

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

Title 2, §§ 640 - 646

NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATIONS

Notice Published June 2, 2022

The California Victim Compensation Board (CaVVCB) is providing notice of modifications made to previously proposed regulations in Title 2, California Code of Regulations, sections 640, 642, and 645. Sections 640 and 642 address the procedure for presenting and rejecting a claim under Penal Code sections 4900 et seq., and section 645 concerns the contents of the proposed decision to resolve such claims. CaVVCB is providing this notice pursuant to Government Code section 11346.8, subdivision (c), and California Code of Regulations, section 44 of Title 1.

On April 1, 2022, CaVVCB proposed regulations for sections 640, 641, 642, 643, 644, 645 and 646 of Title 2, California Code of Regulations, by publishing a Notice of Proposed Rulemaking in the California Regulatory Notice Register (CRNR). CaVVCB simultaneously posted a copy of the Notice, with the proposed text and Initial Statement of Reasons (ISOR) on its website, along with a proposed form for submitting a claim under Penal Code section 4900. CaVVCB provided a 45-day comment period on these proposed regulations, spanning from April 1, 2022, through May 16, 2022. No public hearing was scheduled, and none requested.

Since the close of the comment period, CaVVCB has determined that modifications of the proposed regulatory text for sections 640, 642, and 645 are needed. The purpose of this notice is to inform the public of these proposed modifications and open a 15-day public comment period, running from **June 2, 2022**, through **June 17, 2022**. Consistent with the Administrative Procedure Act, CaVVCB will only address comments received during this comment period concerning modifications to the text of the proposed regulations.

Details on how to submit comments are provided below. A copy of the full proposed regulations text, including these modifications, is attached to this Notice.

In the Final Statement of Reasons, CaVVCB will respond to all comments received during the comment periods for the original proposed regulations and modifications.

### SUMMARY OF PROPOSED MODIFICATIONS

CaVVCB proposes to modify text in section 640, subdivisions (a), (b), and (d), section 642, subdivisions (a) and (b), and section 645, subdivision (g), as shown below. Additions and deletions from the original rulemaking proposal are shown in single underline and single strikethrough, respectively. Modifications to add text appear in double underline, and modifications to delete text appear in double strikethrough.

## 2 CCR 640(a)

(a) Claims on behalf of persons erroneously convicted of felonies shall be filed submitted on an "Erroneously Convicted Person Claim Form," Rev. September 2011 Rev. ~~March~~ May 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 statement of facts signed under penalty of perjury that shows the crime did not occur or was not committed by the claimant, and;

(2) supporting documentation as specified in the claim form.

## 2 CCR 640(b)

(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 5:00 p.m. during the week or anytime during the weekend or state holidays 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.

## 2 CCR 640(d)

(d) Once received, a hearing officer will review the claim to determine whether all requisite elements for jurisdiction are satisfied compliance with Penal Code sections 4900 and 4901 and, upon such a determination, deem the claim filed. A filed claim will be considered by the Board. All claims that fail to comply with sections 4900 and 4901 may be rejected by a hearing officer.

## 2 CCR 642(a)

(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 by a hearing officer and will not be heard or considered by the Board.

(1) A claim that fails to state facts upon which relief may be granted is not in compliance with Penal Code sections 4900 and 4901.

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

(3) A claim solely based upon a vacated conviction due to a change in the legal definition of the crime, for example pursuant to Penal Code section 1170.95, is not in compliance with Penal Code sections 4900 ~~or~~ and 4901. To be ~~recognizable~~ compliant, the claim must allege that the claimant is innocent of the crime with which they were ~~was~~ erroneously convicted because the charged crime was either not committed at all or not committed by the claimant under the law in effect at the time the charged crime allegedly occurred.

## **2 CCR 642(b)**

(d) ~~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.

## **2 CCR 645(g)**

(g) For claims proceeding under subdivision (b) of Penal Code section 4900, the proposed decision may not deny a claim unless the overall weight of evidence, which may include the trial record only in combination with other admissible evidence, satisfies the Attorney General's burden of proof.

## PURPOSE AND NECESSITY FOR MODIFICATIONS

### **2 CCR 640(a)**

The modifications to section 640, subdivision (a), are intended to provide guidance and clarity to claimants about the current procedure to submit their claims to CalVCB. The modifications include replacing the term “filed” with “submitted” for consistency. It also includes updating the reference to the latest version of the claim form, which was slightly modified in May 2022 for grammatical and stylistic corrections, without any substantive change. A copy of the revised claim form is accessible on CalVCB’s website. Subdivision (a)(1) of this section is modified to delete the potentially ambiguous term “detailed” and replace it, instead, with a description of the contents that must be included in the verified factual summary accompanying the claim. Finally, subdivision (a)(2) of this section is modified to clarify that the requisite type of supporting documentation is specified in the claim form. These changes are needed to assist claimants who wish to submit their claims to CalVCB, often without the assistance of an attorney.

### **2 CCR 640(b)**

The sole change in section 640, subdivision (b), replaces the general term “business hours” with a specific time during the week and specifically excludes weekends and holidays. This change is needed to avoid uncertainty and provide clear instruction to claimants about the current procedure for submitting their claims.

### **2 CCR 640(d)**

New language is added to subdivision (d) of section 640 to clarify the procedural distinction between a claim that is “filed” and a claim that fails to comply with Penal Code sections 4900 and 4901. Specifically, filed claims will be considered and ultimately decided by the Board in a public meeting, after consideration of the hearing officer’s proposed decision, at which the parties may appear and present arguments as to why the proposed decision should be adopted or rejected. (See Cal. Code of Regs., tit. 2, §§ 619.2, 619.3, 619.4, 619.5 (Board

Meeting procedures).) All other claims may be rejected by a hearing officer. The procedure to be employed by the hearing officer before rejecting such a claim is set forth in section 642, which requires notice to the claimant of the defect and an opportunity to cure the defect before rejection. The rejection procedure is applied to roughly half of all submitted claims to CalVCB, which conserves resources for the parties, as well as CalVCB, by avoiding an administrative hearing before a hearing officer and appearance before the Board on a claim that cannot, as a matter of law, be granted. Decisions by the Board, as well as rejections by the hearing officer, constitute final determinations that are subject to judicial review pursuant to section 1094.5 of the California Code of Civil Procedure.

## **2 CCR 642(a)(3)**

Clarifying language is added to subdivision (a)(3) of section 642 to confirm that a change in the legal definition of any crime for which the claimant was previously convicted, and not just the change to the definition of murder under Penal Code section 1170.95, is an insufficient basis upon which to raise a cognizable claim. Instead, the claim must allege factual innocence under the law in effect at the time the crime allegedly occurred. This change is needed to provide clarity and guidance to claimants about the required elements for presenting a claim to the Board and to ensure consistent decisions by the Board in an efficient manner.

## **2 CCR 640(d), 642(a) & (b)**

The remaining changes in section 640, subdivision (d), and section 642, subdivisions (a) and (b), are intended to avoid using the technical term of jurisdiction, which may be confusing to litigants. The term jurisdiction is replaced, instead, with its definition in this particular administrative proceeding, which means compliance with all of the statutory requirements set forth in Penal Code sections 4900 and 4901 to present a claim to the Board for consideration. Sections 4900 and 4901, in turn, require a timely submitted and verified claim asserting innocence of a felony conviction, for which the claimant served a term of imprisonment, because the charged crime either did not occur or was not committed by the claimant. (Pen. Code, §§ 4900, 4901.) These changes include grammatical corrections, replacing “or” with “and,” to require compliance with both sections 4900 and 4901 for consistency. It similarly replaces “cognizable” with “compliant” for consistency. Also, clarifying language is added to section (a) of section 642 to confirm that a hearing officer, in lieu of the three-member Board, may reject claims that fail to comply with sections 4900 and 4901. These changes to the proposed regulatory text are needed to provide clarity and guidance to the litigants as to the substantive and procedural requirements for presenting a claim to the Board and to ensure consistent decisions by the Board in an efficient manner.

## **2 CCR 645(g)**

The final modification adds new subdivision (g) to section 645. Subdivision (g) confirms, in accordance with Penal Code section 4903, subdivision (d), that the proposed decision may deny a claim proceeding under subdivision (b) of Penal Code section 4900 only when the overall weight of admissible evidence, which may include the trial record in combination with some other evidence, satisfies the Attorney General’s burden of proof. Subdivision (g) is intended and needed to provide clarity as to the appropriate considerations upon which the proposed decision may be based. It is also intended and needed to ensure consistency by the Board in reaching those decisions.

## WRITTEN COMMENT PERIOD

Any interested individual, or their authorized representative, may submit written comments regarding the modifications set forth above to the proposed regulations in Sections 640, 642, and 645. The written comment period closes on **June 17, 2022**. CalVCB will consider only comments received at its office by that date. Comments may be submitted by regular mail to:

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

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

## AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of all documents related to this rulemaking can be accessed via CalVCB's website at <https://victims.ca.gov/board/proposed-regulations/>.