

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 on May 16, 2022. CaIVCB will consider only comments received at its office by that date. Submit written comments to:

Neil Ennes, Legislative Coordinator  
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).

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