

Victim Compensation Board Meeting Agenda
September 15, 2022
10:00 a.m.
400 R Street
Third Floor, Room 330
Sacramento, CA 95812

BOARD MEETING MATERIALS

- | | | |
|----------------|---|------------------|
| Item 1. | Approval of Minutes
Minutes of the July 21, 2022, Board Meeting
DRAFT Minutes attached | Action Item |
| Item 2. | Public Comment on Items Not on the Agenda
The Board will receive comments from the public on matters that are not on the agenda. The Board may not discuss or take any action on any item raised during public comment except to decide whether to place the matter on a subsequent agenda. (Gov. Code, § 11125.7.)
No materials for this item | |
| Item 3. | Executive Officer Statement
2021-22 Annual Report attached | Information Item |
| Item 4. | Legislative Update
Copy of Legislative Update attached | Information Item |
| Item 5. | Contract Update
Copy of Contract Report attached | Information Item |
| Item 6. | Request for Authority to Conclude the Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 640, et seq.)
Copy of agenda item attached | Action Item |
| Item 7. | Joaquin Ciria (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |
| Item 8. | Kimberly Long (Pen. Code, §§ 4900, et seq.)
Copy of Proposed Decision attached | Action Item |

ITEM 1

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California Victim Compensation Board Open Meeting Minutes July 21, 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 Amy Tong, Secretary of the Government Operations Agency, at 400 R Street, Third Floor, Room 330, Sacramento, California, on Thursday, July 21, 2022, at 10:10 a.m. Appearing 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, Andrea Burrell, was also present and recorded the meeting.

Item 1. Approval of the Minutes of the May 19, 2022, Board Meeting

Member Becton moved approval of the Minutes for the May 19, 2022, Board Meeting. The motion was seconded by Member Silva. By unanimous vote, the Board approved the minutes of the May 19, 2022, Board meeting.

Item 2. Public Comment

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

There was no public comment.

Item 3. Executive Officer Statement

Executive Officer Gledhill updated the Board on several items:

To start, Ms. Gledhill reported that nearly all of the budget proposals impacting CalVCB that were part of the May Revise made their way into the final budget, which passed and was signed into law, and took effect on July 1. Through the budget, benefit caps for three key expenses increased for the first time in 20 years. The expense limits for funeral and burial increased from \$7,500 to \$12,818, relocation increased from \$2,000 to \$3,418, and crime scene cleanup increased from \$1,000 to \$1,709.

The higher limits apply to any new applications received on July 1st and after. Ms. Gledhill noted that the increases were long overdue and their inclusion in the budget is great news for victims and certainly will help during these inflationary times.

The budget also provides \$23 million in additional funding for Trauma Recovery Centers. This breaks down to \$6.62 million to boost funding for current TRCs; \$6.67 million in

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additional money for grant awards over the next three years; \$5 million to establish a Regional TRC Pilot Program setting up satellite TRC offices in rural or underserved communities in the Central Valley and Northern California; \$2.16 million for the 18 existing TRCs to provide flexible emergency cash assistance for victims for such costs as transportation, childcare, food, emergency shelter or other urgent expenses; \$1.39 million for a three-year contract with the University of California Trauma Recovery Center Technical Assistance Program for technical assistance and training for CalVCB and TRCs; and \$1.15 million in extra staffing for CalVCB to manage the increased workload.

The budget also allocates \$3 million from the state Restitution Fund for CalVCB to conduct a media and outreach campaign. CalVCB is very excited about the opportunity to build awareness about its program and its benefits. This will fund a strategic, three-year campaign to target underserved populations and connect victims with the compensation and services they need.

CalVCB believes this campaign will help overcome traditional barriers that exist to accessing CalVCB in addition to those created by the pandemic. CalVCB aims to build a solid foundation for outreach that it can expand upon once the campaign concludes.

CalVCB will hire a vendor to create and execute this campaign. There will be more information about this as it moves through the process.

Finally, the budget also included money to bolster CalVCB's information technology security infrastructure and to hire additional attorneys to handle the increase in erroneous conviction claims prompted by the passage of SB 446.

Aside from providing additional funding for CalVCB, the budget makes an important change in how CalVCB pays people who the Board determines have been erroneously convicted. The process has been for the Board to make a recommendation to the Legislature on each approved PC 4900 claim. The Legislature then in turn votes on the legislation to pay the claim, and a check is sent to the claimant if and when the legislation is passed and signed.

These claims are almost always approved, but the process can take many months, especially when the Legislature is not in session.

AB 200, one of the budget trailer bills, revised statute to direct CalVCB to make the payment for an approved PC 4900 claim immediately after the Board approves the claim. The budget also allocated \$7 million to CalVCB for these payments, with a provision to increase this amount upon order of the Department of Finance by the amount of any total unpaid claims. Under AB 200, CalVCB will provide an annual summary of approved claims to the Legislature. Also, AB 200 confirmed that CalVCB remains immune from damages for any decision rendered on a PC 4900 claim.

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This change will allow these claimants to receive their compensation more quickly. This was a change CalVCB sought as a way to improve the process and Ms. Gledhill expressed how pleased she is that it was part of the final budget.

Ms. Gledhill provided a related update on proposed regulations governing PC 4900 claims.

Earlier this year, CalVCB officially commenced the rulemaking process to revise and amend its regulations governing PC 4900 claims in Sections 640 through 646 of Title 2, of the California Code of Regulations.

On April 1, the proposed regulations and related documents were submitted to the Office of Administrative Law (OAL), and published on CalVCB's website. Those documents included a revised form to submit PC 4900 claims to CalVCB.

After the initial 45-day public comment concluded, CalVCB determined that modifications were needed, and they were posted on CalVCB's website on June 2. Following a 15-day public comment, CalVCB was in the process of finalizing the proposed regulations as modified for Board approval when AB 200 became law.

CalVCB determined that additional modifications were needed to the regulations and claim form as a result of AB 200, in order to replace references to "recommendation" with, instead, "approval of a claim...." CalVCB posted this second round of modifications to the website on July 20th, and the 15-day public comment period expires on August 4th. To date, no public hearing has been scheduled, and none has been requested. CalVCB hopes to have a final version of the regulations ready to present for the Board's approval at the September Board meeting.

Additionally, Ms. Gledhill mentioned that she attended the Conference of the National Association of Crime Victim Compensation Boards in June in Alexandria, Virginia. This was the first conference held in person in three years, and thus, her first conference as executive officer of CalVCB. She mentioned she got a chance to meet and talk in person with colleagues from across the country, who are grappling with many of the same issues as CalVCB – decreases in restitution, questions about eligibility and how to reach more victims. Ms. Gledhill stated it was powerful to hear from colleagues in New York and Texas so soon after large mass violence events in their states.

As part of the conference, Ms. Gledhill was elected to the Board of the organization. Because California is the largest program in the country, it is important that we are actively engaged and participate in these national discussions.

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Right now, the Federal Office of Victims of Crime at the US Department of Justice is considering updating the federal rules surrounding compensation and we are monitoring those discussions very closely.

Finally, Ms. Gledhill stated that CalVCB will continue its efforts to move to its new, permanent way of working. CalVCB is transitioning to at home COVID testing after successfully administering testing in the office for the past 6 months. CalVCB also had its telework agreement approved by the union partners and the Department of General Services. The statewide telework form will be rolled out to CalVCB employees next month.

Chairperson Ravel thanked Ms. Gledhill for the updates. He also congratulated her on her selection to the Board of the National Association.

Item 4. Legislative Update

The Legislative Update was provided by Deputy Executive Officer of the External Affairs Division, Andrew LaMar.

Mr. LaMar informed the Board that the Legislature is currently on summer recess and will be returning on August 1st for the final month of the legislative session.

Mr. LaMar provided updates on several bills that CalVCB is following:

- SB 877, by Senator Eggman, which would authorize CalVCB to reimburse mental health providers who are licensed in states outside of California is currently on the Suspense File in the Assembly Appropriations Committee. The Suspense File will be heard by August 12th, when bills will either pass off the file and move to the floor or be held in committee.
- SB 1468, by Senator Glazer, which is related to findings of factual innocence, is scheduled to be heard in the Assembly Appropriations Committee on August 3rd, where it will be a candidate to be placed on the Suspense File.
- SB 993 by Senator Skinner, which would make many significant changes to CalVCB statutes, is currently in the Assembly Appropriations Committee. However, the 2022-23 budget stated the intent of the Legislature to reconsider the changes proposed by this bill for potential inclusion in the 2024-25 budget, pending a determination in the spring of 2024 that General Fund money is available to support such changes.

Additionally, SB 632 by Senator Portantino, which would appropriate \$4.5 million from the General Fund to pay five erroneous convicted claims approved by the Board at the March Board meeting was signed by the Governor this week.

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Three additional claims were approved by the Board at the May Board meeting. These claims could not be included in SB 632 and were approved before the Board was authorized to approve payment directly. Upon the Legislature's return, the appropriation to pay these claims will be amended into an existing bill to allow its passage before the end of the session.

Chairperson Ravel thanked Mr. LaMar for the updates.

Item 5. Contract Update

The Contract Update was provided by Executive Officer Lynda Gledhill.

Ms. Gledhill explained the Board would consider two items for approval at the meeting related to the Forced or Involuntarily Sterilization Compensation Program. As part of the statute, the Department of State Hospitals and the Department of Corrections and Rehabilitation must, in consultation with stakeholders, establish markers or plaques at designated sites that acknowledge the wrongful sterilization of thousands of vulnerable people.

These two contracts that are presented today for approval facilitate compliance with that part of the statute.

Chairperson Ravel thanked Ms. Gledhill for her updates.

Member Silva moved to approve the Executive Officer's execution of items 1 and 2 of the Contract Report – the contract with the Department of State Hospitals in the amount of \$450,000 and the contract with the Department of Corrections and Rehabilitation in the amount of \$500,000. The motion was seconded by Member Becton. By a unanimous vote of the Board, the motion passed.

Item 6. Proposal to Amend Trauma Recovery Center Grant Awards

The Proposal to Amend Trauma Recovery Center Grant Awards, was presented by Deputy Executive Officer of the External Affairs Division, Andrew LaMar.

Mr. LaMar stated the state budget has provided \$23 million in additional funding for Trauma Recovery Centers. This will allow TRC's to serve more victims of crime across California.

Mr. LaMar explained that a Trauma Recovery Center (TRC) is an organization that helps victims of violent crime by providing trauma-informed services that include assertive

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outreach to underserved populations, comprehensive evidence-based mental health services, and coordinated care tailored to each victim's needs.

CalVCB presently funds 18 TRCs through grants.

The 2022-23 budget provided funding to do the following: (1) increase support for lower funded TRCs; (2) add funding for future TRC grants; (3) establish a Regional TRC Pilot Program aimed at rural and underserved communities; (4) provide flexible emergency cash assistance for TRC clients; and (5) to execute a contract with the University of California Trauma Recovery Center Technical Assistance Program for technical assistance and training for TRCs and CalVCB.

This item asks for two Board actions: (1) to approve amended grant agreements with 11 TRCs to increase their funding, as directed by the state budget, and (2) to authorize Executive Officer Lynda Gledhill to sign a contract with the UC TRC Technical Assistance Program, as directed by the legislation approving the state budget.

Finally, the amounts for the amended TRC contracts are listed in the agenda item. The total amount of increased funding for them collectively is \$6.62 million. The contract with the Technical Assistance Program is currently being developed by staff. The budget provides \$1.39 million for a three-year contract. This will be a deliverables-based contract that will include providing training to staff in all TRCs, assisting new TRCs and studying and identifying the need for TRC services throughout the state and how to best meet that need.

Chairperson Ravel thanked Mr. LaMar for the updates.

Member Becton moved to approve the amended TRC grant awards as recommended by staff. The motion was seconded by Member Silva. By a unanimous vote of the Board, the motion passed.

Member Silva moved to approve the Executive Officer's execution of the contract with the University of California Trauma Recovery Center Technical Assistance Program in the amount of \$1,390,000. The motion was seconded by Member Becton. By a unanimous vote of the Board, the motion passed.

Item 7. PC 4900 Claim No. 22-ECO-08, Edward Easley

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

On March 2, 2022, Edward Easley filed an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was

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based upon Mr. Easley's 1993 convictions for lewdly touching a child. The convictions were vacated- and dismissed by the Shasta County Superior Court in August of 2017.

As there was no objection filed by the Office of the Attorney General, compensation is automatic under Penal Code section 4900 (b) and the proposed decision recommends compensation of \$263,620, which represents \$140 per day for the 1,883 days Mr. Easley was wrongfully imprisoned.

Throughout the proceedings, Mr. Easley was represented by Paige Kaneb, of the Northern California Innocence Project. The Attorney General's Office was represented by Deputy Attorney General Jessica Leal.

Ms. Gauthier added the proposed decision on the last page recommends that if the decision is adopted by the Board, that the Legislature appropriate the money for payment of this claim. This proposed decision was drafted and submitted prior to the new legislation (AB 200) that took effect giving CalVCB the authority to directly pay PC 4900 claims. Therefore, Ms. Gauthier requested that the Board adopt the decision with the slight amendment that CalVCB pay the claim directly, assuming that appropriate funds are available and have been provided by the Legislature.

Chairperson Ravel asked that counsel for Mr. Easley address the Board first.

Linda Star, the Director of the Northern California Innocence Project, spoke on behalf of Mr. Easley. Ms. Star stated that they have been working on Mr. Easley's case for 21 years and through changes in three separate laws. She stated it took the courage of a young woman who persisted in telling the truth, risked the wrath of her family, and incurred the scorn and belittlement of law enforcement, but persisted. She finished by stating Mr. Easley is only intent on establishing his innocence and having it publicly recognized. Compensation will be a great assistance to him since he lives on a chicken farm in Cottonwood. She thanked the Board and expressed her hope that compensation will be approved. She also said they were thrilled that CalVCB could compensate claimants directly now, and it does not have to go through the Legislature.

Chairperson Ravel thanked Ms. Star for her comments.

Chairperson Ravel then asked if Mr. Easley would like to address the Board. Mr. Easley, who appeared in-person, declined to comment.

Chairperson Ravel thanked Mr. Easley for his appearance.

Chairperson Ravel then asked Ms. Leal for her comments on the matter.

Ms. Leal, who appeared via Zoom, agreed that compensation should be granted.

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Chairperson Ravel thanked Ms. Leal for appearing before the Board.

Member Silva moved to adopt the Hearing Officer's Proposed Decision in the Penal Code section 4900 matter of Edward Easley, with the amendments as noted in accordance with the recent statutory changes to Penal Code section 4904 under Assembly Bill 200. The motion was seconded by Member Becton. The motion was approved by a unanimous vote of the Board and the Proposed Decision was adopted.

Item 8. PC 4900 Claim No. 18-ECO-25, Lamont Tarkington

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

On September 27, 2018, Lamont Tarkington submitted an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based on Mr. Tarkington's 2007 convictions for five counts of second-degree robbery and one count of second-degree commercial burglary, which were vacated on state habeas for ineffective assistance of counsel. The Los Angeles County District Attorney's Office elected to retry Mr. Tarkington, but the case was dismissed pursuant to Penal Code section 1382 after the prosecution announced it was unable to proceed.

Mr. Tarkington seeks compensation for 4,556 days of imprisonment in the amount of \$637,840.

While the claim was under consideration with CalVCB, the Legislature passed Senate Bill 446. Senate Bill 446 included the addition of subdivision (b) to Penal Code section 4900, which shifted the burden of persuasion for cases like Tarkington's, whose underlying convictions were vacated during a habeas proceeding and dismissed on remand. Both parties agreed, as did the Hearing Officer, that newly amended Penal Code section 4900, subdivision (b) and corresponding amendments applied to Tarkington's claim and if the Office of the Attorney General chose to object to compensation, the Office of the Attorney General bears the burden to prove by clear and convincing evidence that Mr. Tarkington committed the acts constituting the offense.

The Office of the Attorney General objected to the claim and waived further hearing, submission of additional evidence, and briefing, and submitted on the record. Mr. Tarkington's counsel also waived further hearing, raising new arguments, and submission of additional evidence and submitted on the record.

In accordance with California Code of Regulations, title 2, section 619.4, subdivision ©, a schedule was established for the submission of written argument after the proposed

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decision was mailed to the parties. Claimant's counsel submitted written argument, which was followed by a response from the Office of the Attorney General and claimant's counsel's reply to the Office of the Attorney General. All of these materials were provided to the Board for their review, as well as the proposed decision, which recommends denial of the claim as the Attorney General met its burden of proving by clear and convincing evidence that Mr. Tarkington robbed the Bank of America.

Throughout the proceedings, Mr. Tarkington was represented by Leo Terrell along with Tony Su from the Law Offices of Leo Terrell. The Attorney General's Office was represented by Deputy Attorney General Dina Petrushenko and Deputy Attorney General Jessica Leal.

Mr. Terrell, Mr. Su, and Ms. Leal were all in attendance.

Chairperson Ravel asked that counsel for Mr. Tarkington address the Board first.

Mr. Terrell, who appeared in person, started by introducing his co-counsel Mr. Su who presented the argument. Mr. Su stated that with the change in the law, the Attorney General did not meet their burden of proof and did not provide clear and convincing evidence that Lamont Tarkington committed the crime. The importance in this case is the Court of Appeals' finding that the main detective that investigated this case was not truthful. The main detective exaggerated the existence of bank dye on a t-shirt that was found in Lamont Tarkington's car. Mr. Su asked the Board to consider the credibility of that main detective and how he tainted the entire case and how the Attorney General relied on evidence that the Court of Appeals already found did not connect Lamont to the crime.

Mr. Su, concluded by urging the Board to approve Mr. Tarkington's claim and to not follow the decision by the Hearing Officer to deny Lamont's claim.

Chairperson Ravel thanked Mr. Su for his comments.

Chairperson Ravel confirmed that Mr. Tarkington was not in attendance.

Chairperson Ravel then asked Ms. Leal for her comments on the matter.

Ms. Leal, who appeared via Zoom, stated the Attorney General's Office has thoroughly addressed Mr. Tarkington's claim of the untruthfulness of the detective in this case and the evidence that is addressed by the Attorney General and the four responses, and the Hearing Officer's proposed decision summarized clear and convincing evidence that proves Mr. Tarkington committed the robbery of Bank of America.

The Attorney General requested that the proposed decision be adopted.

Chairperson Ravel thanked Ms. Leal for appearing before the Board.

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Member Silva moved to adopt the Hearing Officer's Proposed Decision in the Penal Code section 4900 matter of Lamont Tarkington. The motion was seconded by Member Becton. The motion was approved by a unanimous vote of the Board and the Proposed Decision was adopted.

Closed Session

The Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:33 a.m. pursuant to Government Code section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1-142 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.

Member Silva moved to approve items 1 through 142, and to adopt proposed decision numbers 1-142, of the Victim Compensation Program. Member Becton seconded the motion. The motion was approved by a unanimous vote of the Board and the proposed decisions were adopted.

Adjournment

Member Becton moved adjournment of the July Board meeting. Member Silva seconded the motion. The motion was adopted by a unanimous vote of the Board and the meeting was adjourned at 10:42 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, September 15, 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 expect to decide whether to place the matter on a subsequent agenda.

(Gov. Code, § 11125.7.)

ITEM 3

Executive Officer's Statement

CALIFORNIA VICTIM COMPENSATION BOARD

2021 | 2022

ANNUAL REPORT

CALIFORNIA
CaIVCB
VICTIM COMPENSATION BOARD

OUR MISSION

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

OUR VISION

CalVCB helps victims of crime restore their lives.

OUR VALUES

INTEGRITY | We are honest and ethical.

RESPECT | We treat everyone with courtesy and decency.

COMPASSION | We care about victims and their well-being.

DEDICATION | We serve with devotion and professionalism.

COLLABORATION | We create an atmosphere of teamwork.

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

STRATEGIC FRAMEWORK 2021-2024

CalVCB executive staff assessed the strengths and weaknesses of the organization and conducted an in-depth survey of employees. With the information they collected, they developed a strategic plan for 2021-24 with three overarching goals:

- Promote access to CalVCB services
- Improve the CalVCB experience
- Develop and engage staff to best serve victims

Titled “Strategic Framework 2021-2024,” the document provides a road map for how to pursue our values and goals and fulfill our mission. “California’s victims of violent crime are counting on us to support them,” said Executive Officer Lynda Gledhill. “It’s imperative that as an organization we strive for excellence, hold ourselves accountable to our goals and constantly work to best meet the needs of victims.”

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ABOUT US

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At CalVCB, we have the important responsibility of helping victims of crime recover from their experiences by compensating them for costs associated with the crimes. Helping victims heal and rehabilitate is not only crucial for the victims themselves, but also for their families and communities.

Our work in Fiscal Year 2021-22, as presented in this report, continues my commitment to do all we can to help victims, and by extension, all of California.

CalVCB worked hard to broaden the benefits and services available to victims and to find ways to better reach them. Working with the Governor and Legislature, we have been able to:

- Increase the limit for reimbursements for funeral and burial expenses for the first time in 20 years.
- Expand Trauma Recovery Centers with \$23 million in additional funding that includes setting up satellite offices in rural or underserved areas, providing flexible cash assistance for victims and increasing grants over the next three years.
- Boost outreach with a \$3 million, three-year campaign to target underserved populations, raise awareness about CalVCB and connect victims with the compensation and services they need.
- Shorten the payment process for people approved for erroneous conviction claims.

In addition, CalVCB launched the Forced or Involuntary Sterilization Compensation Program to pay reparations to victims of state-sponsored forced sterilization. We are proud we were asked to run this program to compensate those who underwent this reprehensible practice.

We have stepped up our outreach, both virtually and in person, and continue to grow our efforts to connect victims with our program. I have also met with my state and national colleagues to share resources and ideas on better serving victims of crime.

While pursuing these program expansions and changes, CalVCB has continued to work on efficiently processing claims, developing our staff and strengthening our organization.

In Fiscal Year 2021-22, we took significant strides in our work to serve victims and I look forward to the year ahead, as we continue our commitment to helping victims of crime restore their lives.

Lynda Gledhill

Lynda Gledhill
Executive Officer

We have the
important
responsibility of
helping victims
of crime recover
from their
experience by
compensating
them for costs
associated with
the crime.



AMY TONG | *Secretary of the Government Operations Agency*

In March 2022, Amy Tong was appointed Secretary of Government Operations by Governor Gavin Newsom. She was named to the position after having previously served as the State's Chief Information Officer and California Department of Technology Director, and the Director of the California Office of Digital Innovation.



BETTY T. YEE | *California State Controller*

Betty T. Yee, who is a standing member of the Board, was elected State Controller in 2014 and re-elected in 2018, following two terms on the California Board of Equalization. Now serving as the state's chief fiscal officer, Yee also chairs the Franchise Tax Board and serves as a member of the CalPERS and CalSTRS governing boards.



DIANA BECTON | *Contra Costa County District Attorney*

Diana Becton, who was appointed to the Board by Governor Newsom in January 2021, was sworn in as the 25th District Attorney for Contra Costa County in 2017. Following her appointment from the Board of Supervisors, she was elected to the position in June 2018 and re-elected in 2022. Becton served for 22 years as a judge in Contra Costa County. She is the past president of the National Association of Women Judges, the nation's leading voice for women in the judiciary, and past chair of the State Bar Council on Access and Fairness.

LYNDA GLEDHILL | *Executive Officer*

Lynda Gledhill has served as Executive Officer of CalVCB since December 2019. In that time, she has led a transformation of the organization that included hiring a new executive team, reorganizing staff and implementing measures to improve efficiency. Previously, Gledhill served for seven years as the Deputy Secretary of Communications at the Government Operations Agency, where she worked on projects to modernize the California DMV, establish the California Tax and Fee Administration and make all state government websites accessible. She also held executive level communications positions in the California Attorney General's Office and the California State Senate, after starting her career as a journalist.

NATALIE MACK | *Chief Deputy Executive Officer*

Natalie Mack joined CalVCB as Deputy Executive Officer of the Victim Compensation Program in May 2020 and became Chief Deputy Executive Officer in July 2021. Before coming to CalVCB, Mack spent eight years at the Employment Development Department. Mack began her state service in November 2001. She has held positions with the State Controller's Office, Department of Corrections and Rehabilitation, Department of Health Care Services, Department of Social Services and Department of Justice.

KIM GAUTHIER | *Chief Counsel*

Kim Gauthier became Chief Counsel at CalVCB in June 2020. She previously served as Special Counsel/Assistant Chief Counsel for the Secretary of State, where she also held the position of Deputy Secretary of State for Operations during her 10 years with that office. Gauthier served as Chief Counsel at First 5 California, Senior Corporations Counsel for the Department of Corporations and Staff Counsel at the Department of Health Services.

ANDREW LAMAR | *Deputy Executive Officer, External Affairs Division*

Andrew LaMar joined CalVCB as Deputy Executive Officer of the External Affairs Division in October 2020. He previously served as the Deputy Director of Communications at the California Department of Human Resources. He has held numerous communication and policy roles at the Capitol, including in the offices of California Senator Bob Hertzberg, Superintendent of Public Instruction Tom Torlakson, the Senate Office of Research, Senate Majority Leader Ellen Corbett, and Senate President pro Tempore Don Perata. He started his career as a journalist, working for several different newspapers in Oregon and California.

ABDUL SHAIK | *Deputy Executive Officer, Information Technology Division*

Abdul Shaik joined CalVCB as Deputy Executive Officer of Information Technology in July 2022. Before joining CalVCB, Abdul worked for the Employment Development Department as one of the IT Division Chiefs and provided technical leadership in managing the department's payment systems for the unemployment, disability and paid family leave programs. Prior to EDD, he worked for FI\$Cal as the Assistant Deputy Director of Technology. He has also held technology management positions with the Department of Corrections and Rehabilitation, the Department of Health Services and Intel Corporation.

VINCENT WALKER | *Deputy Executive Officer, Victim Compensation Program*

Vincent Walker joined CalVCB as Deputy Executive Officer of the Victim Compensation Program in August 2021. Before coming to CalVCB, Walker spent 16 years providing oversight to a variety of statewide programs and direction regarding claim management, quality assurance, policy and procedure development and customer relations at the Employment Development Department.

CalVCB is the nation's first victim compensation program. It has provided compensation and support to victims of violent crime since 1965.

The program has served as a model for others in victim services across the country and around the globe.

Over the years, CalVCB's mission has grown. Today, the program compensates not only victims of violent crime but also people who were wrongfully convicted and survivors of state-sponsored sterilization.

CalVCB staff are dedicated to helping victims receive compensation for crime-related expenses to help them restore their lives.

Crimes eligible for claims include child abuse, domestic violence, human trafficking, assault, homicide, elder abuse, sexual assault, vehicular manslaughter and stalking. CalVCB is the payor of last resort, meaning it reimburses claimants for crime-related expenses when other sources, such as health insurance, auto insurance or workers' compensation, are not available or are exhausted.

Reimbursed expenses can cover medical and mental health treatment, income loss and funeral or burial expenses, among others. A total of up to \$70,000 in expenses can be paid to an eligible claimant per crime.

Assistance is also available to survivors of crime victims who have died, persons who are legally dependent upon the victim for financial support, and members of a victim's family. Parents, grandparents, siblings, spouses, children or grandchildren of the victim are all eligible.

In Fiscal Year 2021-22, CalVCB received 39,015 applications and paid \$40.3 million in compensation. Statute requires that CalVCB process applications within 90 days. In 2021-22, CalVCB's average application processing time was 45 days.

Under the leadership of Executive Officer Lynda Gledhill, CalVCB has worked to continuously exceed statutory timeline requirements for processing claims, increase benefit limits, improve efficiency, boost outreach and expand services and support for victims. CalVCB is working every day to build a broader and stronger network of support for victims.



CalVCB staff are dedicated to helping victims receive compensation for crime-related expenses to help them restore their lives.

FISCAL YEAR 2021-22 STATISTICS

For the period July 1, 2021 – June 30, 2022

CALVCB APPLICATION DATA

Applications Received	39,015
Applications Processed	37,128
<i>Allowed</i>	<i>30,886</i>
<i>Denied</i>	<i>4,996</i>
<i>Duplicate</i>	<i>1,246</i>

PAYMENTS BY PAYMENT CATEGORY

Crime Scene Cleanup	\$20,029.89
Dental	\$1,775,836.55
Funeral/Burial	\$13,464,930.00
Home Modification	\$1,120.50
Income Support Loss	\$5,497,697.41
<i>Human Trafficking</i>	<i>\$1,119,638.48</i>
<i>Other</i>	<i>\$4,378,058.93</i>
Medical	\$6,251,578.05
Mental Health	\$9,991,555.63
Rehabilitation	\$0.00
Relocation	\$2,473,834.25
Residential Security	\$703,713.51
Vehicle Purchase or Modification	\$172,089.83
Total	\$40,352,385.62

PAYMENTS BY CRIME CATEGORY

Arson	\$23,135.95
Assault	\$14,696,629.43
Child Abuse	\$3,022,141.05
DWI/DUI	\$1,046,128.44
Homicide	\$14,394,616.19
Kidnapping	\$1,540,411.34
<i>Human Trafficking</i>	<i>\$1,164,862.25</i>
<i>Other</i>	<i>\$375,549.09</i>
Not Covered or Unspecified	\$21,191.12
Other	\$981,701.48
Other Vehicular	\$1,412,770.34
Robbery	\$1,290,900.13
Sexual Assault	\$1,769,471.98
Stalking	\$144,521.21
Terrorism	\$8,766.96
Total	\$40,352,385.62

APPS RECEIVED BY RACE/ETHNICITY

American Indian/Alaska Native	284
Asian	1,135
Black/African American	5,983
Hispanic or Latino	16,242
Multiple Races	1,441
Native Hawaiian and Other Pacific Islander	188
Not Reported	7,185
Some Other Race	289
White Non-Latino/Caucasian	6,268
Total	39,015



CalVCB's principal charge is to reimburse victims of violent crime for their crime-related expenses. But CalVCB does more than that – it funds Trauma Recovery Centers, responds to mass violence events, and compensates people who were wrongfully convicted of crimes, as well as victims of forced sterilization.

In 2021-22, CalVCB expanded many benefits and services available to victims.

INCREASING BENEFIT LIMITS

In an ongoing effort to identify ways to better help victims, during Fiscal Year 2021-22, CalVCB identified key benefit limits that had not been raised since 2000 and worked with the Governor's Office and the Legislature to increase these limits in several categories. The state budget passed and signed into law for 2022-23 adjusted the reimbursement limits for three types of expenses:

- Funeral and burial expenses increased from \$7,500 to \$12,818.
- Relocation expenses increased from \$2,000 to \$3,418.
- Crime scene cleanup expenses increased from \$1,000 to \$1,709.

The higher limits took effect on July 1, 2022, and

cover new claims filed on that date or later. For more information on victim benefits, see CalVCB's [Compensation Benefit Reference Guide](#).

EXPANDING SERVICES AND SUPPORTING VICTIMS

Through legislative and budget changes, CalVCB has grown the Trauma Recovery Center Program and changed how erroneously convicted persons are compensated. The successful launch of the Forced or Involuntary Sterilization Compensation Program continued support of mass violence victims and compensation for human trafficking victims have also been areas that CalVCB has actively supported victims.

TRAUMA RECOVERY CENTER PROGRAM

Any victim of violent crime can visit a Trauma Recovery Center (TRC) for immediate counseling and assistance. TRCs provide mental health treatment and case management services to crime victims who may not be eligible for victim compensation, or who may be fearful of reporting a crime to law enforcement.



Currently, CalVCB funds 18 TRCs across the state and closely monitors them to ensure they meet the requirements and standard of care set in state statute.

The Fiscal Year 2022-23 state budget provided \$23 million in additional funding for TRCs. The money boosts grant awards for current TRCs and provides more funding for awards to be made over the next three years.

It also allocates \$120,000 to each TRC to provide flexible emergency cash assistance for victims for costs, such as transportation, childcare, food, emergency shelter or other urgent expenses.

In addition, the budget provided funding for a three-year pilot program to create satellite TRC offices in rural or underserved communities in Central and Northern California.

Research shows that TRCs provide better outcomes for victims than standard care. Victims who receive services at TRCs are happier, less likely to suffer symptoms of Post-Traumatic Stress Disorder (PTSD), more likely to cooperate with law enforcement to solve crimes and more likely to return to work.

Each spring, CalVCB awards grants to TRCs through a competitive application process. For more information, visit CalVCB's [TRC webpage](#) or download a [TRC fact](#)

[sheet](#) to share with others.

FORCED OR INVOLUNTARY STERILIZATION COMPENSATION PROGRAM

In July 2021, California created the Forced or Involuntary Sterilization Compensation Program and directed CalVCB to establish and oversee it.

The purpose of the program is to compensate victims of state-sponsored forced sterilization that occurred at state-run hospitals, homes and institutions until 1979. Separately, the California Department of Corrections and Rehabilitation (CDCR) also sterilized many inmates without their consent after 1979 and those victims are also eligible for compensation.

The state budget set aside \$4.5 million for reparation payments to be equally shared among all forced sterilization survivors who were alive when the program began and who apply by December 31, 2023. Those eligible include anyone who was sterilized by the state prior to 1979 and anyone in the custody of CDCR who was sterilized without proper consent.

CalVCB successfully launched the program on January 1, 2022, and began processing applications and issuing payments within the first three months. An estimated



600 survivors of forced sterilization remain alive and are eligible for compensation.

To raise awareness, CalVCB has mailed posters and fact sheets about the program to libraries, skilled nursing facilities and correctional facilities statewide. We have also contracted with a marketing firm to do targeted outreach to all eligible survivors.

To learn more, visit CalVCB's [Forced Sterilization webpage](#), which provides information about the program and applications for survivors to fill out and submit.

COMPENSATING PEOPLE ERRONEOUSLY CONVICTED

Under California law, a person erroneously convicted of a felony and incarcerated in a California state prison may file a claim with CalVCB. Previously, if the claim was approved, the Board made a recommendation to the Legislature to appropriate funds to pay the claim, which amounts to \$140 for each day of incarceration served solely as a result of the erroneous conviction.

Following a proposal by CalVCB to establish a new process, CalVCB will be able to directly pay erroneous conviction claims approved by the Board rather than reporting them to the Legislature for appropriation. This process will allow approved claimants to receive

their compensation more quickly.

Other recent legislation changed the standard by which some claims are approved. Traditionally, these claims were approved only upon a preponderance of evidence that the claimant did not commit the offense for which they had been convicted and imprisoned.

Effective January 1, 2022, SB 446 amended the law to additionally require approval of claims in which the underlying conviction has been vacated by a grant of habeas relief and the charges resulted in dismissal or acquittal on remand, and the Attorney General fails to timely present clear and convincing evidence of guilt. Thus, a preponderance of evidence of innocence is no longer required for compensation to be awarded for this specific class of claims.

As a result, both the number of claims received and the amount of compensation recommended have increased significantly. Between January and June 2022, CalVCB received a total of 24 claims and recommended \$5,209,100 as compensation for six claimants, whereas between July 2021 and December 2021, CalVCB received a total of 16 claims and recommended \$2,973,040 compensation for three claimants.

Prompted by this and other legislative changes over the past decade, CalVCB proposed new and amended



regulations governing Penal Code section 4900 claims, which were last updated in 2012. The rulemaking process officially commenced in March 2022.

In total, during Fiscal Year 2021-22, the Board approved nine erroneous conviction claims, recommending that the Legislature appropriate \$8,182,140 for these claims.

ASSISTING VICTIMS OF MASS VIOLENCE

CalVCB continues to respond to mass violence events and reach out to its partners to make sure victims know about the support CalVCB can provide.

CalVCB helps coordinate the immediate response for victim assistance and services when such an event occurs, and provides compensation to victims and their families afterward.

On April 3, 2022, six people were killed and 12 others were injured in a shooting in downtown Sacramento. As of the end of June 2022, CalVCB had issued a total of \$29,404 to five claimants, an average of \$5,881 per claimant. Victims and their families can apply for compensation through April 3, 2029.

CalVCB continues to offer support for survivors of the July 28, 2019, shooting at the Gilroy Garlic Festival, where four people (including the gunman) were killed and 17

were wounded. As of the end of June 2022, CalVCB had issued a total of \$248,140 to 121 claimants, an average of \$2,051 per claimant. Victims and their families can apply for compensation through July 28, 2026.

On October 1, 2017, more than 600 people were injured in a shooting at the Route 91 Harvest Festival in Las Vegas. Thirty-five of the 58 people killed were from California. As of the end of June 2022, CalVCB had issued a total of \$6,300,319 to 1,725 claimants, an average of \$3,652 per claimant. Victims and their families can apply for compensation through October 1, 2024.

SUPPORTING VICTIMS OF HUMAN TRAFFICKING

Beginning January 1, 2020, AB 629 authorized CalVCB to provide compensation for income loss to victims of human trafficking. CalVCB can provide compensation equal to the loss of income or support that victims incur as a direct result of their deprivation of liberty, providing up to \$10,000 a year for up to two years per victim.

CalVCB has issued \$2,628,103 to 330 claimants under the new law.

For more information, visit CalVCB's [Human Trafficking webpage](#).

CalVCB works to build a strong network of support for victims and victim advocates. That means partnering with stakeholders at every level, from local and county officials to other states and the federal government.

CalVCB has continued to expand its outreach and networking efforts as agencies and organizations start meeting in person again in the wake of the COVID-19 pandemic. This has included attending national conferences, visiting counties for outreach and training, stepping up meetings with stakeholders, and providing more information to, and dialogue with, victims and victim advocates.

CREATING THE VICTIM SERVICES STATE AGENCY COORDINATION COUNCIL

In January 2022, Executive Officer Lynda Gledhill launched the Victim Services State Agency Coordination Council.

The council was established by CalVCB in collaboration with the Governor's Office of Emergency Services and the California Department of Corrections and Rehabilitation to coordinate state-level crime victim services. More than a dozen state departments and agencies are represented on the council, which meets three times per year.

The council's goals include:

- Leveraging resources to ensure greater accessibility to services and resources for crime victims and their families.
- Establishing comprehensive, centralized platforms of information about victim services and financial assistance.
- Reducing barriers to allow more crime victims to access services.

Many state agencies and departments provide some assistance to victims, from information and referrals to direct service. The council aims to better organize and coordinate state efforts, making it easier for victims to find the help they need.

SUPPORTING VICTIM ADVOCATES AND MENTAL HEALTH PROVIDERS

In Fiscal Year 2021-22, CalVCB re-established monthly advocate training seminars to educate victim advocates on program requirements. Some sessions present an overview of CalVCB to bring new advocates up to speed, while others focus on specific topics such as crime and benefit payment categories.

Program staff also hold regular [mental health forums](#) for providers to improve accessibility and services for victims. Both the monthly advocate trainings and the mental health forums have been well received and heavily attended.

In conjunction with those efforts, CalVCB has renewed in-person outreach and training, which was suspended





during the pandemic, with visits to counties throughout California. The trainings with local victim advocates include extended question-and-answer sessions, providing detailed information on every aspect of CalVCB's program and how to apply.

To request a training or presentation from CalVCB, email the [Public Affairs and Outreach section](#).

CONDUCTING AN OUTREACH CAMPAIGN

CalVCB worked with lawmakers to add to the 2022-23 state budget a \$3 million allocation for CalVCB to conduct a media and outreach campaign.

CalVCB will use this appropriation for a strategic, three-year effort to target underserved populations, help boost awareness of CalVCB, and connect victims with the compensation and services they need. Data indicates that few crime victims know about CalVCB or the compensation they are eligible for.

The media campaign will aim to overcome traditional barriers that exist to accessing CalVCB, in addition to those created by the pandemic. It will also create a foundation for outreach CalVCB can build on once the campaign concludes.

CalVCB will contract with a media vendor to design and run the campaign.

CONNECTING WITH STAKEHOLDERS

Executive Officer Lynda Gledhill connects regularly with victim service stakeholders through the CalVCB Victim Compensation Advisory Committee. Each quarter, the committee – which is comprised of district attorneys, victim service providers and victim advocates from across the state – meets to discuss emerging issues and how to best serve crime victims.

This allows stakeholders to jointly address issues of concern, such as rising gun violence, difficulty of finding mental health providers and changes in state or federal victim services policy.

Gledhill also meets separately with stakeholders to improve working relationships and find partnering opportunities. The comprehensive list of stakeholders CalVCB works with includes partners from district attorneys to nonprofits and national organizations, such as the Rape, Abuse and Incest National Network (RAINN).

Likewise, Gledhill networks with partners in other states. At its first in-person conference in three years, she was elected to the board of the National Association of Crime Victim Compensation Boards. She also frequently speaks about California's program in front of national audiences and was asked to present to the Indonesian government as it works to establish a crime victim compensation program.

The foundation for effectively serving victims and building a network to support them starts with the organization of CalVCB itself. CalVCB is constantly striving to foster a culture of teamwork and excellence. In 2021-22, CalVCB worked to further develop staff and enhance collaboration.

CAPITALIZING ON TELEWORK

Employees returned to the office in January 2022 after working almost entirely from home for nearly two years during the pandemic. CalVCB established a long-term hybrid working policy that involves most staff continuing to telework from home four days a week and coming into the office a minimum of one day each week to meet in person with their teams.

The in-office personal contact has helped strengthen working relationships, team building and communication, while the hybrid approach has allowed employees to continue to enjoy all the benefits, including the reduced cost, of teleworking most of the time.

Teleworking also produces positive benefits for society by helping to reduce traffic congestion, gas consumption and carbon emissions.

ENGAGING STAFF IN THE MISSION

CalVCB recognized and promoted Sexual Assault Awareness Month and Denim Day in April 2022 by leading a denim drive to support victims of sexual assault. Staff donated nearly 100 pieces of new and gently used denim clothing to WEAVE (When Everyone Acts Violence Ends), which provides crisis intervention services for survivors of domestic violence and sexual assault in Sacramento County. WEAVE sold the jeans in its store to help fund its operations.

Staff also observed Denim Day on April 27, wearing jeans to the office to raise awareness about sexual

assault and commemorate the injustice of an Italian court overruling a rape conviction because the victim wore tight jeans.

COMMITTING TO STAFF DEVELOPMENT

CalVCB works to develop staff through both internal and external training opportunities. The organization's Training Unit develops courses and tools specifically for CalVCB employees, while employees are directed to other state training programs, when necessary.

In Fiscal Year 2021-22, CalVCB's Training Unit offered 67 eLearning trainings and 12 internal virtual instructor-led trainings for CalVCB staff. Many employees took multiple classes. The internal virtual instructor-led trainings had a total of 153 attendees, and internal eLearning trainings had a total of 2,646 attendees.

All staff also attended implicit bias training presented by Dr. Bryant Marks, a nationally renowned expert in the field who is the Chief Equity Officer and Principal Trainer with the National Training Institute on Race & Equity at Morehouse College.

RECOGNIZING EXCELLENCE

Each quarter, CalVCB holds an all staff meeting and recognizes one employee or team of employees for their outstanding work. An interdivision scoring team carefully evaluates nominations and scores them, using the organization's core values as the measure.

The highly coveted awards come with a letter of commendation for the winner's personnel file, among

other perks, and the recognition and admiration of co-workers. CalVCB presents the awards both quarterly and annually, inspiring employees to perform at the highest levels.

Winners have come from every corner of the organization – from mailroom employees to application processors to IT help staff – demonstrating that it doesn't matter what role employees have but rather how they perform it.

IMPROVING CYBER SECURITY

CalVCB has continued to strengthen its cyber security operations through various efforts to improve protection of victim's privacy and information. These include establishing an Information Security and Privacy Executive Governance body, a collaborative risk management forum for proactive risk prioritization and treatment, and a variety of other initiatives, such as training all staff on the latest security risks and protocols through a series of courses.

BY THE NUMBERS

CalVCB's Appropriation for FY 2021/22 was \$148,280,000

2021-22 CalVCB BUDGET

Victim Compensation	\$133,647,000
Restitution Program	\$14,613,000
Good Samaritan	\$20,000

FUNDING SOURCES

General Fund	\$40,890,000
Restitution Fund (This includes a \$33,000,000 transfer from the General Fund to the Restitution Fund)	\$70,987,000
Federal Fund	\$24,820,000
Safe Neighborhood and Schools Fund	\$11,583,000



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ITEM 4

California Victim Compensation Board
Legislative Update
September 15, 2022

AB 160 (Committee on Budget) – Public Safety Trailer Bill

This bill would make a number of changes to CalVCB statutes, effective July 1, 2024, only if General Fund moneys over the multiyear forecasts beginning in the 2024–25 fiscal year are available to support ongoing augmentations and actions, and if an appropriation is made to backfill the Restitution Fund to support the actions. The bill would increase the total limit on reimbursement from \$70,000 to \$100,000, increase the reimbursement limit on relocation expenses from \$3,418 to \$7,500, increase the reimbursement limit on funeral and burial expenses from \$12,818 to \$20,000 and eliminate the \$10,000 and \$5,000 reimbursement limits on mental health counseling expenses. It would also provide that no victim shall be determined to have failed to cooperate based on the victim’s conduct with law enforcement at the scene of the crime or solely because the victim delayed reporting the qualifying crime. It would expand income and support loss by providing compensation for victims who were not employed at the time of the crime, including minors for future earnings, expanding compensation for bereavement leave, expanding compensation for leave for hospitalization of a relative, and expanding the forms of evidence that may corroborate a loss. It would remove the prohibition against granting compensating to a person who is convicted of a violent felony until that person has been discharged from probation, parole, post-release community supervision or mandatory supervision. It would expand CalVCB’s duty to provide outreach materials to hospitals and law enforcement’s duty to inform victims about their rights and the services available to them. It would also reduce the time in which CalVCB is required to resolve an appeal and notify the claimant in writing of its decision or that there was insufficient information to make a decision from six months to four months and expand the period for a claimant to file for reconsideration to 365 days. Finally, it would add to compensation for erroneously convicted individuals to include \$70 per day served on parole or on supervised release solely as a result of the former conviction and provide an annual increase based on the Consumer Price Index in the amount compensated per day of incarceration, parole or supervised release.

Status: On the Governor’s Desk

SB 1468 (Glazer) – Factual Innocence

This bill would deem any decision by the California Victim Compensation Board (CalVCB) to approve compensation for erroneously convicted offenders under Penal Code section 4900 to be, instead, an official finding of factual innocence. Relying upon this designation, this bill would create a new program for “nonmonetary relief,” to be administered by CalVCB and disbursed by the Department of Justice (DOJ), for all persons who have been either (1) declared factually innocent by a federal or state court under any standard, or (2) approved for compensation by CalVCB under Penal Code section 4900. The nonmonetary

relief includes an official certificate of innocence, as well as an entry in the claimant's criminal history information, that proclaims the State of California has found the person to be factually innocent. This nonmonetary relief is retroactively available to all persons who previously obtained either a CalVCB decision for compensation or a court-issued finding of factual innocence (under any standard) prior to January 1, 2023.

Status: On the Governor's Desk

SB 877 (Eggman) – CalVCB: Mental Health Services: Reimbursement.

This bill would authorize CalVCB to reimburse the costs of mental health counseling services performed by providers who are licensed in the state where the victim is residing or supervised by a person licensed in that state.

Status: On the Governor's Desk

AB 13 (Holden) – Erroneous Conviction Claims Bill

This bill would appropriate \$2,497,600 from the General Fund to pay three erroneous conviction claims approved by CalVCB for Alexander Torres, Juan Carlos de Jesus Bautista, and Zavion Johnson.

Status: Signed by the Governor (Chapter 230, Statutes of 2022)

SB 993 (Skinner) – Victims and Persons Erroneously Convicted

This bill would increase the total cap on reimbursement (from \$70,000 to \$100,000), increase the caps on relocation (from \$3,418 to \$7,500) and funeral and burial expenses (from \$12,818 to \$20,000), and eliminate caps and session limits for mental health counseling services. It would add a fourth board member with experience in restorative justice. It would expand eligibility for compensation of income and support loss, including for a victim who was unemployed at the time of the crime. It would allow documentation other than a crime report to be used to verify a qualifying crime. It would shorten the time period for processing of applications and appeals and extend the time period for a victim to provide additional information, appeal a decision, request reconsideration or file a petition for a writ of mandate. It would add requirements for CalVCB's communication of information to claimants. It would remove reasons for denial, including felony convictions, lack of cooperation and involvement in the events leading to the crime. It would create a presumption in favor of granting an emergency award for relocation or funeral expenses. It would require governmental agencies to provide information to potential survivors of crime about CalVCB services and require courts to provide information to survivors about the offender's sentence. It would also increase compensation for erroneously convicted individuals to account for inflation, legal expenses, and time spent on parole or probation.

Status: Remained on the Assembly Floor and will not move forward

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

This bill would add documentation that describes or demonstrates that a person suffered serious bodily injury or death as a result of a law enforcement officer's use of force to the definition of sufficient evidence establishing that the person is

a victim eligible for compensation. 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. 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.

Status: Returned to the Assembly Inactive File and will not move forward

SB 632 (Portantino) – Erroneous Conviction Claims Bill

This bill appropriated \$4,518,620 from the General Fund to pay five erroneous conviction claims approved by CalVCB for George Souliotes, Guy Miles, Edward Dumbrique, Jonathan Hampton, and John Klene.

Status: Signed by the Governor (Chapter 133, Statutes of 2022)

SB 981 (Glazer) – Criminal Procedure: Factual Innocence

This bill would provide that, for defendants whose convictions were reversed on habeas and the district attorney fails to object and prove clear and convincing evidence of guilt, the court shall issue a finding that they are entitled to compensation under Penal Code section 4900.

Status: On the Governor's Desk

SB 731 (Durazo) – Criminal Records: Relief

This bill would provide that if a person is sentenced to jail for a felony, the court in the interest of justice may allow a person to withdraw their guilty plea and enter a plea of not guilty and the court shall set aside the verdict and dismiss the accusations or information against the defendant when specified conditions are met. The bill could cause a potential loss of restitution fines or orders because it expands the scope of this relief to all felonies in which the offender completed their sentence.

Status: On the Governor's Desk

SB 1106 (Wiener) – Criminal Resentencing: Restitution

This bill would prohibit a petition for relief, whether statutorily authorized or in the court's discretion, 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: On the Governor's Desk

SB 154 (Skinner) – Budget Act of 2022

The Budget Act of 2022 contains a \$23 million one-time General Fund appropriation for funding for trauma recovery centers. It also appropriates \$7 million from the General Fund to create a fund for the payment of erroneous

conviction claims approved by CalVCB. It also provides \$39.5 million in General Fund support to preserve the solvency of the Restitution Fund. It also provides budget authority for CalVCB to implement internet technology security and system enhancements and funding to pay Attorney General fees related to erroneous conviction claims.

Status: Signed by the Governor (Chapter 43, Statutes of 2022)

AB 178 (Ting) – Budget Act of 2022

This bill amends SB 154, the Budget Act of 2022. It amends provisional language specifying the distribution of the \$23 million one-time General Fund appropriation for funding for trauma recovery centers. It also increases CalVCB's budget authority by \$3 million to conduct an outreach campaign to raise awareness of statewide victim support services.

Status: Signed by the Governor (Chapter 45, Statutes of 2022)

SB 189 (Committee on Budget) – State Government

This Budget Trailer Bill increases CalVCB benefit limits on funeral and burial expenses (from \$7,500 to \$12,818), relocation expenses (from \$2,000 to \$3,418), and crime scene cleanup expenses (from \$1,000 to \$1,709). It also states the intent of the Legislature to provide General Fund augmentation for the Restitution Fund as of the 2024-25 Budget for the purpose of eliminating restitution fines and making changes to victim compensation program eligibility, benefit levels, and administration. The bill also adds temporary exceptions to the Bagley-Keene Act allowing public meetings to be held by teleconference through June 30, 2023.

Status: Signed by the Governor (Chapter 48, Statutes of 2022)

AB 200 (Committee on Budget) – Public Safety

This Budget Trailer Bill repeals provisions that require CalVCB to submit a report and recommendation to the Legislature for the appropriation of funds to pay erroneous conviction claims. The bill instead authorizes CalVCB to approve payment of an erroneous conviction claim if sufficient funds have been appropriated by the Legislature. The bill also provides immunity to CalVCB from liability for damages for any decision on an erroneous conviction claim. It also requires CalVCB to report annually to the Joint Legislative Budget Committee on approved erroneous conviction claims paid in the previous year. The bill also establishes a pilot program within OES to contract with community-based organizations to provide direct cash assistance to survivors of violence.

Status: Signed by the Governor (Chapter 58, Statutes of 2022)

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: Failed policy committee deadline

SB 119 (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. The amendment

specifies that the contract is for study of and outreach to survivors of forced or involuntary sterilization at previously named Los Angeles County Hospital, currently named Los Angeles County + USC Medical Center in Los Angeles, California.

Status: Signed by the Governor (Chapter 9, Statutes of 2022)

AB 2126 (Flora) – Controlled Substances

This bill would create the Fentanyl Victim Compensation Fund and deposit into that fund 10 percent of the collections from a \$20,000 fine imposed on drug charges in cases involving fentanyl. It would also authorize CalVCB to accept applications for reimbursement for up to \$7,500 for funeral and burial expenses arising from, and up to \$5,500 for mental health counseling related to, a fatal 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 Victim Compensation Fund by the Legislature for this purpose.

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

AB 2850 (Berman) – California Sexual Assault Response Team (SART) Advisory Council

This bill would create the California Sexual Assault Response Team (SART) Advisory Council to promote swift, coordinated, competent, and efficient sexual assault intervention in every county, whose work shall be directed by a lead agency or department to be specified by the Governor. The bill would require the council to consist of representatives from specified entities, including the California Victim Compensation Board, sexual assault forensic examination teams, law enforcement agencies, county district attorneys' offices, crime laboratories, rape crisis centers, and hospitals. The bill would establish procedures for the council and require the council to, among other things, review statewide sexual assault intervention, advise county sexual assault response team programs, and submit, beginning on November 30, 2024, a biennial report to the Governor, Legislature, relevant legislative committees, and specified state agencies.

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

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: Failed the policy committee deadline and will not move forward

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: Failed the policy committee deadline and will not move forward this year

AB 2600 (Dahle) – State Agencies: Letters and Notices: Requirements

This bill would require that every state agency, when sending any communication to any recipient, state, in bolded font at the beginning of the communication, whether it requires action on the part of the recipient or serves as notice requiring no action.

Status: Failed the policy committee deadline and will not move forward this year

Bills Impacting Victim Services

AB 2553 (Grayson) – Human Trafficking Act: California Multidisciplinary Alliance to Stop Trafficking (MAST)

This bill would establish the California Multidisciplinary Alliance to Stop Trafficking Act (MAST) to examine collaborative models between governmental and nongovernmental organizations for protecting victims and survivors of trafficking, among other related duties. The task force would be comprised of specified state officials or their designees and specified individuals who have expertise in human trafficking or providing services to victims of human trafficking.

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

AB 2534 (Bryan) – Survivor Support and Harm Prevention Pilot Program Act

This bill would, contingent upon an appropriation, establish the Survivor Support and Harm Prevention Pilot Program, to be administered by the California Health and Human Services Agency, with the purpose of funding noncarceral, nonpunitive, prevention-oriented, and therapeutic programs that support survivors of crime and otherwise support individuals who have experienced violence or trauma of any nature. The bill would require the agency to solicit applications from counties interested in hosting the pilot program and would require the agency to work with no more than 5 counties. It would also require the program to inform survivors of available victims' compensation programs.

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

ITEM 5

California Victim Compensation Board
Contract Report
September 15, 2022

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

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

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

Contractor Name and PO/Contract/Grant/Solicitation Number	Contract Amount and Contract Term	Good or Service Provided
Informational		
Grantee Name: A Quarter Blue Grant Number: G21-001 A2	Grant Amount: 1,293,827.73 Term: 7/1/2021 – 6/30/2023	Amendment to add funds in the amount of \$906,174.00. Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: Contra Costa Family Justice Alliance Grant Number: G21-003 A2	Grant Amount: \$1,532,910.75 Term: 7/1/2021 – 6/30/2023	Amendment to add funds in the amount of \$667,091.00. Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: Olive View UCLA Grant Number: G21-006 A2	Grant Amount: \$2,063,245.24 Term: 7/1/2021 – 6/30/2023	Amendment to add funds in the amount of \$136,755.00 Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma

		Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: Palomar Health Foundation Grant Number: G21-007 A2	Grant Amount: \$1,857,864.16 Term: 7/1/2021 – 6/30/2023	Amendment to add funds in the amount of \$342,137.00 Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: Partnership for Trauma Recovery Grant Number: G21-008 A2	Grant Amount: \$1,378,435.79 Term: 7/1/2021 – 6/30/2023	Amendment to add funds in the amount of \$821,566.00. Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: Rady Children's Hospital – San Diego Grant Number: G21-004 A2	Grant Amount: \$1,386,567.13 Term: 7/1/2021 – 6/30/2023	Amendment to add funds in the amount of \$813,434.00. Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: Solano Trauma Recovery Center Grant Number: G21-005 A2	Grant Amount: \$1,512,609.28 Term: 7/1/2021 – 6/30/2023	Amendment to add funds in the amount of \$687,392.00. Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.

Grantee Name: Special Services for Groups, Inc. Grant Number: G21-010 A2	Grant Amount: \$1,501,973.99 Term: 7/1/2021 – 6/30/2023	Amendment to add funds in the amount of \$698,028.00. Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: The University Corporation Grant Number: G21-012 A2	Grant Amount: \$1,487,677.25 Term: 7/1/2021 – 6/30/2023	Amendment to add funds in the amount of \$712,324.00. Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: Citrus Counseling Services, Inc. Grant Number: G22-003 A1	Grant Amount: \$2,200,000.00 Term: 7/1/2022 – 6/30/2024	Amendment to add funds in the amount of \$210,000.00. Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: USC Suzanne Dwork-Peck Grant Number: G22-007 A1	Grant Amount: \$2,200,001.00 Term: 7/1/2022 – 6/30/2024	Amendment to add funds in the amount of \$633,622.00. Grantee shall provide mental health services and outreach to victims of crime. Assembly Bill 178, Section 214 (Provision 2) allocates funds to Trauma Recovery Centers for the purposes of serving additional victims of violent crime.
Grantee Name: Alameda County District Attorney's Office Grant Number: G22-010	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.

		Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.
Grantee Name: Citrus Counseling Services Grant Number: G22-011	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: CSU Long Beach Grant Number: G22-012	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: Miracles Counseling Center Grant Number: G22-013	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash</p>

		assistance program to support victims of crime.
Grantee Name: The Regents of UCSF Grant Number: G22-014	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: USC Suzanne Dwork-Peck Grant Number: G22-015	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: Downtown Women's Center Grant Number: G22-016	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>

Grantee Name: A Quarter Blue Grant Number: G22-017	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: Amanacer Community Counseling Grant Number: G22-018	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: Contra Costa Family Justice Alliance Grant Number: G22-019	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: Rady Children's Hospital – San Diego	Grant Amount: \$120,000.00 Term:	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds</p>

Grant Number: G22-020	7/1/2022 – 6/30/2025	<p>may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: Napa Solano Sane-Sart Grant Number: G22-021	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: Olive View UCLA Grant Number: G22-022	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Grantee Name: Palomar Health Foundation Grant Number: G22-023	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support</p>

		<p>victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
<p>Grantee Name: Partnership for Trauma Recovery</p> <p>Grant Number: G22-024</p>	<p>Grant Amount: \$120,000.00</p> <p>Term: 7/1/2022 – 6/30/2025</p>	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
<p>Grantee Name: Safe Harbor - UCLA</p> <p>Grant Number: G22-025</p>	<p>Grant Amount: \$120,000.00</p> <p>Term: 7/1/2022 – 6/30/2025</p>	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
<p>Grantee Name: Special Services for Groups</p> <p>Grant Number: G22-026</p>	<p>Grant Amount: \$120,000.00</p> <p>Term: 7/1/2022 – 6/30/2025</p>	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs</p>

		for a flexible emergency cash assistance program to support victims of crime.
Grantee Name: The University Corporation Grant Number: G22-027	Grant Amount: \$120,000.00 Term: 7/1/2022 – 6/30/2025	<p>The Grantee shall administer \$120,000.00 for the Flexible Emergency Cash Assistance Program (FECAP) to support victims of crime. These funds may be used for, but are not limited to, the following: transportation, childcare, food, emergency shelter, and any other reasonable urgent expenses to support victims of crime.</p> <p>Assembly Bill 178, Section 214 (Provision 4) allocates funds to TRCs for a flexible emergency cash assistance program to support victims of crime.</p>
Contractor Name: Government Operations Agency Contract Number: S22-011	Contract Amount: \$95,000.00 Term: 7/01/2022 – 6/30/2023	<p>The Contractor shall provide administrative services to CalVCB. Administrative services include, but are not limited to: Legal, Budget, Personnel, Legislative, Information Technology, and Policy Oversight.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1, Section 5.80 (A)(4) (Interagency agreement)</p>
Contractor Name: West Publishing Contract Number: VC-8008 A2	Contract Amount: \$93,055.54 Term: 7/01/2018 – 12/30/2022	<p>Amendment to add six months and additional funds in the amount of \$11,318.40. The Contractor shall provide on-line access to legal research database services in accordance with the Department of General Services, Master Service Agreement 5-17-70-11. This service will be accessible to seven members of the CalVCB Legal staff in order to search and research case law, statutes, regulations, and legislative history.</p> <p>This Contract was procured through a Department of General Services approved Master Service Agreement.</p>

<p>Contractor Name: Excel Interpreting LLC</p> <p>PO/Contract Number: S22-009</p>	<p>Contract Amount: \$180,000.00</p> <p>Term: 9/1/2022 – 6/30/2025</p>	<p>The Contractor shall provide translation and interpretation services to CalVCB.</p> <p>This Contract was procured utilizing a DGS approved Leveraged Procurement Agreement and was solicited through a Request for Offer to only certified Small Businesses.</p>
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ITEM 6

**California Victim Compensation Board
Request to Authorize Filing of the Final Rulemaking Record for
California Code of Regulations, Title 2, Sections 640 – 646**

September 15, 2022

Action Requested

On March 17, 2022, the California Victim Compensation Board (Board) authorized staff to commence the rulemaking process to amend the regulations governing Penal Code section 4900 claims, located in the California Code of Regulations, title 2, sections 640 through 645. Now that this process is complete, it is requested that the Board adopt the proposed regulations, as modified on July 20, 2022, along with the claim form revised July 2022, and authorize the Executive Officer to file the final rulemaking record with the Office of Administrative Law (OAL).

Background

CalVCB processes claims from persons seeking compensation as an erroneously convicted felon pursuant to Penal Code sections 4900 et seq. Although these statutes have been amended and revised several times over the past decade, the applicable regulations have not been updated since 2012. As a result, many of these regulations are outdated, incomplete, or contrary to current law.

At its March 2022 meeting, the Board approved commencement of the rulemaking process to update these regulations. The Board specifically authorized staff to take action, including preparation of a regulation package with proposed regulations for sections 640 through 646.

The regulation package was submitted to the California Office of Administrative Law (OAL) for publication on April 1, 2022, with notice sent by mail or email to all interested parties, and all materials were posted on CalVCB's website for public comment. The initial public comment period commenced on April 1, 2022, and closed 45-days later on May 16, 2022. Multiple comments were received.

After careful consideration, modifications to the proposed regulations were posted on CalVCB's website on June 2, 2022, and the requisite notice was provided. A 15-day public comment period ensued, which closed on June 17, 2022. A single comment was received and considered.

No further modifications were contemplated, but then Assembly Bill (AB) 200 was enacted on June 30, 2022, which changed the statutory process by which approved claims under Penal Code section 4900 are paid. Staff determined that additional modifications to the proposed regulations and accompanying claim form were needed to

comport with AB 200. The second round of modifications was posted on CalVCB's website on July 20, 2022, with the requisite notice. The 15-day comment period closed on August 4, 2022, without receipt of any comments.

To date, no public hearing has been scheduled, and none requested. No additional modifications are proposed.

Attached are the following documents in support of the requested action: (1) Final Statement of Reasons, (2) Final Regulation Text, (3) Summary of Comments and Responses to Proposed Regulations, (4) Updated Informative Digest / Policy Statement Overview, and (4) Erroneously Convicted Person Claim Form, revised July 2022.

Recommendation

It is recommended that the Board adopt the proposed regulations, as modified on July 20, 2022, along with the claim form as revised July 2022, and authorize the Executive Officer to file the rulemaking record with the OAL for its review and approval.

Certification

I certify that at its September 15, 2022, Board Meeting, the California Victim Compensation Board adopted the proposed regulations as modified and authorized the Executive Officer to file the rulemaking record with the Office of Administrative Law for its review and approval.

Andrea Burrell
Board Liaison

Final Statement of Reasons

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

FINAL 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. Typically, the claimant bears the burden to demonstrate innocence and injury by a preponderance of the evidence. If successful, CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the Legislature, 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. In June 2022, AB 200 (Committee on Budget, Chapter 58, Statutes of 2022) changed the process by which approved claims are paid. In 2021, SB 446 (Glazer, Chapter 490, Statutes of 2021), switched the burden of proof for 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), to require the Attorney General to demonstrate guilt by clear and convincing evidence, 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 approval 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.

PROCEDURAL HISTORY

On March 17, 2022, the Board approved commencement of the rulemaking process to update the regulations governing claims under Penal Code section 4900. The Board specifically authorized staff to take action, including preparation of

a regulation package with proposed regulations for sections 640 through 646 of the California Code of Regulations. The regulation package was submitted to the California Office of Administrative Law (OAL) for publication on April 1, 2022, and simultaneously posted on CalVCB's website for public comment. The posted materials included an updated form for submitting Penal Code section 4900 claims to CalVCB.

The initial public comment period commenced on April 1, 2022, and closed 45 days later on May 16, 2022. Multiple comments were received for the following sections: 640(a), 640(d), 640(e), 640(f), 641(b), 641(c), 641(d), 641(e), 642(a), and 645(f). A summary of each comment and CalVCB's response is detailed in the attached Summary of Comments and Responses to Proposed Regulations and Modified Regulations ("Comments and Responses Summary").

After careful consideration, modifications to the proposed regulations were posted on CalVCB's website on June 2, 2022. These substantial but related modifications to the proposed regulations specifically applied to the following sections: 640(a), 640(b), 640(d), 642(a), 642(b), and 645(g). The claim form was also revised for grammatical and stylistic corrections, without any substantive change. A 15-day public comment period ensued, which closed on June 17, 2022. A single comment related to section 640(a) was received. A summary of that comment and CalVCB's response is set forth in the attached Comments and Responses Summary.

Prompted by the passage of AB 200, effective June 30, 2022, a second round of modifications to the proposed regulations and claim form were posted on CalVCB's website on July 20, 2022. These substantial but related modifications applied to section 640 of the proposed regulations and to multiple provisions of the claim form describing the procedure for payment of approved claims. A 15-day public comment period ensued, which closed on August 4, 2022, without receipt of any comments.

No additional modifications were proposed by CalVCB. CalVCB determined that no other suggested or considered alternative would be as effective and less burdensome than the proposed regulations, as twice modified, and the claim form, as revised July 2022. This determination is supported by the description for the purpose and necessity for each proposed regulation set forth below, as well as the attached Comments and Responses Summary.

Throughout these events, no hearing was scheduled or requested.

BENEFITS

The proposed regulations, as twice modified, along with the claim form revised July 2022, will comply with the current law governing Penal Code section 4900 claims in accordance with SB 446, as well as AB 200, 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 fairly decide these claims in a consistent and efficient manner.

PURPOSE

Section 640: The purpose of this revised regulation, as twice modified, is to clarify the process for submitting a claim to CalVCB and, upon filing, referring that claim to the Attorney General for a response. It also updates the definition for injury in accordance with current law and removes any reference to the former procedure for payment of approved claims.

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 version revised July 2022. 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 modified subdivision also explains that the completed form must include a statement of facts, signed under penalty of perjury, that shows the crime did not occur or was not committed by the claimant, as well as supporting documentation that must be attached as specified in the form.
- **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. As part of that explanation, it notifies claimants that claims submitted after 5:00 p.m. during the week or anytime during the weekend or state holidays will be deemed received the next business day.
- **Section 640, subdivision (c):** This subdivision describes the substantive information that must be confirmed by the supporting documentation in order to present a claim to the Board, without specifying any particular document.
- **Section 640, subdivision (d):** This subdivision, as modified, explains that a submitted claim is deemed to be filed once a hearing officer confirms that it complies with all of the requirements set forth in Penal Code sections 4900 and 4901. The specific date of filing is significant, as it triggers the Board’s 30-day deadline to approve 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). By referencing sections 4900 and 4901, in lieu of employing a technical term like “jurisdiction,” this modified provision provides claimants with clear notice of the requirements that must be satisfied for their claim to be filed. This subdivision further explains that filed claims will be considered by the Board, whereas all other claims may be rejected by a hearing officer according to the procedure set forth in section 642, which includes notice and an opportunity to cure any identified defects.
- **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 approval of the claim 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 approval 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 approval 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 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 informal 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 approve a claim for compensation, as such a requirement conflicts with the Board’s obligation to approve a claim 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, subdivision (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, as modified, explains the process by which claims may be rejected by a hearing officer for failing to comply with the requirements of Penal Code sections 4900 and 4901, and it provides three illustrative examples of the types of claims that fail to do so.

The specific purpose of each subdivision follows.

- **Section 642, subdivision (a):** This subdivision, as modified, explains that a hearing officer may reject a claim, without being heard or considered by the Board, if that claim fails to comply with Penal Code sections 4900 and 4901. This subdivision provides three specific examples of such claims. First, as set forth in subdivision (a)(1), a claim that fails to state facts upon which relief may be granted is not in compliance with sections 4900 and 4901. Second, as set forth in subdivision (a)(2), a successive or duplicative claim is not in compliance with sections 4900 and 4901. Third, as set forth in subdivision (a)(3), a claim solely based upon a vacated conviction due to a change in the legal definition of the crime, without any allegation of innocence under the law in effect at the time the crime allegedly occurred, is not in compliance with sections 4900 and 4901.
- **Section 642, subdivision (b):** This subdivision, as modified, details the process by which a submitted claim may be rejected for failing to comply with sections 4900 and 4901. Specifically, it confirms that no claim will be rejected without notifying the claimant of the 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 initially failed to comply with section 4900 and 4901 is calculated based upon the date the deficiency was cured. The date of filing is significant, as it triggers the Board's 30-day deadline to approve a claim for 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). By comparison, timeliness is determined based upon the date a claim is submitted, not filed.
- **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 before a hearing officer, 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, as modified, 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 645, subdivision (g):** This subdivision clarifies 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.

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

NECESSITY

As detailed below, the proposed regulations and revisions, as modified, are needed to comply with the current law governing Penal Code section 4900 claims in accordance with SB 446, as well as AB 200, 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. This need is particularly urgent due to the recent increase of claims received and approved since January 2022 pursuant to SB 446, which is almost double the rate from previous years.

Section 640: This twice-modified regulation is needed to clarify the process for submitting a claim to CalVCB and, upon filing, 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 statement of facts, signed under penalty of perjury, that shows the crime did not occur or was not committed by the claimant, as well as supporting documentation enumerated in the updated claim form. 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. As part of that explanation, it notifies claimants that claims submitted after 5:00 p.m. during the week or anytime during the weekend or state holidays will be deemed received the next business day.
- **Section 640, subdivision (c):** The proposed revision is needed to describe the substance of information that must be confirmed by 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, as modified, explains that a submitted claim is deemed to be filed once a hearing officer confirms that it complies with the requirements set forth in Penal Code sections 4900 and 4901. Clarification on the method for calculating the date of filing is needed, as it triggers the Board's 30-day deadline to approve a claim for

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). By referencing sections 4900 and 4901, in lieu of employing a technical term like "jurisdiction," this modified provision provides needed guidance to claimants as to the requirements that must be satisfied for their claim to be filed. It further provides an overview of the process by which a filed claim will be considered by the Board, while an unfiled claim may be rejected by a hearing officer. Combined, this subdivision is needed to provide clarity to claimants about the process and requirements for filing a claim.

- **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 approval of the claim 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 approval 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 approval 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 4903, subdivision (c). All of these proposed revisions are needed to provide clarity to claimants and the Attorney General and to promote 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. This definition is needed to provide guidance to the parties and ensure efficient and consistent determinations by CalVCB.

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 approve a claim for compensation, as such a requirement conflicts with the Board's obligation to approve 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 and satisfies the standard for formal administrative hearings under Government Code section 13959, subd. (e)(1). 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. Overall, this subdivision ensures needed balance for both flexibility and reliability when considering the admissibility of evidence during these informal hearings for Penal Code section 4900 claims.
- **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 by a hearing officer for failing to comply with the requirements of Penal Code sections 4900 and 4901, and it provides three specific examples of those types of claims. Due to the increased rate of claims received since January 2022, this revised regulation is urgently needed to enable CalVCB to efficiently resolve those claims for which, as a matter of law, relief may not be granted under section 4900.

The specific need for each subdivision follows.

- **Section 642, subdivision (a):** The proposed revision explains that a hearing officer may reject a claim, without being heard or considered by the Board, if that claim fails to comply with Penal Code sections 4900 and 4901. This subdivision provides three specific examples of such claims. First, as set forth in subdivision (a)(1), a claim that fails to state facts upon which relief may be granted is not in compliance with sections 4900 and 4901. Second, as set forth in subdivision (a)(2), a successive or duplicative claim is not in compliance with sections 4900 and 4901. Third, as set forth in subdivision (a)(3), a claim solely based upon a vacated conviction due to a change in the legal definition of the crime, without any allegation of innocence under the law in effect at the time the crime allegedly occurred, is not in compliance with sections 4900 and 4901. This fact-specific clarification of law is needed to ensure an efficient and consistent resolution of all claims that fail to comply with sections 4900 and 4901, which often includes noncognizable claims as a matter of law, successive claims, and claims solely based upon a new definition of a crime.
- **Section 642, subdivision (b):** The proposed revision is needed to clarify the process by which a submitted claim may be rejected for failing to comply with sections 4900 and 4901. Specifically, it confirms that no claim will be rejected without notifying the claimant of the deficiency and allowing the claimant 30 days to cure that deficiency.

- **Section 642, subdivision (c):** The proposed revision is needed to clarify the method for calculating the filing date for a submitted claim when the deficiency is cured in compliance with Penal Code section 4900 and 4901. Clarity on the method for calculating this date is needed, as this event triggers the Board's 30-day deadline to approve a claim for 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). By comparison, timeliness is determined based upon the date a claim is submitted, not filed.
- **Section 642, subdivision (d):** The proposed revision is needed to replace 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 informal 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 a hearing before a hearing officer 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 regulation confirms that the hearing officer's 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 645, subdivision (g):** This proposed regulation confirms that the hearing officer's proposed decision may not deny a claim proceeding under

subdivision (b) of Penal Code section 4900 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.

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, the Board shall approve payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the Legislature. Even then, compensation is awarded to a limited group of individuals, historically less than eight per year, although that figure is expected to almost double 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 compensation, if sufficient funds are available upon appropriation by the Legislature, 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 compensation, if sufficient funds are available, 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 compensation, if sufficient funds are available, 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 compensation, if sufficient funds are available, 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 compensation, if sufficient funds are available, 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 besides approving the proposed regulations as twice modified, along with the claim form revised July 2022, in order to effectively process claims under Penal Code section 4900 in accordance with current law. The Board has determined that no alternative considered would be more effective in carrying out the purpose for which these regulations were proposed, would be as effective and less burdensome to affected private persons than these adopted regulations, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

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, as twice modified with the revised claim form, do not affect small businesses because they apply to a limited group of individuals seeking approval of a claim for compensation, if sufficient funds are available, as a result of an erroneous felony conviction for which they were wrongfully incarcerated.

SUMMARY OF COMMENTS AND RESPONSES

The Comments and Responses Summary, which lists the comments and responses from the 45-day comment period for the proposed regulations, as well as the 15-day comment period for the modifications to the proposed regulations, and confirms the absence of any comments to the second modifications, is incorporated into the final statement of reasons.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The informative digest / policy statement overview is incorporated into the final statement of reasons.

DOCUMENTS INCORPORATED BY REFERENCE

Publication of the Erroneously Convicted Person Claim Form, Revised July 2022, is incorporated by reference. The nature of the form and formatting, as well as the length, would make it cumbersome for publication in the California Code of Regulations. The form is identical to the form posted on CalVCB's website on July 20, 2022.

Final Regulation Text

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

AS SUBMITTED BY THE CALIFORNIA VICTIM COMPENSATION
BOARD ON APRIL 1, 2022, AND MODIFIED ON JUNE 2, 2022,
AND MODIFIED A SECOND TIME ON JULY 20, 2022

§ 640. Presentation of Claim.

(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 July 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.

(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.

(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 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.

(be) 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.

(ef) 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, 4900-49064904, 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 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.

(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-~~4906~~4904, 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.

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

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

(ee) 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-~~4906~~4904, 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.

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

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

(cd) ~~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.

(d2) The parties shall present evidence in the following order:

(4A) 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.

(~~pg~~) 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~~4904, 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.

(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.

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.

Summary of Comments and Responses to Proposed Regulations

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

SUMMARY OF COMMENTS AND RESPONSES TO PROPOSED REGULATIONS

On April 1, 2022, the California Victim Compensation Board (CalVCB) provided notice of proposed changes to the regulations governing claims from erroneously convicted persons located in sections 640 through 646, title 2, of the California Code of Regulations. The first table below summarizes each of the comments received and CalVCB's response, sequentially organized by each section and subdivision of the proposed regulations. On June 2, 2022, CalVCB provided notice of proposed modifications to those regulations. The second table below summarizes the sole comment received and CalVCB's response to the modifications. On July 20, 2022, the CalVCB provided notice of second modifications to those regulations and accompanying claim, but no response was received, as set forth in the third table below.

TABLE 1 – RESPONSES TO COMMENTS TO PROPOSED REGULATIONS

Section 640, subdivision (a)(1)		
SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
McLane, Bednarski & Litt, LLP (MB&L)	The provision in proposed 640(a)(1) that requires a "detailed factual summary signed under penalty of perjury" is not feasible for most innocent persons who lack personal knowledge about the crime. The innocent person was not present for the crime or investigation and may have limited understanding of what occurred during the trial. It is appropriate to request a claimant to attest that they were erroneously convicted of a crime they did not commit and to any facts about which the claimant has personal knowledge. But the majority of the factual summary for any erroneous conviction case is construed from record materials and	Modified 640(a)(1) to require, instead, a "statement of facts signed under penalty of perjury that shows the crime did not occur or was not committed by the claimant." This modification confirms that the claimant is not required to attest to any facts regarding the crime itself, only facts that show the crime was not committed by the claimant. While an innocent claimant may not be able to declare, under penalty of perjury, who committed a particular crime or how it occurred, they will still be able to provide specific facts to show that they did not commit the crime. For example, they may declare that they

	evidence that a claimant cannot certify as true, as a personal matter. Innocent persons should not be exposed to perjury prosecutions in the event that facts/evidence beyond their control are deemed to be inaccurate.	were in a different location when the alleged crime occurred, or that the underlying act was accidental or in self-defense. But a conclusory proclamation of innocence, without specific supporting facts, will not suffice.
MB&L	The requirement in 640(a)(1) for a “detailed factual summary signed under penalty of perjury” is contrary to Penal Code section 4901, which states that a claim under Penal Code section 4900 must include a “statement of facts constituting the claim, verified in the manner provided for the verification of complaints in civil actions, without stating that a “detailed” statement must be signed by the claimant “under penalty of perjury.” (Pen. Code, § 4901, subd. (a).)	Modified 640(a)(1) to replace “detailed summary” with, instead, a “statement of facts signed under penalty of perjury that shows the crime did not occur or was not committed by the claimant.” No modification to the language requiring the claimant’s signature under penalty of perjury. As modified, 640(a)(1) comports with Penal Code section 4901, which likewise requires a verified statement of facts for a claim under Penal Code section 4900. The requirements for verification are set forth in Code of Civil Procedure (CCP) section 446, which requires an affidavit that swears to the truth or belief in the truth of the matters stated therein or, alternatively, asserts the truth or belief in the truth under penalty of perjury. CCP section 2015.5 confirms that verification may be based upon either a certification or declaration so long as it substantially certifies “under penalty of perjury that the foregoing is true and correct.” (CCP § 2015.5.(a).)
MB&L	Revise the provision in proposed 640(a)(1) that requires a factual summary signed under penalty of perjury to require, instead, only a completed claim form that is verified in the manner provided by CCP 446.	Declined suggested modification to cross-reference CCP 446, as many claimants may not know or understand what is required for verification by CCP 446. Instead, retained language requiring substance of CCP 446.
Section 640, subdivision (d)		

SUBMITTER	SUMMARY OF COMMENTS	CaIVCB RESPONSE
MB&L	<p>New language in 640(d) requires a hearing officer to review all received claims for jurisdiction and, upon such a determination, deem the claim filed. But the meaning of “jurisdiction” in this context is unclear from the proposed regulations and statutes. As a result, this provision provides inadequate notice of the grounds on which a hearing officer might reject a claim for failing to comply with this vague filing requirement. Consider amending to provide greater clarity on what defects are considered jurisdictional.¹</p>	<p>Modified 640(d), as well as 642, to replace “jurisdiction” with “compliance with Penal Code sections 4900 and 4901” in order to specify the procedural requirements needed to file a claim. Added clarifying language to explain that filed claims will be considered by the Board, whereas claims that fail to comply with sections 4900 and 4901 may be rejected by a hearing officer. The process for rejection by a hearing officer is detailed in 642. Added clarifying language in 642(a) to provide examples of claims that fail to comply with sections 4900 and 4901. Viewed together, these regulations provide adequate notice of the filing requirements.</p>
MB&L	<p>It is unusual for a claim to be deemed unfiled until reviewed and approved by the reviewing agency or court. Typically, the “filing” occurs upon receipt of the claim, and any defects may be cured without impairing the original filing date. If not curable, the defects would result in the rejection of a filed claim, rather than a failure to accept a claim for filing. While the 10-year deadline to file a claim renders it unlikely that the validity of a claim will turn on this rule in most cases, the more typical practice is to deem a claim filed upon receipt and allow amendment or supplementation as necessary to perfect the claim. Consider amending to give claimants an opportunity to cure defects without affecting the filing date of the filed claim,</p>	<p>No modification. As a practical matter, CalIVCB must be able to screen incoming claims to ensure a cognizable claim for relief is raised before triggering the administrative hearing process before the Board. Courts routinely employ a similar screening function before filing proffered documents to ensure procedural requirements are satisfied. (See Cal. Rules of Court Rules 2.118; 2.259.) Federal courts likewise screen, “before docketing, if feasible,” civil complaints by inmates and sua sponte dismiss those complaints that fail to state a claim upon which relief may be granted. (28 USC 1915A.) Moreover, timeliness of a claim is determined based upon the date a claim is</p>

¹ MB&L referenced 641 for some of its comments related to jurisdiction and the rejection process. (MB&L Letter, dated May 16, 2022, at pp. 4-5.) Because 640 and 642, but not 641, involve jurisdiction and the rejection process, CalIVCB construes MB&L’s references accordingly.

	rather than the rejection of a submitted claim.	submitted. Accordingly, a claim will not be deemed untimely based upon the filed date.
MB&L	Delete 640(d) and, instead, revise 640(b) to deem a claim filed upon receipt. ²	Declined proposed modification in favor of other modifications, as explained above, for 640(d) and 642.

Section 640, subdivision (e)(2)

SUBMITTER	SUMMARY OF COMMENTS	CaIVCB RESPONSE
MB&L	The language in 640(e)(2), which asserts that the automatic recommendation provisions in Penal Code sections 851.865 and 1485.55 “do not apply if the claimant lacks a court finding of factual innocence for each and every conviction underlying their incarceration” is not supported by the statutory language of those sections and contrary to their legislative intent. MB&L recognizes that the Board has rejected this argument in favor of the legal position reflected in this language.	No modification, except to delete the reference to “recommendation” in accordance with the new payment procedure enacted by AB 200, effective June 30, 2022, in the second round of modifications. CaIVCB adjudications since 2017 have repeatedly reached the same conclusion as the proposed language in 640(e)(2). As explained in those decisions, construing the ambiguous, automatic compensation provision in Penal Code sections 851.865 and 1485.55 to apply only when a claimant obtains a finding of factual innocence for all convictions underlying their incarceration best ensures that the hearing officer will be able to accurately complete the often complex compensation calculations in an expeditious manner. This construction is consistent with the Legislature’s stated intent to “streamline” the compensation process for “innocent” persons. (See Assem. Floor, Analysis of Sen. Bill No. 618 (2013-2014 Reg. Sess.), at pp. 1, 6-7, Sept. 5, 2013; Senate Floor, Analysis of Sen. Bill No. 618, at p. 4.) As such, it would

² Because the suggested modifications to both subdivisions of section 640 appear together, a separate entry to revise subdivision (b) of section 640 is omitted from this table.

		<p>contravene legislative intent to compensate a guilty claimant for any time served in prison pursuant to a validly imposed conviction that overlaps with a separate sentence for an erroneous conviction. This construction also ensures that the provisions in sections 851.8, 1485.5, and 4903, which render a court's factual innocence findings admissible and binding during a CalVCB hearing on the claim, are not rendered superfluous, as no such hearing occurs when the automatic compensation provisions apply. Finally, this construction enables both the Attorney General and claimant to be heard and present evidence on this issue before the hearing officer drafts the proposed decision.</p>
MB&L	<p>If CalVCB or the Attorney General wishes to contest a portion of the incarceration on the grounds that it was subject to a concurrent conviction, such dispute should not delay the claimant's receipt of the uncontested portion of compensation, which should be approved by the Board within 30 days as mandated by Penal Code section 4902.</p>	<p>No modification. This suggested approach for piecemeal adjudications of contested and uncontested compensation is not feasible, much less within the 30-day deadline for automatic approval. CalVCB lacks direct access to any of the custodial records maintained by either the Department of Justice or the Department of Corrections and Rehabilitation. Accordingly, CalVCB cannot begin to calculate the uncontested portion of a claimant's imprisonment for overlapping sentences without a response from the Attorney General. Moreover, CalVCB is only authorized to request a response from the Attorney General when the automatic compensation provisions do not apply. (Pen. Code, § 4902, subd. (a).) In those cases, the Attorney General is allotted 60 days to submit the response, which may be extended for demonstrated good cause. Accordingly, claimant's</p>

		suggested approach to approve only the uncontested portion of a claimant's confinement within 30 days is not manageable. Such an approach would likely result in miscalculations, as well as an undue consumption of CalVCB resources to twice decide the same claim. It may also prove overly burdensome to the claimant, especially if appearing in pro per, two appear multiple times before the Board.
MB&L	Delete (e)(2) entirely or clarify that claims with findings of factual innocence will be approved in accordance with Penal Code sections 851.865, 1485.55, and 4902, within 30 days and without a response from the Attorney General.	No modification. The language in 640(e)(2) reflects CalVCB's interpretation of the relevant statutes. Any additional language requiring a decision within 30 days, without a response from the Attorney General, whenever Penal Code section 851.865 or 14855 apply is already set forth in Penal Code section 4902, subdivision (a).
Section 640, subdivision (f)		
SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
MB&L	The language in 640(f), which defines "injury" to mean "but for the erroneous conviction, the claimant would not have been in custody," is not supported by statute. The relevant statutory provisions do not include any such definition of "injury." Instead, the statute states that, if a claimant has been wrongfully convicted and sustained any injury, "the amount of the appropriation recommended shall be a sum equivalent to one hundred and forty dollars (\$140) per day of incarceration served, and shall include any time spent in custody, including in a county jail, that is considered to be a part of the term of	No modification. CalVCB adjudications have repeatedly reached the same conclusion as the proposed language in 640(e)(2). As explained in those decisions, "injury" is twice referenced in Penal Code section 4904 as a requisite condition for compensation, which is calculated at a rate of \$140 per day. Thus, the injury contemplated by section 4904 is "each day spent illegally behind bars, away from society, employment, [] and loved ones." (<i>Holmes v. VCGC</i> (2015) 239 Cal.App.4th 1400, 1405.) Effective 2016, the legislature removed language requiring "pecuniary injury"

	incarceration.” (Former Pen. Code, § 4904 (2021).) MB&L recognizes that the Board has rejected this argument in favor of the legal position reflected in the proposed language.	as “an unfortunate and unsound description of the unique harm suffered when factually innocent persons are imprisoned....” (SB 635 (2015) Senate Floor Analysis, as amended 9/3/15, at pp. 4-5.) Though no specific definition was provided, the Legislature intended “injury” to refer to “whatever harm is suffered by a person who is wrongly imprisoned....” (<i>Id.</i> at p. 5.) This harm would necessarily exclude any period of incarceration pursuant to a valid conviction. Accordingly, the proposed regulation’s definition for injury is consistent with the current version of section 4904 by ensuring that compensation is approved solely for the period of time during which the claimant was imprisoned pursuant to an erroneous conviction, while excluding compensation for any overlapping period during which the claimant was serving a sentence for a valid conviction.
MB&L	Delete 640(f) entirely.	No modification. As explained above, the definition of injury provided in 640(f) is consistent with statute, legislative history, and prior CalVCB adjudications.

Section 641, subdivision (b)

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
MB&L	The language in 641(b), which allows consideration as substantive evidence the prior testimony of witnesses that claimant had an opportunity to cross-examine, remains unchanged. But is it important for the Board to recognize that, when an innocent person has been erroneously convicted, the evidence	Added 645(g) to clarify that, 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

	<p>relied upon by the original jury and/or any other evidence that would be inadmissible in a criminal trial may well be unreliable and deserving of little weight by the Board.</p>	<p>Attorney General's burden of proof. The language in 641(b), which has been in effect since 2010 and is consistent with Evidence Code section 770, remains unchanged. This original language, particularly when combined with new 645(g), serves as a helpful guide for CalVCB's informal administrative hearings, which are not subject to the traditional rules of evidence or even the rules of evidence for formal hearings. (Gov. Code, §§ 11445.40 (informal hearing), 11513 (formal hearings exempted from technical rules of evidence); 2 CCR § 615.1, subd. (a); 615.2, subd. (g)(A), 644, subds. (o) & (p).)</p>
MB&L	<p>Add the following language as a new subdivision to 641: "If a claimant's conviction has been vacated, that conviction has no weight and shall not be considered by the Board as a reason for denying the claim. For a conviction that is no longer valid, the Board shall not rely on the evidence presented by the prosecution at the trial preceding the erroneous conviction, without carefully weighing the continued reliability and/or credibility of that evidence in light of the post-conviction proceedings."</p>	<p>Rejected MB&L's proposed language in favor of new 645(g), as detailed above. MB&L's proposed language is unnecessary to the extent it restates the statutory language in Penal Code section 4903, subdivision (d), that a conviction reversed and dismissed is no longer valid. The proposed language also imposes unwarranted restrictions upon CalVCB's broad discretion when deciding claims under Penal Code section 4900. By comparison, new 645(g) provides helpful guidance, in accordance with statute, that does not unnecessarily infringe upon CalVCB's discretion and ensures the hearing officer may weigh and consider all relevant evidence.</p>
Section 641, subdivision (c)		
SUBMITTER	SUMMARY OF COMMENTS	CaIVCB RESPONSE

<p>California Innocence Project (CIP)</p>	<p>We appreciate that all relevant evidence should be considered, as confirmed by 641(c). However, this first sentence of 641(c), which allows the admission of any type of relevant evidence if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, seems to unnecessarily broaden the scope of relevant evidence. The second sentence, which is the only proposed change to this particular subdivision, appropriately describes the scope of admissibility based upon the statutory definition for relevant evidence. Consider deleting the first sentence and retaining only the second.</p>	<p>No modification. The language in the first sentence of 641(c), which has been in effect since 2010, allows consideration of any type of relevant evidence if it is the sort of evidence on which reasonable persons are accustomed to rely. This language is identical to the standard for admissibility of evidence in formal hearings under Administrative Procedure Act (APA), which imposes a more demanding standard for admissibility than required for informal hearings. (Gov. Code, §§ 11445.40, 11513, subd. (c).) This is the same standard that governs CalVCB's informal hearings for victim compensation. (Gov. Code, § 13959, subd. (e)(1).) This standard appropriately balances the competing needs for flexibility and reliability when considering the admissibility of evidence submitted by the claimant, as well as the Attorney General, at CalVCB's informal hearings for Penal Code section 4900 claims.</p>
<p>CIP</p>	<p>The language in the first sentence of 641(c), which permits admissibility of evidence on which reasonable persons are accustomed to rely, only applies in formal hearings conducted by an Administrative Law Judge, in which there are other protections including discovery rights.</p>	<p>No modification. CalVCB hearings, which are conducted by trained attorneys as hearing officers, are informal. (2 CCR § 615.1, subd. (a); 615.2, subd. (g)(A), 644, subds. (o) & (p).) As a result, the first sentence imposes a heightened restriction upon admissibility of evidence than otherwise required by the APA. (Gov. Code, §§ 11445.40, 11513, subd. (c).) Moreover, other provisions of the current and proposed regulations ensure that both parties have advance notice of all evidence to be presented for the Board's consideration with an opportunity to object. (See CCR 643 (pre-hearing procedure).)</p>

MB&L	<p>The new language in the second sentence of 641(c) defining relevant evidence is valuable. However, the first sentence, which allows admission of the sort of evidence on which reasonable persons are accustomed to rely, appears to provide much greater and subjective leeway that may result in the Board's consideration of misleading or unreliable evidence. Considering deleting this language within the first sentence while retaining the second sentence.</p>	<p>No modification. As explained above, the language in 641(c) satisfies the standard for admissibility in formal hearings under the APA and provides a practical framework for resolving admissibility questions at CalVCB's informal hearings. These hearings are conducted by impartial attorneys who are trained to weigh all evidence and evaluate credibility to ensure their proposed decisions are accurate, thorough, and fair. Those proposed decisions, in turn, are carefully considered by the Board members when deciding whether to approve a claim. (See Evid. Code, § 664 (official duty presumed to be regularly performed).) No further restrictions upon the admissibility of evidence are warranted.</p>
MB&L	<p>The first sentence of 641(c) may result in the Board's consideration of potentially prejudicial evidence that would otherwise be excluded or limited in criminal trial, such as gang affiliation, prior criminal acts, drug use, or mental health struggles, which would undermine the impartiality of the Board's decision.</p>	<p>No modification. As explained above, hearings are conducted by attorneys who are trained to neutrally evaluate all evidence. Moreover, the traditional rules of evidence allow evidence of a person's prior bad acts to show motive, intent, absence of mistake or accident, or identity, as well as impeachment of a witness' credibility. (Evid. Code, § 1101, subd. (b).) Accordingly, any blanket exclusion of gang affiliation, prior criminal acts, drug use, or mental health struggles would unnecessarily impair CalVCB's discretion when deciding claims under Penal Code section 4900. Such a limitation may further impair the ability of some claimants to present all evidence in support of their claim.</p>
<p>Section 641, subdivision (d)</p>		

SUBMITTER	SUMMARY OF COMMENTS	CaIVCB RESPONSE
CIP with Northern California Innocence Project (NCIP)	<p>The unchanged language in 641(d) allows admission of evidence if permitted under the standard set forth in 641(c), even though there is a common law or statutory rule which might bar admission in any other proceeding. Transparency intended by this subdivision is appreciated, however, evidence rules, for example dealing with limitations on the presentation of character evidence, should still apply to these proceedings. Too often, these proceedings pivot to a character assassination of the wrongfully convicted that has no bearing on the merits of their wrongful conviction and rules like this retain the integrity and decency of the proceedings.</p>	<p>No modification. CaIVCB disagrees with the characterization that any of its proceedings devolved into a character assassination of the claimant. Adding the traditional rule that bars admission of character evidence to show propensity (Evid. Code, § 1101, subd. (a)) would unnecessarily restrict CaIVCB's discretion to consider any relevant information when deciding claims under Penal Code section 4900. As detailed above, the standard for admissibility under 641(c), which is approved by the APA for formal hearings, is best suited for CaIVCB's informal hearings on Penal Code section 4900 claims. Furthermore, language in 641(e) ensures that any objections to and arguments about admissibility may be considered by the hearing officer when determining the weight to be given to the challenged evidence. Combined, these provisions ensure the integrity and decency of the proceedings while preserving CaIVCB's broad discretion when deciding these claims. It also ensures that claimants are not precluded from presenting all relevant evidence to support their claim.</p>

Section 641, subdivision (e)

SUBMITTER	SUMMARY OF COMMENTS	CaIVCB RESPONSE
MB&L	<p>The language in 641(e), which allows consideration of any objections or arguments about the evidence when determining its weight, remains unchanged. To prevent the Board from considering evidence that may be</p>	<p>No modification. The language in 641(e), which has been in effect since 2010, provides appropriate guidance without unduly restricting CaIVCB's discretion to decide claims under Penal Code section 4900. Hearings</p>

	unduly prejudicial, such as prior contacts with law enforcements, gang affiliation, or substance abuse, add the following language as a new subdivision to 641: The Board shall exercise care in giving any weight to evidence that would be excluded in other types of proceedings, in particular evidence seeking to suggest the claimant's guilt by indirect means, such as other bad acts evidence.	are conducted by trained attorneys, who are unlikely to be swayed by unduly prejudicial evidence when drafting their proposed decisions. These trained attorneys are capable of discerning the appropriate weight to assign contested evidence.
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Section 642, subdivision (a)

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
MB&L	New language in 642(a) allows a hearing officer to reject a claim for lack of jurisdiction. But the meaning of "jurisdiction" in this context is unclear from the proposed regulations and statutes. As a result, this provision provides inadequate notice of the grounds on which a hearing officer might reject a claim for failing to comply with this vague filing requirement. Consider amending section 642 to provide greater clarity on which defects are considered jurisdictional.	Modified 642, as well as 640(d), to replace "jurisdiction" with "compliance with Penal Code sections 4900 and 4901" in order to specify the procedural requirements needed to file a claim. Added clarifying language to 640(d) to explain that filed claims will be considered by the Board, whereas claims that fail to comply with sections 4900 and 4901 may be rejected by a hearing officer. The process for rejection by a hearing officer is detailed in 642(a)-(d). Added clarifying language in 642(a) to provide three examples of claims that fail to comply with sections 4900 and 4901, including that the claim fails to state facts upon which relief may be granted. Viewed together, these modified regulations provide adequate notice of the filing requirements.
	The language in 642(a) allows a hearing officer to reject a claim prior to the claim being filed. Typically, a claim is deemed filed upon receipt and amendment is	No modification. As a practical matter, CalVCB must be able to screen incoming claims to ensure a cognizable claim for relief is raised

	<p>allowed as necessary to perfect a claim without impacting the filing date for timeliness calculations. Consider amending to give claimants an opportunity to cure defects without affecting the filing date of the claim and provide that such defects, if not cured, will result in the rejection of a filed claim, rather than the rejection of a submitted claim.</p>	<p>before triggering the administrative hearing process before the Board, which occurs once a claim is deemed filed. This screening process includes notice of the defect and an opportunity to cure. (642(b).) CalVCB employs this screening process in approximately half of all new claims, which conserves resources for the parties, as well as CalVCB, by avoiding the need for a hearing or briefing on the merits by the Attorney General on a claim that cannot, as a matter of law, result in an approved claim for compensation. Whether rejected by a hearing officer or denied by the Board following a hearing, the final decision is subject to review by a petition for writ of mandate. (CCP 1094.5.) Moreover, as explained above, state and federal courts engage in similar screening functions. (Cal. Rules of Court Rules 2.118; 2.259; 28 USC 1915A.) No provision in Penal Code sections 4900 et seq. prohibits such an approach, whereas section 4906 expressly permits CalVCB “to make all needful rules and regulations consistent with the law for the purpose of carrying into effect this chapter.” Finally, timeliness of a claim is determined based upon the date submitted, not filed.</p>
	<p>The language in newly added 642(a)(1) declares that successive or duplicative claims fail to comply with Penal Code sections 4900 or 4901 and the Board will consider on the merits only a single claim by a claimant challenging the same underlying conviction. This language creates a new procedural bar that does not appear in statute and creates a substantial and additional barrier to claimants beyond the scope of</p>	<p>Modified solely to renumber 642(a)(1) as 642(a)(2) and to clarify that successive or duplicative claims fail to comply with both Penal Code section 4900 and 4901. Otherwise, the language is consistent with CalVCB’s previous adjudications rejecting successive or duplicative claims, as it is not unusual for claimants to submit a second claim after their first claim is denied. The limit imposed by 642(a)(1) upon the number of claims that may be submitted is supported by language</p>

	<p>the Board’s rulemaking authority. Consider deleting subdivision (a)(1).</p>	<p>in sections 4900 and 4901, both of which refer to a singular claim, rather than claims in the plural. Moreover, no provision in Penal Code sections 4900 et seq. prohibits this limitation upon the number of claims that a claimant may submit to CalVCB, and section 4906 expressly permits CalVCB “to make all needful rules and regulations consistent with the law for the purpose of carrying into effect this chapter.”</p>
	<p>The language in newly added 642(a)(2) declares that a claim solely based upon a vacated conviction pursuant to Penal Code section 1170.95³ is not in compliance with Penal Code sections 4900 or 4901. It further declares that, to be cognizable, a claim must allege that the claimant was erroneously convicted under the law in effect at the time the charged crime occurred. This new language creates a procedural bar that does not appear in statute and creates a substantial and additional barrier to claimants beyond the scope of the Board’s rulemaking authority. Consider deleting subdivision (a)(2).</p>	<p>Modified slightly to renumber 642(a)(1) as 642(a)(2) and clarify that claims solely based upon a change in the legal definition of any crime for which the claimant was previously convicted fail to comply with both Penal Code section 4900 and 4901. Sections 4900 and 4901 plainly require an allegation of factual innocence for the crime as charged, which resulted in an erroneous conviction at that time, to be eligible for compensation. This interpretation is bolstered by case law, which confirms that Penal Code section 1170.95 provides the exclusive relief for persons previously convicted under the prior definition for murder (<i>People v. Gentile</i> (2020) 10 Cal.5th 830, 859) and that individuals relieved of criminal responsibility for any reason besides substantive innocence are not eligible for relief under section 4900 (<i>Diola v. State Board of Control</i> (1982) 138 Cal.App.3d 580, 587-88). This language is consistent with CalVCB’s previous adjudications that rejected claims solely based upon a vacated murder conviction pursuant to</p>

³ In 2019, the Legislature prospectively narrowed liability for accomplices and felony-murder. (Pen. Code, §§ 188, 189, as amended by Stats. 2018, c. 1015 (S.B. 1437), eff. Jan. 1, 2019.) The Legislature simultaneously enacted Penal Code section 1170.95 to allow all previously convicted defendants to petition for dismissal upon a showing that their actions no longer satisfy the current elements for murder. (Pen. Code, § 1170.95, added by Stats. 2018, c. 1015 (S.B. 1437), eff. Jan. 1, 2019.)

		section 1170.95. Moreover, no provision in sections 4900 et seq. prohibits rejection of claims on this basis, and section 4906 expressly permits CalVCB “to make all needful rules and regulations consistent with the law for the purpose of carrying into effect this chapter.”
Section 645, subdivision (f)		
SUBMITTER	SUMMARY OF COMMENTS	CaIVCB RESPONSE
CIP with NCIP	The language in newly-added 645(f) states that the proposed decision may not deny a claim solely because the claimant failed to obtain a finding of factual innocence. This new language covers a concern previously expressed by CIP and NCIP that proposed decisions still reference whether or not the claimant requested and received a court finding of factual innocence, even though Penal Code section 1485.55 bars any presumption from failing to obtain such a finding. NCIP had suggested adding language to ensure that the failure to obtain a finding of factual innocence is not a basis or even a factor for consideration or mention in a decision.	No modification. The language in 645(f) is consistent with Penal Code section 1485.55, subdivision (d), which provides that a “presumption does not exist in any other proceeding for failure to make or obtain” a court finding of factual innocence. Thus, 645(f) appropriately prohibits denying a claim solely on this basis, without precluding consideration of this fact as a single factor. Any further limitations upon a proposed decision’s use or reference to the failure to obtain a finding of factual innocence would unduly restrict CalVCB’s discretion.

TABLE 2 – RESPONSES TO COMMENTS TO MODIFICATIONS OF PROPOSED REGULATIONS ON JUNE 2, 2022

Section 640, subdivision (a)(2)		
SUBMITTER	SUMMARY OF COMMENTS	CaIVCB RESPONSE
CIP	As modified, 640(a)(2) requires claimants to submit, along with a	No modification. There is no particular list of documents

	<p>completed claim form, “supporting documentation as specified in the claim form.” CIP inquired where to find the list of “supporting documents” for the claim form.</p>	<p>required by 640(a)(2). Instead, 640(a)(2) only requires “supporting documentation as specified in the claim form,” and the form, in turn, specifies various types of documentation required for different scenarios (i.e., any documentation that confirms the claimant’s conviction, imprisonment, and release for the challenged offense, finding of factual innocence, reversal of conviction during habeas, or dismissal of charges on remand). As further clarified by 640(c), the supporting documentation must confirm the claimant’s felony conviction and imprisonment, and release, as well as timeliness under the 10-year deadline. By design, the regulation and form avoids enumerating a specific list of documentation that must be provided in all cases, in recognition that some claimants may lack certain records.</p>
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TABLE 3 – RESPONSES TO COMMENTS TO SECOND MODIFICATIONS OF PROPOSED REGULATIONS ON JULY 20, 2022

Section 640(a) & (e)		
SUBMITTER	SUMMARY OF COMMENTS	CaIVCB RESPONSE
None	None received.	None provided.

Updated Informative Digest / Policy Statement Overview

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

UPDATED INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

Existing law requires the California Victim Compensation Board (CalVCB) to process claims for compensation from erroneously convicted persons for the injury sustained as a result of their erroneous conviction and imprisonment pursuant to Penal Code sections 4900 et seq. Specifically, section 4900 authorizes only those persons who, “being innocent” of a “crime against the state amounting to a felony” for which they were convicted and imprisoned in the state prison or incarcerated in county jail pursuant to subdivision (h) of Section 1170 for that conviction, “for the reason that the crime with which they were charged was either not committed at all or, if committed, was not committed by the person,” may “present a claim” to CalVCB “for the injury sustained ... through the erroneous conviction and imprisonment....” Section 4901 requires such a claim be accompanied by a verified statement of facts and presented to CalVCB within ten years after judgment of acquittal, dismissal of charges, pardon granted, or release from custody.

For approved claims as of July 2022, the Board shall approve payment for the purpose of indemnifying the claimant if sufficient funds are available, upon appropriation by the Legislature, in the amount of \$140 per day of the claimant’s erroneous incarceration. (Pen. Code, §§ 4900, 4904, as amended by AB 200 (Committee on Budget, Chapter 58, Statutes of 2022), eff. June 30, 2022.) For previously approved claims, the Board issued a recommendation that the Legislature make an appropriation for the purpose of indemnifying the claimant in the amount of \$140 per day of their erroneous incarceration. (Former Pen. Code, § 4904.)

To process these claims, CalVCB is authorized by Penal Code section 4906 “to make all needful rules and regulations consistent with the law for the purpose of carrying into effect this chapter.” Government Code section 13920 similarly authorizes CalVCB to “adopt regulations ... governing any matter over which it has jurisdiction.”

Prior to 2022, CalVCB received, on average, 27 claims or less per year under Penal Code section 4900. Approximately half of those claims were rejected by a hearing officer for failing to comply with Penal Code sections 4900 and 4901. The remaining claims that proceeded to the Board for consideration were approved only upon proof, by a preponderance of evidence, that the claimant did not commit the charged offense for which they were convicted and imprisoned. Compensation was approved for less than eight claimants per year.

Effective January 2022, SB 446 (Glazer, Chapter 490, Statutes of 2021), shifted 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).) For those particular claims, the claimant need not prove innocence. Instead, the Board is required to approve the claim unless the Attorney General timely presents clear and convincing proof of the claimant's guilt, even if the evidence fails to prove by a preponderance that the claimant did not commit the crime. (Pen. Code, §§ 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).) Since January 2022, the rate of claims received and approved has almost doubled, with 46 claims anticipated to be received by the end of this year and 12 claims anticipated to be approved.

Over the past decade, additional statutory changes have impacted CalVCB's processing of claims under Penal Code section 4900. 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 compensation 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 numerous statutory changes, CalVCB has not updated its regulations governing claims under Penal Code section 4900 since 2012. Those regulations are located in sections 640 through 645 of title 2 of the California Code of Regulations. As a result, many provisions of the current regulations are outdated, incomplete, or contrary to law. For example, the current regulations require proof of pecuniary harm (2 CCR § 640(f)), bar a recommendation for compensation absent proof of innocence (2 CCR §§ 641(a)), place the burden of proof entirely on the claimant (2 CCR § 644(c)), and fail to acknowledge the effect of a court finding of factual innocence when deciding a claim (2 CCR § 645). The regulations also require submission of an outdated claim form from 2011 (2 CCR 640(a)), lack options for submitting a claim electronically or appearing at a hearing via remote means (2 CCR §§ 640, 644), and omit detailed guidance as to the substantive and procedural requirements in order for a submitted claim to be filed and considered by the Board without rejection by a hearing officer (2 CCR §§ 640, 642). The

regulations also fail to address contempt sanctions in the specific context of a Penal Code section 4900 proceeding.

The proposed regulations, as modified, would resolve all of these issues.

Section 640 updates and clarifies the process for submitting a claim to CalVCB, which is expanded to include electronic submissions via email, and revises the definition for injury. In addition, it specifies an updated claim form as revised July 2022, which is incorporated by reference, and clarifies the necessary information and supporting documentation that must accompany the form. It explains that submitted claims which comply with all of the requirements of Penal Code sections 4900 and 4901 will be deemed filed and proceed for consideration by the Board, while all other claims may be rejected by a hearing officer. It acknowledges that a court finding of innocence for any individual conviction is binding upon CalVCB and confirms that an automatic approval of a claim is required, without a response from the Attorney General, only when the claimant obtained a finding of innocence for every conviction underlying their incarceration.

Section 641 updates and clarifies the evidentiary standard applicable to CalVCB's informal hearings on a Penal Code section 4900 claim. It removes the bar to approving a claim absent persuasive proof of innocence, which conflicts with claims under subdivision (b) of section 4900, and adds a definition for relevant evidence. It retains the statutory standard of admissibility for formal administrative hearings, which 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. It likewise retains the Board's broad discretion to consider any information it deems relevant, including evidence that might be inadmissible under the traditional rules of evidence.

Section 642 updates and clarifies the process by which a CalVCB hearing officer may reject a claim, without being heard or considered by the Board, if that claim fails to comply with Penal Code sections 4900 and 4901. It adds three specific examples of such deficient claims: (1) a claim that fails to allege facts upon which relief may be granted, (2) a successive or duplicative claim, and (3) a claim solely based upon a change in the legal definition of a crime. It confirms that no claim will be rejected for failing to comply with sections 4900 and 4901 without notice to the claimant of the deficiency and a 30-day opportunity to cure the defect. It explains that the filing date for a deficient claim is calculated based upon the date the deficiency is cured.¹

¹ The filing date, in turn, triggers the Board's 30-day deadline to approve 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). By comparison, timeliness of the claim is based upon the date of submission, not filing.

Section 643 updates and clarifies the procedures that apply in advance of an informal hearing. It recognizes the hearing officer's discretion to request pre-hearing briefs from the parties on the merits of the claim and allows either party to waive submission. It expressly requires each party to submit a pre-hearing statement identifying anticipated witnesses and exhibits to be presented at the informal hearing. It retains the hearing officer's discretion to consider any other matters that will promote the orderly and efficient conduct of the hearing.

Section 644 updates and clarifies the procedures that apply to the informal hearing before a hearing officer. It explains the process for scheduling an informal hearing, which takes into consideration the availability of parties and witnesses, and the circumstances under which such a hearing may be waived. It confirms that in-person hearings will continue to occur in Sacramento, unless the hearing officer agrees to a different location, and recognizes the hearing officer's discretion to allow appearance by electronic means. It explains the parties' respective burden of proof for claims proceeding under subdivision (b) of Penal Code section 4900 and specifies the order for presenting evidence. It retains the hearing officer's discretion to determine the amount of time allotted for each claim, to request post-hearing briefs, and to reopen the record for good cause. It continues to require that all hearings be recorded and exempt from the formal hearing provisions of the Administrative Procedure Act.

Section 645 updates and clarifies appropriate considerations for a hearing officer's proposed decision. It continues to require the proposed decision be based upon the record, including any matters subject to official notice, as well as the hearing officer's specialized knowledge to evaluate the evidence. It continues to require a statement of factual and legal bases, which may include witness credibility. It clarifies that the hearing officer shall take the matter under submission once the administrative record closes, rather than when the hearing adjourns. It adds that the proposed decision may not deny a claim solely because the claimant failed to obtain a court finding of factual innocence. It further adds that the proposed decision may not deny a claim under subdivision (b) of Penal Code section 4900 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.

Section 646 expands the existing provisions for contempt and sanctions in the specific context of Penal Code section 4900 claims. It continues to subject any person with contempt who obstructs or interrupts a hearing with insolent behavior toward the Board or hearing officer. It 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. It continues to allow sanctions for any party or representative who engages in bad faith or frivolous tactics. It adds that sanctions may be ordered against any party, representative, or witness in a proceeding under section 4900.

Overall, the proposed regulations for sections 640 through 646, as amended and twice modified, and the claim form, as revised July 2022, will comply with the current law governing claims under Penal Code section 4900. By doing so, these regulations will provide clear guidance to the parties and enable CalVCB to fairly decide these claims in a consistent and efficient manner.

Erroneously Convicted Person Claim Form

ERRONEOUSLY CONVICTED PERSON CLAIM FORM

VCB-41-00002 (Rev. 07/2022)



California Victim Compensation Board
P.O. Box 350
Sacramento, CA 95812-0350

Email: HearingOfficer@victims.ca.gov

For Official Use Only

Please carefully review and complete this form, attach all supporting documentation, and return to CalVCB at the above address by either regular mail or email. A CalVCB representative will contact you once your submission has been received and considered.

Eligibility for Compensation under Penal Code section 4900

If you were erroneously convicted and sentenced to state prison or incarcerated in county jail pursuant to Penal Code section 1170, subdivision (h), for a felony offense under California law, then you may be entitled to approval of your claim for compensation under Penal Code section 4900. (Pen. Code, § 4900, subd. (a).) To be eligible for consideration, you must no longer be incarcerated for that conviction, and you must submit a completed claim form, with supporting documentation, within 10 years of your release from custody, dismissal of charges, pardon, or acquittal on retrial. (Pen. Code, § 4901; Cal. Code Regs., tit. 2, §§ 640, 642.)

With limited exceptions, you must present evidence to prove by a preponderance that (1) the charged crime was not committed at all or was not committed by you, and (2) you sustained injury as a result of your erroneous conviction and imprisonment. (Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).) Both of these elements are presumed, and approval of your claim for compensation is automatically mandated by law, if a court has found you factually innocent for every offense underlying your incarceration. (Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).) Alternatively, if your conviction was vacated during a habeas proceeding or pursuant to Penal Code sections 1473.6 or 1473.7, subdivision (a)(2), and the charges were dismissed or acquitted upon remand, then approval of your claim for compensation is mandated for your demonstrated injury, unless the Attorney General timely submits clear and convincing evidence of your guilt. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4903, subd. (b).)

CALIFORNIA VICTIM COMPENSATION BOARD

P.O. Box 350 • Sacramento, CA 95812-0350

Phone: 800.777.9229 • Fax: 916.491.6441

Email: HearingOfficer@victims.ca.gov • www.victims.ca.gov

Compensation is calculated at a flat rate of \$140 per day of your erroneous imprisonment. (Pen. Code, § 4904.) Compensation is barred for any claimant who pled guilty with the specific intent to protect another from prosecution. (Pen. Code, § 4903, subd. (e).) If your claim is approved, CalVCB shall approve payment if sufficient funds are available, upon appropriation by the Legislature. (Pen. Code, § 4904.)

Section A. Claimant Information

Claimant's Name: _____ Date of Birth: _____

CDCR Inmate Number: _____ Preferred Pronouns: _____

Email Address: _____ Telephone Number: _____

Mailing Address: _____ City: _____ State: _____ ZIP: _____

It is your ongoing duty to provide a current address to CalVCB. (Cal. Code Regs., tit. 2, § 616.2.)

Section B. Attorney/Representative Information *(if applicable)*

Name of Attorney/Representative: _____

Email Address: _____ Telephone Number: _____

Mailing Address: _____ City: _____ State: _____ ZIP: _____

Signature: _____ Date: _____

An attorney or representative is not required in this administrative proceeding. If you are represented, your representative has an ongoing duty to provide a current address to CalVCB. (Cal. Code Regs., tit. 2, § 616.2.)

Section C. Erroneous Conviction(s) Information

County and Criminal Court Case Number for Erroneous Felony Conviction(s): _____

Penal Code (or Vehicle Code or Health and Safety Code) section for Erroneous Felony Conviction(s): _____

State prison(s) in which Claimant's sentence was served: _____

Date of Arrest: _____ Date of Conviction: _____

Sentence Imposed: _____ Days Actually Served: _____

Date of Release from Imprisonment (*you are not eligible to submit a claim if you are still incarcerated for the challenged conviction(s)*): _____

Date of Discharge from Parole/Supervision: _____

Date of Dismissal or Acquittal of Charges on Retrial: _____

Date of Pardon Granted: _____

Amount of Compensation Requested (*calculated at \$140 per day of your erroneous incarceration*):
\$ _____

You must attach supporting documentation to confirm your conviction, imprisonment, and release from custody for the challenged offense. (Cal. Code Regs., tit. 2, § 640, subd. (a)(2).)

Section D. Factual Innocence Determination

1. Has a court issued a finding of factual innocence for your challenged conviction(s) in any proceeding to grant habeas relief or vacate the judgment under Penal Code section 1473.6?
____ No. ____ Yes. If yes, you must attach a copy of the court's order to this claim form.
2. Did the court finding of factual innocence apply to each and every conviction underlying your entire sentence?
____ No. ____ Yes. If yes, you must attach a copy of the Abstract of Judgment or other documentation to confirm the calculation for your sentence.

Upon satisfactory proof that the answer to both of these questions is yes, then you may be entitled to an automatic approval of your claim for compensation within 30 days and without an administrative hearing.

CALIFORNIA VICTIM COMPENSATION BOARD
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Section E. Post-Conviction Proceedings (Excluding Direct Appeal)

1. Has a court vacated your challenged conviction(s) by granting habeas relief?
____ No. ____ Yes. If yes, you must attach a copy of the court's order to this claim form.
2. Has a court vacated your challenged conviction(s) pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2)?
____ No. ____ Yes. If yes, you must attach a copy of the court's order to this claim form.
3. If you answered yes to either #1 or #2 above, were the charges subsequently dismissed on remand or were you acquitted on retrial?
____ No. ____ Yes. If yes, you must attach a copy of the court's order to this claim form.

Upon satisfactory proof that the answer is yes to questions #1 and #3 or #2 and #3, then you may be entitled to approval of your claim for compensation for your demonstrated injury, unless the Attorney General timely submits clear and convincing evidence of your guilt.

Section F. Statement of Factual Innocence

Absent an exception, you bear the burden to prove your factual innocence by a preponderance of evidence. (Pen. Code, § 4900, subd. (a).) To present a claim to the Board, you must provide a statement of facts to show that the crime with which you were charged was either not committed at all, or, if committed, was not committed by you. *(Please attach additional paper if needed.)*

This image shows a blank sheet of white paper with horizontal ruling lines. The lines are evenly spaced and extend across the width of the page. There are no margins, text, or other markings on the paper.

Section G. Statement of Injury

Absent an exception, you bear the burden to prove, by a preponderance, that you sustained injury as a result of your erroneous conviction. Injury is shown if you would have been free from custody but-for the erroneous conviction. To demonstrate injury, list every conviction and resulting sentence that was imposed at any time during your confinement for the erroneous conviction.

(Please attach additional paper if necessary.)

Section H. Disqualification for Certain Guilty Pleas

1. Did you enter a guilty plea to the conviction(s) for which you are seeking compensation under Penal Code section 4900?
____ No. ____ Yes.
2. If the answer is yes, did you do so with the specific intent to protect another from prosecution?
____ No. ____ Yes.
3. Please explain the reasons for your decision to enter a guilty plea.

Section I. Declaration Statement

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Printed Name: _____

Signature: _____ Date: _____

Privacy Notice on Collection

1. CalVCB collects this information based on California Government Code sections 13952 et seq. and 13954, Penal Code section 4900 et seq., and California Code of Regulations, title 2, section 640 et seq.
2. All information collected from this site is subject to, but not limited to, the Information Practices Act. See victims.ca.gov/legal/public-records-requests/.
3. This information is collected for the purpose of determining eligibility for compensation.
4. CalVCB may disclose your personal information to another requester, only if required to do so by law or in good faith that such action is necessary to:
 - a. Conform to the edicts of the law or comply with legal process served on CalVCB or the site;
 - b. Protect and defend the rights or property of CalVCB; and,
 - c. Act under exigent circumstances to protect the personal safety of users of CalVCB, or the public.
5. Individuals are to provide only the information requested.
6. The information provided is voluntary.
7. The consequences of not providing the requested information could delay filing the claim or the claim not being filed.
8. The information collected is used by the Legal staff to process your claim.
9. Any questions regarding the information collected, please write to the following address: P.O. Box 350, Sacramento, CA 95812-0350, email CustodianOfRecords@Victims.ca.gov, call (888) 833-3593, or contact the CalVCB Privacy Coordinator at InfoSecurityAndPrivacy@Victims.ca.gov.

ITEM 7

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

8
9 In the Matter of:

10 **Joaquin Ciria**

11 Claim No. 22-ECO-17

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On May 9, 2022, Joaquin Ciria (Ciria) submitted a claim for compensation as an erroneously
14 convicted person to the California Victim Compensation Board (CalVCB) pursuant to Penal Code
15 section 4900. The claim is based upon Ciria's 1991 convictions for murder and felon in possession of
16 a firearm, which were vacated and dismissed during a state habeas proceeding based on new
17 evidence. Ciria seeks compensation in the amount of \$1,636,600 for having served 11,690 days
18 imprisonment for these convictions. Ciria is represented by Paige Kaneb of the Northern California
19 Innocence Project.

20 The Attorney General is represented by Sharon Loughner. By letter dated August 8, 2022, the
21 Attorney General declined to object to Ciria's claim. The administrative record closed that same day,
22 and the matter was assigned to CalVCB Senior Attorney Sara Harbarger. As required by subdivision
23 (b) of Penal Code section 4900, CalVCB is mandated to approve payment to Ciria in the amount of
24 \$1,636,600 if sufficient funds are available, upon appropriation by the Legislature, as indemnification
25 for the injury sustained by Ciria for his 11,690 days imprisonment for a vacated conviction.¹

26
27
28 ¹ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B.446), § 3, eff. Jan. 1, 2022, amended
by Stats.2022, c. 58 (A.B.200), § 17, eff. June 30, 2022).

II. Procedural History

On April 19, 1990, Ciria was arrested and subsequently charged with murder with the allegation that he personally used a firearm and was a felon in possession of a firearm in San Francisco County Superior Court case number 137440.² On February 25, 1991, a jury found Ciria guilty of first degree murder and found true the allegation that he personally used a firearm.³ In a bifurcated proceeding, the trial court found true that Ciria was a felon in possession of a firearm.⁴ The court sentenced Ciria to a total of 31 years to life in state prison.⁵

The judgment was affirmed on direct appeal on August 31, 1992.⁶ Between 1993 and 2018, Ciria filed petitions for writs of habeas corpus at all levels of state and federal court on several grounds, including unconstitutional identification procedures, actual innocence, and failure of the prosecution to disclose exculpatory evidence to the defense.⁷ The courts denied each petition.⁸

On January 19, 2021, Ciria filed a petition for writ of habeas corpus based on ineffective assistance of counsel, new evidence, false testimony, and actual innocence.⁹ On March 18, 2021, the court issued an Order to Show Cause to the San Francisco County District Attorney's Office (SFDA) as to why Ciria should not have his judgment of conviction vacated pursuant to his actual innocence claim based on false testimony presented at trial.¹⁰ The SFDA responded and concluded that the cumulative weight of the new evidence presented by Ciria would have more likely than not changed

² Pen. Code, §§ 187, 667.5, subd. (b), and 12021, subd. (a) .

³ Ciria Application ("App.") at p. 376. The pagination for Ciria's application refers to the continuous page numbers for the entire 392 page file.

⁴ App. at p. 376; Abstract of Judgment.

⁵ App. at p. 376; Abstract of Judgment.

⁶ App. at pp. 48, 127.

⁷ *Ibid.*

⁸ *Ibid.*

⁹ App. at pp. 59, 114, 128.

¹⁰ App. at p. 376.

1 the outcome at trial, and the new evidence undermines the entire prosecution's case and points
2 unerringly to Ciria's innocence.¹¹

3 On April 19, 2022, the San Francisco County Superior Court granted habeas relief based on
4 new evidence and pursuant to Penal Code section 1473, subdivision (b)(3).¹² The court found that
5 Ciria had presented credible new evidence of his innocence that would have more likely than not
6 changed the outcome of the trial.¹³ The court simultaneously vacated and dismissed Ciria's
7 convictions for murder and felon in possession of a firearm in the interest of justice in case number
8 137440.¹⁴ The court did not address Ciria's claim of actual innocence in the order.

9 On April 20, 2022, Ciria was released from custody on bail. By then, as both parties agree,
10 Ciria had been confined a total of 11,690 days since his arrest on April 19, 1990 solely as a result of
11 his vacated convictions.¹⁵

12 On May 9, 2022, Ciria submitted a claim to CalVCB seeking compensation as an erroneously
13 convicted person under subdivision (b) of Penal Code section 4900. Through his counsel, Ciria
14 requested compensation in the amount of \$1,636,600 for 11,690 days of incarceration.¹⁶ After
15 confirming compliance with Penal Code sections 4900 and 4901, CalVCB filed the claim but requested
16 clarification from Ciria's counsel as to the date of arrest and requested an abstract of judgment.¹⁷ On
17 May 20, 2022, through his counsel, Ciria submitted an Abstract of Judgment and confirmed the date of
18 arrest was April 19, 1990.¹⁸

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20 ¹¹ App. at pp. 59-60.

21 ¹² App. at p. 21; see also Pen. Code, § 1473, subdivision (b)(3) (authorizing habeas relief for new
22 "evidence that is credible, material, presented without substantial delay, and of such decisive force and
value that it would have more likely than not changed the outcome at trial").

23 ¹³ App. at p. 21.

24 ¹⁴ App. at p. 22.

25 ¹⁵ App. at p. 1; E-mail from Ciria's counsel Paige Kaneb dated May 20, 2022; Letter from Deputy
Attorney General Sharon Loughner, dated August 8, 2022, submitted via email on August 8, 2022, .

26 ¹⁶ App. at pp. 1, 18.

27 ¹⁷ CalVCB Email to parties, entitled "*Joaquin Ciria, PC 4900 Claim 22-ECO-17 – Request for
Response Letter*," sent May 10, 2022.

28 ¹⁸ E-mail from Ciria's counsel Paige Kaneb dated May 20, 2022.

1 Meanwhile, CalVCB requested a response from the Attorney General within 45 days as
2 required by subdivision (d) of Penal Code section 4902. Following a single request for an extension of
3 time, the Attorney General timely submitted a declination letter on August 8, 2022. In it, the Attorney
4 General declined to object to Ciria's claim and did not dispute the custodial day calculation.¹⁹ The
5 administrative record closed on the same day.

6 **III. Factual Background** ²⁰

7 **A. Facts Presented at Trial**

8 On March 25, 1990, Ciria told his friend, G.V.²¹ that his friend Rubin Alfonso (Alfonso) had
9 been shot and killed the day before and he knew who committed the crime.²² At about 6:30 or 7:00
10 p.m., G.V. gave Ciria a ride to a bar on 24th Street and then to the area near the Hall of Justice in his
11 1974 Monte Carlo with a "smashed up" front end.²³ While in the area of the Hall of Justice, Ciria
12 pointed to a man carrying a plastic bag, Felix Bastarrica (Bastarrica), and said he had been looking for
13 that man.²⁴ Ciria exited the vehicle while G.V. waited inside the vehicle.²⁵ Ciria argued with Bastarrica
14 during which Bastarrica made conciliatory hand gestures to Ciria and said, "Joaquin.... begging... for
15 some mercy."²⁶ G.V. heard Ciria say to Bastarrica that he was, "going to die."²⁷ G.V. observed Ciria
16 pull a gun from his pocket and shoot Bastarrica.²⁸ As Bastarrica tried to flee, Ciria shot him a second
17

18 ¹⁹ Letter from Deputy Attorney General Sharon Loughner, dated August 8, 2022, submitted via email
19 on August 8, 2022.

20 ²⁰ This factual summary is primarily based upon the San Francisco County Superior Court's Order to
21 Show Cause for a Writ of Habeas Corpus, which is binding upon CalVCB. (Pen. Code, § 4903, subd.
22 (c).) Consistent aspects of the administrative record are also cited.

23 ²¹ Individuals involved in the investigation are referred to by their initials only in an effort to protect their
24 privacy.

25 ²² App. at p. 377.

26 ²³ *Ibid.*

27 ²⁴ *Ibid.*

28 ²⁵ *Ibid.*

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

1 time and he fell to the ground.²⁹ Ciria stood over Bastarrica and fired the gun into Bastarrica's head.³⁰
2 Ciria returned to the vehicle holding the gun and told G.V. to leave.³¹ G.V. drove Ciria home and then
3 went to his own home.³²

4 The next day, Ciria asked G.V. to help him dispose of the gun.³³ G.V. drove Ciria to a pier,
5 briefly held the gun, and observed the gun was a .44 caliber revolver with burn marks and a cylinder
6 missing.³⁴ Ciria told G.V. he tried to burn the prints and everything off of it.³⁵ Ciria took the gun,
7 walked to the end of the pier, and threw it into the bay.³⁶ G.V. told San Francisco police officers where
8 Ciria tossed the gun and they retrieved it on July 10, 1990.

9 Besides G.V., there were other witnesses to the murder.³⁷ A second witness, K.G., testified
10 that on March 25, 1990, at about 9 p.m., she heard loud yelling outside her second floor window.³⁸
11 She looked outside and saw two men arguing in the alley and a large white car nearby.³⁹ One of the
12 men was thin and held a bag in his hand.⁴⁰ The other man had a stocky build and acted angrily and
13 aggressively.⁴¹ After about two minutes, K.G. saw the stocky man shoot the thin man several times,

18 ²⁹ App. at p. 377.

19 ³⁰ *Ibid.*

20 ³¹ *Ibid.*

21 ³² App. at p. 378.

22 ³³ App. at p. 378.

23 ³⁴ *Ibid.*

24 ³⁵ *Ibid.*

25 ³⁶ *Ibid.*

26 ³⁷ App. at p. 378.

27 ³⁸ *Ibid.*

28 ³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

1 turn, and run back to the white car.⁴² K.G. later positively identified Ciria as the stocky man in
2 photographic and physical lineups, at the preliminary hearing, and at trial.⁴³

3 A third witness, K.D., was parked between 5th and 6th streets at approximately 9:00 p.m. on
4 March 25, 1990.⁴⁴ He observed a light colored 1974 Monte Carlo with damage to the front stop in the
5 alley and a man from the passenger side step out of the vehicle.⁴⁵ K.D. later positively identified Ciria
6 as the passenger in a photographic lineup, at the preliminary hearing, and at trial.⁴⁶ K.D. observed
7 Ciria approach another man in the alley who held a plastic bag.⁴⁷ Ciria yelled at the man with the bag,
8 the man with the bag gestured frantically, and after two minutes Ciria took a gun out of his pocket.
9 K.D. heard a gunshot, looked up, and saw Ciria shoot the man with the bag two more times as the
10 victim fell to the ground.⁴⁸ The driver of the Monte Carlo said something to Ciria and Ciria got in the
11 vehicle and left.⁴⁹

12 **B. Newly Discovered Evidence**

13 1. C.G. Declaration

14 C.G., a childhood friend of G.V., provided a declaration dated August 5, 2020. In the
15 declaration, C.G. stated Ciria called her from prison while G.V. was visiting her home.⁵⁰ G.V. asked to
16 speak to Ciria but Ciria refused to speak to him.⁵¹ G.V. told C.G. that “Joaquin is innocent. I know he
17 didn’t do it.”⁵²

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19
20 ⁴² App. at p. 378.

21 ⁴³ *Ibid.*

22 ⁴⁴ App. at p. 378.

23 ⁴⁵ *Ibid.*

24 ⁴⁶ *Ibid.*

25 ⁴⁷ *Ibid.*

26 ⁴⁸ App. at pp. 378-379.

27 ⁴⁹ App. at p. 379.

28 ⁵⁰ App. at p. 379.

⁵¹ *Ibid.*

⁵² *Ibid.*

1 2. D.C. Declaration

2 D.C., G.V.'s sister, provided a declaration dated September 4, 2020. In the declaration, D.C.
3 described a conversation with G.V.⁵³ G.V. told her Ciria refused to speak to him on the phone.⁵⁴ G.V.
4 told her he lied to the police about Ciria.⁵⁵ G.V. told her that the police pushed him to "go with the flow"
5 and that the police "wanted Joaquin so bad."⁵⁶ G.V. told her "I know Joaquin didn't do this. He's
6 innocent."⁵⁷ G.V. told her another Cuban committed the murder.⁵⁸

7 3. C.J. Declaration

8 C.J., G.V.'s roommate in the 1990s, submitted a declaration. In the declaration, C.J. stated
9 sometime in March of 1990, he arrived home, went into G.V.'s bedroom, and observed G.V. sitting on
10 the bed with a .44 caliber black revolver.⁵⁹ G.V. told him the gun was "hot."⁶⁰ G.V. removed the
11 cylinder and said he would dispose of the gun.⁶¹

12 4. R. S. Declaration

13 R.S., a convicted murderer and a witness to the murder of Bastarrica, submitted a declaration.
14 In the declaration, R.S. stated he had a heated dispute with Alfonso outside of the Star Hotel.⁶² The
15 dispute turned into a fistfight that the hotel manager broke up.⁶³ After hearing Alfonso confronted
16 Bastarrica, he shot Alfonso and was later convicted of his murder.⁶⁴ After shooting Alfonso, R.S. went
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19 ⁵³ App. at p. 379.

20 ⁵⁴ *Ibid.*

21 ⁵⁵ *Ibid.*

22 ⁵⁶ *Ibid.*

23 ⁵⁷ *Ibid.*

24 ⁵⁸ App. at p. 379.

25 ⁵⁹ App. at p. 380.

26 ⁶⁰ *Ibid.*

27 ⁶¹ *Ibid.*

28 ⁶² App. at p. 380.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

1 to stay at a hotel by the alley where Bastarrica's murder took place.⁶⁵ In the early evening of March
2 25, 1990, R.S. asked Bastarrica to bring him clothes.⁶⁶ A while later, R.S. heard yelling outside his
3 window and knew the men were Bastarrica and C.D., a Cuban man he had known for several years.⁶⁷
4 R.S. looked out his window and saw Bastarrica and C.D., heard gunshots, grabbed his gun, and ran
5 outside.⁶⁸ He saw C.D. enter a white car and drive away.⁶⁹ He did not see the driver but recognized
6 that the car belonged to G.V.⁷⁰ R.S. did not see Ciria at the scene nor did he hear Ciria's name being
7 yelled.⁷¹ There had been tension between Bastarrica and C.D. because C.D. failed to pay Bastarrica
8 for a gun and C.D. believed Bastarrica burglarized his apartment.⁷² R.S. did not previously disclose
9 this information to law enforcement because he believed in a code of silence amongst drug dealers
10 and sought to have revenge against C.D.⁷³ He never told Ciria this information while they were in
11 prison together because he did not want to open a can of worms or jeopardize his suitability for
12 parole.⁷⁴ R.S. disclosed this information in 2019 after he was deported to Cuba.⁷⁵

13 C. Writ of Habeas Corpus: Order to Show Cause

14 In the Writ of Habeas Corpus: Order to Show Cause dated March 18, 2021, the San Francisco
15 County Superior Court determined Ciria satisfied his burden of raising a prima facie case that Ciria
16 may be innocent.⁷⁶ The court stated if the facts in the statements provided by R.S., C.G., and D.C. are
17
18

19 ⁶⁵ App. at p. 380.

20 ⁶⁶ *Ibid.*

21 ⁶⁷ *Ibid.*

22 ⁶⁸ *Ibid.*

23 ⁶⁹ *Ibid.*

24 ⁷⁰ App. at pp. 380-381.

25 ⁷¹ App. at p. 381.

26 ⁷² *Ibid.*

27 ⁷³ *Ibid.*

28 ⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ App. at p. 385.

1 taken as true, it would have more likely than not changed the outcome of the trial.⁷⁷ The court ordered
2 the SFDA to brief the court as to Petitioner's entitlement to relief.⁷⁸

3 D. Writ of Habeas Corpus: Real Party In Interest's Return

4 The SFDA submitted the Real Party In Interest's Return, dated October 1, 2021, in response to
5 the court's Order to Show Cause. The SFDA asked the court to set aside Ciria's February 20, 1991
6 conviction, order his immediate release from custody, and find him factually innocent.⁷⁹ The following
7 are some of the pertinent admissions made by the SFDA in their response:

- 8 1. Ciria's conviction was the product of incentivized false testimony and unreliable cross racial
9 eyewitness identifications.⁸⁰
- 10 2. It is more likely than not that G.V. testified falsely against Ciria at trial.⁸¹
- 11 3. The State's primary witness, G.V., provided material, false testimony and years later,
12 admitted to third parties on two separate occasions that Ciria was innocent.⁸²
- 13 4. The new evidence of the actual shooter being C.D. is corroborated by a number of facts.⁸³
- 14 5. C.D. closely matches the description of the shooter provided by two independent
15 eyewitnesses.⁸⁴
- 16 6. R.S. told multiple attorneys, investigators, and members of the SFDA's Innocence
17 Commission, and swore under penalty of perjury, that the real killer is C.D.⁸⁵
- 18 7. There was new evidence of innocence that would have more likely than not changed the
19 outcome of the trial.⁸⁶

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21 ⁷⁷ App. at p. 385.

22 ⁷⁸ App. at p. 392.

23 ⁷⁹ App. at p. 111.

24 ⁸⁰ App. at p. 31.

25 ⁸¹ App. at p. 53. G.V. refused to cooperate with the SFDA's Innocence Commission's investigation of
26 Ciria's case. (App. at p. 104.)

27 ⁸² App. at p. 49.

28 ⁸³ App. at p. 32.

⁸⁴ App. at p. 51.

⁸⁵ App. at p. 50.

1 8. Ciria is actually innocent.⁸⁷

2 9. Ciria spent over 30 years incarcerated for a crime he did not commit.⁸⁸

3 E. Order Granting Petition for Writ of Habeas Corpus, Vacating Conviction and Dismissing Case

4 In the San Francisco County Superior Court's Order Granting Petition of Writ of Habeas
5 Corpus, dated April 18, 2022, the court vacated Ciria's 1991 convictions and sentence under San
6 Francisco County Superior Court Case No. 137440, based on new evidence and pursuant to Penal
7 Code section 1473, subdivision (b)(3).⁸⁹ The court found Ciria presented credible new evidence of his
8 innocence that would have more likely than not changed the outcome of the trial.⁹⁰ The Court granted
9 the People's motion to dismiss all charges in the interest of justice, pursuant to Penal Code section
10 1385.⁹¹ The court did not make any findings regarding Ciria's actual innocence in this order.⁹²

11 **IV. Determination of Issues**

12 Penal Code section 4900 allows a person, who has been erroneously convicted and
13 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
14 CalVCB.⁹³ Typically, claimants bear the burden to prove by a preponderance that (1) the crime with
15 which they were convicted either did not occur or was not committed by them and (2) they suffered
16 injury as a result of their erroneous conviction.⁹⁴ If the claimant satisfies their burden, then as of June
17 30, 2022, CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury if
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21 ⁸⁶ App. at p. 32.

22 ⁸⁷ App. at p. 33.

23 ⁸⁸ App. at p. 33.

24 ⁸⁹ App. at p. 21.

25 ⁹⁰ *Ibid.*

26 ⁹¹ App. at p. 22.

27 ⁹² App. at pp. 21-22.

28 ⁹³ Pen. Code, § 4900.

⁹⁴ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

1 sufficient funds are available, upon appropriation by the Legislature.⁹⁵ Payment is calculated at the
2 rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.⁹⁶

3 In limited circumstances, both of the elements for innocence and injury may be presumed, if a
4 court has found the claimant factually innocent under any standard applicable in a proceeding to grant
5 habeas relief or vacate a conviction pursuant to Penal Code section 1473.6.⁹⁷ To obtain such a
6 finding, the claimant may move for a finding of factual innocence by a preponderance of the evidence
7 that the crime which with they were charged was either not committed at all or, if committed, was not
8 committed by the claimant.⁹⁸ If the claimant received a finding of factual innocence for each and every
9 conviction underlying the period of their incarceration, CalVCB must automatically approve the claim,
10 within 30 days and without a hearing.⁹⁹

11 Alternatively, under subdivision (b) of Penal Code section 4900, an approval is mandated for
12 certain claimants, even without a preponderance of evidence that the claimant did not commit the
13 crime for which they were convicted.¹⁰⁰ Specifically, subdivision (b) compels approval of the claim for
14 compensation, without a hearing and within 60 days, when the following three elements are met. First,
15 the claimant's conviction must have been vacated either by a writ of habeas corpus or pursuant to
16 Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated
17 conviction must have been dismissed on remand, or the claimant must have been acquitted upon
18 retrial. Third, the Attorney General must decline to object to the application in this administrative
19 proceeding.¹⁰¹ If all three of these elements are satisfied, and CalVCB finds that the claimant
20 sustained injury through their erroneous conviction, then CalVCB shall approve payment for the
21 purpose of indemnifying the claimant for the injury if sufficient funds are available, upon appropriation
22

23 ⁹⁵ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

24 ⁹⁶ Pen. Code, § 4904.

25 ⁹⁷ Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).

26 ⁹⁸ Pen. Code, § 1485.55, subd. (b).

27 ⁹⁹ Pen. Code, §§ 861.865; 1485.55, subd. (a), 4902, subd. (a).

28 ¹⁰⁰ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

¹⁰¹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

1 by the Legislature.¹⁰² CalVCB's approval of the claim is required, regardless of whether or not the
2 record proves the claimant is more likely innocent than guilty.

3 If the Attorney General objects, they must do so in writing, within 45 days from when the
4 claimant files the claim, and with clear and convincing evidence that the claimant is not entitled to
5 compensation. Only a single extension of time for 45 days is allowed for good cause. The Attorney
6 General bears the burden to prove, by clear and convincing evidence, that the claimant committed the
7 acts constituting the offense.¹⁰³ To meet that burden, the Attorney General may not rely solely on the
8 trial record for the vacated conviction to establish that the claimant is not entitled to compensation.¹⁰⁴
9 If the Attorney General fails to meet this burden, then CalVCB shall approve payment to the claimant
10 for their demonstrated injury, at the rate of \$140 per day, if sufficient funds are available upon
11 appropriation by the Legislature.¹⁰⁵

12 **A. Innocence**

13 Here, Ciria's claim falls within the mandatory approval provision of subdivision (b) of Penal
14 Code section 4900, as all three of the required elements are met. First, Ciria's convictions for murder
15 and felon in possession of a firearm in case number 137440 were vacated by a writ of habeas
16 corpus.¹⁰⁶ Second, all charges against Ciria in case number 137440 were subsequently dismissed by
17 the San Francisco County Superior Court's Order Granting Petition of Writ of Habeas Corpus per the
18 District Attorney's request.¹⁰⁷ Third, the Attorney General declined to object.¹⁰⁸ Consequently,
19 CalVCB is required by subdivision (b) to approve compensation for the injury sustained by Ciria if
20 sufficient funds are available, upon appropriation by the Legislature.¹⁰⁹

21 _____
22 ¹⁰² Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

23 ¹⁰³ Pen. Code, § 4902, subd. (d).

24 ¹⁰⁴ Pen. Code, § 4903, subd. (d).

25 ¹⁰⁵ Pen. Code, §§ 4903, subd. (d), 4904.

26 ¹⁰⁶ App. at pp. 21-22.

27 ¹⁰⁷ App. at p. 22.

28 ¹⁰⁸ Letter from Deputy Attorney General Sharon Loughner, dated August 8, 2022, submitted via email on August 8, 2022.

¹⁰⁹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

1 **B. Injury**


2 By statute, the amount of compensation to be approved “shall be a sum equivalent to one
3 hundred forty dollars (\$140) per day of incarceration served, and shall include any time spent in
4 custody, including a county jail, that is considered to be part of the term of incarceration.”¹¹⁰ This
5 compensation is “for the purpose of indemnifying the claimant for the injury” sustained “through their
6 erroneous conviction and imprisonment....”¹¹¹ Given the manner by which compensation is calculated,
7 the requisite injury contemplated by Penal Code section 4904 is “each day ... spent illegally behind
8 bars, away from society, employment, and [] loved ones,” solely as a result of their erroneous
9 conviction.¹¹²

10 As both parties agree, Ciria’s injury is based on 11,690 days imprisonment for his vacated
11 convictions in case number 137440. Both parties further agree that compensation for this injury
12 amounts to \$1,636,600, which totals \$140 for each of Ciria’s 11,690 days imprisonment. But-for his
13 vacated convictions, Ciria would have been free for all 11,690 days, as he did not sustain any other
14 convictions during his imprisonment. Ciria is therefore entitled to approval of his claim for
15 compensation in the amount of \$1,636,600.

16 **V. Conclusion**

17 As mandated by subdivision (b) of Penal Code section 4900, the undersigned Hearing Officer
18 recommends that CalVCB grant Ciria’s unopposed claim and approve payment to Ciria in the amount
19 of \$1,636,600 if sufficient funds are available, upon appropriation by the Legislature, as indemnification
20 for the injury sustained by his 11,690 days of imprisonment solely as a result of his vacated
21 convictions.

22
23 Date: August 18, 2022



Sara Harbarger
Hearing Officer
California Victim Compensation Board

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25
26 ¹¹⁰ Pen. Code, § 4904.

27 ¹¹¹ Pen. Code, § 4904.

28 ¹¹² *Holmes v. Calif. Victim Comp. & Gov’t Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

ITEM 8

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

9 In the Matter of:

10 **Kimberly Long**

11 Claim No. 22-ECO-15

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On April 21, 2022, Kimberly Long (Long) submitted a claim for compensation as an erroneously
14 convicted person to the California Victim Compensation Board (CalVCB) pursuant to Penal Code
15 section 4900. The claim is based upon Long's 2005 conviction for murder, which was vacated and
16 dismissed during a state habeas proceeding, without a finding of factual innocence. Long seeks
17 compensation for having served 2,760 days imprisonment for this conviction, which she calculates as
18 \$385,980. Long is represented by Alex Simpson of the California Innocence Project.

19 The Attorney General is represented by Tami Falkenstein Hennick. By letter dated July 12,
20 2022, the Attorney General declined to object to Long's claim, which was calculated at the statutory
21 rate of \$140 per day as \$386,400. The administrative record closed that same day, and the matter
22 was assigned to CalVCB Senior Attorney Laura Simpton. As required by subdivision (b) of Penal
23 Code section 4900, CalVCB is mandated to approve payment to Long in the amount of \$386,400 if
24 sufficient funds are available, upon appropriation by the Legislature, as indemnification for the injury
25 sustained by Long for her 2,760 days imprisonment for a vacated conviction.¹
26

27
28 ¹ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B.446), § 3, eff. Jan. 1, 2022, amended
by Stats.2022, c. 58 (A.B.200), § 17, eff. June 30, 2022).

II. Procedural History

On November 10, 2003, Long was arrested and subsequently charged with the murder of her live-in boyfriend Oswaldo Conde (Conde) in Riverside County Superior Court case number RIF113354.² After the first jury was unable to reach a verdict, a second jury convicted her of second-degree murder on December 27, 2005. On February 24, 2006, the superior court sentenced Long to 15 years to life imprisonment.³

The judgment was affirmed by the California Court of Appeal, Fourth Appellate District, on November 21, 2008, and the California Supreme Court denied review on February 25, 2009.⁴ Long filed a federal habeas petition on several grounds, including insufficient evidence, which was denied by the district court on April 19, 2012, and by the Ninth Circuit on December 2, 2013.⁵ Long next pursued state habeas relief challenging counsel's effectiveness on multiple bases, which was initially denied by the Riverside County Superior Court on May 12, 2014, and by the Court of Appeal on January 12, 2015.⁶

But on August 26, 2015, the California Supreme Court issued an order to show cause and returned the matter to the superior court.⁷ An evidentiary hearing ensued in June 2016, which lasted several days, before the same judge who had presided over both of Long's jury trials.⁸

² Pen. Code, § 187.

³ Long Application ("App.") at pp. 1, 1814-1815, 1846. The pagination for Long's application refers to the continuous page numbers for the entire, 3,230-page PDF file.

⁴ *People v. Kimberly Louise Long*, Fourth District Court of Appeal case number E039986, opinion filed November 21, 2008, available at 2008 WL 4958575; see also *People v. Kimberly Louise Long*, California Supreme Court case number S169443, docket available online at Appellate Courts Case Information at <https://appellatecases.courtinfo.ca.gov/>. (See Cal. Code Regs., tit. 2, § 617.8.)

⁵ *Long v. Lattimore*, U.S. District Court (C.D. Cal.) case number CV 10-277-PSG, decided April 19, 2012, available at 2012 WL 1401779; *Long v. Johnson* (9th Cir. 2013) 736 F.3d 891, decided December 2, 2013; see also Long App. at pp. 927-937 (district court decision), 942-946 (Ninth Circuit decision).

⁶ *In re Long*, Riverside County Superior Court case number RIC140060, online docket available at <https://public-access.riverside.courts.ca.gov/OpenAccess/>; *In re Long*, Fourth District Court of Appeal, Division 2, case number E062484, docket available online at Appellate Courts Case Information at <https://appellatecases.courtinfo.ca.gov/>; see also Long App. at p. 879.

⁷ Long App at pp. 12, 1011, 1196-1784.

1 On June 10, 2016, the superior court granted habeas relief on the basis of ineffective
2 assistance of counsel for “failing to consult and present testimony from a time of death expert and []
3 failing to present supporting evidence about Long’s clothing.”⁹ The court declined to issue a finding of
4 factual innocence pursuant to Penal Code section 1485.55, which at that time required evidence that
5 pointed unerringly to innocence, but did find “it highly unlikely that the petitioner committed the
6 crime....”¹⁰ The court vacated Long’s murder conviction in case number RIF113354, set bail, and
7 ordered a new trial.¹¹

8 On June 10, 2016, Long was released from custody on bail. By then, as both parties agree,
9 Long had been confined a total of 2,760 days since her arrest on November 10, 2003.¹² Her
10 confinement was not continuous, as Long had been released on bail at various stages of the criminal
11 trial proceeding.

12 The prosecution appealed the superior court’s decision. On May 3, 2018, the Court of Appeal
13 reversed the grant of habeas corpus relief and upheld Long’s murder conviction. The appellate court
14 determined that counsel’s omissions as to the time-of-death expert and Long’s clothing were not
15 objectively unreasonable and, therefore, did not amount to ineffective assistance.¹³

16 The California Supreme Court reversed the appellate court’s decision on November 30, 2020.
17 Siding in part with the superior court, the supreme court determined that counsel’s failure to investigate
18 the victim’s time of death was objectively unreasonable and prejudicial to Long’s defense. On this
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22 ⁸ *In re Long* (2020) 10 Cal.5th 764, 773-785 (California Supreme Court decision granting habeas
23 relief); Long App at p. 8-10, 1812-1843 (supreme court decision).

24 ⁹ Long App at p. 1823.

25 ¹⁰ Long App. at pp. 1800-1803; see also former Pen. Code, § 1485.55, subds. (a) & (c) (West 2016).

26 ¹¹ Long App. at pp. 1803, 1806, 1823.

27 ¹² Long App. at pp. 1, 13-14; Letter from Deputy Attorney General Tami Falkenstein Hennick, dated
28 July 12, 2022, submitted via email on July 12, 2022.

¹³ Long App. at pp. 12, 1823; *People v. Long*, Fourth District Court of Appeal case number E066388,
opinion filed May 23, 2018, available at 2018 WL 2057898.

1 basis alone, habeas relief was warranted.¹⁴ Accordingly, Long's murder conviction was vacated, and
2 the matter remanded for a new trial.

3 On April 22, 2021, at the trial readiness hearing, the prosecution declined to proceed and
4 moved to dismiss case RIF113354. The prosecution's motion was "in part due to the lengthy passage
5 of time since the murder and the deaths of key witnesses, [such] that we can no longer prove the case
6 beyond a reasonable doubt to a jury."¹⁵ The court granted the motion in the interest of justice pursuant
7 to Penal Code section 1385, without a finding of factual innocence.¹⁶

8 One year later on April 21, 2022, Long submitted a claim to CalVCB seeking compensation as
9 an erroneously convicted person under subdivision (b) of Penal Code section 4900. Through her
10 counsel, Long requested compensation in the amount of \$385,980 for 2,760 days of incarceration.¹⁷
11 After confirming compliance with Penal Code sections 4900 and 4901, CalVCB filed the claim but
12 requested clarification from Long's counsel "as to the amount of compensation requested, as it
13 appears that \$140 per day for 2,760 days would amount to \$386,400, not \$385,980."¹⁸ However, no
14 clarification was received.

15 Meanwhile, CalVCB requested a response from the Attorney General within 45 days as
16 required by subdivision (d) of Penal Code section 4902. Following a single request for an extension of
17 time, the Attorney General timely submitted a declination letter on July 12, 2022. In it, the Attorney
18 General declined to object to Long's claim, which the Attorney General calculated as \$386,400 for
19 2,760 days.¹⁹ Later that same day, the administrative record closed.

23 ¹⁴ Long App. at pp. 12, 1813-1814, 1840-1843; see also *In re Long, supra*, 10 Cal.5th at pp. 773-785.

24 ¹⁵ Long App. at pp. 12, 1857, 1858.

25 ¹⁶ Long App. at pp. 12, 1857, 1858.

26 ¹⁷ Long App. at pp. 14-15.

27 ¹⁸ CalVCB Email to parties, entitled "*Kimberly Long, PC 4900 Claim 22-ECO-15 – Request for AGRL*,"
sent April 22, 2022, at 12:41 p.m.

28 ¹⁹ Letter from Deputy Attorney General Tami Falkenstein Hennick, dated July 12, 2022, submitted via
email on July 12, 2022.

1 **III. Factual Background** ²⁰

2 In October 2003, Long lived with her boyfriend Conde in a house in Corona, California. Long
3 was employed as an emergency room vocational nurse. Long shared custody of her child with her
4 former husband J.B.,²¹ who had been arrested for domestic violence against Long. J.B. had also
5 threatened to harm Conde after discovering he was romantically involved with Long. In addition,
6 Conde's former girlfriend S.L. had threatened violence against Conde, which prompted Conde to seek
7 a restraining order in September 2003.²²

8 "On October 5, 2003, Long spent the day with Conde, their friend [J.D.], and others, riding their
9 motorcycles and drinking at various bars." ²³ Long consumed "approximately 12 beers and 10 shots of
10 hard liquor that day."²⁴ "At some point, an argument between Long and Conde escalated into a
11 physical altercation when the two of them, along with [J.D.], returned to the couple's home that evening
12 in Corona."²⁵ In particular, Long hit Conde with her hand, her purse, and her motorcycle helmet, and
13 Long told Conde that she wanted him out of the house.²⁶

14 "Long and [J.D.] left sometime between 11:00 p.m. and midnight [12:00 a.m.] and went to
15 [J.D.'s] home about 2.5 miles away."²⁷ There, Long and J.D. "spent time in a jacuzzi" and engaged in
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20 ²⁰ This factual summary is primarily based upon the California Supreme Court decision granting
21 habeas relief in *In re Long, supra*, 10 Cal.5th 764, which is binding upon CalVCB. (Pen. Code, § 4903,
subd. (c).) Consistent aspects of the administrative record are also cited.

22 ²¹ Individuals accused of criminal activity without having been convicted are referred to by their initials
23 only in an effort to protect their privacy.

24 ²² *In re Long, supra*, 10 Cal.5th at pp. 767, 769-770, 780, 784; Long App. at pp. 10, 978.

25 ²³ *In re Long, supra*, 10 Cal.5th at p. 767.

26 ²⁴ *Ibid.*

27 ²⁵ *Ibid.*

28 ²⁶ Long App. at pp. 51, 181, 190, 308-323, 344, 398-401, 874, 943, 1675-1678, 2977-2978; see also
Long v. Johnson, supra, 736 F.3d at p. 892.

²⁷ *In re Long, supra*, 10 Cal.5th at pp. 767-768; Long App. at p. 52.

1 sexual activity.²⁸ J.D. eventually dropped off Long at her home. According to J.D., he dropped off
2 Long “around 1:20 or 1:25 a.m.,” but Long insisted it was “around 2:00 a.m.”²⁹

3 At 2:09 a.m., Long called 911 and exclaimed that she had just returned home to find Conde
4 “bloody” but “still breathing.”³⁰ Long hung up, but she then called 911 a second time and stated “He’s
5 still breathing.”³¹ During this second call, “Long said she was an emergency room nurse but added, ‘I
6 can’t give him medical attention. Something’s wrong with him.’”³²

7 Officers arrived at Long’s home at 2:13 a.m. They encountered “Long waiting in the middle of
8 the street, distraught.”³³ No blood was present on her clothes or person. Inside the home, officers
9 discovered “Conde slumped over the couch with his feet on the floor....”³⁴ Injuries on the right side
10 and back of Conde’s head were readily apparent. Blood spatters and castoff appeared around
11 Conde’s body on all four walls of the living room. A “blood bubble burst in Conde’s mouth” when an
12 officer touched his neck. No pulse was detected.³⁵

13 Minutes later at 2:20 a.m., paramedics arrived and confirmed that Conde was dead. They
14 noted that Conde’s head wound was no longer actively bleeding, his skin was “cold” to the touch, and
15 “rigidity, or rigor mortis,” was observed in his arms.³⁶ But several hours later at 5:03 a.m., the coroner
16 concluded that “Rigor has not started” and “Lividity was almost fixed....”³⁷ The coroner determined
17 that Conde’s cause of death was blunt force trauma. The pathologist opined that Conde had been hit
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21 ²⁸ *In re Long, supra*, 10 Cal.5th at pp. 767-768.

22 ²⁹ *Id.* at p. 767-768, 771, 776; Long App. at p. 1682.

23 ³⁰ *In re Long, supra*, 10 Cal.5th at p. 768.

24 ³¹ *Ibid.*

25 ³² *Ibid.*

26 ³³ *Ibid.*

27 ³⁴ *Ibid.*

28 ³⁵ *Id.* at pp. 768-769; Long App. at pp. 7-9, 62, 892.

³⁶ *In re Long, supra*, 10 Cal.5th at p. 768.

³⁷ *Ibid.*

1 with a blunt weapon a total of three to eight times. The weapon was likely a long slender object like a
2 stick, bat, or golf club. Death occurred within 10 to 15 minutes of the attack.³⁸

3 Police searched the area but did not recover the murder weapon, bloody clothing, or any other
4 evidence linked to the crime. No blood was located anywhere else inside the house, and there was
5 nothing to suggest the sinks or showers had been recently used. There was broken glass in the
6 kitchen, and the sliding glass door from the kitchen to the back yard was open. A shotgun and
7 shotgun shells were missing from a closet, as well as a bowl of change and a stereo from the living
8 room.³⁹ Subsequent DNA testing of the speaker wires excluded Long, and DNA testing of a cigarette
9 butt found in an ashtray near the crime scene excluded both Long and Conde.⁴⁰

10 Long told police that, after being dropped off by J.D. around 2:00 a.m., she entered the home
11 through the unlocked front door, walked into the living room, and spotted Conde on the couch. She
12 noticed the blood but thought Conde had gotten into a fight. Initially, she believed he was still alive
13 and breathing after hearing a “gurgling” sound. But she soon realized that he was not moving and
14 gravely injured. She called 911 within 10 minutes of her arrival home. Long suggested that Conde’s
15 former girlfriend S.L. may be responsible. Long mentioned that her former husband J.B. was
16 supposed to drop off their son around 9:00 p.m., but she had exchanged calls with J.B. between 8:00
17 p.m. and 9:00 p.m. to confirm that their son would remain with J.B. as she was not at home.⁴¹

18 Police questioned Long’s former husband J.B., who maintained that he remained with his son
19 all night at his girlfriend’s home. His girlfriend confirmed J.B. was present when she fell asleep around
20 10:00 p.m. and awoke at 5:00 a.m. to his cell phone vibrating. Police questioned S.L., who maintained
21 that she had been on a date all evening until 1:30 a.m., which was confirmed by her date, a restaurant
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25 ³⁸ *In re Long, supra*, 10 Cal.5th at p. 768; *Long v. Johnson, supra*, 736 F.3d at p. 893; Long App. at pp.
26 229-233 (crime scene photos).

27 ³⁹ *In re Long, supra*, 10 Cal.5th at p. 769.

28 ⁴⁰ Long App. at pp. 9-10.

⁴¹ *In re Long, supra*, 10 Cal.5th at pp. 769-770.

1 receipt for dinner, and S.L.'s mother. As characterized by the California Supreme Court, both of these
2 alibis "were only weakly corroborated, if at all."⁴²

3 Police also spoke with several of Long's neighbors, who recalled hearing loud noises at various
4 times during the night and early morning. Alejandro S.,⁴³ who lived next door, heard a motorcycle
5 engine revving multiple times around 12:00 a.m., and then heard Long's car alarm around 2:00 a.m.
6 His wife Juanita heard someone, whom she believed to be Conde, attempting to start a motorcycle
7 inside his garage around 1:30 a.m., followed by swearing when the motorcycle stalled, before the
8 motorcycle finally departed around 1:45 a.m. She also heard Long's car alarm around 2:00 a.m.
9 Phillip V., who lived across the street, observed two motorcycles parked in front of Long's home
10 around 8:00 p.m., both of which were gone by 9:30 p.m. Phillip V. also heard a motorcycle engine
11 shortly after 12:00 a.m. and a female voice. He heard another motorcycle drive by around 1:20 a.m.
12 He finally heard Long's car alarm around 2:00 a.m.⁴⁴

13 At trial, the prosecution theorized that Long had arrived home around 1:20 a.m., mortally
14 wounded Conde before calling 911 at 2:09 a.m., and disposed of the weapon and bloody clothes
15 during the interim. The prosecution primarily relied upon J.D.'s preliminary hearing testimony to
16 establish this timeline, as J.D. had died unexpectedly before trial. The defense failed to call any expert
17 to testify that Conde's death may have occurred before 1:20 a.m. The defense argued, instead, that
18 someone else committed the crime. Long maintained her innocence at both trials. The first jury split
19 nine to three in favor of acquittal, but the second jury convicted Long of second-degree murder. When
20 denying Long's motion for a new trial, the presiding judge noted that, had it been a court trial, he would
21 have found Long not guilty.⁴⁵

22 During habeas proceedings, Long presented expert testimony from two pathology experts who
23 opined that Conde's death likely occurred before 1:20 a.m. Specifically, Dr. Zhongxue Hue placed
24 Conde's time of death "long before 1:20 a.m." but acknowledged it was "remotely possible," though

25 ⁴² *In re Long, supra*, 10 Cal.5th at pp. 770, 784; Long App. at pp. 10-11.

26 ⁴³ In an effort to preserve their privacy, the witnesses' last names are omitted.

27 ⁴⁴ *In re Long, supra*, 10 Cal.5th at p. 771.

28 ⁴⁵ *Id.* at pp. 767, 771-772; Long App. at p. 13.

1 “extremely unlikely,” that Conde died after 1:20 a.m.⁴⁶ Dr. James Bonnell placed Conde’s time of
2 death “much closer” to 11:00 p.m. than 1 a.m.⁴⁷ Dr. Bonnell characterized the prosecution’s theory
3 that Conde had died sometime after 1:20 a.m. as “medically impossible.”⁴⁸ Both experts found the
4 coroner’s assessment that rigor had not yet started by 5:00 a.m. to be inconsistent with the coroner’s
5 determination that lividity was “almost fixed” at that time, as well as the paramedic’s prior observations
6 as to rigidity at 2:20 a.m. As affirmed by the supreme court, the superior court found both expert’s
7 testimony to be “credible, convincing, and compelling.”⁴⁹

8 In opposition, the prosecution presented expert testimony from Dr. Joseph Cohen, who was the
9 chief forensic pathologist of the Riverside County Sheriff-Coroner’s Office. Dr. Cohen disagreed with
10 the estimated time of death by both Drs. Hue and Bonnell as “skewed,” “too inflexible,” and “too narrow
11 of a range.”⁵⁰ Dr. Cohen discounted the paramedic’s observations as to rigidity, as well as the
12 coroner’s determination as to lividity. Ultimately, Dr. Cohen opined that Conde’s time of death was “as
13 likely” before 1:20 a.m. as after. As affirmed by the supreme court, the superior court also found Dr.
14 Cohen to be “a highly qualified medical examiner,” such that a “jury ... could accept his testimony and
15 disregard petitioner’s experts....”⁵¹

16 Ultimately, as found by the California Supreme Court, trial counsel’s failure to present expert
17 testimony to show that Conde likely died before 1:20 a.m. was both unreasonable and prejudicial, as it
18 would have bolstered Long’s defense that someone else had killed Conde while she was at J.D.’s
19 home. As the court explained, it was reasonably probable that the presentation of expert testimony to
20 dispute the victim’s time of death, combined with the absence of any physical evidence connecting
21 Long to the murder and possible third-party culpability, would have led one or more jurors to harbor
22 reasonable doubt about Long’s guilt. This conclusion was not altered by the experts’ admission that

24 ⁴⁶ *In re Long, supra*, 10 Cal.5th at pp. 778-779.

25 ⁴⁷ *Id.* at p. 779.

26 ⁴⁸ *Id.* at p. 780.

27 ⁴⁹ *Id.* at pp. 778-781.

28 ⁵⁰ *Id.* at p. 780.

⁵¹ *Id.* at pp. 780-782; Long App. at p. 1803.

1 Conde was possibly killed after 1:20 a.m., or by Long’s insistence during the 911 call at 2:09 a.m. that
2 Conde was still breathing. The court acknowledged that, “even though a jury could have ultimately
3 decided to reject it, such evidence would have had enough substance to pose no serious risk of
4 compromising the overall credibility of the defense.”⁵²

5 **IV. Determination of Issues**

6 Penal Code section 4900 allows a person, who has been erroneously convicted and
7 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
8 CalVCB.⁵³ Typically, claimants bear the burden to prove by a preponderance that (1) the crime with
9 which they were convicted either did not occur or was not committed by them and (2) they suffered
10 injury as a result of their erroneous conviction.⁵⁴ If the claimant satisfies their burden, then as of June
11 30, 2022, CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury if
12 sufficient funds are available, upon appropriation by the Legislature.⁵⁵ Payment is calculated at the
13 rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.⁵⁶

14 In limited circumstances, both of the elements for innocence and injury may be presumed, if a
15 court has found the claimant factually innocent under any standard applicable in a proceeding to grant
16 habeas relief or vacate a conviction pursuant to Penal Code section 1473.6.⁵⁷ To obtain such a
17 finding, the claimant may move for a finding of factual innocence by a preponderance of the evidence
18 that the crime which with they were charged was either not committed at all or, if committed, was not
19 committed by the claimant.⁵⁸ If the claimant received a finding of factual innocence for each and every
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23 ⁵² *In re Long, supra*, 10 Cal.5th at pp. 778, 783, 785.

24 ⁵³ Pen. Code, § 4900.

25 ⁵⁴ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

26 ⁵⁵ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

27 ⁵⁶ Pen. Code, § 4904.

28 ⁵⁷ Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).

⁵⁸ Pen. Code, § 1485.55, subd. (b).

conviction underlying the period of their incarceration, CalVCB must automatically approve the claim, within 30 days and without a hearing.⁵⁹

Alternatively, under subdivision (b) of Penal Code section 4900, an approval is mandated for certain claimants, even without a preponderance of evidence that the claimant did not commit the crime for which they were convicted.⁶⁰ Specifically, subdivision (b) compels approval of the claim for compensation, without a hearing and within 60 days, when the following three elements are met. First, the claimant's conviction must have been vacated either by a writ of habeas corpus or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated conviction must have been dismissed on remand, or the claimant must have been acquitted upon retrial. Third, the Attorney General must decline to object to the application in this administrative proceeding.⁶¹ If all three of these elements are satisfied, and CalVCB finds that the claimant sustained injury through their erroneous conviction, then CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the Legislature.⁶² CalVCB's approval of the claim is required, regardless of whether or not the record proves the claimant is more likely innocent than guilty.

If the Attorney General objects, he must do so in writing, within 45 days from when the claimant files the claim, and with clear and convincing evidence that the claimant is not entitled to compensation. Only a single extension of time for 45 days is allowed for good cause. The Attorney General bears the burden to prove, by clear and convincing evidence, that the claimant committed the acts constituting the offense.⁶³ To meet that burden, the Attorney General may not rely solely on the trial record for the vacated conviction to establish that the claimant is not entitled to compensation.⁶⁴ If the Attorney General fails to meet this burden, then CalVCB shall approve payment to the claimant for

⁵⁹ Pen. Code, §§ 861.865; 1485.55, subd. (a), 4902, subd. (a).

⁶⁰ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

⁶¹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

⁶² Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

⁶³ Pen. Code, § 4902, subd. (d).

⁶⁴ Pen. Code, § 4903, subd. (d).

1 their demonstrated injury, at the rate of \$140 per day, if sufficient funds are available upon
2 appropriation by the Legislature.⁶⁵

3 **A. Innocence**

4 Here, Long's claim falls within the mandatory approval provision of subdivision (b) of Penal
5 Code section 4900, as all three of the required elements are met. First, Long's murder conviction in
6 case number RIF113354 was vacated by a writ of habeas corpus.⁶⁶ Second, all charges against Long
7 in case number RIF113354 were subsequently dismissed on remand.⁶⁷ Third, the Attorney General
8 declined to object.⁶⁸ Consequently, CalVCB is required by subdivision (b) to approve compensation
9 for the injury sustained by Long if sufficient funds are available, upon appropriation by the
10 Legislature.⁶⁹ No finding is made as to the weight of evidence offered in support of Long's claim.

11 **B. Injury**

12 By statute, the amount of compensation to be approved "shall be a sum equivalent to one
13 hundred forty dollars (\$140) per day of incarceration served, and shall include any time spent in
14 custody, including a county jail, that is considered to be part of the term of incarceration."⁷⁰ This
15 compensation is "for the purpose of indemnifying the claimant for the injury" sustained "through their
16 erroneous conviction and imprisonment...."⁷¹ Given the manner by which compensation is calculated,
17 the requisite injury contemplated by Penal Code section 4904 is "each day ... spent illegally behind
18 bars, away from society, employment, and [] loved ones," solely as a result of their erroneous
19 conviction.⁷²

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22 ⁶⁵ Pen. Code, §§ 4903, subd. (d), 4904.

23 ⁶⁶ Long App. at pp. 1812-1843; *In re Long*, *supra*, 10 Cal.5th 764.

24 ⁶⁷ Long App. at pp. 1857-1858.

25 ⁶⁸ Letter from Deputy Attorney General Tami Falkenstein Hennick, dated July 12, 2022, submitted via
26 email on July 12, 2022.

27 ⁶⁹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

28 ⁷⁰ Pen. Code, § 4904.

⁷¹ Pen. Code, § 4904.


⁷² *Holmes v. Calif. Victim Comp. & Gov't Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

1 As both parties agree, Long's injury constitutes 2,760 days imprisonment for her vacated
2 conviction in case number RIF113354. Despite Long's miscalculation, compensation for this injury
3 amounts to \$386,400, which totals \$140 for each of Long's 2,760 days imprisonment. But-for her
4 vacated murder conviction, Long would have been free for all 2,760 days, as she did not sustain any
5 other convictions during her imprisonment. Long is therefore entitled to approval of her claim for
6 compensation in the amount of \$386,400, rather than \$385,980 as requested.

7 **V. Conclusion**

8 As mandated by subdivision (b) of Penal Code section 4900, the undersigned Hearing Officer
9 recommends that CalVCB grant Long's unopposed claim and approve payment to Long in the amount
10 of \$386,400 if sufficient funds are available, upon appropriation by the Legislature, as indemnification
11 for the injury sustained by her 2,760 days of imprisonment solely as a result of her vacated murder
12 conviction.

13
14 Date: August 23, 2022

15 
16 _____
17 Laura Simpton
18 Hearing Officer
19 California Victim Compensation Board
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