

CALIFORNIA VICTIM COMPENSATION BOARD MEETING AGENDA

NOVEMBER 17, 2022
 10:00 a.m.
 400 R Street, Room 330
 Sacramento, CA 95811

BOARD MEETING MATERIALS

Item 1.	Approval of Minutes Minutes of the September 15, 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 No materials for this item	Information Item
Item 4.	Legislative Update Copy of Legislative Update attached	Information Item
Item 5.	Contract Update Copy of Contract Report attached	Action Item
Item 6.	Proposed Board Meeting Dates for Calendar Year 2023 Copy attached	Action Item
Item 7.	Proposal to Approve Trauma Recovery Center Grant Award Copy attached	Action Item
Item 8.	Proposed Mental Health Updates Copy attached	Action Item
Item 9.	Michael Ray Hanline (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 NOVEMBER 17, 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, Room 330, Sacramento, California, on Thursday, September 15, 2022, at 10:04 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 July 21, 2022, Board Meeting

Member Becton moved approval of the Minutes for the July 21, 2022, Board Meeting. The motion was seconded by Member Silva. By unanimous vote, the Board approved the minutes of the July 21, 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 portions of a bill focus on increasing compensation for crime victims and broadening their eligibility for CalVCB benefits were put into a budget trailer bill, AB 160, and passed by the Legislature.

AB 160, if signed by the Governor, could have a significant impact on CalVCB and the work that is done. However, it will only take effect on July 1, 2024, if fiscal forecasts indicate there is enough General fund money to pay for the bill's ongoing augmentations and actions, and if an appropriation is made to backfill the Restitution Fund to support those actions.

Those items are:

- Increasing the limit on total reimbursement available to crime victims from \$70,000 to \$100,000.

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- An increase on reimbursement limits for relocation and funeral and burial expenses; elimination of the limits on mental health counseling expenses and expanded income and support loss.
- Payments to claimants who have been convicted of violent felonies and are on parole or other post-release supervision.
- Relaxation of current victim cooperation requirements.

These would be significant changes to the Program, but because of the delay and uncertainty of whether they will be implemented, CalVCB will simply monitor for now.

Next, Ms. Gledhill presented the Annual Report of Fiscal Year 2021-22. Ms. Gledhill complimented the hard work done by CalVCB staff and what was accomplished during this year.

Overall, the number of applications CalVCB received and the amount of compensation paid dropped from the previous year. The reduction could be due to lingering effects of the pandemic, but it is still cause for concern.

CalVCB has stepped up outreach in an effort to reverse the trend. CalVCB resumed in-person outreach and trainings. Cal VCB also sought and received a \$3 million allocation in the budget to fund a strategic three-year outreach campaign to target underserved populations, raise awareness about CalVCB, and connect with victims across California. The hope is that this increased outreach will help CalVCB reach more victims and increase the number of applications filed.

Ms. Gledhill explained that the extra appropriations in the state budget for CalVCB are the result of months of work behind the scenes with the Governor's Office and the Legislature.

In additions to the money for outreach, the budget increased the limit for reimbursements for relocation and funeral and burial expenses for the first time in 20 years, enabled a significant expansion to the Trauma Recovery Centers with \$23 million provided to set up satellite offices- in rural or underserved areas, provided flexible cash assistance for victims, increased grants over the next three years, and established a new process for issuing direct payments for those erroneously convicted claims that the Board approves.

Also, over the past year, CalVCB launched the Forced or Involuntary Sterilization Compensation Program to pay reparations to victims of state-sponsored forced sterilization. The Program began January 1 and is currently scheduled to run for two years. To date, CalVCB has received 147 applications for this Program.

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Ms. Gledhill concluded by noting that CalVCB continues to work on efficiently processing claims, increasing outreach efforts, networking with stakeholders, and strengthening the organization.

Chairperson Ravel thanked Ms. Gledhill for the updates.

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 has adjourned its session and, in addition to AB 160, there are two important bills that could impact CalVCB that are awaiting the Governor's action.

The first is:

- SB 877, by Senator Eggman, which would authorize CalVCB to reimburse out-of-state mental health providers. This bill would take effect January 1 if signed.

The second is:

- SB 1468, by Senator Glazer, which would deem any decision by the Board to approve compensation for erroneously convicted offenders to be an official finding of factual innocence and provide additional non-monetary relief.

The Governor has until September 30 to act on pending legislation.

Mr. LaMar noted that AB 13 by Assemblymember Holden, which appropriates nearly \$2.5 million from the General Fund to pay three claims for erroneously convicted offenders that were approved by the Board at the May meeting, was signed by the Governor. These are the final claims that required a legislative appropriation since the Board is now authorized to make direct payments.

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 that all items on the contract report are informational. The contracts with the Trauma Recovery Centers have been updated per the budget that took effect on

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July 1 and consistent with the Board members' action at the July Board meeting. These amendments raised each current TRC up to at least \$1.1 million. Also included in this report are the separate TRC contracts to each existing TRC for \$120,000 for the emergency cash allocations.

Chairperson Ravel thanked Ms. Gledhill for her updates.

Item 6. Request for Authority to Conclude the Rulemaking Process for Amendments to the California Code of Regulations

CalVCB Senior Attorney Sara Harbarger presented the Request for Authority to Conclude the Rulemaking Process for Amendments to the California Code of Regulations governing claims of erroneously convicted offenders under Penal Code sections 4900 et seq.

Ms. Harbarger noted that on March 17, 2022, the Board approved commencement of the rulemaking process to amend sections 640 through 646 of Title 2 of the California Code of Regulations, which govern Penal Code section 4900 claims and includes the claim form. These regulations were last updated in 2012, and, since then, the statutes for processing Penal Code section 4900 claims have changed significantly.

On April 1, 2022, CalVCB staff published the proposed regulations on the website for public comment. Multiple comments were received. After considering the suggestions, modifications were made to sections 640(a), 640(b), 640(d), 642(a), 642(b), and 645(g). The modified regulations were reposted on June 2, 2022, for additional public comment. One comment was received. The passage of Assembly Bill 200 led to a second round of modifications, which were posted on the website on July 20, 2022, for another round of public comment. No comments were received, and no additional modifications were proposed. Throughout these events, no public hearing was requested or conducted.

The process is now complete, and, if the proposed regulations and claim form are adopted by the Board, then the Executive Officer will file the final rulemaking record with the Office of Administrative Law (OAL). If approved by OAL, the regulations will be filed with the Secretary of State and become operative on January 1, 2023.

Chairperson Ravel thanked Ms. Harbarger for the updates. Chair Ravel confirmed with Ms. Harbarger that the regulation changes are all in conformity with the new statutes governing erroneously convicted offender claims.

Member Silva moved to approve the request for authority to conclude the rulemaking process for amendments to the California Code of Regulations. The motion was seconded by Member Becton. By a unanimous vote of the Board, the motion passed.

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Item 7. PC 4900 Claim No. 22-ECO-17, Joaquin Ciria

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

On May 9, 2022, Joaquin Ciria filed an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based upon Mr. Ciria's 1991 convictions for murder and being a felon in possession of a firearm. The convictions were vacated and dismissed during state habeas proceedings based on new evidence in April of 2022.

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 in the amount of \$1,636,600, which represents \$140 per day for the 11,690 days Mr. Ciria was wrongfully imprisoned.

Throughout the proceedings, Mr. Ciria was represented by Supervising Attorney Paige Kaneb, of the Northern California Innocence Project. The Attorney General's Office was represented by Deputy Attorney General Sharon Loughner.

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

Linda Star, the Director of the Northern California Innocence Project, who appeared in person, stated they appreciated the attention that the Board has given to the case and the Attorney General's concession. She added Mr. Ciria is looking forward to getting on with his life.

Chairperson Ravel thanked Ms. Star for her comments. While waiting for Mr. Ciria to speak, Chairperson Ravel asked Ms. Loughner of the Attorney General's Office for her comments on the matter.

Ms. Loughner, who appeared by telephone, stated her office had no comment.

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

Chairperson Ravel then asked if Mr. Ciria would like to address the Board.

Mr. Ciria, who appeared in-person, stated that he wanted to thank everyone for giving him the opportunity to be in front of the Board and to say God bless everyone.

Chairperson Ravel thanked Mr. Ciria for his appearance.

Member Silva moved to adopt the Hearing Officer's Proposed Decision in the Penal Code section 4900 matter of Joaquin Ciria. The motion was seconded by Member Becton. The

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motion was approved by a unanimous vote of the Board and the Proposed Decision was adopted.

Item 8. PC 4900 Claim No. 22-ECO-15, Kimberly Long

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

On April 21, 2022, Kimberly Long submitted an application for compensation as an erroneously convicted person pursuant to Penal Code section 4900. The application was based on Ms. Long's 2005 conviction for murder. The conviction was vacated and dismissed during state habeas proceedings, and the prosecution declined to proceed with a retrial and moved to dismiss the case in April of 2021.

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 in the amount of \$386,400, which represents \$140 per day for the 2,760 days Ms. Long was wrongfully imprisoned.

Throughout the proceedings, Ms. Long was represented by Alex Simpson of the Northern California Innocence Project. The Attorney General's Office was represented by Deputy Attorney General Tami Falkenstein.

Mr. Simpson and Ms. Long both appeared via Zoom.

Chairperson Ravel asked that counsel for Ms. Long address the Board first.

Mr. Simpson, who is the Associate Director of the California Innocence Project, stated his office has represented Ms. Long for more than 10 years - from the evidentiary hearing and reversal, through the subsequent legal proceedings in the court of appeal in the California Supreme Court, and while she was under threat of retrial. According to Mr. Simpson, the District Attorney's Office agreed that Ms. Long's charges should be dismissed, and she then filed her claim before the Board. Mr. Simpson opined that these compensation proceedings cannot make whole these victims of the criminal legal system, they cannot bring back the years that the erroneously convicted offenders spent in prison while they missed birthdays and holidays, or family events and celebrations. These proceedings cannot replace the years of loss and home sickness. Mr. Simpson added Ms. Long will never be able to get those years back, but through this compensation process, they recognize that we can do something to alleviate some of that loss. Mr. Simpson stated that we should be able to get these individuals back on their feet and able to move on with their lives. Mr. Simpson observed that we should focus not necessarily on the years Ms. Long has lost, although obviously there is a calculation of those years, but we should instead focus on the years she has left and the years she has ahead of her, and this compensation will go a long way to support those years.

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Chairperson Ravel thanked Mr. Simpson for his comments.

Chairperson Ravel then asked if Ms. Long would like to address the Board.

Ms. Long started by saying that today she felt heard, today she felt like she mattered to people who do not know her, but who have now seen the injustice that was bestowed upon her and countless others. She stated it must be recognized the agony and pain that all exonerees suffer here in California. Although compensation will not relieve the trauma of a wrongful conviction, she believed today's findings show that the state of California hopes to put right what has been done wrong. She added that all exonerees deserve to be compensated.

Chairperson Ravel thanked Ms. Long for her comments.

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

Ms. Falkenstein who appeared by telephone stated the Office of the Attorney General agreed with the proposed decision's recommendation.

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

Member Silva moved to adopt the Hearing Officer's Proposed Decision in the Penal Code section 4900 matter of Kimberly Long. 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 10:29 a.m. pursuant to Government Code section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1-225 of the Victim Compensation Program.

Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126, subdivision (c)(3) at 10:35 a.m.

Member Becton moved to approve items 1 through 225, with the exception of item numbers 7 and 19, of the Victim Compensation Program. Member Silva seconded the motion. The motion was approved by a unanimous vote of the Board and the proposed decisions were adopted.

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Adjournment

Member Silva moved adjournment of the September Board meeting. Member Becton seconded the motion. The motion was adopted by a unanimous vote of the Board and the meeting was adjourned at 10:36 a.m.

Next Board Meeting

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

ITEM 2

PUBLIC COMMENT

The Board will receive comments from the public on matters that are not on the agenda.

The Board may not discuss or take any action on any item raised during public comment expect to decide whether to place the matter on a subsequent agenda.

(Gov. Code, § 11125.7.)

ITEM 3

EXECUTIVE OFFICER'S STATEMENT

ITEM 4

CALIFORNIA VICTIM COMPENSATION BOARD
LEGISLATIVE UPDATE
NOVEMBER 17, 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: Signed by the Governor (Chapter 771, Statutes of 2022)

SB 877 (Eggman) – California Victim Compensation Board: 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: Signed by the Governor (Chapter 707, Statutes of 2022)

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 632 (Portantino) – Erroneous Convicted 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 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: Vetoed by the Governor

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 provide clear and convincing evidence of guilt, the court shall issue a finding that they are entitled to compensation under Penal Code section 4900.

Status: Vetoed by the Governor

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)

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

finances or orders because it expands the scope of this relief to all felonies in which the offender completed their sentence.

Status: Signed by the Governor (Chapter 814, Statutes of 2022)

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: Signed by the Governor (Chapter 734, 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

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

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

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 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

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

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

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
 NOVEMBER 17, 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 Number	Contract Amount and Contract Term	Good or Service Provided
Approval		
Contractor Name: Intelligent Medical Solutions, Inc. PO/Contract Number: Number Here	Contract Amount: \$3,026,250.00 Term: 2/01/2023 – 6/30/2026	The Contractor shall provide bill review services including but not limited to: manual data entry of bills, bill review and adjudication, and bill audit services. This Contract was procured through a Request for Proposals acquisition method.
Informational		
Contractor Name: Zones, LLC PR Number: PR 22-099	Contract Amount: \$93,939.08 Term: 12/20/2022 – 12/19/2023	The Contractor shall provide advanced support of Microsoft licensed products. This Contract was procured utilizing a DGS-approved Leveraged Procurement Agreement under the Software Licensing Program.

<p>Contractor Name: Mandatory Contract 1-19-70-19</p> <p>PO/Contract Number: TBD</p>	<p>Contract Amount: \$650,000.00</p> <p>Term: 11/2022 – 11/2025</p>	<p>This Information Technology (IT) procurement is for firewalls to replace CalVCB’s end-of-life infrastructure equipment. Firewalls are the first line of defense for IT against malicious attacks.</p> <p>First year cost: \$350,000.00 for hardware and licensing. Second year cost: \$150,000.00 for licensing. Third year cost. \$150,000.00 for licensing.</p> <p>This Contract was procured utilizing a DGS-approved Statewide Contract.</p>
<p>Contractor Name: Mandatory Contract 1-19-70-19</p> <p>PO/Contract Number: TBD</p>	<p>Contract Amount: \$400,000.00</p> <p>Term: 11/2022 – 11/2025</p>	<p>This IT procurement is for a backup solution to replace CalVCB’s end-of-life infrastructure equipment. The backup solution will allow CalVCB to recover data and systems in the event of a disaster.</p> <p>This procurement is a one-time, up-front expense for a three-year term. The term will be determined upon execution.</p> <p>This Contract was procured utilizing a DGS-approved Statewide Contract.</p>

<p>Contractor Name: NWN Corporation</p> <p>PO Number: PO 2725</p>	<p>Contract Amount: \$319,899.17</p> <p>Term: N/A</p>	<p>This IT procurement is to purchase laptops, docking stations, and bags for CalVCB staff and to maintain inventory for incoming/new staff. This procurement supports work in a post-pandemic environment, providing secure access to CalVCB networks both onsite and when teleworking. In addition, this request supports the replacement of IT assets that are at the end of their useful life.</p> <p>The goods were procured through the Statewide Contract 1-22-70-30.</p>
<p>Contractor Name: TBD</p> <p>Solicitation Number: RFO 22-002</p>	<p>Contract Amount: \$360,000.00</p> <p>Term: TBD – 9/30/2025</p>	<p>This IT Contract is for the provision of managed web hosting services for CalVCB’s website (https://victims.ca.gov), as well as professional services for tasks associated with development, deployment, quality assurance/testing, customization, integration, and ongoing maintenance with 24/7 support.</p> <p>This Contract was procured through a Request for Offers acquisition method.</p>

ITEM 6

CALIFORNIA VICTIM COMPENSATION BOARD
PROPOSED BOARD MEETING DATES FOR CALENDAR YEAR 2023
NOVEMBER 17, 2022

Action Required

Staff proposes the Board approve Board meeting dates for calendar year 2023.

Background

Government Code section 13915 provides:

The board shall hold regular meetings in Sacramento and may hold other meetings at the times and places within the state as a majority of the board directs. At my meeting the board may transact any business and perform all duties imposed upon it.

Currently, the Board meetings are scheduled on the third Thursday of every other month.

If necessary in order to comply with statutorily mandated deadlines (e.g., erroneously convicted felon matters pursuant to Penal Code sections 4900, et seq.), the Board may schedule and conduct additional hearings throughout the year with ten days' notice in compliance with the Bagley Keene Open Meeting Act.

The proposed meeting dates for calendar year 2023 are:

- Thursday, January 19, 2023
- Thursday, March 16, 2023
- Thursday, May 18, 2023
- Thursday, July 20, 2023
- Thursday, September 21, 2023
- Thursday, November 16, 2023

ITEM 7

**CALIFORNIA VICTIM COMPENSATION BOARD
PROPOSAL TO APPROVE REGIONAL TRAUMA
RECOVERY CENTER PILOT GRANT AWARD
NOVEMBER 17, 2022**

Background

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

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

Government Code sections 13963.1 and 13963.2 contain requirements for how TRCs must operate and who they must serve, and direct CalVCB to award the grants through a competitive grant application process. The grants are paid for each year with \$2 million from the State Restitution Fund and a portion of the Safe Neighborhoods and Schools Fund, which is the savings the state realizes annually due to the passage and implementation of Proposition 47. Since its inception, the program has steadily grown over the years. Presently, CalVCB has grant agreements with 18 TRCs across the state.

2022-23 State Budget

On June 30, 2022, Governor Newsom signed into law the 2022-23 state budget package effective July 1, 2022. One bill in the package, AB 178, appropriated \$5,000,000 to establish a Regional TRC Pilot Program, operating TRC satellite offices in rural or underserved areas that would be run by a local organization in each community and affiliated with a TRC in another location that provides the services either via telehealth or by visiting the location on a regular basis, such as once a week.

- Of the total amount, \$2,500,000 shall be to contract for one TRC to run satellite offices in two Northern California locations for three years.
- Of the total amount, \$2,500,000 shall be to contract for one TRC to run satellite offices in two Central California locations for three years.

On September 14, 2022, CalVCB posted the Notice of Funding Availability (NOFA) for the Regional TRC Pilot Program for both the Northern and Central California locations; however, CalVCB received only one application for the Northern California locations and no applications for the Central California locations. CalVCB has reposted the NOFA to solicit grant applications for the Central California locations.

Action Requested

Through this agenda item, staff is recommending and seeking approval to award a Regional TRC Pilot Program grant for \$2,500,000, beginning January 1, 2023, for the one application received to operate satellite offices in Northern California. Based on the results of the application and scoring process for the NOFA, the application received a passing score and meets the qualifications to be a TRC provider.

It is requested that the Board approve awarding this grant to:

- 1. Alameda County Family Justice Center

Summary of Application and Scoring Process

- The Regional TRC Pilot Program NOFA was posted on the Board’s website September 14, 2022.
- The grant application period began September 14, 2022, and ended October 28, 2022, at 2:00 p.m., Pacific Time.
- The Board received one application for this competitive grant program.
- The application was reviewed as outlined in the NOFA, and the one application met the minimum qualifications and received a passing score.

Description of Applicant Recommended for Award

Applicant	Proposed Award
<p>Alameda County Family Justice Center (ACFJC): The ACFJC proposes to operate two satellite operations based in two underserved locations, Santa Rosa in Sonoma County and the City of Sacramento in Sacramento County. The ACFJC will collaborate with the Family Justice Center Sonoma County and the Sacramento Regional Family Justice Center. The partnerships will provide TRC services to regions that do not currently have them. The two counties, Sonoma and Sacramento, are mostly rural and have significant non-English speaking populations, including farm workers and new immigrants.</p> <p>ACFJC currently operates the Alameda County TRC, which provides a wide range of essential responsive services, such as emergency housing, food, and legal assistance, empowerment, and employment programs to clients who have experienced trauma as a victim of crime. Some of the clients are unhoused, and many have mental health challenges or are chronic mentally ill. This proposal will offer weekly on-site and virtual evidence-based and evidence-informed mental health and support services in each location, including individual and group treatment, medication management, substance abuse treatment, and case management.</p>	<p>\$2,500,000 for 30 months</p>

ITEM 8

**CALIFORNIA VICTIM COMPENSATION BOARD
PROPOSAL FOR MENTAL HEALTH UPDATES
NOVEMBER 17, 2022**

Authority

The California Victim Compensation Board (CalVCB) has the authority, pursuant to Government Code section 13957.2, to establish maximum rates and service limitations for reimbursement of mental health and counseling services. Section 13957.2 provides in pertinent part:

- (a) The board may establish maximum rates and services limitations for reimbursement of medical and medical-related services and for mental health and counseling services. The adoption, amendment, and repeal of these service limitations and maximum rates shall not be subject to the rulemaking provision of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the service limitations and maximum rates shall be filed with the Secretary of State upon adoption by the board.

Reimbursement of mental health expenses by CalVCB is based on the definitions, session limitations, documentation requirements and other criteria set forth in the CalVCB Mental Health and Counseling Service Maximum Rates and Service Limitations for Reimbursement, more commonly known as the Mental Health Guidelines (Guidelines).

These Guidelines are subject to the maximum reimbursement provisions of Government Code §13957 and other statutes governing the administration of the California Victim Compensation Program codified in Government Code §13900, et seq.

Mental Health Provider Rate Increases

Background

CalVCB mental health provider rates have not been changed since April 1, 2011, when they were reduced by 10% to address restitution fund challenges. There have been increasing cost pressures that providers have expressed to CalVCB, including inflation, and an increase in demand due to the pandemic.

In July of 2022, CalVCB staff surveyed several sources to obtain average reimbursement rates for mental health treatment. Those sources included Medicare, insurance companies, and other states' victim compensation programs. For the purposes of this document, five license types are provided: Psychiatrist (MD), Psychologist (PSY), Clinical Nurse Specialist or Psychiatric Mental Health Nurse (CNS), Licensed Provider (such as LMFT), and Associate/Assistant.

Proposed Change

Staff propose increasing all provider reimbursement rates by 30 percent, which will allow CalVCB to align with current Medicare rates and many other insurance programs. These proposed rate increases are anticipated to assist CalVCB in the recruitment and retention of quality mental health providers willing to treat victims throughout the state.

The current and proposed rates for the five license types listed above are:

License Type	Current Rate	30% Increase
MD	\$117	\$152
PSY	\$99	\$129
CNS	\$81	\$105
Licensed Provider	\$81	\$105
Associate/Assistant	\$75	\$97

Additional provider types and the corresponding reimbursement rate increases are included in Attachment A.

Updates to the Mental Health Guidelines

Background

The Guidelines provide the details of what services are reimbursable by CalVCB and the process and procedures providers must follow to receive reimbursement.

Generally speaking, the Guidelines require mental health providers working with CalVCB to complete a Treatment Plan (TP), which is standard industry practice and includes information such as the symptoms being treated, as well as the expected duration of treatment. The TP has also, historically, been used to verify crime-relatedness for each claimant's treatment. Additionally, the provider has been required to bill the applicant's insurance prior to submitting expenses to CalVCB. If an expense is not covered, or is only partially covered, the provider is requested to submit a bill with a copy of the Explanation of Benefits (EOB).

These requirements are consistent with CalVCB's statutory responsibility to ensure bills submitted are crime related (Government Code section 13957(a)(2)). This was previously accomplished by either a TP Declaration Page or the TP.

CalVCB is the payor of last resort and can only pay for treatment not covered by any other reimbursement source, including health insurance, civil suits, vehicle insurance, business insurance, home insurance, state disability insurance, and Worker's Compensation.

Last year, CalVCB piloted administrative changes to better ensure other insurance was being properly utilized and the treatment was directly related to the crime. During the past year, CalVCB conducted monthly information and training forums to communicate the updated guideline requirements, answer questions, and assisted with completion of the required documents. During those educational forums, many providers and victim advocates expressed concerns specific to additional administrative work, and challenges with obtaining EOBs and denial letters from insurance carriers.

Below are proposed changes to the Guidelines intended to address the concerns expressed by providers and victim advocates over the past year, while still ensuring that CalVCB has the information necessary to determine crime-relatedness of the treatment to enable it to tender the appropriate payment.

Proposed Changes

1. Update the requirement for session limitations prior to the submittal of the TP or TP Declaration Page and instead request the completion of verification of crime relatedness with the first billing statement. CalVCB created the Mental Health Billing Intake Form for submission with the first bill. The bill intake form requires less information from the provider and will increase the speed at which payments are made.
2. To assist with continuity of service and to ensure prompt payment of bills, mental health providers will be required to submit requests for payment within 90 days of providing services.
3. The Mental Health Billing Intake Form will include a section that allows for claimants to certify, to the best of their knowledge, that no other reimbursement source is available.

These proposed changes to the Guidelines are depicted in Attachment B. Deletions to the text are noted as strikethrough and additions are noted in underline.

Action Requested

Staff request the Board approve the proposed 30 percent increase to the Mental Health Reimbursement Rates as set forth in Attachment A, and adopt the changes to the Mental Health Guidelines as set forth in Attachment B. Upon adoption by the Board, these updates will be submitted to the Secretary of State's office as required by Government Code section 13957.2. Making these updates to our reimbursement rates and the Mental Health Guidelines will allow CalVCB to address the concerns expressed by providers and applicants while remaining in compliance with our statutory requirements.

MENTAL HEALTH GUIDELINES - ATTACHMENT A

ATTACHMENT A: PROVIDER RATES CHART

Provider Type	License or Certificate	Services	Rates Effective 04/01/2011	Rates Effective 12/15/2022
Licensed Psychiatrist (MD)	A, C, or G	Individual/family therapy	\$117/hour	\$152/hour
		Medication management	\$117/hour	\$152/hour
		Group therapy	\$46.80/hour	\$46.80/hour
Licensed Psychologist	PSY	Individual/family therapy	\$99/hour	\$129/hour
		Group therapy	\$39.60/hour	\$39.60/hour
Psychological Associate (must be supervised by a licensed psychologist)	PSB	Individual/family therapy	\$75/hour	\$97/hour
		Group therapy	\$30/hour	\$30/hour
Licensed Clinical Social Worker	LCSW	Individual/family therapy	\$81/hour	\$105/hour
		Group therapy	\$32.40/hour	\$32.40/hour
Associate Clinical Social Worker (must be supervised by a licensed therapist)	ASW	Individual/family therapy	\$75/hour	\$97/hour
		Group therapy	\$30/hour	\$30/hour
Licensed Marriage Family Therapist	LMFT	Individual/family therapy	\$81/hour	\$105/hour
		Group therapy	\$32.40/hour	\$32.40/hour
Associate Marriage and Family Therapist (must be supervised by a licensed therapist)	AMFT	Individual/family therapy	\$75/hour	\$97/hour
		Group therapy	\$30/hour	\$30/hour
Licensed Professional Clinical Counselor	LPCC	Individual/family therapy	\$81/hour	\$105/hour
		Group therapy	\$32.40/hour	\$32.40/hour
Associate Professional Clinical Counselor (must be supervised by a licensed therapist)	APCC	Individual/family therapy	\$75/hour	\$97/hour
		Group therapy	\$30/hour	\$30/hour

Provider Type	License or Certificate	Services	Rates Effective 04/01/2011	Rates Effective 12/15/2022
Clinical Nurse Specialist	CNS	Individual/family therapy	\$81/hour	\$105/hour
		Group therapy	\$32.40/hour	\$32.40/hour
Psychiatric Mental Health Nurse	PMHN	Individual/family therapy	\$81/hour	\$105/hour
		Group therapy	\$32.40/hour	\$32.40/hour
Nurse Practitioner/Physician Assistant	NP, PA	Medication management	Medicare Rate	Medicare Rate
Licensed Physician	A, C, or G	Medication management	Medicare Rate	Medicare Rate
Rape Crisis Peer Counselor	Certified by Rape Crisis Center	Individual therapy for no more than 10 weeks, plus one series of group sessions.	\$15/hour	\$15/hour

MENTAL HEALTH GUIDELINES - ATTACHMENT B

California Victim Compensation Board ~~Service Limitations~~

Mental Health and Counseling Service Maximum Rates and Service Limitations for Reimbursement

(Mental Health Guidelines) Expenses

Government Code §13957.2(a)

Effective December 15, 2022 January 1, 2017

Authority

The California Victim Compensation Board (CalVCB) has the authority, pursuant to Government Code section 13957.2, to establish maximum rates and service limitations for reimbursement of mental health and counseling services.

Reimbursement of ~~outpatient~~ mental health and ~~counseling~~ expenses by the California Victim Compensation Board (~~Board~~) (CalVCB) is based on the definitions, session limitations, documentation requirements and other criteria guidelines (guidelines) set forth below.

These guidelines are subject to the maximum reimbursement provisions of Government Code §13957 and other statutes governing the administration of the California Victim Compensation Board codified by in Government Code §§13900, et seq.

Penal Codes

CalVCB's Glossary of Penal Code Definitions, <https://victims.ca.gov/forms/penal-codes-definitions> is a document designed to assist in reviewing the Mental Health Guidelines and completing the Treatment Plan (TP) and Additional Treatment Plan (ATP). You may also access the Penal Codes at <https://leginfo.legislature.ca.gov/faces/codes.xhtml>.

Billing of Mental Health Services

The California Victim Compensation Board (CalVCB) is the payor of last resort and can only pay for treatment that is not covered by any other reimbursement source. This applies to all reimbursement sources such as: public and private health insurance (i.e., Medi-Cal, Blue Shield, etc.), civil suits, vehicle insurance, business insurance, home insurance, and/or Worker's Compensation.

The insurance provider must be billed prior to submitting expenses to CalVCB for payment. If the expense is not covered, or is only partially covered, submit your billing with a copy of the explanation of benefits (EOB). Failure to do so will result in delays in payment. (Tit. 2, CCR § 649.31)

- Reimbursement rates for licensed or registered mental health providers are listed on the CalVCB website at <https://victims.ca.gov/uploads/2021/01/MentalHealthProviderRates.pdf>.
- Reimbursement for mental health treatment (bills) must be submitted on a Centers for Medicare & Medicaid Services (CMS) 1500 form. The CMS 1500 must be completed entirely according to the CalVCB CMS 1500 Instructions form (<https://victims.ca.gov/uploads/2021/01/CMS1500Instructions.pdf>). Each date of service must

be listed individually. If the treating therapist is a registered associate with the Board of Behavioral Sciences or the Board of Psychology, the supervisor must sign the CMS 1500 form.

- Along with the first CMS 1500 form submitted for each claimant, a CalVCB Mental Health Billing Intake Form (<https://victims.ca.gov/forms/mental-health-billing-intake-form/>) must be completed in its entirety and signed by the treating provider. Submission of this form is required before payment can be made.

Bills must be submitted within 90 days of each date of service provided. If multiple dates of service are included in one CMS 1500 form, then it must be submitted within 90 days from the first service date on the bill.

If bills are not submitted within 90 days of each date of service, reimbursement will be denied.

Section I. Individual/Family/Group Psychotherapy and Case Management Services

The below limitations pertain to standard individual/family/group psychotherapy and case management services. Sessions are based on hourly increments per the table below. Session limits are based on hourly increments.

Session Lengths and Equivalencies

	Length of Time	Session Equivalent
Individual and Family Mental Health Session	Less than 45 minutes	.50
	45 to 74 minutes	1.0
	75 to 104 minutes	1.5
	105 to 120 minutes	2.0
One Group Mental Health Session		One half of an individual session of the same length ¹
Case Management Services Sessions²	15 minutes	.25
	30 minutes	.50
	45 minutes	.75
	60 minutes	1.0

¹ Group mental health sessions should be billed based on the length of time for the services. Similarly, group mental health sessions should represent the amount of time provided in hourly units on treatment plan forms.

² Case management is defined as a service that assists a direct victim with accessing needed medical, educational, social, prevocational, rehabilitative, or other community services. The service activities may include, but are not limited to, communication, referral and coordination.

Case Management

- CalVCB may reimburse up to five case management session hours for claimants, which will not be counted as part of the mental health session limit.

Telehealth

- Telehealth is delivering mental health treatment via communication technologies while the patient is at the originating site and the mental health provider is at a distant site. Services provided via telehealth modality must meet the statutory and regulatory requirements established by the licensing board overseeing the treating mental health provider.
- CalVCB may reimburse up to five telehealth therapy session hours, which will be counted as part of the mental session limit.
- Additional mental health sessions via telehealth modality beyond the initial limit of five session hours may be allowed if the claimant requires telehealth due to clinical necessity or lives in an area where no other clinical resources are available. Authorization for provision of more than five telehealth sessions requires that the Telehealth Therapy Verification form be submitted and approved.

Section I. Session Definitions

- a) ~~An individual mental health counseling session lasting less than 45 minutes is one-half session.~~
- b) ~~An individual mental health counseling session lasting 45 to 74 minutes is one session.~~
- c) ~~An individual mental health counseling session lasting 75-104 minutes is one and one-half sessions.~~
- d) ~~An individual mental health counseling session lasting 105-120 minutes is two sessions.~~
- e) ~~One group mental health counseling session is the equivalent of one-half of an individual mental health counseling session of the same length.~~
- f) ~~Case management is a service that assists claimant's access to needed medical, educational, social, prevocational, rehabilitative, or other community services. The service activities may include, but are not limited to, communication, referral and coordination.~~
- g) ~~Telehealth is delivering mental health treatment via communication technologies while the patient is at the originating site and the mental health provider is at a distant site. Services provided via telehealth modality must meet the statutory and regulatory requirements established by the licensing board overseeing the treating mental health provider.~~

Section II. Initial Treatment Session Limits

Victim Classification	Mental Health Session(s)	Case Management Session(s)
Direct Survivor ³	Up to 40	Up to 5 ⁴
Derivative⁵		
-Adult	Up to 15	
-Minor	Up to 30	Up to 5 ⁴
-Minor Witness	Up to 30	
-Primary Caretakers (at time of crime)	Up to 30	
-Post-Crime Primary Caretakers	Up to 15	

Primary Caretakers (at the time of crime) apply to those caring for minor direct victims. This classification is only eligible to recover up to \$10,000 as a shared payment between up to two Primary Caretakers.

Post-Crime Primary Caretakers apply to those who began caring for a minor direct victim after the crime. This classification is only eligible for treatment that benefits the direct minor victim and shall not exceed \$5,000. (Government Code §13957(a)(2)(B))

- ~~a) Direct Victims: An eligible victim may be reimbursed for up to 40 initial mental health counseling sessions. The Board may reimburse up to 5 case management sessions, which will not be counted as part of the mental health session limit. The Board may reimburse up to five (5) telehealth therapy sessions, which will be counted as part of the mental session limit.~~
- ~~b) Derivative Victims/Minor Witnesses/Good Samaritans: An eligible derivative victim, minor witness or Good Samaritan may be reimbursed under these guidelines for the number of initial sessions set forth in one of the categories that follow. A derivative victim eligible in more than one category may use only the most favorable category. The Board may reimburse up to 5 case management sessions for claimants, which will not be counted as part of the mental health session limit. The Board may reimburse up to five (5) telehealth therapy sessions, which will be counted as part of the mental session limit.~~
- ~~1) An adult derivative victim may receive up to 15 mental health counseling sessions.~~
 - ~~2) A minor derivative victim, or minor witness, or Good Samaritan may receive up to 30 mental health counseling sessions.~~
 - ~~3) Each derivative victim who is the direct victim's primary caretaker at the time of the crime may receive up to 30 mental health counseling sessions, for up to two primary~~

³ Survivors include parent, sibling, child, spouse, fiancé, grandparent, grandchild or registered domestic partner as defined in Family Code §297.

⁴ These are not counted against the mental health session limits.

⁵ A derivative victim in more than one category may only use the most favorable category.

caretakers.

- ~~4) Each derivative victim who is a post-crime primary caretaker may receive up to 15-mental health sessions for up to two post-crime primary caretakers. The initial sessions must be for benefit of the direct victim pursuant to Government Code §13957(a)(2)(B)(i).~~
- ~~5) If the qualifying crime resulted in the death of the victim, a surviving parent, sibling, child, spouse, fiancé, fiancée, grandparent, grandchild, or registered domestic partner as defined in Family Code §297, may receive up to 40 mental health counseling sessions.~~

Section III. Documentation Requirements for Initial Sessions

When a claimant begins treatment, the following documents must be completed by the mental health provider:

- 1) Mental Health Billing Intake Form
- 2) Treatment Plan (TP)

The Treatment Plan (TP) must be completed in its entirety and kept in the claimant's file except for the following circumstances when it must be submitted to CalVCB prior to the beginning of the fourth session:

- ~~a) Reimbursement of the initial sessions described in Section II is subject to the following documentation requirements:~~
 - ~~1) A victim, derivative victim, minor witness or Good Samaritan who is eligible for outpatient mental health counseling expenses may be reimbursed for the service-provider's first three mental health counseling sessions within the session limit without completion of a Treatment Plan.~~
 - ~~2) Reimbursement of mental health counseling sessions beyond the first three sessions requires the treating therapist to complete a Treatment Plan before the fourth session; and~~
 - ~~3) The Treatment Plan may be kept in the victim's or derivative victim's file, but must be submitted to the Board in the following circumstances:~~
 - 1) Upon the Board's CalVCB's request; or
 - 2) If the treatment is less than 100% related to the qualifying crime; or
 - 1) ~~At the time of the Additional Treatment Plan submission; or~~
 - 3) There was a delay in treatment of three years or break in treatment over one year; or
 - 4) If the treatment claimant is the for a post-crime primary caretaker.
 - 5) If the claimant was three years old or younger when treatment began.

If the TP is not submitted to CalVCB for the above circumstances, the bills may be denied until the document is submitted.

4) ~~The Treatment Plan shall include the following:~~

TP Requirements

- 1) A description of the crime for which mental health sessions are being provided. ~~the victim, derivative victim, minor witness, or Good Samaritan is receiving treatment;~~
- 2) Reason(s) therapeutic intervention is needed if the victimization occurred more than three years ago or there was a break in treatment of more than one year.
- 3) The ~~claimant's~~ diagnosis and specifiers as described in the most recently published version of the *Diagnostic and Statistical Manual of Mental Health Disorders* (DSM) and other conditions that may be the focus of clinical attention.
- 4) A description of presenting symptoms, behaviors and beliefs that are the focus of treatment goals;
- 5) ~~Administration of The Level 1 Cross-Cutting Symptom Measure results~~ as described in the most recently published version of the DSM, as clinically indicated. The exceptions for completion are:
 - a. Claimant is non-English speaking
 - b. Claimant is less than six years of age
 - c. Claimant is developmentally disabled
 - d. Treatment is terminated
 - e. Explanations provided in the "Other" box will be considered on a case-by-case basis
- 6) A description of the means by which progress will be measured.
 - a. ~~A description of factors that may adversely affect treatment progress;~~
- 7) ~~An explanation of the claimant's involvement with the legal system in regards to the crime and information on the perpetrator's release from custody and/or contact with the claimant, if applicable;~~
- 7) For a Post-Crime Primary Caretaker, a list and description of the therapeutic interventions that are necessary for the treatment of the direct minor victim. If the claimant is a Post-Crime Primary Caretaker (e.g. foster parent, relative caretaker), a list and description of the therapeutic interventions for the claimant that are aimed necessary for the treatment of the at alleviating the direct minor victim's symptoms; and
- 8) A declaration signed under penalty of perjury of the percentage of the treatment that is necessary as a direct result of the qualifying crime.

Mental Health Billing Intake Form Requirements

The Mental Health Billing Intake Form that is required to be submitted with the first billing, shall include all of the following:

- 1) Claimant Name
- 2) Crime Date

- 3) Type of crime with a brief description
- 4) The date the treatment began
- 5) The date the treatment will end, if applicable
- 6) If treatment is necessary as a direct result of the crime (a requirement of Government Code section 13957(a)(2))
- 7) If insurance or Medi-Cal cannot be billed, applicants are asked for the reason. If any of the reasons are selected, the applicant may be provided an exemption
- 8) Provider Organization Name
- 9) Treating Provider Name
- 10) Supervising Provider Name (if applicable)
- 11) Email address of Provider
- 12) Phone number of Provider
- 13) Provider License Number
- 14) Supervising Provider License Number (if applicable)
- 15) Provider Declaration Certification, signed under penalty of perjury
- 16) Claimant Declaration Certification, signed under penalty of perjury

Section IV. Documentation Requirements for Additional Treatment Beyond Initial Session Limits

Reimbursement for additional mental health sessions for a victim beyond the initial session limit may be approved if an Additional Treatment Plan (ATP) and TP are submitted and the documentation meets the criteria listed below.

The ATP should be completed when the claimant is eight (8) sessions from reaching their authorized session limit. The complete ATP must be submitted within 90 days after the date a bill for sessions that exhaust the authorized session limit is submitted to CalVCB. If the completed ATP and TP are not submitted within the 90-day timeframe, bills for all dates of service that exceed the authorized session limit will be returned and will not be considered for payment.

Bills for dates of service provided after the ATP and TP are submitted, but before the ATP is approved, may be considered for payment subject to approval of the ATP.

If there is a change of therapists within the same provider organization, the succeeding therapist is not considered a new provider and must assess the claimant's therapeutic progress since treatment began with the organization.

ATP Requirements

- 1) A description of the crime for which mental health sessions is being provided.
- 2) Reason(s) therapeutic intervention is needed if the victimization occurred more than three years ago or there was a break in treatment of more than one year.

- 3) The diagnosis and specifiers as described in the most recently published version of the Diagnostic and Statistical Manual of Mental Health Disorders (DSM) and other conditions that may be the focus of clinical attention.
- 4) For a Post-Crime Caretaker, a list and description of the therapeutic interventions that are necessary for the treatment of the direct minor victim.
- 5) A description of the current symptoms, behaviors and beliefs that are the focus of continued treatment.
- 6) The treating therapist's rating of the therapeutic progress in relation to the diagnosis and treatment goals and other progress measurements identified in the initial TP and ATP.
- 7) The Level 1 Cross-Cutting Symptom Measure results as described in the most recently published version of the DSM, as clinically indicated. Acceptable reasons for results of this measurement to not be reported, include:
 - Claimant is non-English speaking
 - Claimant is less than six years of age
 - Claimant is developmentally disabled
 - Treatment is terminated
 - Explanations provided in the "Other" box will be considered in a case-by-case basis
- 8) A description of the means by which progress will continue to be measured.
- 9) A description of factors that may adversely affect treatment progress.
- 10) An explanation of the claimant's involvement with the legal system concerning criminal or dependency hearings resulting from the qualifying crime, if applicable.
- 11) An explanation of the claimant learning of the perpetrator's release from custody, if applicable.
- 12) If a direct minor victim, reporting if the perpetrator has made unwelcome and unauthorized contact with the claimant, if applicable.
- 13) A declaration signed under penalty of perjury of the percentage of the treatment that is necessary as a direct result of the qualifying crime.
 - a) ~~Requests for reimbursement beyond those described in Section II require submission of an Additional Treatment Plan and approval of additional treatment by the Board. The initial Treatment Plan must be submitted with the Additional Treatment Plan if the service provider is the continuing therapist. The Additional Treatment Plan should not be completed before the claimant is within eight (8) sessions from reaching his or her authorized session limit and must be submitted within 90 days after the date a bill for sessions that exhaust the authorized session limit is received by the Board. If the Additional Treatment Plan and Treatment Plan are not submitted within the 90 day timeframe, bills for all dates of service that exceed the authorized session limit will be returned and will not be considered for payment. However, bills for dates of service provided after the Additional Treatment Plan and Treatment Plan are received may be considered for payment, subject to approval of the Additional Treatment Plan. If there is a~~

~~change of therapists within the same provider organization, the succeeding therapist is not considered a new provider and must assess the claimant's therapeutic progress since treatment began with the organization.~~

~~1) The Additional Treatment Plan shall include:~~

- ~~A) An update on all information required by Section III, subsection (a)(4); and~~
- ~~B) The treating therapist's rating and explanation of the claimant's therapeutic progress in relation to the diagnosis and treatment goals, and other progress measurements identified in the initial Treatment Plan; and~~
- ~~C) If the claimant is a derivative victim of a surviving direct victim, a list and description of the therapeutic interventions for the claimant that are aimed at alleviating the direct victim's symptoms.~~

Additional Treatment Criteria

~~The Board CalVCB may require the submission of additional any other information needed required to determine whether the treatment will best aid the victim, derivative victim, minor witness, or Good Samaritan and is necessary as a direct result of the qualifying crime including, but not limited to, legible session notes pursuant to Title 2, California Code of Regulations § 649.7(b)(1).~~

~~The Board CalVCB shall not reimburse additional outpatient mental health counseling sessions unless the below requirements for the claimant's applicable filing classification are met; or in the CalVCB's of Section V, VI VII, or VIII are met; or, in the Board's sole discretion, it determines that additional treatment will best aid the victim, derivative victim, minor witness, or Good Samaritan and is necessary as a direct result of the qualifying crime.~~

~~When evaluating a request for additional sessions, objective assessment measures with demonstrated reliability and validity in peer review literature will be given significant weight.~~

~~When evaluating a request for additional treatment, independent corroborative information may be given significant weight.~~

~~Notwithstanding Section V, subsections (b)(3) and (d)(2), Section VI, subsections (a)(3) and (c)(2), Section VII, subsections (a)(2) and (b), and Section VIII, subsections (a)(2) and (b), if inadequate progress has been shown in treatment, the Board may, in its sole discretion, authorize additional treatment with a different treatment modality, method, or provider.~~

~~Reimbursement made in excess of the limits in Government Code § 13957(a)(2)(A) or (B) must comply with this section and must be based on a finding that dire or exceptional circumstances require more extensive treatment.~~

If additional sessions are needed to address treatment goals:

- Submit a new, complete, signed and certified ATP.

- Submit the ATP within eight sessions of reaching the Mental Health Session limit.
- Certification by the treating therapist of treatment progress that has been made.
 - o If treating therapist is unable to certify progress of previous treatment, the treating therapist must certify that hindering factors can be overcome.
- For subsequent requests for additional sessions, certification by the treating therapist on the continuing progress.
 - o If the treating therapist is unable to certify that treatment progress has been made, the therapist must certify that hindering factors will be successfully overcome with additional sessions.

CaVVCB may not allow additional sessions if one of the following applies:

- The treating therapist indicates that hindering factors can't be overcome with additional sessions.
- Treating therapist certifies that progress has been made but accompanying documentation does not support that certification.

In such cases, an Independent Mental Health Examination may be required.

If inadequate progress has been determined against the below requirements for the claimant's applicable filing classification, CaVVCB may, in its sole discretion, authorize additional treatment with a different treatment modality, method, or provider.

Additional sessions beyond the claimant's applicable initial session limit may be approved providing specified criteria are met for the following claimant classifications:

Section V. Additional Sessions for Direct Victims

- a) ~~Reimbursement for additional mental health counseling sessions for a victim beyond those identified in Section II may be approved if an Additional Treatment Plan is submitted and the circumstances of the application that demonstrate the need for additional treatment meets the criteria listed in subsections (b) and (c) below.~~
- b) ~~Additional sessions for an adult victim may be approved if all of the following criteria are met:~~

Direct Victims

- 1) At least one of the following factors is present:
 - a) The qualifying crime resulted in permanent and substantial disfigurement; or
 - b) The qualifying crime is a sexual assault offense involving conduct described in Penal Code §11165.1(b)(1), (2) or (3); or
 - c) The qualifying crime constituted a plausible and credible threat of serious harm to bodily integrity; or

- d) The qualifying crime resulted in serious bodily injury as defined in Penal Code § 243(f)(4); or
 - e) The victim initiated mental health treatment within three months of being is scheduled to testify as a witness in any criminal or dependency proceeding related to the qualifying crime; To be reimbursed, the mental health counseling must be initiated within three months of being scheduled to testify; or
 - f) The victim initiated mental health treatment within three months of learning that perpetrator will be, or was, is released from custody. To be reimbursed, the mental health counseling must be initiated within three months of learning that the perpetrator will be, or was, released from custody.
- 2) The treatment must be focused on symptoms, behaviors, or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.
- 3) The treatment has progressed, as evidenced by:
- a) Improvement in the Level 1 Cross-Cutting Symptom Measure results, as clinically indicated Scores: and
 - b) The treating therapist's rating and explanation of the claimant's therapeutic progress in relation to the diagnosis and treatment goals and other progress measurements identified in the initial Treatment Plan; and
 - c) Symptom progress rating score provided by the treating therapist based on the status of claimant's symptoms/behaviors; ~~Intervention ratings provided by the treating therapist based on the status of claimant's symptoms/behaviors; and~~
 - d) The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.

Minor Direct Victim

Additional sessions for a minor victim may be approved if the above "Direct Victim" section criteria are met. Otherwise, a minor victim can be authorized additional sessions if the following criteria are successfully met, as specified in subsections (a) and (b) above, or if the requirements of subsections (b)(2) and (b)(3) are met and any of the following factors are present:

- 1) One of the following circumstances are present:
 - a) The qualifying crime is a sexual assault offense involving conduct described in Penal Code §11165.1(a), (b)(4) or (b)(5) and at least one of the following applies:
 - 1) The perpetrator of the qualifying crime was a person in a position of trust or authority with the victim, including, but not limited to a parent, teacher, or religious leader; or
 - 2) The victim was removed from the home as a result of the qualifying crime ~~and is still out of the home at the time of treatment; or~~

- 3) The victim's parent minimizes the significance of the qualifying crime, blames the victim for the qualifying crime, fails to acknowledge that the suspect committed the qualifying crime, or does not believe the qualifying crime occurred; or
 - 4) Another minor in the victim's immediate family was also a victim of the same qualifying crime of sexual abuse committed by the same perpetrator.
- b) The victim reaches a developmental stage or a stage of cognitive development that results in impairment as a direct result of the qualifying crime; or
 - c) The alleged suspect persists in making uninvited and unwelcome contact with the victim that is not authorized by a court.
- 2) The treatment is focused on symptoms, behaviors, or beliefs that are directly attributable to the qualifying crime and could be remediated by the proposed treatment.
- 3) The treatment has progressed, as evidenced by:
- a) Symptom progress rating score provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
 - b) Improvement in the Level 1 Cross-Cutting Symptom Measure results, as clinically indicated; and
 - c) The treating therapist's rating of the therapeutic progress in relation to the diagnosis and treatment goals and other progress measurements identified in the initial TP; and
 - d) The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.

~~If the Board previously approved reimbursement for additional sessions under subsection (a), any subsequent requests are stringently reviewed and may be reimbursed only if both of the following requirements are met:~~

- ~~a) The requirements of subsection (b) or (c) above are met; and~~
 - ~~b) The Board determines that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment and treatment has significantly progressed.~~
- 4) ~~Additional mental health sessions via telehealth modality beyond the initial limit of five (5) sessions may be allowed if the claimant requires telehealth due to clinical necessity or lives in an area where no other clinical resources are available.~~

Section VI. Additional Sessions for Derivative Victims

Derivative claimants may qualify for additional sessions (dependent on approval) under one of the three below subsections a.), b.), c.):

- A) Reimbursement for additional mental health counseling sessions for a derivative victim beyond the initial session limit ~~those identified in Section II~~ may be approved if an Additional

Treatment Plan is submitted and the circumstances of the application that demonstrate the need for additional treatment meets the criteria listed below:

- 1) Either:
 - a) The qualifying crime resulted in the death of the victim; or
 - b) The derivative victim, excluding Post-Crime Caretakers (new caretakers of a minor victim after the qualifying crime), initiated mental health treatment within three months of being is-scheduled to testify in a criminal dependency proceeding related to the qualifying crime; ~~as a witness in any criminal proceeding related to the qualifying crime. To be reimbursed, the mental health counseling must be initiated within three months of being informed that the derivative victim is scheduled to testify;~~ and
- 2) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment; and
- 3) Treatment has progressed, as evidenced by:
 - a) Improvement in the Level 1 Cross-Cutting Symptom Measure Scores; and
 - b) The treating therapist's rating and explanation of the claimant's therapeutic progress in relation to the diagnosis and treatment goals, and other progress measurements identified in the initial Treatment Plan; and
 - c) Symptom progress rating score ~~Intervention ratings~~ provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
 - d) The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.

B) Reimbursement for additional mental health counseling sessions for a derivative victim beyond the initial session limit ~~those identified in Section II~~ may be approved ~~for a derivative victim~~ if an Additional Treatment Plan is submitted and the circumstances of the application that demonstrate the need for additional treatment meets the criteria listed below:

Please note: This is the only subsection that a Post-Crime Caretaker (a new caretaker of a minor victim after the qualifying crime) may be eligible for additional sessions.

1. One of the following direct victim factors are present:
 - a. The qualifying crime resulted in permanent and substantial disfigurement; or
 - b. The qualifying crime resulted in serious bodily injury as defined in Penal Code §243(f)(4); or
 - c. The qualifying crime constituted a plausible and credible threat of serious harm to bodily integrity; or

- d. The qualifying crime is a sexual assault offense involving conduct described in Penal Code §11165.1(b)(1), (2) or (3); or
- e. The direct victim initiated mental health treatment within three months of being scheduled to testify in a criminal or dependency proceeding related to the qualifying crime.; or
- f. The direct victim initiated mental health treatment within three months of learning that the perpetrator will be, or was, released from custody.
- g. Penal Code §11165.1 (a), (b)(4), or (b)(5), Penal Code §243(f)(4); and at least one of the following applies:
 - 1. The perpetrator of the qualifying crime was a person in a position of trust or authority with the victim, including, but not limited to a parent, teacher, or religious leader; or
 - 2. The minor victim was removed from the home as a result of the qualifying crime and is still out of the home at the time of treatment; or
 - 3. The minor victim's parent minimizes the significance of the qualifying crime, blames the victim for the qualifying crime, fails to acknowledge that the suspect committed the qualifying crime, or does not believe the qualifying crime occurred; or
 - 4. Another minor in the minor victim's immediate family was also a victim of the same qualifying crime of sexual abuse committed by the same perpetrator.

~~1) The factors listed in Section V, subsection (b)(1) or (c)(1) are met; and~~

2) Treatment for the derivative victim is necessary for the recovery of the direct victim; and

3) Treatment for the derivative victim is focused on the direct victim's behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment; and

4) Treatment of the derivative victim has resulted in the direct victim's progress as evidenced by one of the following:

a) The Additional Treatment Plan for the direct victim exhibits improvement in the symptoms, behaviors, or beliefs as shown by improvement in the Level 1 Cross-Cutting Symptom Measure and the progress rating by the treating therapist in relation to the claimant's treatment for the diagnosis and goals, and other progress measurements identified in the Treatment Plan; or

b) The Additional Treatment Plan for the derivative victim demonstrates improvement in the direct victim's symptoms, behaviors, or beliefs attributable to the derivative victim's treatment.

C) Reimbursement for additional mental health counseling sessions ~~beyond those identified in Section II may be approved for the benefit of the~~ for a derivative victim, excluding Post-Crime Caretakers (new caretakers of a minor victim after the qualifying crime), beyond the initial session limit may be approved ~~who does not meet the criteria of subsection (a) if an Additional Treatment Plan is submitted and the circumstances of the application that demonstrate the need for additional treatment meets the criteria listed below:~~

1) The derivative victim is a Primary Caretaker, such as a parent caretaker or step-parent at the time of the qualifying crime, or sibling of a minor victim of sexual or severe physical abuse specified within either subsection A or B below: ~~by Section V, subsection (b)(1)(B), (b)(1)(D), or (c)(1); and~~

a) Penal Code §11165.1 (b)(1), (2), (3), Penal Code §243(f)(4); or

b) Penal Code §11165.1 (a), (b)(4), or (b)(5); and at least one of the following applies:

1) The perpetrator of the qualifying crime was a person in a position of trust or authority with the victim, including, but not limited to a parent, teacher, or religious leader; or

2) The minor victim was removed from the home as a result of the qualifying crime and is still out of the home at the time of treatment; or

3) The minor victim's parent minimizes the significance of the qualifying crime, blames the victim for the qualifying crime, fails to acknowledge that the suspect committed the qualifying crime, or does not believe the qualifying crime occurred; or

4) Another minor in the minor victim's immediate family was also a victim of the same qualifying crime of sexual abuse committed by the same perpetrator.

2) Treatment for the derivative victim is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment; and

3) The treatment has progressed, as evidenced by:

a) Improvement in the Level 1 Cross-Cutting Symptom Measure Scores; and

b) The treating therapist's rating and explanation of the claimant's therapeutic progress in relation to the diagnosis and treatment goals, and other progress measurements identified in the initial Treatment Plan; and

c) Symptom progress rating scores ~~Intervention ratings~~ provided by the treating therapist based on the status of claimant's symptoms/behaviors; and

d) The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.

~~D) If the Board previously approved reimbursement for additional sessions under~~

~~subsection (a), (b), or (c) any subsequent requests are stringently reviewed and may be reimbursed only if the Board determines that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment and treatment has significantly progressed.~~

- ~~E) Additional mental health sessions via telehealth modality beyond the initial limit of five (5) sessions may be allowed if the claimant requires telehealth due to clinical necessity or lives in an area where no other clinical resources are available.~~

Section VII. Additional Sessions for a Minor Witness

Reimbursement for additional mental health counseling sessions for a minor witness beyond the initial session ~~limit these identified in Section II~~ may be approved if an Additional Treatment Plan is submitted and the documentation ~~circumstances of the application that demonstrate the need for additional treatment~~ meets all the criteria listed below:

- 1) The treatment ~~for the minor witness~~ is focused on behaviors or beliefs that are directly attributable to the qualifying crime; and ~~could reasonably be remediated by the proposed treatment; and~~
- 2) The treatment has progressed, as evidenced by:
 - a) Improvement in the Level 1 Cross-Cutting Symptom Measure results, as clinically indicated; ~~Scores; and~~
 - b) The treating therapist's rating ~~and explanation~~ of the claimant's therapeutic progress in relation to the diagnosis and treatment goals, and other progress measurements identified in the initial Treatment Plan; and
 - c) Symptom progress rating score ~~Intervention ratings~~ provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
 - d) The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.
- 3) The minor witness initiated mental health treatment within three months of being is scheduled to testify as a witness in any criminal or dependency proceeding related to the qualifying crime. ~~To be reimbursed, the mental health counseling must be initiated within three months of being scheduled to testify.~~
- 4) ~~If the Board previously approved reimbursement for additional sessions under subsection (a), any subsequent requests are stringently reviewed and may be reimbursed only if the Board determines that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment and treatment has significantly progressed.~~
- 5) ~~Additional mental health sessions via telehealth modality beyond the initial limit of five (5) sessions may be allowed if the claimant requires telehealth due to clinical necessity or lives in an area where no other clinical resources are available.~~

Section VIII. Additional Sessions for a Good Samaritan

- A) Reimbursement for additional mental health counseling sessions for a Good Samaritan beyond those identified in Section II may be approved if an Additional Treatment Plan is submitted and the circumstances of the application that demonstrate the need for additional treatment meets the criteria listed below:
- 1) The treatment for the Good Samaritan is focused on behaviors or beliefs that are directly attributable to the qualifying event and could reasonably be remediated by the proposed treatment; and
 - 2) The treatment has progressed, as evidenced by:
 - a) Improvement in the Level 1 Cross-Cutting Symptom Measure Scores; and
 - b) The treating therapist's rating and explanation of the claimant's therapeutic progress in relation to the diagnosis and treatment goals, and other progress measurements identified in the initial Treatment Plan; and
 - c) Intervention ratings provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
 - d) The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.
 - 3) The Good Samaritan is scheduled to testify as a witness in any criminal or dependency proceeding related to the qualifying event. To be reimbursed, the mental health counseling must be initiated within three months of being scheduled to testify.
- B) If the Board previously approved reimbursement for additional sessions under subsection (a), any subsequent requests are stringently reviewed and may be reimbursed only if the Board determines that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment and treatment has significantly progressed.
- C) Additional mental health sessions via telehealth modality beyond the initial limit of five (5) sessions may be allowed if the claimant requires telehealth due to clinical necessity or lives in an area where no other clinical resources are available.

Dire or Exceptional Circumstances:

Additional sessions beyond the claimant's maximum monetary statutory limit for mental health expenses [specified in Government Code § 13957(a)(2)(A) or (B)] may be approved if it is determined that dire or exceptional circumstances that require more extensive treatment is met per Government Code § 13957(a)(2)(C).

ITEM 9

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

8 In the Matter of:

9 **Michael Ray Hanline**

10 Claim No. 16-ECO-10

Proposed Decision

(Penal Code § 4900, subd. (b))

11 **I. Introduction**

12 On November 22, 2016, Michael Ray Hanline (Hanline) submitted a claim for compensation as
13 an erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to
14 Penal Code section 4900. Following a lengthy stay at the parties' request, Hanline supplemented the
15 claim on April 22, 2022. The claim is based upon Hanline's 1980 conviction for murder, which was
16 vacated and dismissed during a state habeas proceeding in 2014, without a finding of factual
17 innocence. As supplemented, Hanline's claim requests compensation in the amount of \$1,840,720 for
18 allegedly serving 13,148 days imprisonment. Hanline is represented by Alexander Simpson of the
19 California Innocence Project and Brett Schreiber of Singleton Schreiber, LLP.

20 The Attorney General is represented by Deputy Attorney General Jonathan M. Krauss. By
21 letter dated July 25, 2022, the Attorney General disputed the amount of compensation but otherwise
22 declined to object to the claim. By the Attorney General's calculation, Hanline spent a total of 13,146
23 days in custody, during which he concurrently served up to 10 years (i.e., 3,650 days) for an unrelated
24 conviction for grand theft under the Indeterminate Sentence Law (ISL). Accordingly, the Attorney
25 General urges a reduction of Hanline's requested compensation by as much as \$511,000 for the
26 overlapping sentence, plus an additional reduction of \$280 for the two-day custodial difference.

27 At CalVCB's invitation, Hanline's counsel timely replied to the Attorney General's calculations
28 on August 12, 2022. Hanline insists that he is entitled to full compensation for 13,148 days

1 imprisonment for murder, which includes his overlapping sentence for grand theft, because his
2 probation was only revoked as a result of his erroneous murder conviction. Alternatively, Hanline
3 asserts that his compensation may be reduced by no more than 16 months (i.e., 485 days) for his
4 overlapping sentence for grand theft by applying the low term of the Uniform Determinate Sentencing
5 Act of 1976 (DSL), resulting in a maximum reduction of \$67,900.

6 Following receipt and review of Hanline’s reply, the administrative record closed on August 23,
7 2022, and the matter was assigned to CalVCB Senior Attorney Laura Simpton. For the reasons
8 detailed below, Hanline’s demonstrated injury amounts to 12,416 of the 13,130 total days that he was
9 confined for murder. This calculation excludes 714 days (i.e., \$99,960) for Hanline’s overlapping
10 sentence for grand theft under the ISL, with a likely parole date after the middle term of two years
11 pursuant to Penal Code section 1170.2. As required by subdivision (b) of Penal Code section 4900,
12 CalVCB is therefore mandated to approve payment to Hanline in the amount of \$1,738,240 if sufficient
13 funds are available, upon appropriation by the Legislature, as indemnification for the demonstrated
14 injury sustained by his 12,416 days imprisonment solely as a result of his vacated murder conviction.¹

15 **II. Procedural History**

16 **A. Trial Proceeding for Murder Conviction**

17 On December 14, 1978, while in custody for a separate offense, Hanline was arrested and
18 charged with the murder of J.T. McGarry (McGarry) in Ventura County Superior Court case number
19 14566.² Following a jury trial, Hanline was convicted on September 24, 1980, of first-degree
20 premeditated murder with a special circumstance for committing murder during the course of a
21 burglary.³ On October 31, 1980, the superior court sentenced Hanline to “the term prescribed by law,
22

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

25 ² Pen. Code, § 187; Hanline Application Cover Letter (App. Letter), signed by Brett Screiber, dated
November 22, 2016, at p. 2.

26 ³ Hanline Application Form (App.) at p. 1; Hanline Supplemental Application Form (Supp. App.) at p. 1;
27 Memorandum in Support of Supplemental Claim for Compensation for Wrongful Conviction (Supp.
28 Memo) at pp. 1, 13; Hanline Supplemental Application Exhibit (Ex.) 4 at p. 1; Clerk’s Transcript (CT) at
pp. 216, 220. Six exhibits are attached to the Supp. Memo (i.e., 1 through 6), along with 21 exhibits
from the habeas proceeding (i.e., Exs. 1a through 1t), 3 volumes of Reporter’s Transcript from the

1 to wit, life imprisonment without the possibility of parole” (LWOP).⁴ The court found, pursuant to
2 stipulation, that Hanline “has served 687 days in custody as a result of the crime(s) of which
3 convicted.”⁵

4 **B. Unrelated Conviction for Grand Theft**

5 Several years earlier on November 26, 1975, Hanline was charged with burglary and grand
6 theft in Ventura County Superior Court Case number 11605, along with four prior felony convictions.⁶
7 On June 1, 1976, Hanline pleaded guilty to one count of grand theft for “unlawfully taking the firearms
8 of another,” and all remaining charges were dismissed.⁷ On June 22, 1976, Hanline was sentenced to
9 “*imprisonment ... for the term prescribed by law,*” which was ordered suspended, and granted felony
10 probation instead.⁸ As a term of probation, Hanline was required to serve one year in county jail and
11 awarded 205 days presentence credit, without specifying the number of days applied for good conduct
12 and for actual time served.⁹ Additional terms of Hanline’s probation required he obey all laws and
13 specifically prohibited his use of illegal drugs or possession of a firearm.¹⁰ In November 1976,
14
15
16

17 habeas proceeding (i.e., HT1 through HT3), 18 volumes of Reporter’s Transcript from the trial (1RT
18 through 8RT, 10RT through 15RT, 17RT through 20RT), 3 volumes of Reporter’s Transcript from the
19 preliminary hearing (PH1 through PH3), the Reporter’s Transcript of opening and closing arguments
20 (XRT), and the Clerk’s Transcript from the trial (CT). Combined, the submitted documents total over
21 5,000 pages.

22 ⁴ CT 220. Although Hanline submitted, inter alia, 17 volumes of the Reporter’s Transcript from the trial
23 proceedings, he omitted the final volume containing the sentencing hearing. The probation report for
24 sentencing was also omitted.

25 ⁵ *Ibid.*

26 ⁶ Pen. Code, §§ 459, 487; Hanline Reply to AG Letter, dated August 12, 2022 (Hanline Reply), Ex. A
27 at pp. 2-3.

28 ⁷ Hanline Reply Ex. A at pp. 10-11, 14.

⁸ Hanline Reply Ex. A at p. 12 (emphasis added).

⁹ Hanline Reply Ex. A at p. 12; see also Pen. Code, Code, § 4019 (awarding two days conduct credit
for every four days served for certain offenses); cf. former Pen. Code, § 4019, as amended by
Stats.1978, c. 1218, p. 3941, § 1 (awarding two days credit for “each one-fifth of a month in which a
prisoner is confined” for certain offenses).

¹⁰ Hanline Reply Ex. A at p. 13.

1 Hanline’s probation for this conviction was transferred to Santa Barbara County pursuant to Penal
2 Code section 1203.9.¹¹

3 While still on probation, Hanline was arrested on November 28, 1978, for grand theft auto while
4 driving a stolen van.¹² It is unclear whether Hanline was charged or convicted of this offense as a new
5 crime.¹³ Regardless, on February 9, 1979, Hanline formally admitted violating probation in Santa
6 Barbara County Superior Court case number 114969, which was accepted by the court.¹⁴ Hanline
7 does not disclose the basis for his admission to violating probation, which occurred while he was
8 awaiting trial for murder. The official charging document for the probation violation is likewise omitted
9 from the record, along with any sentencing probation report.

10 On June 15, 1979, based upon the admitted violation of probation, the court resentenced
11 Hanline in case number 114969 for his 1976 grand theft conviction.¹⁵ Specifically, the court

12 “ordered that Probation be revoked and the *Defendant sentenced to State Prison for the*
13 *term prescribed by law* and further that said sentence be executed forthwith with credit
14 for 778 days heretofore served.”¹⁶

15 Again, the credit calculation did not specify what portion was based upon actual days in custody.

16 Under the ISL, which applied to crimes committed before July 1, 1977, the term prescribed by
17 law for grand theft was “not more than 10 years” imprisonment, and it was left to the governing

18 ¹¹ Hanline Reply Ex. A at pp. 1, 14.

19 ¹² AG Letter from Deputy Attorney General Jonathan M. Krauss (AG Letter), dated July 25, 2022,
20 submitted via email on July 25, 2022, Ex. 1 (arrest report for grand theft auto under former Pen. Code,
21 § 487, subd. (3)) and Ex. 2 at p. 8 (rap sheet).

22 ¹³ Hanline Reply Ex. A at p. 19 (Amended Abstract of Judgment for case number 114969 reflecting
23 conviction for grand theft by jury verdict on June 15, 1979, with 778 days credit awarded); AG Letter
24 Ex. 2 at p. 8 (rap sheet reflecting entry for grand theft conviction, dated June 15, 1979, in case number
25 114996, rather than 114969). Given Hanline was originally convicted of grand theft by guilty plea on
26 June 22, 1976, both the Abstract of Judgment and rap sheet appear to be in error to the extent they refer
27 to the date and means of Hanline’s original conviction for grand theft, unless Hanline was convicted of
28 a new grand theft conviction. Both parties agree that Hanline’s probation was violated and neither
alleges a new conviction for grand theft. (AG Letter at pp. 1-2; Hanline Reply at pp. 1-2.) This hearing
officer likewise assumes that no new conviction resulted and any contrary indication in the Abstract of
Judgment and rap sheet is in error.

¹⁴ Hanline Reply Ex. A at p. 17.

¹⁵ Hanline Reply Ex. A at p. 18.

¹⁶ Hanline Reply Ex. A at p. 18 (emphasis added).

1 authority of the prison (i.e., the Board of Prison Terms) to determine the particular date of release for
2 each offender in its custody.¹⁷ After July 1, 1977, grand theft was punishable under the DSL by 16
3 months, 2 years, or 3 years imprisonment, and the court selected the appropriate term for each
4 offender based upon the applicable mitigating or aggravating circumstances.¹⁸

5 Following the Santa Barbara County Superior Court’s revocation of probation and imposition of
6 sentence for grand theft, Hanline remained in jail awaiting trial on his still-pending murder charge. As
7 previously noted, Hanline was ultimately convicted of first-degree murder on September 24, 1980, and
8 the Ventura County Superior Court sentenced him to LWOP on October 31, 1980.

9 On November 6, 1980, Hanline was transferred to the California Department of Corrections
10 (CDC). As reflected in an entry on his rap sheet dated November 6, 1980, and entitled “CUSTODY:
11 CDC,” Hanline’s aggregate sentence for his separate murder and grand theft convictions was “life
12 without parole, plus 6 months to 10 years imprisonment.”¹⁹

13 Neither Hanline nor the Attorney General provide the specific date on which Hanline’s term of
14 imprisonment for grand theft actually ended. While the Attorney General posits that this date may
15 have been the maximum term of 10 years under the ISL, Hanline maintains it should have been no
16 more than 16 months under the DSL.²⁰

17 **C. Post-Conviction Review of Murder Conviction**

18 The judgment for Hanline’s murder conviction was affirmed by the California Court of Appeal,
19 Second Appellate District, on January 20, 1983, and the California Supreme Court denied review on
20 April 13, 1983.²¹ Hanline pursued multiple petitions for habeas relief in both state and federal court, all
21 of which were initially denied.²²

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23 ¹⁷ Historical and Statutory Notes for Pen. Code §§ 489, 1168; see also AG Letter at p. 2 n.1; Hanline
24 Reply at pp. 4-7.

25 ¹⁸ Pen. Code, §§ 489, subd. (a), 1170, subd. (h)(1); Hanline Reply at p. 6.

26 ¹⁹ AG Letter Ex. 2 at pp. 8-9.

27 ²⁰ AG Letter at pp. 1, 3; Hanline Reply at pp. 4-8.

28 ²¹ Hanline Ex. 1 at p. 4 (referencing *People v. Michael Ray Hanline*, Second District Court of Appeal
case number 39194).

²² Hanline Ex. 1 at pp. 4-7.

1 In 2003, with the assistance of the California Innocence Project, Hanline filed a second federal
2 habeas petition, which alleged a new claim of prosecutorial misconduct for failing to disclose
3 potentially exculpatory evidence in violation of *Brady v. Maryland* (1963) 373 U.S. 83. Following a two-
4 day evidentiary hearing in August 2008, the magistrate judge issued a Report and Recommendation
5 on October 22, 2010, granting habeas relief.²³ In doing so, the magistrate judge found that the
6 statutory procedural bar for successive petitions under 28 U.S.C. § 2244(b), which may be excused
7 only by clear and convincing evidence that no reasonable juror would have returned a guilty verdict,
8 did not apply to *Brady* claims. On the merits, the magistrate judge concluded that the prosecution's
9 failure to disclose two separate reports that may have been used for impeachment violated *Brady*
10 because "there is a reasonable probability that, had the evidence been disclosed to the defense, the
11 result of the proceeding would have been different."²⁴

12 However, on August 24, 2011, the district court rejected the magistrate judge's
13 recommendation. The district court found that *Brady* claims are subject to the procedural bar for
14 successive petitions, such that relief is only available upon clear and convincing evidence that no
15 reasonable juror would have returned a guilty verdict.²⁵ The district court found that Hanline had failed
16 to satisfy this standard on the merits of his *Brady* claim, as none of the suppressed evidence "would
17 have directly supported Petitioner's alibi defense; it did not corroborate Petitioner's version of his
18 whereabouts on the night when McGarry was murdered."²⁶ The district court similarly rejected
19 Hanline's claims of ineffective assistance of counsel for failing to present testimony from various
20 individuals because their testimony "would not be sufficient to establish by clear and convincing
21 evidence that no reasonable factfinder would have found [Hanline] guilty."²⁷ Hanline moved to alter or
22 amend the district court's judgment, which was denied on February 24, 2012, for failing to present new
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25 ²³ Hanline Exs. 1 at p. 7; 6 at pp. 1-51.

26 ²⁴ Hanline Ex. 6 at p. 49.

27 ²⁵ Hanline Habeas Ex. 1m at pp. 5-8.

28 ²⁶ Hanline Habeas Ex. 1m at pp. 8-12, 25.

²⁷ Hanline Habeas Ex. 1m at pp. 12-25.

1 evidence, a change in controlling law, or “any other basis for concluding that the judgment is either
2 clearly erroneous or manifestly unjust.”²⁸

3 Hanline subsequently filed a state habeas petition in the Ventura County Superior Court on
4 January 24, 2014, raising the same claim of *Brady* error, as well as ineffective assistance of counsel.²⁹
5 On January 31, 2014, the superior court requested an informal response from the prosecution.³⁰ The
6 District Attorney responded on November 13, 2014, conceding that habeas relief was warranted. The
7 concession was prompted, in part, upon DNA testing of evidence from the crime scene that excluded
8 Hanline as a contributor. After considering this new evidence, as well as the previously undisclosed
9 evidence supporting the *Brady* claim, and other investigative interviews, the prosecution ultimately
10 lacked confidence in the conviction. Significantly, the District Attorney acknowledged that, “While it
11 remains possible that petitioner had some role in the murder, the new evidence is contrary to the
12 prosecution’s theory at trial.”³¹ The prosecution therefore requested the court vacate Hanline’s murder
13 conviction, release Hanline on bail, and set the matter for retrial.³²

14 By written order filed November 13, 2014, the superior court granted the unopposed habeas
15 petition and vacated Hanline’s murder conviction in Ventura County Superior Court case number
16 14566. The court remanded the case for retrial and scheduled a separate bail hearing.³³ Shortly
17 thereafter, on November 24, 2014, Hanline was released from custody on bail.³⁴ By then, 13,130 days
18 had passed since his arrest for murder on December 14, 1978, and 13,146 days had passed since his
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22 ²⁸ *Hanline v. Galaza*, U.S. District Court (C. Cal.), case number EDCV 00-530-VAP (AJW), Order
23 denying motion to alter or amend judgment, filed February 2, 2012, available via Pacer at
<https://pacer.login.uscourts.gov/csologin/login.jsf>. (Cal. Code, Regs., tit. 2, § 617.8 (official notice).)

24 ²⁹ Hanline Ex. 1.

25 ³⁰ Hanline Ex. 2.

26 ³¹ Hanline Ex. 3 at p. 4.

27 ³² Hanline Ex. 3.

28 ³³ Hanline Ex. 4.

³⁴ Hanline Ex. 5.

1 unrelated arrest for grand theft auto on November 28, 1978. On April 22, 2015, all charges related to
2 the murder case were dismissed.³⁵

3 **D. CalVCB Proceedings**

4 On November 22, 2016, Hanline submitted a claim to CalVCB seeking compensation as an
5 erroneously convicted person under Penal Code section 4900. At that time, Hanline requested
6 compensation in the amount of \$1,838,200 for having been incarcerated a total of 13,130 days from
7 the date of his arrest for murder on December 14, 1978, through his release on November 24, 2014.³⁶
8 The claim did not reference or acknowledge Hanline's overlapping sentence for his grand theft
9 conviction. The claim remained stayed indefinitely after the Attorney General's seventh request for an
10 extension of time to file a response was granted on January 23, 2018, while claimant pursued a motion
11 for a finding of factual innocence.³⁷ Evidently, the motion was denied or abandoned, as no further
12 documentation has been provided concerning the result of that proceeding.³⁸

13 Then on April 22, 2022, counsel for Hanline submitted a second claim seeking compensation
14 as an erroneously convicted person under subdivision (b) of Penal Code section 4900. The second
15 claim form and supporting documentation failed to acknowledge Hanline's previous and still pending
16 claim. It also failed to reference or acknowledge Hanline's overlapping sentence for his grand theft
17 conviction, despite directions in the claim form to "list every conviction that was imposed at any time
18 during your confinement."³⁹ Hanline's second claim requested compensation in the amount of
19 \$1,840,720 for having served 13,148 days imprisonment, an unexplained increase of 18 days and
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21 ³⁵ Hanline Supp. Memo at p. 11; *People v. Michael Ray Hanline*, Ventura County Superior Court case
22 number CR14566, online docket available at <http://www.ventura.courts.ca.gov/case-inquiry.html>; see
23 also Cal. Code Regs., tit. 2, § 617.8 (official notice.) Hanline's proffered exhibit of the superior court's
dismissal order is, instead, the court's order granting bail for the still "open" case on November 24,
2014. (Hanline Ex. 5.)

24 ³⁶ Hanline App. Letter at pp. 2, 5, signed by counsel Brett Schreiber.

25 ³⁷ CalVCB Order, dated January 23, 2018 (approving seventh and unopposed request for an extension
26 of time pending decision on motion for finding of factual innocence); see also Attorney General
Application for Extension of Time to File Response, dated January 22, 2018, with attachment.

27 ³⁸ As mandated by Penal Code section 1485.55, subdivision (d), a presumption does not exist in this
administrative proceeding for failing to obtain a finding of factual innocence.

28 ³⁹ Hanline Supp. App. at p. 2 (Section E of claim form); Supp. Memo at pp. 13-14 (discussing injury).

1 \$2,520 from the first claim. This calculation was based upon Hanline’s representation that he had
2 been arrested on November 26, 1978, not December 14, 1978, as alleged in the first claim.⁴⁰

3 On April 26, 2022, without objection from either party, CalVCB deemed the second claim to be
4 a supplement to Hanline’s first claim. CalVCB requested a response from the Attorney General within
5 45 days as required by subdivision (d) of Penal Code section 4902. Following a single request for an
6 extension of time, the Attorney General timely responded on July 25, 2022.

7 In the response, the Attorney General declined to object to Hanline’s claim but disputed the
8 amount of compensation as a result of Hanline’s overlapping and unrelated sentence for grand theft.
9 According to the Attorney General’s calculation, Hanline was arrested on November 28, 1978, after
10 which he concurrently served between six months (i.e., 180 days) to 10 years (i.e., 3,650 days) for his
11 unrelated grand theft conviction. The Attorney General calculated the duration of Hanline’s
12 imprisonment for murder as 13,146 days from his arrest on November 28, 1978, through his release
13 on November 24, 2014. Based upon these overlapping sentences, the Attorney General asserted that
14 Hanline “is not entitled to compensation for up to 10 years of his incarceration” because he bears the
15 burden to “show the extent of his injury – that is, how long he was incarcerated solely as a result of his
16 murder conviction.”⁴¹ By this reasoning, Hanline’s requested compensation may be reduced by as
17 much as \$511,000 for the overlapping sentence, plus an additional reduction of \$280 for the two-day
18 custodial difference.

19 Per statute, CalVCB’s decision was due within 60 days of the Attorney General’s response,
20 without an opportunity for the claimant to reply or otherwise supplement the claim.⁴² Nonetheless,
21 CalVCB invited a reply from Hanline by August 4, 2022.⁴³ By mutual agreement between Hanline and
22 CalVCB, and without objection by the Attorney General, Hanline’s deadline to submit a reply was
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25 _____
26 ⁴⁰ Hanline Supp. App. at p. 1; Supp. Memo at p. 13, signed by counsel Alexander Simpson.

27 ⁴¹ AG Letter at p. 3.

28 ⁴² Pen. Code, §§ 4900, subd. (b), 4902, subds. (a) & (d); 4904.

⁴³ Email from CalVCB to parties, entitled “RE: Michael Hanline PC 4900(b) – CLAIMANT RESPONSE REQUESTED,” sent on July 28, 2022; see also Pen. Code, § 4902, subd. (d).

1 extended to August 12, 2022, and CalVCB’s deadline to render a decision was extended to the next
2 regularly scheduled board meeting on November 17, 2022.⁴⁴

3 Hanline timely replied on August 12, 2022. Hanline agreed with the Attorney General’s
4 assertion that he was arrested on November 28, 1978, instead of November 26, 1978, without
5 specifying the underlying charge.⁴⁵ Nevertheless, Hanline continued to request “the full amount of
6 compensation for the 13,148 days of wrongful incarceration for the murder conviction and sentence,”
7 as previously calculated by Hanline using the November 26, 1978 arrest date.⁴⁶ Hanline maintained
8 that no reduction in compensation was warranted for the overlapping sentence for grand theft,
9 regardless of the term imposed, because the sole basis for the probation revocation was his erroneous
10 murder conviction.⁴⁷ In the alternative, Hanline asserted that his compensation should be reduced by
11 no more than 16 months as the low term for grand theft under the DSL. Specifically, Hanline alleged
12 that he should have been sentenced to this term under the DSL, rather than up to 10 years under the
13 ISL, because his grand theft conviction and sentence “straddle[] the enactment of the DSL.”⁴⁸

14 Following receipt and review of Hanline’s response, the administrative record closed on August
15 23, 2022.

16 **III. Factual Background** ⁴⁹

17 In 1978, while on probation for grand theft, Hanline was arrested while driving a stolen van,
18 and subsequently tried and convicted for McGarry’s murder. The factual circumstances for each of
19 these offenses are set forth below.

20 ⁴⁴ Email from associate Domenic Martini of Singleton Schreiber, LLP, sent August 3, 2022.

21 ⁴⁵ Hanline Reply at p. 1, signed by counsel Alexander Simpson on August 12, 2022.

22 ⁴⁶ Hanline Reply at p. 4.

23 ⁴⁷ Hanline Reply at pp. 2-4.

24 ⁴⁸ Hanline Reply at pp. 6-7 & n.3.

25 ⁴⁹ This factual summary is primarily based upon the superior court decision granting habeas relief and
26 the district attorney’s response conceding habeas relief, as both are binding upon CalVCB. (Hanline
27 Exs. 3, 4; Pen. Code, §§ 1485.5, subds. (a), & (c), 4903, subd. (c).) Consistent aspects of the
28 administrative record, including the federal district court’s decision, are also cited. This hearing officer
does not find the magistrate judge’s recommendation to be binding or persuasive, as it was rejected in
whole by the district court. (See 28 U.S.C. § 636(b)(1) (authorizing district court judges to “accept,
reject, or modify, in whole or in part” the magistrate judge’s recommendations).)

1 **A. Prior Grand Theft Conviction**

2 On September 24, 1975, Hanline committed grand theft. Specifically, he stole firearms that
3 belonged to the victim, Leon B.⁵⁰ Following his conviction in 1976, Hanline was placed on probation
4 through June 1979. The terms of probation required Hanline to obey all laws and specifically forbid his
5 use of illegal drugs or possession of firearms.⁵¹

6 **B. Grand Theft Auto Arrest / Probation Violation**

7 On November 28, 1978, police stopped Hanline while he was driving a silver van that had been
8 reported stolen.⁵² Inside, police discovered a loaded .38 caliber revolver, as well as .38 caliber shell
9 casings. Police also discovered seven \$100 bills and various items of property belonging to the
10 murder victim, McGarry.⁵³ Police additionally discovered a pink slip for a motorcycle in the name of
11 Mary B., who was then Hanline's girlfriend.⁵⁴

12 **C. Murder Conviction**

13 Two weeks earlier on November 12, 1978, McGarry's lifeless body was found off Highway 33 in
14 Ventura County. His wrists were bound with tape. The cause of death was two, .38 caliber gunshot
15 wounds. One bullet entered McGarry's neck, and the other entered his chest. McGarry's home was
16 located about 30 miles away from where his body was discovered.⁵⁵

17 McGarry was last heard from alive two days earlier, on the evening of November 10, 1978. He
18 spoke over the telephone to his friend and attorney Bruce R. around 9:00 p.m. Bruce called McGarry
19 again around 11:00 p.m., but the line was busy. Bruce tried again at midnight, when the operator
20 informed Bruce that the phone was off the hook. About half an hour later, at approximately 12:30 a.m.

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⁵⁰ In an effort to protect this victim's privacy, the last name is omitted.

24 ⁵¹ Hanline Reply Ex. A at pp. 2, 10-13; AG Letter Ex. 2 at p. 8.

25 ⁵² AG Letter Ex. 1 (police report).

26 ⁵³ Hanline Ex. 3 at p. 6; Hanline Habeas Ex. 1m at pp. 10-11.

27 ⁵⁴ Hanline Ex. 3 at p. 6. The last names for all witnesses and/or potential suspects are omitted in an
effort to protect their privacy.

28 ⁵⁵ Hanline Supp. Memo at p. 4; Ex. 3 at pp. 4-5; Habeas Ex. 1m at pp. 10-12.

1 on November 11, 1978, two associates knocked on McGarry's residence to purchase marijuana and
2 cocaine, but no one answered.⁵⁶

3 McGarry knew Hanline, as they had both been romantically involved with Mary.⁵⁷ Mary had
4 lived on and off with both men, most recently with Hanline at a home in the San Fernando Valley.
5 McGarry, meanwhile, was living in Ventura County with a roommate.⁵⁸ Mary complained to Hanline
6 that McGarry had retained some of her property, including her half of approximately \$35,000 that she
7 and McGarry had allegedly embezzled from motorcycle swap meets that they had managed for a
8 motorcycle magazine publisher.⁵⁹ McGarry owned several firearms, which he allegedly told Bruce
9 were for protection from Mary's boyfriend.⁶⁰

10 After receiving immunity, Mary implicated Hanline, along with his friend Dennis "Bo" M., in
11 McGarry's murder.⁶¹ As Mary testified at trial, she observed Hanline and Dennis leave together on
12 November 10, 1978, between 7:30 and 8:30 p.m., while Hanline was armed with a .38 caliber gun.
13 They returned around 11:00 p.m. or midnight. It had rained, and Hanline appeared wet and dirty.
14 Hanline offered Mary some cocaine in a brown glass vial. Mary thought the vial belonged to McGarry,
15 who also used it to store cocaine. Mary ingested the cocaine, which was different from the cocaine
16 she had previously received from Hanline. Mary also ingested marijuana laced with angel dust that
17 night.⁶²

18 At trial, Hanline denied murdering McGarry but admitted entering McGarry's home. According
19 to Hanline, he remained home on November 10, 1978, working on motorcycles all night, except for a
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21 ⁵⁶ Hanline Supp. Memo at p. 4; Ex. 3 at pp. 4-5.

22 ⁵⁷ Hanline Supp. Memo at p. 3; Ex.3 at p. 5; Habeas Ex. 1m at p. 10.

23 ⁵⁸ Hanline Ex. 3 at p. 6; 1RT 26.

24 ⁵⁹ Hanline Supp. App. Ex. 3 at p. 5; Ex.3 at p. 5.

25 ⁶⁰ Hanline Supp. Memo at p. 4; Habeas Ex. 1m at p. 11.

26 ⁶¹ Hanline Supp. Memo at pp. 5-6; Ex. 3 at pp. 5-6. Dennis M. was charged along with Hanline for
27 McGarry's murder, and a joint preliminary hearing ensued. The record does not disclose the result of
28 that legal proceeding for Dennis. Afterwards, Hanline was tried alone for McGarry's murder. (See
PH1 at 1; PH 3 at 39 for February 23, 1979, hearing).

⁶² Hanline Supp. Memo at pp. 5-6; Ex. 3 at pp. 5-6; Habeas Ex. 1m at p. 12.

1 brief trip to purchase beer around 10:30 p.m. or 11:00 p.m. Several witnesses corroborated Hanline's
2 account.⁶³ As for the cocaine, Hanline claimed that he had obtained it the night before (i.e., November
3 9, 1978) from a woman in Orange County. Hanline admitted driving the stolen van to McGarry's home,
4 but he claimed he only did so on the early morning of November 12, 1978, arriving at 3:00 a.m.⁶⁴ At
5 that time, Hanline was joined by Mary and Dennis. McGarry was not present when they arrived. Mary
6 packed up her belongings and took other items, such as McGarry's briefcase and keys.

7 The threesome left and continued toward San Francisco, using McGarry's credit card to pay for
8 a hotel room.⁶⁵ Hanline signed the receipt as McGarry. When he did so, McGarry was already dead,
9 but his body had not yet been discovered.⁶⁶ Hanline denied knowing that McGarry was dead at that
10 time. He claimed, instead, that Mary told him they could use the credit card because McGarry still
11 owed her money, and it was a company card that would not require personal payment by McGarry.⁶⁷

12 Hanline was eventually arrested on November 28, 1978, while still driving the stolen van.
13 Inside, police located items belonging to McGarry, as well as a .38 caliber firearm and .38 caliber shell
14 casings. However, the firearm in the van was not the same .38 caliber weapon used to murder
15 McGarry.⁶⁸

16 Largely based upon Mary's testimony, the prosecution urged the jury to convict Hanline of
17 McGarry's murder with special circumstances for burglary and kidnapping. According to the
18 prosecution, Hanline, assisted by Dennis, committed these crimes sometime after 9:00 p.m. on
19 November 10, 1978, when McGarry last spoke to Bruce, and before 12:30 a.m. on November 11,
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24 ⁶³ Hanline Supp. Memo at pp. 6-7; Ex. 3 at pp. 6-7.

25 ⁶⁴ Hanline Supp. Memo at pp. 4, 6; Ex. 3 at p. 6; Habeas Ex. 1m at p. 11.

26 ⁶⁵ Hanline Supp. Memo at p. 4; Hanline Ex. 3 at p. 6.

27 ⁶⁶ Hanline Habeas Ex. 1m at p. 11.

28 ⁶⁷ Hanline Supp. Memo at p. 6; Ex. 3 at p. 6; Habeas Ex. 1m at p. 11.

⁶⁸ Hanline Ex. 3 at p. 6; see also Habeas Ex. 1m at p. 11 & n.3.

1 1978, when McGarry's associates stopped by his home to purchase drugs.⁶⁹ The jury partially agreed,
2 convicting Hanline of murder with a special circumstance for burglary but not kidnapping.⁷⁰

3 **D. Exculpatory Evidence**

4 In its concession that habeas relief was warranted, the Ventura County District Attorney relied
5 upon recent DNA testing, sealed police reports, and new investigatory leads, each of which is
6 described below. When considered overall, the District Attorney acknowledged that, "While it remains
7 possible that petitioner had some role in the murder, the new evidence is contrary to the prosecution's
8 theory at trial."⁷¹

9 **1. DNA Testing**

10 The District Attorney requested DNA testing of various items from the crime scene, including
11 the tape used to bind the victim's hands. This forensic analysis had not previously been conducted, as
12 it was not an available technology at the time of the trial. DNA profiles for two males were found on
13 the tape. One profile matched the victim, McGarry. The other male profile did not match Hanline or
14 Dennis.⁷²

15 **2. Sealed Police Reports**

16 Hanline uncovered two police reports the contents of which had not been disclosed during the
17 trial proceedings. The first report involved statements from a confidential informant regarding an
18 alleged conversation between the informant and Mary, during which Mary had supposedly revealed
19 details about McGarry's murder, although some details did not match the physical evidence. The
20 second report involved additional statements by the informant regarding allegedly overheard
21 conversations with other individuals, including McGarry's attorney Bruce, which implicated three other
22 persons in the murder. Following an ex parte hearing at the prosecution's request, the court sealed
23 both reports to protect the informant's identity. As the District Attorney later acknowledged, these
24 undisclosed reports may have been used by the defense either to impeach Mary's testimony that she

25 ⁶⁹ Hanline Supp. Memo at pp. 5-6; Ex. 3 at pp. 3-4.

26 ⁷⁰ CT 216-217.

27 ⁷¹ Hanline Ex. 3 at p. 4.

28 ⁷² Hanline Supp. Memo at p. 6; Ex. 3 at pp. 1, 7.

1 was not present during the murder or to suggest that other guilty persons were attempting to frame
2 Hanline.⁷³

3 **3. Investigatory Leads**

4 The District Attorney conducted several new interviews of individuals with a connection to the
5 events surrounding the McGarry murder. The interviews suggested that persons other than Hanline
6 also had motive and means to kill McGarry. The interviews further suggested that some witnesses
7 were manipulated and threatened and discouraged from cooperating with the prosecution or with the
8 Innocence Project.⁷⁴

9 On this basis, the District Attorney conceded that the “information now known about the case
10 undermines confidence in the conviction.”⁷⁵ The superior court therefore granted habeas relief to
11 vacate Hanline’s conviction for McGarry’s murder and remanded for a new trial.⁷⁶ The charges were
12 ultimately dismissed, without a finding of factual innocence.

13 **IV. Determination of Issues**

14 Penal Code section 4900 allows a person, who has been erroneously convicted and
15 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
16 CalVCB.⁷⁷ Typically, claimants bear the burden to prove by a preponderance that (1) the crime with
17 which they were convicted either did not occur or was not committed by them and (2) they suffered
18 injury as a result of their erroneous conviction.⁷⁸ If the claimant satisfies their burden, then as of June
19 30, 2022, CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury if
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24 ⁷³ Hanline Ex. 3 at pp. 2, 7-8.

25 ⁷⁴ Hanline Ex. 3 at pp. 2, 8.

26 ⁷⁵ Hanline Ex. 3 at pp. 1-2.

27 ⁷⁶ Hanline Ex. 4 at p. 2.

28 ⁷⁷ Pen. Code, § 4900.

⁷⁸ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

1 sufficient funds are available, upon appropriation by the Legislature.⁷⁹ Payment is calculated at the
2 rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.⁸⁰

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 1473.6.⁸¹ 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.⁸² 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.⁸³

11 Alternatively, under subdivision (b) of Penal Code section 4900, CalVCB's approval is
12 mandated for certain claimants, even without a preponderance of evidence that the claimant did not
13 commit the crime for which they were convicted.⁸⁴ Specifically, subdivision (b) compels approval of
14 the claim for compensation, without a hearing and within 60 days, when the following three elements
15 are met. First, the claimant's conviction must have been vacated either by a writ of habeas corpus or
16 pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying
17 the vacated conviction must have been dismissed on remand, or the claimant must have been
18 acquitted upon retrial. Third, the Attorney General must decline to object to the application in this
19 administrative proceeding.⁸⁵ If all three of these elements are satisfied, and CalVCB finds that the
20 claimant sustained injury through their erroneous conviction, then CalVCB shall approve payment for
21 the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon

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23 ⁷⁹ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

24 ⁸⁰ Pen. Code, § 4904.

25 ⁸¹ Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).

26 ⁸² Pen. Code, § 1485.55, subd. (b).

27 ⁸³ Pen. Code, §§ 861.865; 1485.55, subd. (a), 4902, subd. (a).

28 ⁸⁴ Pen. Code, § 4900, subd. (b), added by Stats.2021, c. 490 (S.B. 446), § 3, eff. Jan. 1, 2022.

⁸⁵ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

1 appropriation by the Legislature.⁸⁶ CalVCB's approval of the claim is required, regardless of whether
2 or not the record proves the claimant is more likely innocent than guilty.

3 If the Attorney General objects, he must do so in writing, within 45 days from when the claimant
4 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.⁸⁷ 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.⁸⁸ If
9 the Attorney General fails to meet this burden following a hearing on the claim, then CalVCB shall
10 approve payment to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient
11 funds are available upon appropriation by the Legislature.⁸⁹

12 **A. Innocence**

13 Here, Hanline'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, Hanline's murder conviction in
15 Ventura County Superior Court case number 14566 was vacated by a writ of habeas corpus.⁹⁰
16 Second, all charges against Hanline in that case were subsequently dismissed on remand.⁹¹ Third,
17 the Attorney General declined to object with clear and convincing evidence of guilt.⁹² Consequently,
18 CalVCB is required by subdivision (b) to approve compensation for the injury sustained by Hanline's
19 claim if sufficient funds are available, upon appropriation by the Legislature.⁹³ No finding is made as to
20 the weight of evidence offered in support of Hanline's claim regarding innocence.

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22 ⁸⁶ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

23 ⁸⁷ Pen. Code, § 4902, subd. (d).

24 ⁸⁸ Pen. Code, § 4903, subd. (d).

25 ⁸⁹ Pen. Code, §§ 4903, subd. (d), 4904.

26 ⁹⁰ Hanline Ex. 4.

27 ⁹¹ Hanline Supp. Memo at p. 11; see also *People v. Hanline*, Ventura County Superior Court case
28 number CR14566, online docket at <http://www.ventura.courts.ca.gov/case-inquiry.html>.

⁹² AG Letter at p. 1.

⁹³ Pen. Code, §§ 4900, subd. (b), 4904.

1 **B. Injury**

2 By statute, the amount of compensation to be approved for the claimant’s injury “shall be a sum
3 equivalent to one hundred forty dollars (\$140) per day of incarceration served, and shall include any
4 time spent in custody, including a county jail, that is considered to be part of the term of
5 incarceration.”⁹⁴ This compensation is “for the purpose of indemnifying the claimant for the injury”
6 sustained “through their erroneous conviction and imprisonment...”⁹⁵ The term “injury” is twice
7 referenced in Penal Code section 4904 as a requisite condition for compensation.⁹⁶ Effective 2016,
8 the legislature removed language requiring “pecuniary injury” as “an unfortunate and unsound
9 description of the unique harm suffered when factually innocent persons are imprisoned...”⁹⁷ Though
10 no specific definition was provided, the legislative history reflects that the term “injury” was intended to
11 refer to “whatever harm is suffered by a person who is wrongly imprisoned...”⁹⁸ This harm would
12 necessarily exclude any period of incarceration pursuant to a valid conviction. Given this history along
13 with the manner by which compensation is calculated, the requisite injury contemplated by Penal Code
14 section 4904 is “each day ... spent illegally behind bars, away from society,” solely as a result of the
15 erroneous conviction.⁹⁹ The burden to prove injury rests with the claimant by a preponderance of the
16 evidence.¹⁰⁰

17 As noted by the Attorney General, this interpretation of the requisite injury is bolstered by Penal
18 Code section 2900.5, which limits the availability of presentence custody credits for convicted
19 defendants who were detained for multiple crimes.¹⁰¹ Section 2900.5 expressly provides that
20 presentence credit “shall be given only once for a single period of custody attributable to multiple

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22 ⁹⁴ Pen. Code, § 4904.

23 ⁹⁵ Pen. Code, § 4904.

24 ⁹⁶ Pen. Code, § 4904.

25 ⁹⁷ Senate Floor Analysis of Sen. Bill No. 635 (2015-2016), as amended Sept. 3, 2015, at p. 4.

26 ⁹⁸ Senate Floor Analysis of Sen. Bill No. 635 (2015-2016), as amended Sept. 3, 2015, at pp. 4-5

27 ⁹⁹ *Holmes v. Calif. Victim Comp. & Gov’t Claims Board* (2015) 239 Cal.App.4th 1400, 1405.

28 ¹⁰⁰ Pen. Code, § 4904; Cal. Code of Regs. tit. 2, § 644, subd. (c)(1); see also Evid. Code, § 500.

¹⁰¹ AG Letter at p. 2 (quoting Pen. Code, § 2900.5, subd. (b).)

1 offenses for which a consecutive sentence is imposed.”¹⁰² As confirmed by the California Supreme
2 Court, when a person’s presentence custody “stems from multiple, related incidents of misconduct,”
3 custodial credit applies under section 2900.5 only if the prisoner shows “the term to be credited was
4 also a ‘but-for’ cause of the earlier restraint.”¹⁰³ Just as “a prisoner is not entitled to credit for
5 presentence confinement unless he shows that the conduct which led to his conviction was the sole
6 reason for the loss of liberty during the presentence period,”¹⁰⁴ compensation under Penal Code
7 section 4900 is limited to the period of imprisonment that solely resulted from the erroneous conviction.

8 Here, the parties dispute the extent of Hanline’s injury resulting from his erroneous conviction
9 for murder. According to the Attorney General, Hanline’s demonstrated injury for having supposedly
10 served 13,146 days imprisonment for murder may be reduced by as much as \$511,000 for his
11 overlapping ten-year sentence for grand theft.¹⁰⁵ By comparison, Hanline insists his demonstrated
12 injury amounts to \$1,840,720 for 13,148 days, with no deduction for his overlapping sentence for grand
13 theft, because “the sole basis for the probation revocation was that Mr. Hanline was wrongfully
14 convicted of the murder of J.T. McGarry.”¹⁰⁶ Neither argument is entirely persuasive.

15 **1. Hanline Was Incarcerated for 13,130 Days for Murder**

16 A preponderance of the evidence demonstrates that Hanline’s length of incarceration for
17 murder spans a total of 13,130 days between December 14, 1978, to and including November 24,
18 2014. The record confirms that Hanline’s arrest on November 28, 1978, was for grand theft auto, not
19 murder. Specifically, the police report for the incident on November 28, 1978, lists the offense for
20 Hanline’s arrest and booking as grand theft auto (i.e., “487.3 PC (GTA) violation” and “487.3 PC
21 GTA”).¹⁰⁷ In addition, Hanline’s rap sheet reflects that he was arrested on that date for grand theft
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23 ¹⁰² Pen. Code, § 2900.5, subd. (b).

24 ¹⁰³ *People v. Bruner* (1995) 9 Cal.4th 1178, 1191-1194.

25 ¹⁰⁴ *Ibid.*

26 ¹⁰⁵ AG Letter at pp. 1, 3.

27 ¹⁰⁶ Hanline Reply at p. 2.

28 ¹⁰⁷ AG Letter Ex. 1 (police report citing “487.3 PC (GTA) violation” with “arrest” and “booking” for “487.3 PC GTA”).

1 auto only (i.e., “487.3 PC-GRAND THEFT:AUTO”).¹⁰⁸ By comparison, an entry on the rap sheet dated
2 January 8, 1979, and entitled “ARR/DET/CITE” for “187 PC-MURDER” as count 2, states “NO
3 ARREST RECEIVED” for an unspecified count 1.¹⁰⁹ Also, Hanline’s original application listed the date
4 of his arrest as December 14, 1978.¹¹⁰ This date is consistent with the court’s sentencing order issued
5 October 31, 1980, which found that Hanline “had served 687 days in custody” for murder.¹¹¹ Notably,
6 687 days subtracted from October 31, 1980, equals December 14, 1978.¹¹² In the face of this
7 evidence, Hanline’s more recent and inconsistent assertions that he was arrested for murder on
8 November 26, 1978, or November 28, 1978, are unpersuasive.¹¹³

9 Considered overall, the evidence shows that Hanline was not arrested for murder until
10 December 14, 1978.¹¹⁴ Thus, as initially calculated in his original application, Hanline spent a total of
11 13,130 days incarcerated for murder until his release on November 24, 2014.¹¹⁵

12 **2. Reduction Warranted for Overlapping Grand Theft Sentence**

13 Hanline acknowledges that the amount of compensation for the injury sustained by his
14 erroneous murder conviction may be reduced if the overlapping sentence was for an unrelated
15 offense.¹¹⁶ He insists that no reduction is warranted because, “without the wrongful conviction for the
16 McGarry murder, Mr. Hanline would not have been found to have violated probation, and probation
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19 ¹⁰⁸ AG Letter Ex. 2 at p. 8 (rap sheet with entry dated November 28, 1978, entitled “ARR/DET/CITE”
20 for “487.3 PC-GRAND THEFT:AUTO”).

21 ¹⁰⁹ AG Letter Ex. 2 at p. 9 (rap sheet with entry dated January 8, 1979, entitled “ARR/DET/CITE” for
22 “187 PC-MURDER” with “NO ARREST RECEIVED”).

23 ¹¹⁰ Hanline App. Letter, at p. 2.

24 ¹¹¹ CT 220.

25 ¹¹² TimeandDate.com website, located at <https://www.timeanddate.com/date/dateadd.html>; see also
26 Cal. Code Regs., tit. 2, § 617.8 (official notice).

27 ¹¹³ Supp. Memo at p. 13; Hanline Reply at p. 1.

28 ¹¹⁴ Hanline App. Letter at p. 2; CT 220.

¹¹⁵ Hanline App. at p. 1; Hanline App. Letter at pp. 2, 5; see also *People v. King* (1992) 3 Cal.App.4th
882, 886 (constructing “days” for custody credit to include partial days).

¹¹⁶ Hanline Reply at pp. 4, 7-8.

1 would not have been revoked.”¹¹⁷ As proof, he cites the “closeness of the pronouncement of the
2 sentence for the probation violation and for the McGarry murder,” which he claims occurred “on
3 November 6, 1980 - 6 days after his sentence to life without the possibility of parole for the McGarry
4 murder....”¹¹⁸

5 The record does not support Hanline’s recitation of events. As previously detailed, Hanline was
6 charged with violating probation for grand theft after he was arrested for driving a stolen van on
7 November 28, 1978.¹¹⁹ Hanline admitted the probation violation on February 9, 1979, while still
8 awaiting trial on the murder charge.¹²⁰ On June 15, 1979, the court revoked Hanline’s probation for
9 grand theft and sentenced him “to State Prison for the term prescribed by law....”¹²¹ Over a year later,
10 a jury convicted Hanline of murder on September 24, 1980, and the court sentenced Hanline to LWOP
11 on October 31, 1980.¹²² Hanline was transferred to prison on November 6, 1980, to serve an
12 aggregate sentence of “life without parole, plus 6 months to 10 years imprisonment.”¹²³ Thus, the
13 court revoked Hanline’s probation and sentenced him to prison for his grand theft conviction well
14 before he was convicted of murder.

15 Hanline does not disclose the factual basis for his admission to violating probation at the
16 hearing on February 9, 1979, nor does he disclose the charging document that alleged a probation
17 violation.¹²⁴ If Hanline’s admission to the probation violation was based upon the still pending murder
18 charges, then he would have incriminated himself in both cases, an outcome that seems highly
19 unlikely. The more logical explanation is that Hanline’s probation violation was based upon his arrest
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21 ¹¹⁷ Hanline Reply at p. 4.

22 ¹¹⁸ Hanline Reply at p. 4 (internal footnote omitted).

23 ¹¹⁹ AG Letter Exs. 1, 2 at p. 8.

24 ¹²⁰ Hanline Reply Ex. A at p. 17.

25 ¹²¹ Hanline Reply Ex. A at p. 18.

26 ¹²² CT 220.

27 ¹²³ AG Letter Ex. 2 at pp. 8-9.

28 ¹²⁴ Hanline’s Reply noted that, since the submission of the Attorney General’s response letter, counsel had attempted to locate all documentation related to the probation revocation proceedings. (Hanline Reply at p. 3.)

1 for grand theft auto. This explanation is bolstered by Hanline’s rap sheet, which lists his 1978 arrest in
2 Los Angeles County for grand theft auto in violation of former Penal Code section 487, subdivision (3),
3 immediately followed by another entry in Santa Barbara County for “PROBATION VIOL 487.3 PC-
4 GRAND THEFT MISCELLANEOUS....”¹²⁵ As previously noted, it is assumed that no new conviction
5 for grand theft auto resulted from Hanline’s 1978 arrest, which further supports the inference that
6 Hanline’s probation violation was more likely based upon that new criminal offense, rather than his still
7 pending charges for murder.¹²⁶

8 Overall, Hanline fails to demonstrate by a preponderance that his erroneous murder conviction
9 directly resulted in the revocation of his probation and imprisonment for grand theft. Instead, the more
10 likely cause appears to be Hanline’s arrest for grand theft while driving a stolen van. Consequently,
11 the amount of Hanline’s compensation for the injury sustained by his erroneous murder conviction
12 must be reduced by the duration of his overlapping sentence for grand theft as an entirely unrelated
13 offense.

14 **3. Reduction Calculation for Overlapping Sentence**

15 The parties dispute the precise length of Hanline’s overlapping prison sentence for grand theft.
16 Based on the Attorney General’s reasoning, as applied to CalVCB’s custodial calculation, Hanline’s
17 compensation for his 13,130 days of incarceration for murder must be reduced by the maximum length
18 of his ten-year ISL sentence for grand theft (i.e., 3,650 days), after applying all 778 days of actual and
19 conduct presentence credit. In that scenario, Hanline’s last possible parole date following his June 15,
20 1979, sentencing would have been on April 25, 1987. In that case, Hanline would have been confined
21 solely as a result of his murder conviction for 10,075 days between April 26, 1987, and November 24,
22 2014. Accordingly, Hanline’s compensation for his erroneous conviction would amount to \$1,410,500,
23 with no compensation awarded for the overlapping 3,055 days of his grand theft conviction.

24 By comparison, Hanline asserts, that his compensation should be reduced by no more than the
25 lesser term of 16 months (i.e., 485 days) under the DSL for grand theft, despite his ten-year sentence
26

27 ¹²⁵ AG Letter Ex. 2 at p. 8.

28 ¹²⁶ See AG Letter Ex. 2 at p. 8-9.

1 under the ISL.¹²⁷ Hanline insists that he should have been sentenced under the DSL, rather than the
2 ISL, because his conviction and sentence “straddle[] the enactment of the DSL.”¹²⁸ As support, he
3 cites *In re Estrada* (1965) 63 Cal.2d 740, 744-745, which held that, absent a contrary legislative intent,
4 a new amendatory statute lessening the punishment for escape may be retroactively applied to criminal
5 judgments that had not yet become final.¹²⁹ By Hanline’s reasoning, his compensation would amount
6 to \$1,770,300 for having been incarcerated 12,645 days solely as a result of his erroneous conviction,
7 with the remaining 485 days of his overall confinement for 13,130 days not compensated as a result of
8 his grand theft conviction.

9 **a. Hanline’s Unpersuasive Approach**

10 Hanline’s argument is not persuasive. Hanline fails to acknowledge the contrary holding in
11 *People v. Alcala* (1977) 74 Cal.App.3d 425, which was cited by the Attorney General.¹³⁰ As *Alcala*
12 confirmed, the DSL expressly “precludes determinate sentencing by the courts in those cases where
13 the crime was committed prior to July 1, 1977,” even if sentencing occurs after that date.¹³¹ Citing
14 Penal Code section 1170.2, the *Alcala* court explained that, in those circumstances, “the Legislature
15 has set up statutory procedures by which the [the Board of Prison Terms] shall apply the act to those
16 persons who committed their crimes prior to July 1, 1977.”¹³² Accordingly, Hanline was properly
17 sentenced under the ISL for grand theft, leaving it to the Board of Prison Terms to calculate his release
18 date.

19 Penal Code section 1170.2 sets forth the precise method to calculate the release date for an
20 inmate with an ISL sentence for a felony offense that would have been sentenced under the DSL if

21 _____
22 ¹²⁷ Hanline Reply at pp. 4-8. Hanline does not suggest or otherwise address whether presentence
credits may offset this reduction.

23 ¹²⁸ Hanline Reply at pp. 6-7 & n.3.

24 ¹²⁹ *In re Estrada* (1965) 63 Cal.2d 740, 744-745 (discussing retroactive application of reduced
sentencing penalties for escape to nonfinal judgments under Penal Code sections 3044 and 4530).

25 ¹³⁰ AG Letter at p. 2 n.1 (citing *People v. Alcala* (1977) 74 Cal.App.3d 425, 426-427); see also *In re*
26 *Estrada, supra*, 63 Cal.2d at p. 744 (recognizing that, “Had the Legislature expressly stated which
statute should apply, its determination, either way, would have been legal and constitutional”).

27 ¹³¹ *People v. Alcala, supra*, 74 Cal.App.3d at p. 427.

28 ¹³² *Ibid.* (citing Pen. Code, § 1170.2).

1 committed after July 1, 1977. For those inmates, the Board of Prison Terms must determine “what the
2 length of imprisonment would have been under Section 1170 [of the DSL] without consideration of
3 good-time credit and *utilizing the middle term* of the offense bearing the longest term of imprisonment
4 of which the prisoner was convicted....”¹³³ Typically, if the calculated date is less than the time to be
5 served under the ISL, then it will be deemed the new parole date.¹³⁴ But this new parole date may be
6 rejected if at least two members of the Board of Prison Terms determine that the inmate should serve
7 a longer term in light of the number of current or prior convictions sustained by the inmate or other
8 aggravating factors.¹³⁵ In those cases, the inmate is entitled to a hearing before two commissioners of
9 the board.¹³⁶ When fixing a release date, “the board shall be guided by, but not limited to, the term
10 which reasonably could be imposed on a person who committed a similar offense under similar
11 circumstances” under the DSL.¹³⁷ Evidently, the Board of Prison Terms did not complete this
12 sentencing calculation for Hanline’s grand theft conviction, possibly as a result of his concurrent LWOP
13 sentence for murder.

14 Hanline does not address Penal Code section 1170.2. He does not provide any calculation of
15 his likely release date for grand theft under this section, nor does he provide any calculation of the
16 amount of good-time credits to be excluded from consideration. It is Hanline’s burden to provide this
17 information in order to show injury. Accordingly, he fails to demonstrate that the reduction in
18 compensation should be for any lesser amount than the ten-year ISL sentence for grand theft under
19 the Attorney General’s approach (i.e., \$1,410,500 for 10,075 days).

20 **b. Reduction of 714 Days Under Penal Code Section 1170.2**

21 Despite Hanline’s omission, the statutory language of Penal Code section 1170.2 renders it
22 likely that, but for his erroneous murder conviction, he would have been paroled after having served
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25 ¹³³ Pen. Code, § 1170.2, subd. (a) (emphasis added).

26 ¹³⁴ Pen. Code, § 1170.2, subd. (b).

27 ¹³⁵ Pen. Code, § 1170.2, subd. (b).

28 ¹³⁶ Pen. Code, § 1170.2, subd. (b).

¹³⁷ Pen. Code, § 1170.2, subd. (b).

1 the middle term of two years (i.e., 730 days) for grand theft.¹³⁸ Admittedly, it is possible that two
2 members of the Board of Parole Terms may have objected to this parole date in favor of a longer
3 sentence based on other aggravating circumstances, such as Hanline's multiple prior convictions.¹³⁹
4 But this possibility seems unlikely given the absence of any aggravating factors specified in the
5 Abstract of Judgment for Hanline's grand theft conviction, which expressly found that he was not a
6 habitual criminal.¹⁴⁰ Thus, despite his properly imposed ten-year sentence for grand theft under the
7 ISL, it is likely that Hanline would have been paroled after two years pursuant to section 1170.2.

8 As Penal Code section 1170.2 mandates, good-time credit may not be considered when
9 calculating the parole date. Only credit for actual time served may be applied. The record
10 demonstrates that Hanline actually served 200 days presentencing from his arrest on November 28,
11 1978, until his sentencing hearing on June 15, 1979. Although the court's order from the sentencing
12 hearing awarded a lump sum "credit for 778 days heretofore served," it failed to specify what portion of
13 the credit was based upon actual credit versus good conduct.¹⁴¹ Hanline offers no explanation for this
14 credit calculation, nor does he provide any evidence to show the number of days that he was actually
15 confined presentence for his grand theft conviction.¹⁴² He also offers no authority to show that
16 custodial credits earned before a probation revocation may be applied in this context to reduce a
17 subsequently imposed prison term under section 1170.2.

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20 ¹³⁸ Pen. Code, § 1170.2, subd. (a).

21 ¹³⁹ Pen. Code, § 1170.2, subd. (b); AG Letter Ex. 2 at p. 5-6 (rap sheet listing prior convictions for
22 possession for sale of a controlled substance in violation of former Health & Safe. Code, § 11912,
23 possession of a destructive device in violation of former Pen. Code, § 12303, and counterfeiting in
violation of former Pen. Code, § 475a).

24 ¹⁴⁰ Hanline Reply Ex. A at pp. 19-20. As previously noted, it is assumed this abstract of judgment
25 refers to the original grand theft conviction, rather than a new grand theft auto conviction, despite its
seemingly erroneous representation that Hanline was convicted by jury on June 15, 1979.

26 ¹⁴¹ Hanline Reply Ex. A at pp. 18; see also Pen. Code, Code, § 4019 (awarding two days conduct
27 credit for every four days served for certain offenses); cf. former Pen. Code, § 4019, as amended by
Stats.1978, c. 1218, p. 3941, § 1 (awarding two days credit for "each one-fifth of a month in which a
prisoner is confined" for certain offenses).

28 ¹⁴² Hanline Reply at p. 4 & n.1.

1 On this silent record, this hearing officer declines to speculate what portion of the court's
2 aggregate credit calculation might be applicable. Relying instead upon the limited information
3 provided, this hearing officer finds that, at a minimum, Hanline spent 200 actual days in presentence
4 custody for his grand theft conviction as a result of his parole revocation. This period commenced on
5 the date of Hanline's arrest while driving a stolen van on November 28, 1978, to and including the date
6 of his sentencing on June 15, 1979.¹⁴³ Deducting this amount of presentencing credit for actual days
7 served, it appears that Hanline likely would have been paroled after serving the remaining 530 days
8 imprisonment for grand theft, but for his erroneous conviction for murder.

9 Considering these calculations in combination with the language of Penal Code section 1170.2,
10 it appears that Hanline's likely parole date for grand theft would have been on November 26, 1980.
11 This date is 530 days after Hanline's ISL sentence was imposed for his grand theft conviction on June
12 15, 1979, after having actually served 200 actual days presentencing, for an aggregate total of 730
13 days (i.e., 2 years). Excluding this period from Hanline's overlapping incarceration for his erroneous
14 murder conviction, his injury amounts to 12,416 days. This calculation represents the period between
15 November 27, 1980, when Hanline would no longer have been in custody for grand theft, to and
16 including the date of his release for murder on November 24, 2014.

17 But-for Hanline's erroneous conviction, he likely would have been free for 12,416 of the 13,130
18 days that he was incarcerated for murder. Stated differently, Hanline's demonstrated injury for his
19 erroneous murder conviction and imprisonment excludes 714 days during which he was concurrently
20 serving an unrelated sentence for his valid grand theft conviction. Compensation for Hanline's
21 demonstrated injury amounts to \$1,738,240, representing \$140 for each of the 12,416 days of
22 imprisonment solely attributable to his erroneous conviction. No compensation is authorized for the
23 remaining 714 days of his lawful confinement. Hanline is therefore entitled to approval of his claim in
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28 ¹⁴³ Hanline Reply Ex. A at pp. 12, 18; AG Letter Exs. 1 and 2.

1 this reduced amount, if sufficient funds are available, upon appropriation by the Legislature, for the
2 injury sustained by his erroneous conviction and imprisonment.¹⁴⁴

3 **V. Conclusion**

4 As mandated by subdivision (b) of Penal Code section 4900, the undersigned hearing officer
5 recommends that CalVCB grant Hanline's claim and approve payment to Hanline in the amount of
6 \$1,738,240 if sufficient funds are available, upon appropriation by the Legislature, as indemnification
7 for the injury sustained by his 12,416 days of imprisonment solely as a result of his vacated murder
8 conviction.

9
10 Date: October 6, 2022



11 _____
12 Laura Simpton
13 Hearing Officer
14 California Victim Compensation Board

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26 _____
27 ¹⁴⁴ Alternatively, if this Board should find that Hanline failed to meet his burden to show injury for the
28 entirety of his 10-year, ISL sentence, then as explained above, his injury amounts to \$1,410,500 for
10,075 days.