9 occupants. Daniel C. heard the front seat passenger shout, "Fuck Lil' Watts," while the rear  
10 passenger leaned out the window holding a firearm. Daniel C., who was not wearing his glasses, told  
11 responding officers that he could not identify any of the Hispanic male occupants.<sup>17</sup>

12 Shortly after Alarcon's death, Santos Alvarez (Alvarez), who was a member of the Lawndale  
13 13 gang, implicated Klene and Dumbrique in Alarcon's murder. Alvarez had been in jail at the time of  
14 this disclosure and hoped to gain early release. Alvarez told law enforcement that, on the afternoon  
15 of the shooting, he saw Klene and Dumbrique hanging out with other Lawndale 13 gang members,  
16 when Klene stated they were "going to go look for some Twats," which was a derogatory term used  
17 for Lil' Watts gang members. Alvarez claimed that Klene and others were in a dark green Ford Escort  
18 supposedly owned by fellow Lawndale 13 gang member Robert C. Alvarez added that he heard  
19 Dumbrique carried a nine-millimeter firearm. According to Alvarez, the search for Lil' Watts gang  
20 members was in retaliation for a shooting of two Lawndale 13 gang members that had occurred the  
21 day before on June 27, 1997. Alvarez claimed that Klene had been close friends with one of those  
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24 <sup>14</sup> This factual summary is based upon the application and supporting documents, as well as portions of  
25 the decision in *People v. Klene, supra*, 2002 WL 599076, that are consistent with the most recent  
26 habeas decision to vacate the underlying conviction.

27 <sup>15</sup> Klene App. at pp. 14, 21; see also *People v. Klene, supra*, 2002 WL 599076, \*1.

28 <sup>16</sup> Witnesses are referred to solely by their first name in an effort to preserve their privacy.

<sup>17</sup> Klene App. at pp. 14-15, 23, 98; see also *People v. Klene, supra*, 2002 WL 599076, \*1.

1 victims and added that, after the shooting, he heard Klene announce that he had “blasted some  
2 fool.”<sup>18</sup>

3 Law enforcement showed Daniel C. several photographic lineups of various Lawndale 13  
4 gang members. The lineups included Klene and Dumbrique, but not Alvarez or fellow Lawndale 13  
5 gang member Chad “Ghost” Landrum (Landrum). According to the officer, Daniel C. immediately  
6 identified Dumbrique as the shooter and Klene as the front seat passenger. However, Daniel C. later  
7 recanted both identifications and insisted he had been pressured by police into identifying both  
8 men.<sup>19</sup>

9 Law enforcement arrested Klene and Dumbrique for Alarcon’s murder. They were tried  
10 together, and neither testified. Instead, multiple alibi witnesses testified that both defendants spent  
11 the evening of the shooting at Klene’s home watching the infamous boxing match between Mike  
12 Tyson and Evander Holyfield, which occurred on June 28, 1997. Klene’s defense included his  
13 mother’s testimony, who insisted that Klene remained with her throughout the day, except for a quick  
14 trip to the grocery store, and he did not leave her sight from 5:00 p.m. to midnight for more than ten  
15 minutes.<sup>20</sup>

16 However, Klene’s counsel failed to present evidence to corroborate the veracity of Klene’s  
17 alibi witnesses, most of whom were impeached either by their inherent bias as a family member or by  
18 their gang membership. Counsel also failed to present Luis M.’s testimony that he was not a gang  
19 member and did not know Klene and, therefore, Klene had no motive to avenge his shooting. In  
20 addition, counsel failed to present records showing that Robert C. had sold his green Escort months  
21 before the shooting. Finally, Klene had purposefully altered his appearance, at his counsel’s urging,  
22 by growing out his hair for a live lineup, which was cited by the prosecutor as evidence of Klene’s  
23 consciousness of guilt.<sup>21</sup>

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24  
25 <sup>18</sup> Klene App. at pp. 16, 22, 45, 50, 83 see also *People v. Klene, supra*, 2002 WL 599076, \*2.

26 <sup>19</sup> Klene App. at pp. 23, 49-50; see also *People v. Klene, supra*, 2002 WL 599076, \*2.

27 <sup>20</sup> Klene App. at pp. 15, 21, 90-91; see also *People v. Klene, supra*, 2002 WL 599076, \*2.

28 <sup>21</sup> Klene App. at pp. 69-70 (motive), 70-75 (alibi), 80-82 (altered appearance), 82-83 (car ownership);  
see also *People v. Klene, supra*, 2002 WL 599076, \*3.

1 Perhaps more importantly, the prosecution failed to disclose that, several weeks after  
2 Alarcon's murder, Landrum beat to death a homeless man while Alvarez was present, and then  
3 Alvarez disposed of the victim's body. Also undisclosed was the decision by police not to pursue  
4 Alvarez in connection with the homeless man's murder, despite obtaining a warrant for his arrest,  
5 after learning of Alvarez's role as a witness against Klene.<sup>22</sup>

6 In 2012, Klene learned that Landrum had prepared an affidavit in which he confessed to killing  
7 Alarcon without any involvement from Klene or Dumbrique.<sup>23</sup> By then, Landrum was terminally ill and  
8 already serving a life sentence without possibility of parole for the murder of the homeless man.  
9 According to Landrum, he shot Alarcon in retribution for Alarcon supposedly killing Landrum's friend  
10 in 1996. On the night of June 28, 1997, Landrum tracked down Alarcon to the autobody shop that  
11 Alarcon frequented, where Landrum spotted Alarcon talking on the payphone. Landrum instructed  
12 his driver, whose identity is not disclosed, to stop alongside Alarcon. At that point, Landrum stepped  
13 out of the car, fired 12 shots from his nine-millimeter Berretta at Alarcon, and shouted, "Fuck Lil  
14 Watts."<sup>24</sup> Landrum stated that he had been willing to testify in favor of Klene and Dumbrique at their  
15 trial in 1998, and he was even scheduled for a pretrial interview with Klene's counsel, but the meeting  
16 was canceled after Landrum stabbed another inmate, and Klene's counsel never rescheduled.<sup>25</sup>

17 A private polygraph examiner, who had previously worked for law enforcement, opined that  
18 Klene was not attempting deception when he denied being in the car during Alarcon's fatal shooting  
19  
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21 <sup>22</sup> Klene App. at p. 56-60 (prior killing involvement), 60-61 (non-prosecution for prior killing).

22 <sup>23</sup> Klene App. at pp. 96-97. The application does not disclose when Klene first learned that Landrum  
23 was the killer, although presumably he knew before trial in 1998, when Landrum "got word to  
24 Dumbrique's family that he was prepared to confess his role in the Alarcon killing and, in doing so,  
25 completely exonerate Klene and Dumbrique." (Klene App. at p. 75.)

26 <sup>24</sup> By claiming to have fired while standing outside the car, Landrum's version of events avoided  
27 culpability for the special circumstance of murder by drive-by-shooting, which carries a mandatory  
28 sentence of either death or life without possibility of parole. (See Pen. Code, 190.2, subd. (a)(21).)  
Landrum's version of events was consistent with statements from "two independent witnesses" who  
described to police "that the person who killed Alarcon was standing outside of the car when he shot  
and killed Alarcon." (Klene App. at p. 30.)

<sup>25</sup> Klene App. at p. 75-77, 96-100.



1 or firing one of the shots.<sup>26</sup> The polygraph examiner similarly did not detect any deception when  
2 Klene's mother insisted that Klene remained at home the entire evening.<sup>27</sup> The polygraph examiner  
3 likewise did not detect any deception when Daniel C. stated that a detective had pointed out a person  
4 in the photographic lineup as the culprit.<sup>28</sup>

5 Klene maintained his innocence in attorney-client correspondence with his appellate attorney.  
6 He also sent a letter to the district attorney in 2014 proclaiming his innocence. At the time of his  
7 arrest in 1997, Klene was a 19-year-old freshman attending El Camino College. While incarcerated,  
8 Klene completed various degrees from Coastline Community College, Penn Foster College, and  
9 West Hills College. By the time of his release more than 23 years later, Klene was 42 years old.<sup>29</sup>

#### 10 **IV. Determination of Issues**

11 Penal Code section 4900 allows a person, who has been erroneously convicted and  
12 imprisoned for a felony offense, to submit a claim for compensation to CalVCB.<sup>30</sup> Typically, claimants  
13 bear the burden to prove by a preponderance of evidence that (1) the crime with which they were  
14 convicted either did not occur or was not committed by them and (2) they suffered injury as a result of  
15 their erroneous conviction.<sup>31</sup> If the claim is ultimately approved, it results in a recommendation by  
16 CalVCB to the Legislature to make an appropriation for compensation for the person's sustained  
17 injury, which is calculated at the rate of \$140 per day of imprisonment that resulted from the  
18 erroneous conviction.<sup>32</sup>

19 In limited circumstances, both of the elements for innocence and injury may be presumed, if a  
20 court has found the claimant factually innocent under any standard applicable in a proceeding to  
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23 <sup>26</sup> Klene App. at pp. 86-90.

24 <sup>27</sup> Klene App. at p. 91.

25 <sup>28</sup> Klene App. at pp. 94-95.

26 <sup>29</sup> Klene App. at pp. 5, 101-102.

27 <sup>30</sup> Pen. Code, § 4900.

28 <sup>31</sup> Pen. Code, § 4900, subd. (a); 4903, subd. (a).

<sup>32</sup> Pen. Code, § 4904.

1 grant habeas relief or vacate a conviction pursuant to Penal Code section 1473.6.<sup>33</sup> To obtain such a  
2 finding, the claimant may move for a finding of factual innocence by a preponderance of the evidence  
3 that the crime with which they were charged was either not committed at all or, if committed, was not  
4 committed by the claimant.<sup>34</sup> If the claimant received a finding of factual innocence for each and  
5 every conviction underlying the period of their incarceration, CalVCB must automatically recommend  
6 compensation, within 30 days and without a hearing.<sup>35</sup>

7         Alternatively, under recently enacted subdivision (b) of Penal Code section 4900, a  
8 recommendation for compensation is mandated for certain claimants, even without a preponderance  
9 of evidence that the claimant did not commit the crime for which they were convicted.<sup>36</sup> Specifically,  
10 subdivision (b) compels a recommendation for compensation, within 60 days of filing the claim and  
11 without a hearing, when all three of the following elements are met. First, the claimant's conviction  
12 must have been vacated by a writ of habeas corpus or motion to vacate pursuant to Penal Code  
13 section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated conviction  
14 must have been dismissed on remand, or the claimant must have been acquitted upon retrial. Third,  
15 the Attorney General must decline to object to the claim.<sup>37</sup> If all three of these elements are satisfied,  
16 and CalVCB finds that the claimant sustained injury through their erroneous conviction, then CalVCB  
17 shall recommend that the Legislature make an appropriation for the purpose of indemnifying the  
18 claimant for the injury.<sup>38</sup> The recommendation for compensation is required, regardless of whether or  
19 not the evidence proves the claimant is more likely innocent than guilty.

20         If the claim is ultimately approved, it results in a recommendation by CalVCB to the  
21 Legislature to make an appropriation for compensation for the claimant's sustained injury. Injury is  
22 calculated at the rate of \$140 per day for the pre- and post-conviction confinement that resulted from

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24 <sup>33</sup> Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).

25 <sup>34</sup> Pen. Code, §§ 1485.55, subd. (b).

26 <sup>35</sup> Pen. Code, §§ 861.865; 1485.55, subd. (a), 4902, subd. (a).

27 <sup>36</sup> Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

28 <sup>37</sup> Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

<sup>38</sup> Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

1 the erroneous conviction.<sup>39</sup> Compensation is disbursed to the claimant if the Legislature passes a bill  
2 to appropriate the funds that is then signed by the Governor.<sup>40</sup>

3 Here, Klene's claim falls within the mandatory recommendation provision of subdivision (b) of  
4 Penal Code section 4900, as all three of the required elements are met. First, Klene's conviction for  
5 Alarcon's murder and related enhancements in case number YA033562 were vacated by a writ of  
6 habeas corpus issued by the Los Angeles Superior Court on February 19, 2021.<sup>41</sup> Second, all  
7 charges against Klene in case number YA033562 were dismissed that same day.<sup>42</sup> Third, the  
8 Attorney General declined to object to Klene's claim in this administrative proceeding.<sup>43</sup>  
9 Consequently, CalVCB is required by subdivision (b) to recommend compensation for the injury  
10 sustained by Klene.<sup>44</sup>

11 The injury sustained by Klene amounts to 8,591 days imprisonment for his vacated conviction  
12 in case number YA033562. Given the manner by which compensation is calculated, the requisite  
13 injury contemplated by Penal Code section 4904 is "each day ... spent illegally behind bars, away  
14 from society, employment, and [ ] loved ones."<sup>45</sup> But-for his vacated conviction for special-  
15 circumstance murder, Klene would have been free for all 8,591 days from the date of his arrest on  
16 August 14, 1997, to and including the date of his release on February 19, 2021.<sup>46</sup> Klene is therefore  
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18 <sup>39</sup> Pen. Code, § 4904.

19 <sup>40</sup> Pen. Code, § 4904; see also Assembly Bill 1593 (2020-2021) (appropriating compensation for  
20 multiple PC 4900 claimants); (Senate Bill 417 (2019-2020) (appropriating compensation over minority  
21 dissent for PC 4900 claimant); *cf.* Assembly Bill 1273 (2007-2008) (declining to appropriate  
22 compensation for PC 4900 claimant); Capitol Weekly, *GOP Senators Targeting Mods on Criminal  
Justice*, posted July 12, 2007, accessible at <https://capitolweekly.net/gop-senators-targeting-mods-on-criminal-justice/> (explaining AB 1273).

23 <sup>41</sup> Klene App. at p. 110.

24 <sup>42</sup> Klene App. at p. 110.

25 <sup>43</sup> AG Declination Letter, dated February 15, 2022, submitted via email on February 16, 2022.

26 <sup>44</sup> Pen. Code, §§ 4900, subd. (b), 4904.

27 <sup>45</sup> *Holmes v. Calif. Victim Comp. & Gov't Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

28 <sup>46</sup> Klene App. at p. 6 (dates of incarceration); see also Pen. Code, § 2900.5 (credit for days spent in  
custody); *People v. King* (1992) 3 Cal.App.4th 882, 886 (construing "days" for custody credit to include  
partial days).

1 entitled to a recommendation for compensation in the amount of \$1,202,740, representing \$140 per  
2 day of his erroneous incarceration.

3 **V. Conclusion**

4 CalVCB hereby grants Klene's unopposed claim for compensation as mandated by  
5 subdivision (b) of Penal Code section 4900 and, therefore, recommends that the Legislature  
6 appropriate \$1,202,740 as payment for his 8,591 days of incarceration that were solely attributable  
7 his vacated conviction for murder.

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9 Date: February 23, 2022



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10 Laura Simpton  
11 Senior Attorney  
12 California Victim Compensation Board  
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