

CALIFORNIA VICTIM COMPENSATION BOARD MEETING AGENDA

MAY 18, 2023

10:00 a.m.

400 R Street, Room 330

Sacramento, CA 95811

BOARD MEETING MATERIALS

Item 1.	Approval of Minutes Minutes of the March 16, 2023, Board Meeting DRAFT Minutes attached	Action Item
Item 2.	Approval of Minutes Minutes of the April 12, 2023, Board Meeting DRAFT Minutes attached	Action Item
Item 3.	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 4.	Executive Officer Statement No materials for this item	Information Item
Item 5.	Legislative Update Copy of Legislative Update attached	Information Item
Item 6.	Contract Update Copy of Contract Report attached	Information Item
Item 7.	Johnny Choinski (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 8.	Jeannette Turner (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 9.	Patrick Willis (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item

ITEM 1

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CALIFORNIA VICTIM COMPENSATION BOARD OPEN MEETING MINUTES MARCH 16, 2023, 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, March 16, 2023, at 10:11 a.m. Also present was Member Evan Johnson, acting for, and in the absence of, Malia Cohen, Controller. Appearing via Zoom was Member Diana Becton, District Attorney.

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 January 19, 2023, Board Meeting

Member Becton moved approval of the Minutes for the January 19, 2023, Board Meeting. The motion was seconded by Member Johnson. By a unanimous vote of the Board, the motion passed.

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 acknowledged that just after the January Board meeting, California experienced two horrific mass shooting events. The shootings in Monterey Park and Half Moon Bay were tragic incidents that left behind countless victims. CalVCB reacted immediately to both incidents, working with its local partners to make sure that the victims, including the families of the deceased, the injured and those that were witnesses, receive the help they need and knew they could apply for CalVCB benefits.

CalVCB has been working continuously to follow up and assess what outreach can be done to better reach victims. In both places, there have been significant language and cultural barriers. CalVCB is working both with the State Department of Civil Rights and local community leaders to make sure accurate information is provided to members of the community.

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Ms. Gledhill noted there was quite a bit of confusion about how Go Fund Me accounts work with CalVCB benefits. CalVCB clarified that victims could receive both Go Fund Me money and CalVCB benefits, but that CalVCB benefits cannot be used to reimburse for expenses already paid by Go Fund Me accounts.

To date, CalVCB has received 27 applications from Monterey Park victims, and 44 applications from Half Moon Bay victims. CalVCB continues outreach to these areas with the reminder that victims have 7 years from the time of the incident to apply for CalVCB benefits. CalVCB also continues to work with local community leaders to make sure they understand how CalVCB works and to help them get applications filed.

In cases like these, CalVCB is also the entity that applies for a federal Antiterrorism and Emergency Assistance Program Grant, or AEAP Grant. These grants provide extra money to local communities to help with ongoing costs related to mass violence events. CalVCB continues the conversation with the local communities and the federal government to see if the community would benefit from the grant and whether or not CalVCB should be applying for one.

Ms. Gledhill noted that the mass violence events demonstrated how the work CalVCB has been doing to coordinate with its state partners also helps victims of crime. She reminded the Board that last year she convened the State Victim Coordination Council in order to bring together all state entities that help victims of crime. Within hours of the Monterey Park incident, even on a Sunday morning, many were coordinating their outreach and making sure those in state government were talking to each other so that everyone could best serve the victims on the ground. This Coordination Council continues to meet and talk about how best to work together. Ms. Gledhill plans to increase coordinated outreach efforts in the coming months as a way to amplify the work that CalVCB does.

Ms. Gledhill next discussed the Forced or Involuntary Sterilization Compensation Program, which is in its second year of the two-year program and is set to expire on December 31, 2023. As required by statute, CalVCB recently submitted the first annual report to the Legislature outlining the work so far and the payments to qualified applicants. CalVCB continues to work on getting the word out about the program and to try and reach the estimated 600 survivors of forced sterilization.

To date, CalVCB has received 389 applications and has approved 65. CalVCB knows there are more survivors out there and continues to do everything it can to reach them.

Finally, Ms. Gledhill previewed that in late April CalVCB will be marking Crime Victims' Rights Week and Denim Day. These are important dates on the calendar and an opportunity for CalVCB to highlight the work that is done to help victims. Similar to last year, CalVCB staff will

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be hosting a denim drive to help a local non-profit raise money for services. Ms. Gledhill promised to update the Board on these activities at the May Board meeting.

Chairperson Ravel thanked Ms. Gledhill for the updates.

Item 4. Legislative Update

The Legislative Update was presented by Executive Officer Lynda Gledhill.

Ms. Gledhill noted that the Legislature returned to work in January and the Legislative Report in the Board binder reflected that they have been busy introducing bills.

Ms. Gledhill discussed AB 335, which would have repealed Proposition 47, and noted that it had been recently amended and no longer contained provisions related to CalVCB.

Hearings on all the bills start in the next few weeks and CalVCB will continue to monitor them as they go through the lengthy legislative process.

Chairperson Ravel thanked Ms. Gledhill for the updates.

Item 5. Contract Update

The Contract Update was presented by Executive Officer Lynda Gledhill.

Ms. Gledhill requested the Board's approval of the contract with the Government Operations Agency in the amount of \$300,000. This contract is for administrative services including, but not limited to, Legal, Budget, Personnel, Legislative, and Information Technology Services and Policy and Communication Oversight.

Chairperson Ravel thanked Ms. Gledhill and noted for purposes of the minutes that, because he is an employee of the Government Operations Agency, pursuant to Government Code section 1091, he would be recusing himself from this item, and asked Counsel to call for the motion.

Member Johnson moved to approve the Executive Officer's execution of Item 1 of the Contract Report – the contract with the Government Operations Agency in the amount of \$300,000. The motion was seconded by Member Becton. An aye vote being cast by members Becton and Johnson (Chair Ravel abstained from the vote), the motion passed.

Item 6. Proposal to Approve Trauma Recovery Center Grant Award

The Proposal to Approve the Trauma Recovery Center Grant Awards was presented by Chief Deputy Executive Officer, Natalie Mack.

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Ms. Mack started by explaining that CalVCB is charged with administering the Trauma Recovery Center Grant process. CalVCB functions on a two-year cycle and there is no limit to the amount of funding that can be requested, there is no guarantee of funding regardless of whether the TRC was previously funded or not, and CalVCB has made certain considerations based on feedback that has been previously provided by legislators who have been interested in this effort. Specifically, information related to geographic distribution and making sure that there is coverage in all areas possible has been incorporated into the process. Of note, legislators provided additional one-time funding in the last budget cycle to raise the floor for existing TRCs to \$1.1 million per TRC, which allowed for more services throughout existing TRCs. Additionally, funding was provided to establish satellite offices, providing more coverage and more services.

Ms. Mack explained that the funding for this grant process comes from the Restitution Fund (\$2 million) and the remaining 10% from the Safe Neighborhoods and Schools Act. It is adjusted annually based on budget revise released by the Governor in May. For this grant cycle, CalVCB introduced the NOFA and received applications from interested partners. The process of scoring the NOFA has been consistent. CalVCB takes the minimum qualifications as outlined in statute and grantees who meet the minimum qualifications are scored and consideration is given for things like geography, and how quickly they would be able to get up and running. Based on all of this, the applications are scored and recommendations are provided to the Board for consideration for funding.

Ms. Mack then showed the Board a graphic display of all of the TRCs throughout California and their geographic distribution. The graphic showed that within the state of California, there are clusters of Trauma Recovery Centers, but reminded them that CalVCB has no control over who applies for the grants or where they are locating their centers. CalVCB is cognizant of not withdrawing services and maintaining where feasible the continuity of the centers that are already in place. CalVCB's funding recommendation for this cycle recommends a cap of \$1.1 million per year. Ms. Mack acknowledged that there is no cap in statute, but further acknowledged there are constraints as there is a finite amount of money available. In this cycle, applicants requested nearly \$42 million in grant funds, and there is approximately \$20 million available to distribute to all approved TRCs.

Finally, CalVCB has created a tiered approach which allows for the Program to more evenly distribute the funds, maintain the continuity throughout the state, and fund the most TRCs. The only TRC that is not being recommended for funding this cycle is one that did not meet the minimum qualifications.

Ms. Mack recommended the Board approve the Trauma Recovery Center Grant Awards as recommended and further authorize staff to increase or decrease the awards as necessary to reflect the funds available following release of the Governor's revised budget in May.

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Chair Ravel thanked Ms. Mack for all the work that was put into the program to ensure a fair geographic distribution and continuity of services.

Member Johnson stated that it was remarkable to see the effort that's gone into the program and to maintain its geographic diversity, as well as the continuity of care. He noted that there are obviously going to be areas that remain underserved and understood CalVCB is limited to the applications that come in the door. However, he wondered what efforts were undertaken, or can be undertaken in the future, to make sure that places in the north part of the state have some representation on the map in the future. Member Johnson stated the services that are in existence are great, but if CalVCB can expand them and make them more geographically diverse, that would be a win for everyone.

Ms. Mack responded and reported on the outreach efforts for the grants, which included sending out a mass mailing to all of the hospitals and community-based organizations, throughout the and advising them of the process for applying for the grants, and notifying them that the NOFA had been released. Ms. Mack further noted, as previously mentioned, that the Legislature provided additional funding in the most recent budget for some satellite offices that were specifically targeted to those areas that are underserved, such as the Central Valley and the outskirts.

Member Johnson followed up by asking if there is a way to think about or assess where the greatest need is versus where the centers are currently located to identify gaps in service.

Ms. Mack responded and noted that CalVCB currently has outreach efforts that are underway and that CalVCB is trying to determine high need areas based on crime rates, rather than the number of applications filed with CalVCB. Specific to trauma recovery centers, Ms. Mack further noted that CalVCB is required to partner with organizations that can operate the TRC, but suggested future marketing efforts will drive CalVCB's outreach, not just for the TRCs, but also for victims of crime.

Member Becton moved to adopt the Proposed Trauma Recovery Center Grant Awards as recommended and further authorized staff to increase or decrease the awards as necessary to reflect funds available following the Governor's revised budget in May. The motion was seconded by Member Johnson.

During public comment on this issue, Breena Taira from Olive View TRC stated she would like to make sure that the Board was aware of the concrete impact of the funding cuts that were being proposed with the recommended awards. Many of the existing TRCs will have their funding cut. She noted Olive View TRC received a funding increase from CalVCB in July when it was stated that the minimum budget annually should be \$1.1 million. With those funds, they were able to scale up their program and add additional staff. Also, they have been able to greatly decrease the waiting list that they have for victim services that their TRC

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provides. With the current proposal and the current cut to their budget, they will now have to lay off those additional staff that they just brought on and the subsequent impact on the victims will be that the waitlists will again increase. She wanted to make sure that the Board was aware of the impact on the TRCs and then the downstream impact to the clients and the victims.

Ms. Taira explained that the Olive View TRC has been in existence for only two years, and this is about the fifth or sixth different budget that they have had to navigate. Every time there is a new budget, they have had to adapt their operations and it is very difficult, and the impact of that is that administratively their attention is then diverted to dealing with the budgets, adapting the staffing, and adapting the operations. She asserted that this really diverts attention away from the victims and being able to provide high quality care to the victims, which she believes is really what the TRCs are meant for. She expressed her hope that the Board considered that when voting on this item, but also urged the Board to think about ways in which CalVCB and the TRCs could work together over the coming months, and even the coming years, to make sure that this process is not so much of a roller coaster. She said what the TRCs really need to be able to function well is consistency in terms of the budget and consistency from CalVCB so that they can make sure they provide high quality services.

Chair Ravel thanked Ms. Taira for her comments. He also urged CalVCB staff to take the comments into account when administering the program. He acknowledged that CalVCB is dealing with limited resources, that there are a lot of applicants that meet the minimum qualifications, and that CalVCB has to figure out a way to distribute the funds evenly, but urged, to the extent possible, that some consistency in the process be achieved.

Following public comment, by a unanimous vote of the Board, the motion passed.

Item 7. PC 4900 Claim No. 14-ECO-01, Daniel Larsen

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

On September 8, 2014, Daniel Larsen filed an application as an erroneously convicted felon with the California Victim Compensation Board. That application was based on his 1999, three strikes conviction for possessing a concealed dirk or dagger. That conviction was vacated and dismissed during federal habeas proceedings in June of 2010.

Ms. Gauthier noted that this matter includes a long procedural history, which was detailed in the proposed decision.

As mandated by court order pursuant to Penal Code section 1485.55, the proposed decision recommended compensation in the amount of \$736,540, which represents \$140 per day for each of the 5,261 days Mr. Larsen was wrongfully imprisoned.

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Throughout the proceedings, Mr. Larsen was represented by Alexander Simpson of the California Innocence Project. The Attorney General's Office was represented by Deputy Attorney General Dina Petrushenko.

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

Alexander Simpson, the Associate Director for the California Innocence Project, appeared via Zoom, stated he has been Mr. Larsen's attorney for the last 15 years, both in his quest to have his wrongful conviction overturned and for the purposes of compensation. He is very happy that they have arrived here today and said the resolution is extremely meaningful to Mr. Larsen. He went on to note that Mr. Larsen was very thankful to have the Board's consideration at the meeting. He thanked Caitlin Weisberg from McLain, Bednarski, & Litt, Ben Siminou from Singleton Schreiber, Mike Semanchik Melissa O'Connell from the Northern California Innocence Project and Jasmin Harris from his office, part of the California Innocence Coalition, all of who were instrumental in making sure Mr. Larsen could appear before CalVCB.

Finally, Mr. Simpson thanked the Board for the consideration of the claim on behalf of his office.

Chairperson Ravel thanked Mr. Simpson for his comments. The Chair asked whether Mr. Larsen was in attendance. Mr. Simpson confirmed that he spoke with Mr. Larsen earlier in the day and Mr. Larsen stated he had some medical issues that prevented him from being at the meeting.

Chairperson Ravel, then requested to hear from Ms. Petrushenko from the Attorney General's Office.

Ms. Petrushenko, who appeared via Zoom, stated she did not have any comments to add other than to acknowledge there was no objection to the Board hearing this claim or the recommended action to be taken by the Board. She submitted the matter to the Board.

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

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

Ms. Burrell noted that Item 8 on the agenda, the PC 4900 claim of Johnny Choinski, was continued at the request of the claimant. Accordingly, the Board moved on to Item 9.

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Item 9. PC 4900 Claim No. 22-ECO-32, Darwin Crabtree

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

On October 18, 2022, Darwin Crabtree filed an application as a Penal Code section 4900 erroneously convicted felon. That application is based on his 1991 convictions related to child sexual abuse. Those convictions were vacated in January of 2018 by the Butte County Superior Court based on newly discovered evidence of actual innocence. As there was no objection filed by the Office of the Attorney General, compensation is automatic under Penal Code section 4900, subdivision (b).

Accordingly, the proposed decision recommends compensation in the amount of \$440,020, which represents \$140 per day for each of the 3,143 days Mr. Crabtree was wrongfully convicted.

Mr. Crabtree was represented in these proceedings by Paige Kaneb of the Northern California Innocence Project. The Attorney General's Office was represented by Deputy Attorney General Jessica Leal.

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

Paige Kaneb of the Northern California Innocence Project who appeared in person relayed that Darwin Crabtree came to them with the evidence of innocence in his hands. Specifically, his children as adults had come to him and said they had known about his innocence and they explained in their own words and signed notarized written statements, describing how an unlicensed therapist had coerced them when they were young and impressionable children going through a traumatic time into falsely accusing their father. Ms. Kaneb explained how the Innocence Project interviewed them, and found them to be credible. She described them as wonderful men, just like their father. The children have always been adamant throughout their adult years that their father is innocent. Mr. Crabtree had kept everything, including the tapes of their childhood interviews, and the Innocence Project was able to listen to those and, more importantly, give them to an expert who analyzed them. The expert opined those interviews used every technique that we now know elicits false accusations.

Ms. Kaneb explained all of this happened after Mr. Crabtree had completed his sentence, and served his parole. At the time Mr. Crabtree came to the Innocence Project with all this evidence, the law required that you have standing to challenge your wrongful conviction by being in custody still. So, they had to ask Mr. Crabtree to do the impossible and keep waiting and keep registering under Penal Code section 290, which came with getting his picture plastered over work sites, losing jobs, and his reputation tainted. Mr. Crabtree endured that with incredible grace until finally the law changed. Thereafter, they were able to bring the

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evidence of his innocence to court and the state has been wonderful throughout this portion of the process. The state approached this case with a very open mind, they interviewed him and his sons, they told them they believed them, they apologized to him, and joined the Innocence Project in asking the court to vacate his wrongful conviction. The court did so and dismissed all the charges. When the Innocence Project asked for compensation, they did not object.

Finally, Ms. Kaneb stated, no amount of money will ever fix what Mr. Crabtree, his sons and his whole family, including his wife who has stood by him all this time, have endured. Nothing will ever fix that, but they do at least get compensation for his time erroneously convicted, and Ms. Kaneb urged the Board to adopt the proposed decision.

Chairperson Ravel thanked Ms. Kaneb for her comments. He then asked if Mr. Crabtree would like to address the Board.

Mr. Crabtree, who also appeared in person, thanked the Board for allowing him the opportunity to address them and to be able to apply for compensation. He noted it has been a long time coming - almost 32 years as of December. If the Board adopts and grant compensation, he explained he wanted to say the same thing to the Board that he said directly to the district attorney and the deputy attorney that investigated the case - not only was he an accused and wrongfully convicted felon that was exonerated, he was also part of the community in the state of California, and he is thankful for the decision and the integrity of the DA's office in investigating and making the decision to overturn the case. They worked hard for compensation and he thanked the Board for doing the right thing.

Mr. Crabtree explained that in 2019 he lobbied in Sacramento with the Innocence Project where he met numerous representatives, but at that time he did not have standing for compensation, even though he had been exonerated. He stated it has been one battle after the other to get the laws up to date and to recognize the holes in the system.

Mr. Crabtree concluded by saying he was thankful, noting it has been a long time, and acknowledging his gratitude that this represents the end.

Chairperson Ravel thanked Mr. Crabtree for appearing before the Board. He then asked to hear from Jessica Leal from the Attorney General's Office.

Ms. Leal, who appeared via Zoom, stated she reviewed had Mr. Crabtree's case file, reviewed the merits, and investigated the case. She did not interview Mr. Crabtree or his children, but she did speak to the district attorney who handled the case at length and the Attorney General did not have any objections to the recommended compensation. She concluded by saying she is personally glad to see this day come for Mr. Crabtree.

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

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Member Johnson moved to adopt the Hearing Officer's Proposed Decision in the Penal Code section 4900 matter of Darwin Crabtree. 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 10:47 a.m. pursuant to Government Code section 11126, subdivision (a) to discuss a personnel matter and pursuant to Government Code section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1 through 91 of the Victim Compensation Program.

Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126, subdivision (c)(3) at 10:56 a.m.

Member Becton moved to approve items 1 through 91 of the Victim Compensation Program. Member Johnson seconded the motion. The motion was approved by a unanimous vote of the Board and the proposed decisions were adopted.

Adjournment

Member Becton moved the adjournment of the March Board meeting. Member Johnson seconded the motion. The motion was approved by a unanimous vote of the Board and the meeting was adjourned at 10:58 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, May 18, 2023.

ITEM 2

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CALIFORNIA VICTIM COMPENSATION BOARD OPEN MEETING MINUTES APRIL 12, 2023, 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 Wednesday, April 12, 2023, at 11:01 a.m. Also present was Member Evan Johnson, acting for, and in the absence of, Malia Cohen, Controller. Appearing via Zoom was Member Diana Becton, District Attorney.

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. PC 4900 Claim No. 23-ECO-11, Maurice Hastings

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

On March 14, 2023, Maurice Hastings filed an application as an erroneously convicted person with the California Victim Compensation Board. That application was based on his 1988 conviction for murder and related charges, which were vacated and dismissed during state habeas proceedings in October of 2022. Following his release from prison in March of 2023, the court granted the motion for a finding of factual innocence pursuant to subdivision (b) of Penal Code section 1485.55.

As mandated by Penal Code section 1485.55, and the finding of factual innocence, the proposed decision recommends compensation in the amount of \$1,945,720, which represents \$140 per day for each of the 13,898 days Mr. Hastings was wrongfully imprisoned.

Mr. Hastings has been represented throughout these proceedings by Paula Mitchell and Ayesha Hussain of the Los Angeles Innocence Project. As this claim involves a finding of factual innocence, no appearance was requested by the Office of the Attorney General; however, Deputy Attorney General Kathryn Althizer is present and also prepared to address the Board.

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

Ayesha Hussain thanked the Board on behalf of Mr. Hastings for hearing this claim and being accommodating on short notice and taking his claim outside of the regularly scheduled meetings. She reiterated that Mr. Hastings spent over 13,000 days in prison, which equates to almost four decades of wrongful incarceration and so Mr. Hastings receiving compensation is just one of many steps required for Mr. Hastings to truly achieve justice in this case after being wrongfully incarcerated for many years.

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Ms. Hussain concluded by saying how much they appreciated the Board's time and being a crucial and necessary step in righting this wrong that has been done to Mr. Hastings. Chairperson Ravel thanked Ms. Hussain for her comments and her advocacy in the case. He asked if Mr. Hastings would like to address the Board.

Mr. Hastings thanked the Board for the time and the meeting. He said he is looking forward to getting his life underway, and that hopefully this compensation can assist him in having a better life in the future. He concluded by thanking the Board members for their time.

Chair Ravel thanked Mr. Hastings for appearing before the Board and for his comments.

Chair Ravel asked if Ms. Althizer from the Attorney General's Office wished to address the Board.

Ms. Althizer, who appeared via Zoom, acknowledged that compensation is automatic in this case and noted that the Attorney General had no comments on the merits of the claim.

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

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

Adjournment

Member Johnson moved for the adjournment of the April Board meeting. Member Becton seconded the motion. The motion was adopted by a unanimous vote of the Board and the meeting was adjourned at 11:06 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, May 18, 2023.

ITEM 3

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 4

EXECUTIVE OFFICER'S STATEMENT

ITEM 5

CALIFORNIA VICTIM COMPENSATION BOARD
LEGISLATIVE UPDATE
MAY 18, 2023

SB 655 (Durazo) Victim Compensation

This bill would make a number of changes to CalVCB statutes, effective January 1, 2024. It would remove reasons for denial, including felony convictions, lack of cooperation with law enforcement and involvement in the events leading to the crime. The bill 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 remove CalVCB's authority to set service limitations for medical and mental health services. It would create a presumption in favor of granting an emergency award for relocation or funeral expenses. It would prohibit denial of relocation reimbursement due to the victim informing the offender of the location of the new residence. It would add requirements for CalVCB's communication of information to claimants.

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

SB 838 (Menjivar) Use of Force by a Law Enforcement Officer

This bill would require CalVCB to compensate individuals who were killed or injured by law enforcement notwithstanding current eligibility requirements. It 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: Placed on the Suspense File in the Senate Appropriations Committee

AB 56 (Lackey) Victim Compensation: Emotional Injuries

This bill would expand eligibility for compensation by CalVCB to include solely emotional injuries from felony violations including, among other crimes, attempted murder, rape and sexual assault, mayhem, and stalking.

Status: On the Assembly Floor

AB 1187 (Quirk Silva) Victim Compensation: Certified Child Life Specialists

This bill would authorize CalVCB to reimburse mental health counseling services provided by a Certified Child Life Specialist.

Status: In the Assembly Appropriations Committee

AB 1186 (Bonta) Juveniles: Restitution

This bill would remove provisions that require juvenile offenders to pay restitution, instead requiring them to participate in various restorative justice programs. The courts would determine the amount of restitution owed and transmit it to CalVCB, which would be required to pay the amount to the victim upon appropriation by the Legislature.

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

AB 1551 (Gipson) Vehicular Manslaughter While Intoxicated

This bill would increase from \$70,000 to \$100,000 the limit on support loss that CalVCB may compensate minor derivative victims of a direct victim who was killed by a crime of vehicular manslaughter while intoxicated.

Status: In the Assembly Appropriations Committee

AB 855 (Jackson) Criminal Procedure: Fines, Fees, and Restitution

This bill would change the annual interest rate on restitution orders and the annual interest rate charged by the Franchise Tax Board on certain delinquent payments, including fines, fees, and restitution, to no more than one percent.

Status: In the Assembly Revenue and Tax Committee

SB 78 (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 by CalVCB under Penal Code section 4900. The bill also makes statutory changes to conform to CalVCB's new payment process for erroneous conviction claims that was enacted in 2022.

Status: On the Senate Floor

SB 530 (Bradford) Exoneration: Compensation

This bill, effective January 1, 2024, would remove the requirement that erroneous conviction compensation claimants prove injury and instead state that they would be compensated for incarceration served solely as a result of the former erroneous conviction. In addition, it would

add to a list of provisions that are scheduled to take effect July 1, 2024, but only if it is determined that sufficient General Fund monies exist, and an appropriation is made. The additional provisions would require compensation of \$70 per day for time that a claimant spent on the sex offender registration list due to an erroneous conviction and compensation of reasonable attorney fees for all successful claimants. The bill would also in certain circumstances extend the deadline from 30 days to 90 days from the filing of a claim for CalVCB to calculate the compensation for the claimant and approve payment to the claimant.

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

[AB 997 \(Gipson\) Exoneration: Mental Health Services](#)

This bill would require CalVCB to compensate mental health services for individuals with successful erroneous conviction claims, up to the length of time that they were incarcerated.

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

[AB 433 \(Jackson\) State- and County-Funded Grants: Advance Payments](#)

This bill would require state and county departments that offer grants to nonprofit organizations to advance a payment of 10 percent of the total grant amount awarded to the nonprofit organization, upon request of the nonprofit administrators.

Status: In the Assembly Accountability and Administrative Review Committee

[AB 330 \(Dixon\) Domestic Violence: Victim's Information Card](#)

This bill would require the Victims of Domestic Violence card to be a different color than other cards issued by officers, to include a disclaimer, to be available in languages other than English, and to include various information such as the definition of domestic violence and the statute of limitations for domestic violence.

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

[AB 1402 \(Dahle\) Medical Evidentiary Examinations: Reimbursement](#)

Existing law requires the Office of Emergency Services to establish a protocol for the examination and treatment of victims of sexual abuse and attempted sexual abuse, including child sexual abuse, and the collection and preservation of evidence. This bill would declare the intent of the Legislature to enact legislation relating to reimbursements for child abuse forensic examinations.

Status: In the Assembly Appropriations Committee

[AB 1215 \(Carrillo\) Pets Assistance with Support Grant Program](#)

This bill would require the Department of Housing and Community Development to develop and administer the Pets Assistance With Support Grant Program (PAWS), to award grants to qualified homeless shelters and qualified domestic violence shelters. It would require grant recipients to meet certain availability and service requirements as they relate to the pets of people experiencing homelessness and people escaping domestic violence. The bill would provide that the program would only become operative upon appropriation by the Legislature.

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

SB 86 (Seyarto) Crime Victims: Resource Center

Existing law requires the establishment of a resource center that operates a statewide, toll-free information service, consisting of legal and other information, for crime victims and providers of services to crime victims, as defined. This bill would require the resource center to additionally provide the information through an internet website and to the families of crime victims. The bill would require that the internet website include a summary of victims' rights and resources.

Status: At the Assembly Desk pending referral to committee

ITEM 6

CALIFORNIA VICTIM COMPENSATION BOARD
CONTRACT REPORT
MAY 18, 2023

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		
There are no contracts requiring approval by the Board.		
Informational		
Contractor Name: Kovarus Inc. PO Number: PO 2914	Contract Amount: \$303,145.91 Term: N/A	This Information Technology procurement is for replacement servers. This acquisition upgrades servers and increases CalVCB IT systems’ performance and capacity. This was procured utilizing the Statewide Contract #1-19-70-19D-2.
Contractor Name: U.S. Postal Service PO Number: PR 22-211	Contract Amount: \$50,000.00 Term: N/A	This procurement is to replenish the CalVCB’s postage account. Postage is needed to continue daily mailings from CalVCB to claimants and stakeholders. This was procured utilizing SAM section 8120.2 to prepay United

		Parcel Service metered accounts with revolving fund checks.
Contractor Name: NWN Solutions Corporation PO Number: PO 2909	Contract Amount: \$148,777.03 Term: N/A	This Information Technology procurement is for network switches to increase CalVCB IT systems' security and performance. This was procured utilizing the Statewide Contract #1-19-70-19H-1.
Contractor Name: NWN Solutions Corporation PO Number: PO 2936	Contract Amount: \$66,798.97 Term: N/A	This Information Technology procurement is for desktop computers to increase efficiency for CalVCB's application developers, budget analysts, and graphic designers. This was procured utilizing the Statewide Contract #1-22-70-30.
Contractor Name: NWN Solutions Corporation PO Number: PO 2950	Contract Amount: \$141,871.29 Term: N/A	This Information Technology procurement is for Multifunctional Printers (MFP) and Desktop Printers to support work efficiency and enhance security. This was procured utilizing the Statewide Contract #1-21-70-04A.

ITEM 7

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

8 In the Matter of:

9 **Johnny Choinski**

10 Claim No. 21-ECO-09

Proposed Decision

(Penal Code § 4900, subd. (a))

11 **I. Introduction**

12 On May 12, 2021, Johnny Choinski (Choinski) submitted a claim to the California Victim
13 Compensation Board (CalVCB) as an erroneously convicted person pursuant to Penal Code section
14 4900. The claim is based upon Choinski's seven, still-valid convictions for assault with a firearm,
15 assault with a firearm upon a peace officer, criminal threats, corporal injury, and discharging a
16 firearm. Choinski seeks compensation in the amount of \$949,200 for the duration of his imprisonment
17 for these seven felony convictions, which totaled 6,780 days. The Attorney General objected to the
18 claim, arguing that the evidence fails to prove Choinski's innocence. CalVCB Senior Attorney Laura
19 Simpton held a hearing on August 9, 2022, at which both parties appeared. The record closed
20 immediately thereafter. Throughout these proceedings, Choinski represented himself, and the
21 Attorney General was represented by Deputy Attorney General Jessica Leal.

22 After considering all the evidence in the record, the claim is recommended for denial because
23 Choinski has failed to prove, by a preponderance, that he is innocent of the challenged convictions.
24 As detailed below, the inculpatory evidence includes his still valid convictions, which are supported by
25 overwhelmingly evidence. By comparison, his exculpatory evidence largely consists of his
26 unsupported testimony and drawings, which describe an implausible version of events. Overall, the
27 proffered evidence fails to satisfy Choinski's burden under subdivision (a) of Penal Code section 4900
28 to show that he is innocent of the charged crimes.

1 **II. Procedural Background**

2 Choinski was arrested on August 22, 2001, and subsequently charged with numerous
3 offenses against his estranged wife "L.C." and several responding police officers in Los Angeles
4 County Superior Court case number BA221417.¹ The charges included assault with a deadly
5 weapon, criminal threats, corporal injury to spouse, discharging a firearm, burglary, kidnapping, and
6 four separate counts of assault with a deadly weapon upon a peace officer.² Following a jury trial,
7 Choinski was found guilty of all but one count of assault with a deadly weapon upon a peace officer.
8 Choinski was sentenced on September 23, 2002, to an aggregate term of 28 years and 8 months
9 imprisonment for all nine convictions.³

10 Choinski appealed to the Second Appellate District of the California Court of Appeal. In an
11 unpublished decision filed February 17, 2004, the appellate court reversed the kidnapping conviction
12 due to insufficient evidence of movement and further reversed the burglary conviction due to
13 instructional error.⁴ Otherwise, the appellate court affirmed the remaining seven convictions for
14 assault with a deadly weapon (i.e., L.C.), assault with a deadly weapon upon a peace officer (i.e.,
15 Officers Olson, Stambaugh, and Travis),⁵ criminal threats, corporal injury, and discharging a firearm.
16 Upon remand to the trial court, the prosecution was barred from retrying Choinski for kidnap because
17 of Double Jeopardy and ultimately declined to retry Choinski for burglary. After dismissing both
18 charges on May 4, 2004, the trial court resentenced Choinski on the remaining seven felony
19 convictions to an aggregate term of 23 years.⁶

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22 _____
23 ¹ Attorney General Response Letter (AGRL) at p. 4. The victim is referred to by her initials only in an
24 effort to protect her privacy.

25 ² Pen. Code §§ 245, subd. (a)(2), 459, 422, 273.5, 246.3, 207, and 245, subd. (d)(1); AGRL at pp. 4-5;
26 AG Exhibit (Ex.) 1 at pp. 46-49.

27 ³ Ex. 1 at pp. 193-195.

28 ⁴ Ex. 7; see also *People v. Johnny Choinski*, Second District Court of Appeal case number B162139,
unpublished opinion filed February 17, 2004.

⁵ The first name of the peace officers are omitted to protect their privacy.

⁶ AGRL at p. 6; Ex. 8 at pp. 25-26.

1 Between 2004 and 2020, Choinski filed 19 habeas petitions in state court, plus one more in
2 federal court. Among the numerous claims raised in these habeas petitions was an allegation that
3 Choinski was actually innocent. With the exception of an order to recalculate the custody credits in
4 August 2019, all petitions were denied, including two subsequent petitions challenging the revised
5 custody credit calculations in November 2019 and November 2020.⁷

6 Choinski remained imprisoned until he completed his 23-year sentence on March 19, 2021,
7 when he was released on parole. By then, he had been incarcerated for a total of 6,780 days from
8 August 22, 2001, to and including March 19, 2021. His parole evidently terminated one year later on
9 March 19, 2022.⁸

10 On May 12, 2021, Choinski timely submitted a claim to CalVCB seeking compensation as an
11 erroneously convicted offender pursuant to Penal Code section 4900. But instead of alleging factual
12 innocence, the claim only challenged the accuracy of the credit calculations by the California
13 Department of Corrections and Rehabilitation (CDCR). After notifying Choinski that his claim may be
14 rejected for failing to raise any basis upon which relief may be granted, Choinski supplemented the
15 claim on June 16, 2021. In his supplemental claim, Choinski affirmatively alleged that he was
16 factually innocent of all seven convictions that led to his incarceration in case number BA221417.⁹

17 CalVCB filed Choinski's supplemented claim on July 1, 2021, and requested a response from
18 the Attorney General. Following multiple extensions for demonstrated good cause, the Attorney
19 General timely submitted a response letter on April 27, 2022, along with 47 exhibits spanning over
20 2,300 pages.¹⁰

21 Choinski requested an in-person hearing before the hearing officer, which was granted. At
22 CalVCB's invitation, Choinski submitted a pre-hearing brief on July 1, 2022, which generally asserted
23

24 ⁷ AGRL at pp. 6-10; Exs. 27-35; Choinski Application ("App.") at pp. 9-10.

25 ⁸ Choinski App. at pp. 1, 5.

26 ⁹ Choinski Supplemental (Supp.) App. at pp. 1-12 (claim form with written statement) at pp. 13-163
27 (supporting documents); see also CalVCB Letter dated July 1, 2021, requesting response from the
Attorney General at pp. 1-2.

28 ¹⁰ AGRL at pp. 1-17; Exs. 1-47.

1 that the Attorney General failed to offer any direct or physical evidence to oppose his claim. The
2 hearing ensued on August 9, 2022, at which Choinski appeared and testified, along with his sole
3 witness Martina Dul (Dul). The Attorney General also appeared and cross-examined both Choinski
4 and Dul, but otherwise declined to submit any new evidence. The record closed at the conclusion of
5 the hearing, after both parties declined to submit post-hearing briefs.

6 **III. Factual Summary**

7 As detailed below, the record reveals that Choinski engaged in a series of escalating incidents
8 of domestic violence against L.C. that culminated on August 22, 2001, with the offenses that lead to
9 his seven felony convictions.

10 **A. Trial Evidence**

11 Choinski married L.C. in 1998. In April 1999, Choinski threw L.C. to the ground, injuring her
12 head, and threatened to shoot L.C., the police, and himself.¹¹ L.C. obtained a restraining order
13 against Choinski based upon this act of domestic violence,¹² but they eventually reconciled, and the
14 order expired. The following year in September 2000, Choinski hit and choked L.C., held a gun to her
15 mouth, and threatened to shoot L.C., the police, and himself.¹³ In April or May of 2001, Choinski
16 punched L.C. several times and threatened to kill her if she called police, even from behind bars.¹⁴
17 On July 4, 2001, during a camping trip with friends, Choinski struck L.C. with a bottle, held a gun to
18 her mouth, threatened to play Russian Roulette, and then fired the gun multiple times near her, while
19 aiming up in the air or down at the ground.¹⁵

20 Following this incident, L.C. broke off their relationship.¹⁶ L.C. remained in the apartment she
21 had shared with Choinski, which still contained some of his belongings, but he did not live there.¹⁷

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23 ¹¹ AGRL at p. 1; Ex. 2 at pp. 62-71.

24 ¹² Ex. 2 at pp. 71-72.

25 ¹³ AGRL at p. 4; Ex. 3 at pp. 325-330 (testimony by Mariusz K.), 352-353 (testimony by Kasia S.).

26 ¹⁴ AGRL at p. 4; Ex. 3 at pp. 347-355; Ex. 42 at pp. 5-6.

27 ¹⁵ Ex. 3 at pp. 331-333; Ex. 42 at pp. 5-6.

28 ¹⁶ Ex. 2 at pp. 134-135, 137.

¹⁷ Ex. 2 at p. 73; Ex. 7 at p. 5.

1 The apartment was located on the second floor with a balcony. The front door of the apartment was
2 accessible only through an enclosed flight of stairs, which was secured at the base by a screen metal
3 security door.¹⁸ The door itself was difficult to see through, unless positioned directly in front with
4 good lighting.¹⁹

5 On August 6, 2001, starting at approximately 2:00 a.m., Choinski repeatedly called L.C. He
6 left around 15 messages in which he called L.C. vulgar names and threatened to come to her
7 apartment with a gun. Around 4:00 a.m., Choinski arrived at L.C.'s apartment complex. Choinski
8 attempted to retrieve a ladder, but it was chained to a fence under L.C.'s balcony. Unable to free the
9 ladder, Choinski instead vandalized L.C.'s car and finally left irate when L.C. called police.²⁰

10 A few weeks later on the night of August 22, 2001, Choinski arrived at L.C.'s apartment again.
11 This time, he brought a bolt cutter, which he used to cut the chain from the ladder. He propped the
12 ladder against L.C.'s balcony and started to climb. L.C. heard the commotion and tried to push
13 Choinski away with a broom, but he grabbed it from her. L.C. warned Choinski that she would call
14 police if he came upstairs, but Choinski pulled a gun from his belt and pointed it at L.C. Within
15 seconds, Choinski was standing on the balcony with his gun pointed at L.C.'s head.²¹

16 Choinski ordered L.C. inside the apartment, entering through the window into the bedroom
17 and continuing to the living room. Choinski, who appeared to be drunk, followed behind L.C. while
18 pointing a gun at her the entire time.²²

19 Choinski complained that his mother had kicked him out of the house. He told L.C. that since
20 he had "no life," she must also die. Choinski demanded alcohol, but L.C. denied having any.
21 Choinski struck L.C.'s arm, hip, and neck with the gun, causing bruises. Eventually L.C. found some
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25 ¹⁸ Ex. 2 at pp. 49, 51, 133, 263.

26 ¹⁹ Ex. 2 at p. 51; Choinski Supp. App. at p. 75; Choinski Hearing Ex. 3 at pp. 14, 16.

27 ²⁰ Ex. 2 at pp. 65-69; Ex. 42 at p. 3.

28 ²¹ AGRL at p. 2; Ex. 2 at pp. 72-74, 197; Ex. 42 at p. 3.

²² AGRL at p. 2; Ex. 2 at pp. 74-80; Ex. 42 at pp. 3-4.

1 cognac and gave it to Choinski. He ordered L.C. to drink some too, while holding a gun to her head.
2 She pretended to comply.²³

3 While still holding the gun to L.C.'s head, Choinski told her to call her family in Poland to say
4 her "goodbyes" because she was living her "last minutes." L.C. tried to calm Choinski by engaging
5 him in conversation. Choinski told L.C. that he had 50 bullets in his pocket and then displayed the
6 loaded bullets in his gun. Choinski suggested having sex with L.C. before shooting her to death. He
7 also suggested they move to Poland.²⁴

8 Eventually, L.C. used the bathroom, while Choinski stood over her holding a gun to her head.
9 Once she finished, Choinski exposed his penis and demanded she "service him." L.C. instead
10 offered to make coffee and discuss their future. Choinski remained in the bathroom. Once she was
11 out of his sight, L.C. grabbed her cordless phone and ran out of the apartment's front door, down the
12 enclosed stairwell, past the screen metal security door, onto the driveway for the apartment complex.
13 L.C., who was wearing only a nightgown, hid under a car and called police.²⁵ As recorded by 911,
14 L.C. was crying and repeatedly stated she was scared because her husband wanted to kill her and
15 had a gun.²⁶

16 Police arrived shortly thereafter. There were five or six responders, which included Officers
17 Olson, Strambaugh, and Travis, and Sergeant Gomez.²⁷ From their exterior location, they spotted
18 Choinski holding a gun inside the apartment and heard multiple gunshots. Eventually, Choinski
19 opened the screen metal security door at the base of the enclosed staircase and faced the officers
20 waiting outside. Choinski remained near the doorway, standing on the single step immediately below
21 the threshold, while holding a gun in his mouth with his right hand.²⁸ The officers repeatedly ordered
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24 ²³ AGRL at p. 2; Ex. 2 at pp. 74-80; Ex. 42 at pp. 3-4.

25 ²⁴ AGRL at p. 2; Ex. 2 at pp. 74-80; Ex. 42 at pp. 3-4.

26 ²⁵ AGRL at pp. 2-3; Ex. 2 at pp. 80-83; Ex. 42 at p. 4.

27 ²⁶ Choinski Supp. App. at pp. 32-39.

28 ²⁷ Ex. 2 at pp. 39-40.

²⁸ Ex. 2 at pp. 43-44, 49, 54-56, 144-145, 165-169, 184-185.

1 Choinski to drop his gun. Instead, Choinski pointed his gun directly at Officers Olson, Stambaugh,
2 and Travis, all of whom were standing near each other and within four to 15 feet of Choinski.²⁹
3 Sergeant Gomez was standing directly behind these officers.³⁰ Afraid for their lives, the officers fired
4 at Choinski, striking him multiple times.³¹

5 A subsequent investigation determined that the officers fired a total of 20 rounds at Choinski,
6 although most bullets missed him.³² The officers' weapons included two .45 caliber semi-automatic
7 pistols, an AR-16 .223 rifle, and a shotgun.³³ Medical records confirmed that Choinski was struck
8 once in the chest and right shoulder, with both bullets exiting out his back, and once in the stomach,
9 pelvis, left bicep, and right hand.³⁴ Choinski was transported by ambulance to the hospital for
10 surgery.³⁵ Extensive metallic bullet fragments remained in Choinski's body.³⁶

11 After the shooting, police seized Choinski's gun, which at some point had fallen from his
12 hand.³⁷ The gun was loaded and registered to Choinski.³⁸ Police also located a fired cartridge
13 casing inside the front pocket of Choinski's bloody shorts, which had been left near the driveway,
14 evidently after paramedics tended to Choinski.³⁹ Police eventually entered L.C.'s apartment and
15 found it in complete disarray. As documented by photographs, shots had been fired through the
16 balcony window, bathroom mirror, toilet, television, and even clothing in the closet. L.C.'s computer,
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19 ²⁹ Ex. 2 at pp. 43-46 (Stambaugh), 147, 154 (Olson), 185-186 (Travis)

20 ³⁰ Ex. 2 at pp. 148, 187.

21 ³¹ AGRL at p. 3; Ex. 2 at pp. 44, 48, 147, 165-176, 190; Ex. 42 at p. 4.

22 ³² Choinski Supp. App. at pp. 146-149 (Los Angeles County District Attorney's Office Analysis of non-
23 fatal shooting, dated June 11, 2002). Although this information was not presented to the jury, it is
24 included for context.

25 ³³ Choinski Supp. App. at p. 148.

26 ³⁴ Choinski Supp. App. at pp. 107-108, 148.

27 ³⁵ Choinski Supp. App. at pp. 146-149.

28 ³⁶ Choinski Supp. App. at pp. 107, 109.

³⁷ AG Ex. 2 at p. 167.

³⁸ Ex. 2 at pp. 202-203, 211, 217.

³⁹ Ex. 2 at pp. 205-206.

1 radio, and related equipment had been thrown on the ground and destroyed. Multiple fired cartridge
2 casings were located inside the apartment.⁴⁰ Finally, a pair of bolt cutters was located in a carport
3 near L.C.'s apartment.⁴¹

4 Meanwhile, Officer F.,⁴² who was fluent in Polish, arrived on scene after the shooting in order
5 to interview L.C. They spoke for several hours. This was the first time that Officer F. met L.C.⁴³

6 In his defense, Choinski testified that L.C. had lied about everything. He claimed L.C. had
7 welcomed him into the apartment via the balcony to retrieve his personal belongings, including his
8 gun. He admitted using the ladder after cutting the chain but only because the downstairs security
9 door was locked, so no one would be able to hear him knock. He denied being drunk and accused
10 L.C. of having a drinking problem. During their amicable visit, he showered. While he was getting
11 dressed, he overheard L.C. call 911 and falsely accuse him. Once L.C. left the apartment, Choinski
12 called his mother, who supposedly told him to hand over his gun to the police. After drinking some
13 cognac, Choinski walked out of the apartment and down the stairwell, while supposedly holding the
14 gun with one finger. As he descended the stairs, he tossed the gun towards the still-closed screen
15 metal security door. In particular, Choinski stated, "Maybe three stairs prior to this security door, I put
16 my hand down to throw the gun. And as I throw the gun, the gun hit the security door and it was left
17 there in the corner."⁴⁴ After tossing the gun, he claimed police nevertheless shot him, while he was
18 standing behind the closed screen metal security door. Choinski denied ever pointing the gun at the
19 officers. Choinski acknowledged that the photographs of L.C.'s apartment looked "like a typhoon
20 went through it," but he denied causing any of the damage. During the trial, Choinski expressly
21 declined to accuse the police of "any type of set up," insisting instead that only L.C. and her friends
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24 ⁴⁰ Ex. 2 at pp. 92-95.

25 ⁴¹ Ex. 2 at p. 197.

26 ⁴² Only the first initial of this officer's name is included in this proposed decision because of the
27 accusations made by Choinski against this officer, none of which were sustained by any court.

28 ⁴³ Ex. 1 at pp. 5-6, 15; Ex. 2 at pp. 114-116; see also Choinski Hearing Exhibit 2 at p. 17 (Officer F.
Declaration).

⁴⁴ Ex. 2 at p. 240.

1 had framed him. Choinski also denied wearing the bloody shorts that were seized from the driveway,
2 claiming instead that the shorts belonged to L.C.⁴⁵

3 In rebuttal, a firearms expert testified that the bullet holes in the screen metal security door
4 were either fired towards the outside from someone standing within the stairwell while the door was
5 closed, or from outside towards the stairwell while the door was open. Also, one friend of Choinski
6 and one friend of L.C. testified to the abuse they observed Choinski inflict upon L.C. before August
7 2001, including the camping trip on the Fourth of July.⁴⁶

8 The jury convicted Choinski of nine of the ten charges. Specifically, the jury found Choinski
9 guilty of three counts of assault with a firearm upon a peace officer (i.e., Officers Olson, Strambaugh,
10 and Travis) and one count each of assault with a firearm upon L.C., kidnapping, burglary, criminal
11 threats, inflicting corporal injury on a spouse, and discharging a firearm. The jury acquitted Choinski
12 of a single count of assault with a firearm upon a peace officer (i.e., Sergeant Gomez), presumably
13 because he was not located in the immediate line of fire. After Choinski's convictions for kidnapping
14 and burglary were reversed and ultimately dismissed, leaving intact his remaining seven convictions,
15 he was resentenced to 23 years in prison.⁴⁷

16 **B. Federal Civil Rights Litigation**

17 In 2004, Choinski filed a civil rights action against the Los Angeles Police Department and
18 several officers, including Officer F.⁴⁸ Evidently, Choinski submitted multiple declarations from
19 friends, family members, and a neighbor in an effort to bolster his complaint. Specifically, a
20 declaration signed by Michael Kulig (Kulig) on January 21, 2005, averred that, before the shooting, on
21 August 6, 2001, L.C. claimed to have made new friends who would shoot Choinski for her.⁴⁹ A

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23 ⁴⁵ AGRL at pp. 3-4; Ex. 2 at pp. 220-241; Ex. 3 at pp. 247-302; Ex. 3-2 at pp. 303-324; Ex. 42 at pp. 4-
24 5.

25 ⁴⁶ AGRL at p. 4; Ex. 3 at pp. 326-347 (Mariusz K.), 348-365 (Kasia S.); Ex. 42 at p. 6.

26 ⁴⁷ AGRL at pp. 5-6; Ex. 1 at pp. 188-189; Ex. 8 at p. 26; Ex. 9.

27 ⁴⁸ Choinski Supp. App. at pp. 16-26, 105-106, 119; see also online docket for *Johnny Choinski v. Los Angeles Police Department et al.*, U.S. District Court (C. Cal.), case number 2:04CV04459. (See Cal. Code Regs., tit. 2, § 617.8 (official notice.)

28 ⁴⁹ Choinski Supp. App. at pp. 16-17.

1 declaration signed by Elenora Mazerant (Mazerant) on February 18, 2005, averred that, on August
2 13, 2001, Kulig had expressed concern about L.C.'s threat to have Choinski shot.⁵⁰ A declaration
3 signed by Urszula Zurawski (Zurawski) on February 21, 2005, likewise averred that, on August 13,
4 2001, Kulig had expressed concern about L.C.'s threat to have Choinski shot.⁵¹

5 Significantly, a declaration signed by Dul on February 18, 2005, averred that, on August 18,
6 2001, Mazerant had told her of L.C.'s threat to have Choinski shot. Dul added that, sometime after
7 Choinski was sentenced to prison on September 23, 2002, L.C. told her that Officer F. had promised
8 "to take care of" Choinski, supposedly by having the police "beat him up and shot [sic] his testicle and
9 penis."⁵² L.C. supposedly told Dul that Officer F. had assured L.C. that she would "easily" obtain a
10 green card if Choinski went to prison.⁵³

11 A declaration signed by Choinski's mother Lucy Choinski (Lucy) on January 21, 2005, alleged
12 that, on August 6, 2001, Choinski had told her about L.C.'s threat to have him shot.⁵⁴ Lucy further
13 declared that, on August 22, 2001, Choinski told her over the telephone that L.C. had falsely told
14 police that he had tried to kill her, and Lucy responded by advising Choinski to surrender his gun to
15 police.⁵⁵ A declaration signed by his father Stefan Choinski (Stefan) on February 18, 2005, similarly
16 averred that, on August 6, 2001, Choinski had told him about L.C.'s threat to have him shot. This
17 conversation with Stefan supposedly occurred after Choinski returned from checking on L.C. at 1:30
18 a.m. in the morning because she had ignored his earlier telephone calls.⁵⁶ A declaration signed by
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21 ⁵⁰ Choinski Supp. App. at pp. 18-19.

22 ⁵¹ Choinski Supp. App. at p. 20.

23 ⁵² Choinski Supp. App. at p. 24.

24 ⁵³ Choinski Supp. App. at p. 24.

25 ⁵⁴ Choinski Supp. App. at pp. 21-22.

26 ⁵⁵ Significantly, as noted by the prosecution outside of the jury's presence during the trial, Choinski's
27 mother and sister had repeatedly called L.C. and told her not to testify. His mother specifically
28 threatened L.C. that "If anything happens to my son I'm going to kill you." (Ex. 2 at pp. 59-60.) As a
result of this threat, L.C. obtained a restraining order. (Choinski Supp. App. at pp. 40, 43.)

⁵⁶ Choinski Supp. App. at p. 23.

1 Choinski's sister Elizabeth Mehmood on August 10, 2006, claimed that she was prohibited by court
2 security from recording the trial on her personal recorder.⁵⁷

3 Finally, a declaration signed by L.C.'s neighbor Angelica Cruz on December 29, 2005, averred
4 that on August 22, 2001, at about 12:20 a.m., she observed officers approaching the stairwell, heard
5 shots, and later observed an officer kick a firearm from the bottom of the stairwell out onto the
6 driveway. Cruz did not witness the actual shooting.⁵⁸

7 Ultimately, Choinski's civil rights complaint was dismissed on September 19, 2006, when the
8 court granted the defendants' motion for summary judgment. Specifically, the case was "dismissed
9 with prejudice as to all of plaintiffs [*sic*] claims," with the sole exception of those "claims for the alleged
10 use of excessive force, which are dismissed without prejudice to bringing the claims if plaintiffs [*sic*]
11 relevant criminal convictions are invalidated."⁵⁹ Choinski's recent motion for reconsideration was
12 denied on January 26, 2022.⁶⁰

13 **C. Habeas Proceedings**

14 Choinski's numerous state habeas petitions were generally denied, sometimes on procedural
15 grounds, without a formal decision, including his claim of factual innocence.⁶¹ Habeas relief was
16 granted solely to recalculate custody credits on June 28, 2019, which resulted in an amended
17 Abstract of Judgment issued on August 15, 2019.⁶² Thereafter, on November 25, 2019, and again on
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22 ⁵⁷ Choinski Supp. App. at pp. 25-26.

23 ⁵⁸ Choinski Supp. App. at pp. 105-106.

24 ⁵⁹ Docket for *Choinski v. Los Angeles Police Department et al.*, *supra*, case number 2:04CV04459, at
25 pp. 9-10; see also *Heck v. Humphrey* (1994) 512 U.S. 477, 487 (barring prisoner's civil rights claim for
26 damages whenever a judgment in favor of the prisoner would necessarily imply the invalidity of his
conviction or sentence, unless the prisoner demonstrates that the conviction or sentence has already
been invalidated).

27 ⁶⁰ *Ibid.* at p. 8.

28 ⁶¹ Exs. 8, 12, 13, 14, 16, 23, 26, 34, 35, 37, 39, 41.

⁶² Ex. 32; Choinski App. at pp. 9-10.

1 November 12, 2020, the state court expressly found that Petitioner “has failed to demonstrate there
2 was any error in recalculating his custody credit or release date....”⁶³

3 Meanwhile, Choinski’s federal habeas petition was denied in a lengthy decision issued by the
4 magistrate judge on March 24, 2008, which was adopted by the district court on February 24, 2009.⁶⁴
5 The petition alleged, inter alia, prosecutorial misconduct by withholding, hiding, or covering up
6 evidence and ineffective assistance of counsel for failing to investigate and present a defense to all
7 charges.⁶⁵ It does not appear that Choinski submitted the declarations from his friends and family.⁶⁶
8 Regardless, the federal habeas court ultimately concluded that Choinski had “fail[ed] to establish the
9 existence of errors that, when viewed singly or cumulatively, deprived him of a fair trial.”⁶⁷ The court
10 specifically found Choinski’s claims “that the police planted evidence to justify the shooting ... or
11 coerced petitioner’s wife to frame petitioner” to be unsupported and speculative.⁶⁸ Also, when
12 summarizing the trial evidence, the court observed that, on August 22, 2001, Choinski had been living
13 with his mother when he arrived at L.C.’s apartment, threatened L.C. with a gun, subsequently exited
14 the stairwell holding the gun in his mouth, and then pointed the gun at police.⁶⁹ The court further
15 observed that the officers fired at Choinski while believing their lives were in danger.⁷⁰

16 **D. CalVCB Proceedings**

17 On May 12, 2021, Choinski submitted a claim under Penal Code section 4900. But rather
18 than claiming to be innocent, Choinski instead challenged the accuracy of CDCR’s credit calculations
19 for his still valid convictions, which allegedly delayed his release from prison by 736 days.⁷¹ As
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21 ⁶³ Exs. 34, 35.

22 ⁶⁴ Exs. 42, 43.

23 ⁶⁵ Ex. 42 at p. 6.

24 ⁶⁶ Ex. 42 at p. 10, n.2.

25 ⁶⁷ Ex. 42 at p. 25.

26 ⁶⁸ Ex. 42 at p. 11.

27 ⁶⁹ AG Ex. 42 at pp. 3-4.

28 ⁷⁰ AG Ex. 42 at p.4.

⁷¹ Choinski App. at pp. 1-2, 4.

1 support, Choinski attached a series of grievances with CDCR challenging his credit calculations to
2 determine his parole date, which were denied as meritless in a final decision rendered December 31,
3 2020.⁷² He also attached several court minute orders and a revised Abstract of Judgment filed on
4 August 15, 2019, which confirmed his aggregate sentence of 23 years for his still valid convictions
5 while awarding 987 days actual credit and 148 days conduct credit.⁷³ Finally, he attached a CDCR
6 form that confirmed his scheduled release date on March 19, 2021.⁷⁴

7 Following notice by CalVCB that his claim appeared to be deficient for failing to comply with
8 Penal Code sections 4900 and 4901, Choinski submitted a supplemental claim on June 16, 2021.⁷⁵
9 In a written statement, Choinski insisted that he was innocent of his seven convictions for assault with
10 a firearm against L.C., assault with a firearm against the police officers, criminal threats, corporal
11 injury, and discharging a firearm.⁷⁶ He alleged that both L.C. and the police had falsely accused him
12 of the underlying crimes and further alleged that the police had planted evidence against him.⁷⁷ He
13 also raised numerous allegations of trial error, such as ineffective assistance of counsel. As support,
14 Choinski attached the same declarations from the civil rights litigation (i.e., Kulig, Mazerant, Zurawski,
15 Dul, Lucy, Stefan, Mehmood, and Cruz). He also attached his grievances with the Los Angeles
16 Police Department over the shooting, as well as the result of the Los Angeles District Attorney's
17 investigation that exonerated the officers, plus various reports from the Los Angeles Police
18 Department and medical records.⁷⁸ Finally, Choinski included numerous crime scene photographs
19 with his own annotations and drawings in an effort to depict that he was shot by police, while standing
20 behind the closed screen metal security door, and not holding a gun.

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22 ⁷² Choinski App. at pp. 14-15, 23-34, 37.

23 ⁷³ Choinski App. at pp. 9-10.

24 ⁷⁴ Choinski App. at p. 5.

25 ⁷⁵ Choinski Supplemental ("Supp.") App. at pp. 1-165.

26 ⁷⁶ Choinski Supp. App. at p. 1; see also CalVCB Letter, dated July 1, 2021, regarding "Request for
27 Response Letter from the Attorney General," at pp. 1-2.

27 ⁷⁷ Choinski Supp. App. at pp. 1, 3-12.

28 ⁷⁸ Choinski Supp. App. at pp. 98, 107-111, 146-149,

1 After the Attorney General submitted a response letter with supporting exhibits on April 27,
2 2022, an in-person hearing ensued on August 9, 2022. Choinski appeared and testified under oath,
3 as did his sole witness Dul. Their testimony is summarized below, along with a description of the
4 exhibits submitted by Choinski.⁷⁹

5 **1. Choinski's Testimony**

6 Choinski insisted he was innocent of all seven felony convictions. He denied ever threatening
7 or abusing L.C. He also denied threatening the police with his firearm. He accused the police of
8 shooting him while he was no longer holding a gun and still standing behind the closed screen metal
9 security door. Contrary to his trial testimony, Choinski claimed that he bent down, placed the gun on
10 the floor, and then was shot by police just as he was standing back up. He further accused the police
11 of falsely testifying to a contrary version of events, as well as tampering with evidence to frame him.

12 To support his version of events, Choinski claimed that the gunshot wound to the fingertip of
13 his right hand, combined with the absence of any strike marks on his gun,⁸⁰ proved that he could not
14 have been aiming the gun at the police when they shot him. Choinski also claimed that steel
15 remnants of the screen metal security door remained in his body, which he attempted to demonstrate
16 during the hearing by lifting his shirt and placing a supposed magnet on his chest and abdomen. The
17 magnet appeared to adhere to Choinski's skin. Choinski insisted the magnet would not have adhered
18 to any of the remaining bullet fragments because they were made of lead and copper.⁸¹ In addition,
19 Choinski referenced a crime scene photograph of the screen door with bullet holes,⁸² which he
20 claimed, contrary to the prosecution's expert at trial, showed that the direction of the bullets originated
21 from outside towards the stairwell while the door was still closed. He also suggested the bullet holes
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24 ⁷⁹ See Olympus Audio Recording of August 9, 2022, Hearing, spanning 1:47:06 in length; see also
25 Zoom Visual Recording, with limited audio, of August 9, 2022, Hearing, spanning 1:57:16 in length.

26 ⁸⁰ Choinski Hearing Ex. 3 at p. 30.

27 ⁸¹ As emphasized by the Attorney General when objecting to this demonstration, Choinski lacked any
28 expert scientific evidence to lay a foundation for this demonstration. The objection was overruled but
the lack of foundation goes to the weight of this evidence. (Cal. Code Regs., tit. 2, § 641, subd. (e).)

⁸² Choinski Hearing Ex. 3 at pp. 16-17.

1 in the screen metal door matched the location of his gunshot injuries based upon his own
2 measurements and calculations derived from the police reports and medical records. Choinski further
3 noted extensive blood on the floor behind the screen metal security door, which apparently included a
4 footprint from one of his sandals, as well as blood flows down the single step leading to the
5 driveway,⁸³ as proof that he was shot while standing inside the enclosed stairwell. He claimed that a
6 crime scene photograph of his firearm resting on the driveway had been planted by police because
7 he had actually discarded it while standing inside the stairwell behind the door.⁸⁴ In an attempt to
8 bolster this claim, Choinski referenced the neighbor's declaration that had described an officer kicking
9 the firearm from the bottom of the stairwell out onto the driveway once the shooting ceased.⁸⁵ Based
10 upon his version of events, Choinski maintained that he did not assault any of the police officers with
11 a firearm and, therefore, the officers' use of force was excessive and unjustified.

12 As for the remaining crimes against L.C., Choinski denied pointing a gun at L.C. anytime that
13 night. He denied committing any acts of violence or abuse against L.C., either that night or any time
14 before. He denied ever threatening to shoot police, either that night or before. He also denied firing
15 his gun inside the apartment, where he insisted he still lived with L.C. Nonetheless, he admitted
16 loading his gun that night. He also admitted cutting the chain to the ladder to enter the apartment.
17 Choinski insisted that L.C. knew Officer F. before the shooting occurred and cited Officer F.'s
18 declaration from the civil rights litigation as support, even though that declaration confirms Officer F.
19 first met L.C. after the shooting.⁸⁶ Choinski further claimed that his civil rights complaint was denied
20 without prejudice, even though the court docket reveals some claims were denied with prejudice
21 while the remaining were denied without prejudice only if the underlying criminal convictions were
22 vacated.

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26 ⁸³ Choinski Hearing Ex. 3 at pp. 10, 14, 26, 37; Choinski Hearing Ex. 4 at p. 4.

27 ⁸⁴ Choinski Hearing Ex. 3 at p. 37.

28 ⁸⁵ Choinski Supp. App. at p. 105 (Cruz declaration).

⁸⁶ Choinski Hearing Ex. 2 at pp. 8-15, 17-18.

1 **2. Dul's Testimony**

2 Dul, who had suffered a stroke and spoke limited English, also testified on behalf of Choinski.
3 Dul appeared to have difficulty understanding the Attorney General's questions, but she readily
4 understood most of Choinski's questions. Dul had known Choinski and L.C. since approximately
5 1994. At one point during cross-examination, Dul admitted visiting Choinski while in prison, but then
6 later denied having done so. In addition, Dul initially denied knowing whether Choinski ever beat
7 L.C., then admitted she saw him abuse L.C., but then denied ever seeing any abuse. Dul claimed
8 that L.C. was a heavy drinker. Dul accused L.C. of becoming aggressive when drunk, once towards
9 Dul when Dul refused to drink with her. At Choinski's prompting, Dul further claimed that L.C. had
10 lied to police about a car accident while driving under the influence of alcohol. In addition, Dul
11 claimed that, sometime before the shooting, L.C. had told her about Officer F. Specifically, L.C.
12 supposedly told Dul that Officer F. had assured her that she (L.C.) would qualify for a green card if
13 her husband went to jail. Dul insisted this conversation happened before the shooting, despite the
14 contrary representation in her declaration that it occurred afterwards. Dul acknowledged that she
15 was not present when Choinski was shot.

16 **3. Choinski's Hearing Exhibits**

17 During the hearing, Choinski submitted multiple exhibits. Exhibit 1 includes a collection of
18 defense motions regarding appointment of an investigator and expert, request for continuance,
19 request for dismissal; multiple declarations by Choinski challenging the adequacy of his trial counsel's
20 representation; and a notice from the California State Bar that found insufficient evidence to sustain
21 any of Choinski's allegations of improper conduct by his trial counsel.⁸⁷ Exhibit 2 includes the
22 investigative report issued by the Los Angeles County District Attorney, which concluded that all
23 officers who fired at Choinski acted lawfully in self-defense and defense of others.⁸⁸ It also includes
24 a declaration from Officer F. from the civil rights litigation, which confirms the timing of her first
25 meeting with L.C. after the shooting occurred, along with the Statement of Uncontroverted Facts and
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27 ⁸⁷ Choinski Hearing Ex. 1 at pp. 1-24.

28 ⁸⁸ Choinski Hearing Ex. 2 at pp. 1-25.

1 Law filed by the defendants in support of their motion for summary judgment.⁸⁹ Exhibit 3 includes
2 one officer's response to interrogatories in that litigation; a jury instruction that allows only reasonable
3 force to make an arrest and, when unreasonable or excessive, permits the arrestee to use
4 reasonable force in return; along with multiple photographs of the scene, some of which were
5 annotated by Choinski; a Los Angeles Police Department Firearms Analyzed Evidence Report; and
6 medical records and photographs depicting Choinski's hand injury.⁹⁰ Exhibit 4 includes multiple
7 drawings and annotated crime scene photographs depicting the shooting according to Choinski's
8 version of events.⁹¹ Exhibit 5 includes multiple medical records regarding Choinski's treatment
9 following the shooting, which confirms gunshot wounds on his chest, pelvis, left arm, fingertips on his
10 right hand, and back.⁹² The records further confirm that several bullet fragments were located on his
11 chest, abdomen, and pelvis. Exhibit 5 also includes correspondence by Choinski complaining of his
12 appellate counsel's representation, as well as a notice from the California State Bar that found
13 insufficient evidence to sustain any of Choinski's allegations of improper conduct by his appellate
14 counsel. Exhibit 5 additionally includes an annotated transcript of Choinski's statement to the trial
15 court at sentencing, during which he insisted he was innocent, accused L.C. and the responding
16 officers of framing him, and specifically accused Officer F. of having promised L.C. that the police
17 would shoot Choinski at least two weeks before the shooting occurred. Exhibit 6 consists of a life-
18 size mannequin with various markings, holes, and dowels that were added by Choinski in an effort to
19 recreate the location and trajectory of the gunshot wounds he sustained, based upon his own
20 evaluation of the measurements contained in the police reports. Exhibit 7 consists of a screen metal
21 that Choinski represented was identical to the material used in the security door at the apartment.
22 Exhibits 8 and 9 are photographs taken during the hearing of Exhibits 6 and 7, respectively. Finally,
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25 ⁸⁹ Choinski Hearing Ex. 2 at pp. 8-15, 17-18.

26 ⁹⁰ Choinski Hearing Ex. 3 at pp. 1-25.

27 ⁹¹ Choinski Hearing Ex. 4 at pp. 1-5.

28 ⁹² Choinski Hearing Ex. 5 at pp. 1-62.

1 exhibits 10a and 10b are photographs taken during the hearing of Choinski holding the screen metal
2 (exhibit 7) in front of the mannequin (exhibit 6).

3 **Determination of Issues**

4 Penal Code section 4900, subdivision (a), allows a person, who has been erroneously
5 convicted and imprisoned for a felony offense that they did not commit, to submit a claim for
6 compensation to CalVCB for the injury sustained.⁹³ Typically, under subdivision (a) of section 4900,
7 claimants bear the burden to prove by a preponderance that (1) the crime with which they were
8 convicted either did not occur or was not committed by them and (2) they suffered injury as a result of
9 their erroneous conviction.⁹⁴ Once such a claim is received and filed, Penal Code section 4902
10 requires the Attorney General to submit a written response pursuant to Penal Code section 4902.⁹⁵
11 Thereafter, under Penal Code section 4903, an informal administrative hearing before a hearing officer
12 ensues, at which the claimant and Attorney General may present evidence concerning innocence and
13 injury.⁹⁶ Upon the requisite showing of innocence and injury, then pursuant to Penal Code section
14 4904, CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury
15 sustained if sufficient funds are available, upon appropriation by the Legislature, at a rate of \$140 per
16 day.⁹⁷

17 In limited circumstances, a different procedure may apply for claimants whose convictions have
18 been reversed. First, under Penal Code section 1485.55 or 851.865, if the claimant received a court
19 finding of factual innocence during a proceeding that resulted in either a grant of habeas relief or
20 vacated conviction pursuant to Penal Code section 1473.6, then CalVCB must automatically approve
21 the claim, within 30 days and without a hearing, pursuant to Penal Code section 4904 for the injury
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25 ⁹³ Pen. Code, § 4900.

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

27 ⁹⁵ Pen. Code, § 4902, subd. (a).

28 ⁹⁶ Pen. Code, §4903, subd. (a).

⁹⁷ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

1 sustained.⁹⁸ Second, under subdivision (b) of Penal Code section 4900, if the claimant’s conviction
2 was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7,
3 subdivision (a)(2), and the charges were dismissed on remand, and the Attorney General declines to
4 object with clear and convincing proof of guilt, then CalVCB must approve the claim within 60 days
5 pursuant to Penal Code section 4904 for the injury sustained.⁹⁹ Unless one of these narrow statutory
6 exceptions applies, then the claimant bears the burden to prove innocence and injury by a
7 preponderance of the evidence under subdivision (a) of Penal Code section 4900.

8 When determining whether the claimant has satisfied their burden of proof, the Board may
9 consider the “claimant’s denial of the commission of the crime; reversal of the judgment of conviction;
10 acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the
11 crime....”¹⁰⁰ The Board may also “consider as substantive evidence the prior testimony of witnesses
12 [that] claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for
13 which claimant had an opportunity to object.”¹⁰¹ Ultimately, the Board may consider “any other
14 information that it deems relevant to the issue before it,” even if inadmissible under the traditional rules
15 of evidence, so long as “it is the sort of evidence on which reasonable persons are accustomed to rely
16 in the conduct of serious affairs.”¹⁰²

17 CalVCB’s broad authority to consider all relevant evidence when deciding a claimant’s
18 application for compensation may be limited by various court determinations during the criminal
19 proceedings. By statute, CalVCB is bound by express factual findings rendered by a court during
20 proceedings on a petition for habeas corpus, motion to vacate judgment pursuant to Penal Code
21 section 1473.6, or an application for a certificate of factual innocence.¹⁰³ While this statutory provision
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23 ⁹⁸ Pen. Code, §§ 851.865; 1485.55, subd. (a), 4902, subd. (a); see also Cal. Code of Regs., tit. 2, § 640,
24 subd. (e)(1)-(2), eff. Jan. 1, 2023.

25 ⁹⁹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

26 ¹⁰⁰ Cal. Code Regs., tit. 2, § 641, subd. (a).

27 ¹⁰¹ Cal. Code Regs., tit. 2, § 641, subd. (b).

28 ¹⁰² Cal. Code Regs., tit. 2, § 641, subs. (c) and (f).

¹⁰³ Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c).

1 omits any findings rendered by an appellate court on direct appeal, an appellate court’s determination
2 of claims that were, or could have been, raised on direct appeal, may be binding under the doctrines of
3 res judicata and collateral estoppel.¹⁰⁴ Nonetheless, a claim under Penal Code section 4900 may not
4 be denied solely because the claimant failed to obtain a court finding of factual innocence.¹⁰⁵
5 Regardless of any court determinations that may bind CalVCB, the claimant continues to bear the
6 burden of proof to demonstrate innocence by a preponderance of the evidence.¹⁰⁶

7 **A. Penal Code Section 4900, subdivision (a), Governs Choinski’s Claim**

8 In his supplemented claim, Choinski seeks compensation for all seven of his still-valid felony
9 convictions in case number BA221417, for which he was imprisoned a total of 6,780 days.¹⁰⁷ None of
10 these convictions were reversed or vacated, despite Choinski’s appeal and multiple habeas petitions in
11 state and federal court. Accordingly, neither of the limited statutory exceptions set forth in Penal Code
12 section 1485.55 or subdivision (b) of Penal Code section 4900 applies. Therefore, as the Attorney
13 General maintains and Choinski does not dispute,¹⁰⁸ subdivision (a) of section 4900 governs the
14 disposition of this claim. This determination is not altered by the reversal of two of Choinski’s
15 convictions on direct appeal. A reversal on direct review is not one of the enumerated events that may
16 trigger application of either Penal Code section 1485.55 or subdivision (b) of Penal Code section 4900.
17 Moreover, Choinski’s claim does not challenge either of these vacated convictions, for which he did not
18 serve any term of imprisonment. Thus, Choinski’s claim does not fall within either of the limited
19 statutory exceptions to subdivision (a) of section 4900.

22 ¹⁰⁴ See *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 206
23 (explaining “Res judicata, or claim preclusion, precludes parties or their privies from relitigating a cause
24 of action finally resolved in a prior proceeding” and “Collateral estoppel precludes relitigation of issues
argued and decided in a prior proceeding”).

25 ¹⁰⁵ Pen. Code, § 1485.55, subd. (d); Cal. Code of Regs., tit. 2, § 645, eff. Jan. 1, 2023.

26 ¹⁰⁶ Pen. Code, § 4900, subd. (a), 4904; *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580, 588
27 n.7 (“To prevail claimant must carry the burden of proof of innocence by a preponderance of the
evidence”); Cal. Code of Regs., tit. 2, § 644, subd. (b)(1), eff. Jan. 1, 2023.

28 ¹⁰⁷ Choinski Supp. App. at p. 1.

¹⁰⁸ AGRL at pp. 10-11.

1 **B. Choinski’s Claim Excludes CDCR’s Credit Calculations**

2 Incidentally, Choinski’s claim, as supplemented, does not include any challenge to CDCR’s
3 custody credit calculations.¹⁰⁹ Nevertheless, to the extent any such claim might be inferred, it must be
4 rejected, as a matter of law, for failing to raise any basis upon which relief may be granted.¹¹⁰ Relief
5 under Penal Code section 4900 is limited to individuals who were imprisoned for a crime they did not
6 commit.¹¹¹ Consequently, a sentencing miscalculation for a crime that the claimant admittedly
7 committed does not qualify for relief under section 4900. And even assuming otherwise, Choinski still
8 fails to prove by a preponderance that any such error occurred. To the contrary, the state court
9 expressly determined on November 12, 2020, that Choinski “has failed to demonstrate there was any
10 error in recalculating his credits or release date....”¹¹² CDCR likewise confirmed the accuracy of their
11 calculations in a final decision issued on December 31, 2020, and Choinski was subsequently released
12 as scheduled on March 19, 2021.¹¹³ None of Choinski’s protestations demonstrate otherwise.

13 Thus, to prevail on his supplemented claim, Choinski bears the burden to demonstrate by a
14 preponderance that (1) the crimes with which he was convicted and imprisoned were either not
15 committed at all or, if committed, were not committed by him, and (2) he sustained injury as a result of
16 his imprisonment for his erroneous convictions.¹¹⁴

17 **C. Binding Court Determinations**

18 Neither party addresses what, if any, court determinations rendered during the criminal
19 proceedings are binding. In an abundance of caution, it is assumed that the appellate court’s
20 determination of insufficient evidence to support the kidnapping conviction is binding, as well as the
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23 ¹⁰⁹ Choinski Supp. App. at pp. 1-165; see also CalVCB Letter, dated May 21, 2021, regarding “Unfiled
24 Penal Code § 4900 Application 21-ECO-09” at pp. 1-2.

25 ¹¹⁰ Cal. Code of Regs., tit. 2, § 642.

26 ¹¹¹ Pen. Code, § 4900, subd. (a).

27 ¹¹² Ex. 35.

28 ¹¹³ Choinski App. at pp. 5, 14-15, 23-34, 37.

¹¹⁴ Pen. Code, § 4900, subd. (a).

1 appellate court's finding of instructional error for the burglary conviction.¹¹⁵ It is further assumed that
2 the state court's final habeas determination finding in November 2020 that Choinski had failed to
3 demonstrate any error in recalculating his custodial credits or release is also binding.¹¹⁶ In addition, it is
4 assumed that the federal habeas court's determination that Choinski failed to establish the existence of
5 any error that, when viewed singly or cumulatively, deprived him of a fair trial, is likewise binding.¹¹⁷
6 Alternatively, even if none of these court findings are binding, their reasoning is persuasive and may be
7 considered by CalVCB.¹¹⁸ No presumption is made as a result of Choinski's failure to obtain a finding
8 of factual innocence.¹¹⁹

9 **D. Insufficient Proof of Innocence**

10 After considering all of the evidence and argument presented by the parties, and taking into
11 consideration the binding determinations by the state and federal courts,¹²⁰ Choinski has failed to
12 satisfy his burden to demonstrate innocence by a preponderance. On balance, the weight of the
13 inculpatory evidence far exceeds the exculpatory evidence. As detailed below, the record fails to show
14 that Choinski is more likely innocent than guilty of any of the challenged crimes for which he was
15 convicted and imprisoned. Choinski's claim for compensation must therefore be denied.

16 **1. Inculpatory Evidence**

17 Most significantly, Choinski remains validly convicted of all seven felony offenses that he
18 challenges in this administrative proceeding. Those crimes include assault with a firearm, assault with
19 a firearm upon a peace officer, terrorist threats, corporal injury, and discharging a firearm. These seven
20 convictions resulted from an unanimous jury finding of guilt, beyond a reasonable doubt, after
21 considering the live testimony from L.C., multiple responding officers, Choinski, and other percipient
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23 ¹¹⁵ Ex. 7 at pp. 4-5, 8.

24 ¹¹⁶ Ex. 35.

25 ¹¹⁷ Ex. 42 at p. 25.

26 ¹¹⁸ Cal. Code Regs., tit. 2, § 641, subd. (f).

27 ¹¹⁹ Pen Code, § 1485.55, subd. (d).

28 ¹²⁰ Alternatively, even if none of the state and federal court decisions are binding, the result of this proposed decision would remain the same.

1 witnesses. Despite an appeal and numerous habeas challenges in state and federal courts, these
2 seven convictions remain undisturbed and have never been reversed or vacated. Accordingly, these
3 still-valid convictions carry significant incriminating weight.

4 Moreover, compelling evidence supports the jury's finding of guilt for all seven convictions. L.C.
5 provided an emotional account of the abuse she endured at Choinski's hands throughout their
6 marriage, including the night of August 22, 2001.¹²¹ He repeatedly aimed a loaded firearm at her, even
7 pressing it against her head at times. He threatened to kill her, telling her to say goodbye to her family
8 because she was living her "last minutes." And he forcibly struck L.C. with the firearm on her arm, hip,
9 and neck, leaving bruises. After L.C. managed to escape while wearing only a nightgown, multiple
10 gunshots were heard emanating from inside her apartment where Choinski remained. L.C. never
11 wavered in her accusations against Choinski, despite extensive cross-examination.¹²²

12 L.C.'s testimony was corroborated by the recording of her emotional 911 call to police, in which
13 she cried and repeatedly stated she was scared because her husband wanted to kill her and had a
14 gun.¹²³ Her testimony was further corroborated by her prior police reports of Choinski's abuse, one of
15 which resulted in a restraining order years earlier. Physical evidence also corroborated L.C.'s version
16 of events. Specifically, multiple bullets had been fired through a window, mirror, toilet, television, and
17 clothing in L.C.'s apartment, all of which was documented by police photographs. Also, Choinski's
18 firearm was loaded and a spent bullet casing was found in his pocket. L.C.'s consistent and
19 corroborated testimony, which was believed by the jury over Choinski's version of events, weighs
20 heavily in favor of his guilt for the crimes against L.C.

21 The testimony from the responding officers also weighs heavily in favor of Choinski's guilt for his
22 crimes against them. Officers Olson, Strambaugh, and Travis each testified, under penalty of perjury,
23 that Choinski opened the screen metal security door while holding his firearm in his mouth, and they
24 fired at Choinski only after Choinski aimed his firearm directly at them. Choinski was located within 15

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26 ¹²¹ See Ex. 2 at p. 491 (acknowledging L.C.'s emotional testimony).

27 ¹²² Ex. 2 at pp. 112-134, 136-137 (cross and re-cross).

28 ¹²³ See Ex. 2 at p. 501 (acknowledging emotional 911 call); Choinski Supp. App. at pp. 30, 32-39.

1 feet of these officers, and his firearm was loaded. The victims' account, which was confirmed by
2 another responding officer who testified at trial,¹²⁴ was consistent and unequivocal. It was also
3 bolstered by the physical evidence, which included Choinski's loaded firearm, and the expert's
4 testimony regarding the bullet piercings in the screen metal security door. The jury necessarily found
5 these officers credible when rejecting Choinski's contrary testimony. Viewed together, the record
6 provides overwhelming evidence of Choinski's guilt for all seven of his challenged felony convictions.

7 This determination is not undermined by the appellate court's reversal of two of Choinski's
8 convictions for kidnapping and burglary.¹²⁵ The court concluded, as a matter of law, that there was
9 insufficient evidence of movement as required for kidnapping and prejudicial instructional error on a
10 defense to burglary of one's own residence.¹²⁶ But neither of these legal conclusions regarding matters
11 of law reflect a determination that the version of events testified by L.C. and the responding officers was
12 false or inaccurate.

13 Additional evidence in the record further inculpatates Choinski. The Los Angeles County District
14 Attorney's Office conducted an independent investigation of the shooting by law enforcement. Their
15 review of the incident concluded that all officers acted lawfully in self-defense and in defense of others.
16 As detailed in their report letter dated June 11, 2002, "Choinski came out of the stairway door with the
17 barrel of a stainless steel .44 caliber revolver in his mouth," but instead of heeding the officers' verbal
18 demands to drop the gun, "Choinski pointed the gun at" the officers, who "immediately shot at Choinski
19 inflicting multiple gunshot wounds."¹²⁷ The report notes that this confrontation with police occurred after
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21 ¹²⁴ Ex. 2 at pp. 161-178.

22 ¹²⁵ Choinski's claim under Penal Code section 4900 is not based upon either of these vacated
23 convictions. (Choinski Supp. App. at p. 1.) Indeed, any such claim would necessarily fail because
24 Choinski did not serve any part of any term of imprisonment for either conviction. (Pen. Code, § 4900,
25 subd. (a) (requiring claimant "shall have served the term or any part therefore for which they were
26 imprisoned"). Once these two convictions were reversed in 2004, Choinski's original sentence of 28
27 years and 8 months was reduced to 23 years, over a decade before that term expired in 2021. Thus,
28 none of Choinski's imprisonment was attributable to either of these two, reversed convictions. For this
same reason, no "injury" was "sustained" as a result of these reversed convictions. (Pen. Code, §§
4900, subd. (a), 4904.)

27 ¹²⁶ Ex. 7.

28 ¹²⁷ Choinski Supp. App. at pp. 146-149; Choinski Hearing Ex. 2 at pp. 1-4.

1 Choinski had pointed a revolver at L.C., threatened to kill her, pistol whipped her, and fired multiple
2 shots while inside the apartment. Despite Choinski's challenges to aspects of this report, the result of
3 this independent investigation by the District Attorney bolsters the already compelling evidence of
4 Choinski's guilt.

5 His guilt is further corroborated by the Defendants' Statement of Uncontroverted Facts and
6 Conclusions of Law in the civil rights litigation. As detailed in that pleading, the officers shot Choinski
7 only after he pointed his firearm at them.¹²⁸ Thereafter, the officers "secured the scene" and then
8 escorted paramedics to Choinski's location "on the stairs," where he "was combative and being verbally
9 abusive."¹²⁹ The officers removed Choinski's handcuffs at the paramedics' request, and then the
10 paramedics removed Choinski's clothing to assess his condition. Choinski was placed on a gurney,
11 given oxygen, and transported by ambulance to the hospital. Choinski continued to be "verbally
12 abusive to everyone in the ambulance while enroute to the hospital."¹³⁰ Meanwhile, L.C. met with
13 Officer F. for the first time after the shooting ended, and she described how Choinski had assaulted her
14 with a firearm, threatened her, and hit her earlier that night.¹³¹ All of these details are based upon
15 declarations from various witnesses, all submitted under penalty of perjury, which ultimately resulted in
16 a ruling in Defendants' favor.

17 Overall, the record contains overwhelming evidence of Choinski's guilt for all seven of his still-
18 valid convictions for assault with a firearm, assault with a firearm upon peace officers, criminal threats,
19 corporal injury, and discharging a firearm.

20 **2. Proffered Exculpatory Evidence**

21 By comparison, Choinski's proffered exculpatory evidence largely consists of his own
22 uncorroborated testimony and self-serving drawings, which combine to present an implausible version
23 of events. It also includes Dul's testimony, which is mostly irrelevant as she was not present when any
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25 ¹²⁸ Choinski Hearing Ex. 2 at p. 9.

26 ¹²⁹ Choinski Hearing Ex. 2 at p. 13.

27 ¹³⁰ Choinski Hearing Ex. 2 at p. 14.

28 ¹³¹ Choinski Hearing Ex. 2 at pp. 9-10.

1 of the disputed events occurred. It further includes declarations from friends and family on tangential
2 issues. Following a careful and thorough review, none of the proffered evidence of innocence is
3 persuasive.

4 Choinski's testimony was not credible for several reasons. At the threshold, his version of
5 events is not objectively plausible. If Choinski had truly wished to peacefully surrender when he
6 approached the officers, then he would have simply left his firearm inside the apartment. His
7 purposeful retention of the firearm after leaving the apartment negates any benign intent. Also, if
8 Choinski's visit with L.C. was entirely cordial, there was no need for him to have loaded his firearm that
9 evening, which he admitted doing. In addition, if Choinski still lived with L.C. and had been welcomed
10 into their apartment that night, then he would not have needed to enter by climbing a ladder onto the
11 balcony, much less bring his own bolt cutters. Finally, it is simply not believable that all five to six of the
12 responding officers would have conspired with L.C. to falsely accuse Choinski of numerous violent
13 crimes and then proceed to shoot up L.C.'s apartment afterwards to bolster their false account.

14 Overall, Choinski's version of events is objectively unlikely.

15 Not only is Choinski's account implausible, but it has shifted over time. When testifying before
16 CalVCB, Choinski claimed that he bent down, placed his gun on the floor while standing behind the
17 closed metal screen security door, and then was shot just as he stood back up. But when testifying at
18 trial, Choinski claimed to have thrown the gun against the door, which landed in the corner near the
19 doorway, while he was still standing on the third-to-last step of the stairwell. Both versions of events
20 cannot be true. Similarly, Choinski accused multiple peace officers, as well as L.C., of fabricating
21 evidence against him in an elaborate conspiracy to frame him for all seven crimes that led to his
22 convictions. But at trial, he expressly denied the police were involved in any set up and blamed only
23 L.C. and her friends.

24 Not only does Choinski's hearing testimony contradict itself, but it also contradicts other
25 disinterested witnesses. For example, he flatly denied ever assaulting his wife, despite the trial
26 testimony from multiple persons who had witnessed Choinski abuse L.C. Also, Choinski insisted that
27 the impact of the piercing bullets into the screen metal security door demonstrates that the bullets
28 emanated from outside while the door was closed. However, the expert at trial provided contrary

1 testimony, opining that the impact demonstrated that either the bullets were fired from someone
2 standing inside the stairwell with the door closed or outside the stairwell with the door open. The jury
3 necessarily sided against Choinski on both issues, which further undermines his credibility.

4 Choinski's credibility further suffers from the lack of an adequate scientific foundation to support
5 his dubious account of the shooting. For example, he insisted that the magnet demonstration during
6 the hearing confirms the presence of particles from the screen metal security door inside his body, yet
7 there was no foundational showing that the object used in the demonstration was actually a magnet, or
8 that the object adhered to his skin because of a magnetic attraction versus some other adherent, or that
9 the magnetic attraction would only apply to the door remnants rather than any of the bullet and/or
10 shotgun fragments that remain in his body. The absence of any expert foundation likewise renders
11 Choinski's illustrations, which purport to match his wounds with the trajectory of bullets that supposedly
12 pierced through the screen metal security door based upon his own calculations, entirely unpersuasive.
13 Similarly, he claims the injuries to his fingertips and supposed absence of any strike marks on his
14 firearm confirm that he was not aiming at the police when shot, but no medical or ballistics expert was
15 offered to corroborate either representation. Overall, Choinski's unsupported testimony regarding any
16 of these scientific and medical subjects is not persuasive.

17 Choinski's photographs and annotated drawings are similarly unconvincing. Several drawings
18 depict him standing unarmed, behind the closed screen metal security door, as one or more officers
19 aim and fire at him.¹³² But these drawings are directly contradicted by the officers' consistent testimony
20 that they fired at Choinski only after he opened the door and pointed his firearm at them. Some
21 photographs show substantial blood stains on the floor landing behind the door and the step
22 immediately below, which Choinski claims demonstrates that he was shot while standing behind the
23 closed door.¹³³ But the location of the blood appears to be consistent with the officers' testimony that
24 the shooting occurred while Choinski was standing on the step below the opened doorway when the
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26 ¹³² See, e.g., Choinski Supp. App. at pp. 73, 79-80, 86, 94, 122; Choinski Hearing Ex. 3 at pp. 14, 26;
27 Choinski Hearing Ex. 4 at pp. 1-3.

28 ¹³³ See, e.g., Choinski Supp. App. at pp. 81-82, 85, 128; Choinski Hearing Ex. 3 at p. 10; Choinski
Hearing Ex. 4 at p. 4.

1 shooting commenced, in which case Choinski either fell backwards or purposefully retreated, and
2 eventually landed on the floor. The collage of photographs depicting the injuries to Choinski's fingertips
3 and the supposed absence of any strike marks to his firearm similarly fail to prove he had been
4 unarmed when the shooting commenced.¹³⁴ It is possible that the strike marks to the firearm were
5 averted by Choinski's own hand, or that the strike marks are simply not visible in the selected
6 photographs. It is also possible that, by the time the bullet penetrated Choinski's hand, he had already
7 dropped his firearm. None of these scenarios prove Choinski's innocence. As for the photographs
8 showing Choinski's firearm positioned on the driveway, several feet beyond the security door,¹³⁵ they
9 presumably reflect the location where the firearm came to rest after responding officers kicked it out of
10 Choinski's reach, immediately after the shooting ceased. The photographs of the screen metal security
11 door are similarly unhelpful,¹³⁶ as the direction of the bullets' penetration is not visible in most, while the
12 closeup lacks sufficient context to discern which direction the door is facing. Ultimately, none of the
13 submitted photographs and drawings offer persuasive evidence of innocence.

14 Dul's testimony similarly fails to demonstrate Choinski's innocence. Whether due to her
15 friendship with Choinski, her limited English, recent stroke, or perhaps some combination of all three,
16 Dul was not a credible witness. Her testimony that L.C. claimed to have spoken with Officer F. about a
17 green card before the shooting occurred was contradicted by her own declaration from 2005, which
18 averred that the conversation occurred after Choinski was sentenced for these offenses. It was also
19 contradicted by both L.C. and Officer F., who swore that their first meeting occurred only after the
20 shooting. Consequently, Dul's other claims regarding L.C.'s drinking habits, possible false traffic report,
21 and supposed threats to have Choinski shot are likewise unconvincing, particularly given Dul's
22 inconsistent responses as to whether she ever witnessed Choinski abuse L.C. and whether she ever
23 visited Choinski in prison. In any event, much of Dul's testimony was irrelevant, as she was not present

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26 ¹³⁴ See, e.g., Choinski Supp. App. at pp. 87, 100, 104; Choinski Hearing Ex. 3 at pp. 27-31.

27 ¹³⁵ See, e.g., Choinski Supp. App. at pp. 122, 128, 134, 145, 151; Choinski Hearing Ex. 3 at p. 37;
Choinski Hearing Ex. 4 at p. 4.

28 ¹³⁶ See, e.g., Choinski Supp. App. at pp. 75-77; Choinski Hearing Ex. 3 at p. 10, 15, 16-19, 40.

1 during the events of August 22, 2001, that led to Choinski's convictions. Dul therefore has no first-hand
2 knowledge whether or not Choinski committed assault with a firearm, criminal threats, corporal injury,
3 discharge of a firearm, or assault with a firearm against a peace officer. Ultimately, neither Dul's
4 testimony nor her declaration amount to persuasive evidence of innocence.

5 The proffered declarations from Choinski's friends and family, which generally allege that L.C.
6 threatened to have Choinski shot weeks before the shooting occurred, are similarly unpersuasive. At
7 the outset, little weight is given to any declaration whose declarant did not testify subject to cross-
8 examination in any judicial or administrative proceeding.¹³⁷ Even less weight is given to those
9 declarations that merely repeat second-hand hearsay (i.e., Mazerant, Zurawski, and Stefan). All of
10 these declarants' credibility is generally impeached by their inherent bias in Choinski's favor due to their
11 personal relationships. This is especially true as to Choinski's mother Lucy, whose credibility is further
12 impeached by her pre-trial threat to kill L.C., which resulted in a restraining order to protect L.C.¹³⁸
13 Accordingly, Lucy's declaration that she told Choinski to "surrender his revolver" to the police, which
14 supposedly led to Choinski's armed confrontation with police, is not trustworthy. More importantly,
15 none of these declarants were present on August 22, 2001, and, therefore, they all lack first-hand
16 knowledge as to Choinski's guilt or innocence. Finally, the allegation throughout these declarations that
17 L.C. had threatened to have Choinski shot is ultimately irrelevant, as Choinski was not shot by L.C. or
18 any of her friends. Rather, Choinski was shot by the police, and the shooting occurred only after he
19 pointed a loaded firearm at them. Accordingly, these declarations fail to prove that Choinski is more
20 likely innocent than guilty.

21 Finally, the proffered declaration from neighbor Cruz fails to bolster Choinski's claim of
22 innocence. Cruz did not witness the shooting or the events that led up to it and, therefore, has no first-
23 hand knowledge as to Choinski's guilt or innocence for the challenged convictions. While Cruz
24 declared that she observed an officer kick a firearm from the bottom of the stairwell out onto the
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27 ¹³⁷ See Cal. Code Regs., tit. 2, §§ 641 (admissibility of evidence), 645 (hearing officer's proposed
decision).

28 ¹³⁸ Ex. 2 at pp. 59-60; Choinski Supp. App. at pp. 40, 43.

1 driveway after the shooting ended, such an event is readily explained by the officer's need to ensure
2 that the firearm remained out of Choinski's grasp. This security precaution was clearly needed, given
3 Choinski's continued "combative" and "verbally abusive" demeanor after the shooting, which persisted
4 even in the ambulance to the hospital.¹³⁹ No nefarious intent may be gleaned from this benign action
5 to protect the safety of all those in the area of the crime scene.

6 Incidentally, Choinski's repeated complaints about his counsel's representation during the trial,
7 as well as during the appeal, are not exculpatory. These complaints were necessarily rejected as
8 meritless when the state and appellate courts denied Choinski's multiple habeas petitions. But
9 regardless, relief under subdivision (a) of Penal Code section 4900 requires affirmative proof that the
10 claimant did not commit the crime. A showing of mere trial error will not suffice.

11 **3. Analysis**

12 On balance, the evidence fails to prove that Choinski is more likely innocent, than guilty, of any
13 of his seven convictions for assault with a firearm, assault with a firearm upon peace officers, criminal
14 threats, corporal injury, and discharging a firearm. The inculpatory evidence is overwhelming. Most
15 damning, it includes Choinski's still valid convictions for these offenses, which have been repeatedly
16 affirmed by the state and federal courts on appeal and habeas. It also includes the clear and
17 unequivocal trial testimony from L.C. and the responding officers, who consistently detailed the events
18 leading to Choinski's arrest on the night of August 22, 2001. It further includes corroborating physical
19 evidence, such as Choinski's loaded firearm at the scene of the shooting, bullet holes and spent
20 casings throughout L.C.'s apartment, and the bolt cutters in the carport. It likewise includes L.C.'s
21 emotional 911 call for help. Choinski's guilt is further supported by the results of the independent
22 investigation conducted by the Los Angeles County District Attorney, which exonerated all of the
23 responding officers, as well as the federal court's dismissal of Choinski's civil rights complaint by
24 granting the police department's motion for summary judgment.

25 Choinski's proffered evidence of innocence pales in comparison. It largely consists of his own
26 testimony, which is not credible. His version of events has shifted over time and is ultimately

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28 ¹³⁹ Choinski Hearing Ex. 2 at pp. 13-14.

1 implausible. None of his drawings, photographs, or annotations prove otherwise, particularly those
2 lacking an adequate scientific foundation. The testimony of his sole witness Dul similarly lacks
3 credibility and is of limited relevance given she was not present when any of the disputed events
4 occurred. The declarations of Choinski's friends and family are similarly unpersuasive due to their
5 credibility issues and lack of personal knowledge regarding Choinski's actions on the night of his arrest.

6 All in all, the evidence fails to prove that Choinski is more likely innocent, than guilty, of any of
7 his seven convictions for assault with a firearm, assault with a firearm against a peace officer, criminal
8 threats, corporal injury, and discharging a firearm. The burden rests upon Choinski to affirmatively
9 demonstrate that he did not commit any of these offenses for which he was convicted and imprisoned.
10 But on balance, the totality of evidence fails to tip the scales toward innocence. Indeed, Choinski's guilt
11 appears much more likely given all of the evidence detailed above. Accordingly, his application as an
12 erroneously convicted person under Penal Code section 4900 must be denied.

13 **V. CONCLUSION**

14 In accordance with subdivision (a) of Penal Code section 4900, the undersigned hearing
15 officer recommends that CalVCB deny Choinski's claim. He failed to demonstrate by a
16 preponderance of evidence that he is factually innocent of any of the seven, felony offenses for which
17 he was convicted and imprisoned. Choinski is, therefore, ineligible for compensation as an
18 erroneously convicted person.

19
20 Date: February 6, 2023



21 _____
22 Laura Simpton
23 Senior Attorney
24 California Victim Compensation Board
25
26
27
28

ITEM 8

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

8
9 In the Matter of:
10 **Jeannette Turner**
11 Claim No. 20-ECO-14

Proposed Decision on Remand Post-Writ
(Penal Code §§ 4900 et seq.)

12 **I. Introduction**

13 On June 22, 2020, Jeannette Turner submitted a claim for compensation to the California
14 Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to Penal Code
15 section 4900. The claim was based upon Turner's 1997 felony conviction for perjury, which was
16 vacated in 2020. But because Turner had already been denied compensation for this same conviction
17 in 2006 in accordance with then-existing law, Turner's 2020 claim was rejected for lack of jurisdiction
18 on the basis of res judicata. Turner pursued a writ, which was granted in part. Without resolving the
19 merits, the court determined that CalVCB had erred by failing to exercise jurisdiction over Turner's
20 2020 claim before considering the affirmative defense of res judicata.

21 Though the calculations have varied over time, Turner requests compensation for her 2020
22 claim in the amount of \$82,600 for 590 days imprisonment as a result of her vacated perjury
23 conviction. While the Attorney General originally opposed this claim on the basis of res judicata, the
24 Attorney General now recommends it should be granted pursuant to subdivision (b) of Penal Code
25 section 4900. The Attorney General does not address the amount of compensation to be approved.

26 Turner is represented by Phillip Cooke of the Law Office of Cooke & Marshall. The Attorney
27 General is represented on remand by Deputy Attorney General Heather Gimle. This matter was
28 assigned to CalVCB Senior Attorney Laura Simpton. As explained below, it is recommended CalVCB

1 grant Turner’s 2020 claim pursuant to subdivision (b) of Penal Code section 4900 but approve
2 payment only in the amount of \$80,920 if sufficient funds are available, upon appropriation by the
3 Legislature, as indemnification for the injury sustained by her 578 days imprisonment solely as a result
4 of her erroneous conviction for perjury. No compensation is recommended for the remaining 12 days
5 of Turner’s 2020 claim due to the lack of demonstrated injury for those unspecified dates.

6 **II. Procedural and Factual Background**

7 **A. Trial Proceedings**

8 On October 27, 1995, Turner was charged with a single count of perjury in Tehama County
9 Superior Court case number NCR41247.¹ Specifically, Turner was accused of falsely misrepresenting
10 her income and work history on an application for Aid to Families with Dependent Children (AFDC)
11 benefits that she completed on or about June 28, 1995.² Turner filed this application while her social
12 security income (SSI) benefits were suspended for excess resources due to her purchase of a
13 racehorse for \$3,800.³

14 A jury trial ensued on Turner’s perjury charge in October 1996. The prosecution’s evidence
15 showed that Turner owned and operated a business entitled “Seducktions,” with two locations, from
16 which she had reported income totaling over \$40,000 in 1993 and \$47,000 in 1994. She eventually
17 sold the business for \$35,000 in 1996. However, on her AFDC application in 1995, Turner declared a
18 monthly income of just \$50 and claimed to have only worked two days out of the past five years.⁴
19 When testifying in her defense, Turner admitted to once owning “Seductions,” but she claimed to have
20

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22 ¹ Pen. Code, § 118 (perjury).

23 ² Turner Amended Application (“Amended App.”), dated September 3, 2020, at pp. 32-33. The
24 pagination refers to the continuous page numbers in this 57-page PDF file of this document.

25 ³ Attorney General Response Letter Exhibit (AGRL Ex.) 1 at pp. 4-5; Turner Points and Authority in
26 Reply (Reply), dated January 27, 2023, at p. 2.

27 ⁴ *Turner v. Hickey, et al.*, U.S. District Court (E.Cal.) case number 2:99-cv-01537, Findings and
28 Recommendations (F&R) at pp. 3-8, filed December 5, 2001, adopted in full February 4, 2002; decision
available online via Pacer at <https://pacer.uscourts.gov/>; see also Cal. Code of Regs., tit. 2, § 617.8
(official notice); Pen. Code, § 1485.5, subd. (c) (rendering court findings during habeas proceeding
binding upon CalVCB).

1 sold it to her daughter, and she denied working there or receiving any income when she applied for
2 AFDC benefits.⁵

3 On October 18, 1996, the jury found Turner guilty as charged of perjury. The jury necessarily
4 determined, as an element of perjury, that Turner's false statements on the AFDC application were
5 "material." In this context, "material" means that "it is probable that the information would influence the
6 outcome of the proceedings, but it does not need to actually have an influence on the proceedings."⁶
7 Significantly, materiality is determined at the time the false statement is rendered, regardless of
8 whether the false statement, in hindsight, actually did affect the proceeding.⁷

9 Turner was sentenced on February 14, 1997, to three years imprisonment. Throughout these
10 proceedings, Turner remained released on bail, including pending appeal, with no award of
11 presentence custody credits.⁸

12 On January 28, 1998, the Third District of the California Court of Appeal affirmed Turner's
13 conviction in an unpublished decision. The California Supreme Court denied review on March 5, 1998.
14 The remittitur issued on April 21, 1998, rendering the appellate court decision final.⁹

15 Turner commenced serving her term of imprisonment on April 29, 1998, and was released on
16 November 27, 1999, amounting to 578 days confinement.¹⁰ Turner sought presentence custody
17 credits totaling 12 days, perhaps related to her detention for failure to appear in court or an unrelated
18 charge of driving on a suspended license. However, her motion was denied on November 1, 1999,
19 shortly before her release.¹¹

21 ⁵ F&R at pp. 8-10.

22 ⁶ CALCRIM No. 2640 (jury instruction defining perjury elements).

23 ⁷ Pen. Code, § 123 ("It is no defense to a prosecution for perjury that ... the false statement ... did not,
24 in fact, affect the proceeding in or for which it was made"); see also *Chein v. Shumsky* (9th Cir. 2004)
25 373 F.3d 978, 984 ("under California law, materiality is evaluated from an ex ante, not an ex post
26 perspective").

27 ⁸ Turner Amended App. at pp. 47, 57.

28 ⁹ *People v. Jeannette Marie Turner*, Third District Court of Appeal case number C025922, docket
available online at <https://appellatecases.courtinfo.ca.gov/search.cfm?dist=3>.

¹⁰ Turner Reply at p. 7.

¹¹ Turner Amended App. at pp. 7, 39-40, 44, 47.

1 **B. Social Security Proceedings**

2 Turner, who was born in 1950, commenced receiving SSI benefits as a disabled person in
3 1973. As a result of her status as an SSI recipient, she also received AFDC benefits for her minor
4 children. But in 1994, Turner’s SSI benefits were suspended by the Social Security Administration
5 (SSA) due to excess resources. Specifically, Turner paid \$3,800 for a racehorse, but to be eligible for
6 SSI benefits, the recipient’s resources must not exceed \$2,000. As a result of the SSI suspension,
7 Turner’s AFDC benefits also ceased.

8 Turner appealed the SSI suspension. At a hearing, Turner and her friend both testified that the
9 horse was in poor health and could barely walk. In a written decision issued June 13, 1996, the
10 administrative law judge (ALJ) relied upon this testimony to value the horse at only \$100, despite the
11 purchase price of \$3,800. Based upon this valuation, the ALJ concluded that Turner’s resources did
12 not exceed the statutory limit for SSI eligibility. The ALJ acknowledged that Turner “operated an adult
13 novelty gift shop from 1985 to 1996,” but “this decision specifically focused on the claimant’s resources
14 rather than her business income.”¹²

15 Turner’s SSI benefits were reinstated, along with her AFDC benefits, in August 1996, shortly
16 before her perjury conviction in October 1996. However, the SSA denied Turner’s request for
17 retroactive AFDC benefits during her suspension between 1994 and 1996. Turner pursued a writ of
18 mandate of the SSA’s administrative decision, which was eventually granted by the Sacramento
19 County Superior Court on March 19, 1999.¹³ Citing “the unique facts of this case,” the superior court
20 found that Turner should have been “considered” to be a recipient of SSI throughout the duration of
21 her suspension, as it ultimately ended with a successful appeal. Based upon this designated status as
22 a SSI recipient, the superior court found that the SSA had erred when it refused to apply 42 U.S.C. §
23 602(a)(24) to Turner’s administrative claim for retroactive AFDC benefits. Under § 602(a)(24), an

24 _____
25 ¹² Turner Reply at p. 2; Reply Ex. 2 at pp. 14-17 (SSA Decision in the case of Jeannette Turner, dated
26 June 13, 1996). The pagination refers to the continues pages of this 57-page PDF file, including
27 counsel’s authenticating declaration (at pp. 1-2) and exhibits 1 through 10 (pp. 3-57).

28 ¹³ Turner’s Meet and Confer Letter with Exhibits (M&C Letter) at p. 5, dated November 18, 2020 (writ
of mandate issued on March 19, 1999, in *Turner v. Anderson*, Sacramento County Superior Court
case number 98SC00362).

1 individual's "income and resources shall not be counted" when calculating AFDC benefits for any
2 period during which the individual "is receiving SSI benefits...." The superior court remanded the
3 matter back to the SSA, which subsequently awarded full retroactive AFDC benefits to Turner by
4 applying § 602(a)(24).¹⁴ Notably, the superior court's decision solely focused on Turner's entitlement
5 to retroactive AFDC benefits in the administrative proceeding; it did not address the validity of Turner's
6 criminal conviction for perjury based upon the false statements in her AFDC application.

7 **C. Federal Habeas Proceeding**

8 On April 9, 1999, Turner filed a federal habeas petition challenging the sufficiency of evidence
9 to support her perjury conviction. Relying upon the superior court's administrative decision, Turner
10 argued the requisite element of materiality for her criminal conviction was lacking. She reasoned that,
11 as a matter of law, her income and resources were irrelevant in her application for AFDC benefits due
12 to her designated status as a SSI recipient during her suspension between 1994 and 1996. The
13 federal court disagreed.¹⁵

14 As the magistrate judge explained, substantial evidence supported the jury's finding that Turner
15 had falsely answered questions in the AFDC application about her income and work history. As the
16 judge remarked, "The jury heard plenty of evidence demonstrating that petitioner worked at and
17 earned money, if not owned, the Seducktions businesses."¹⁶ The judge further concluded that
18 Turner's false statements were material for purposes of perjury because, at the time those false
19 statements were made, Turner was not, in fact, receiving SSI benefits.¹⁷ Although Turner's SSI
20 benefits were subsequently reinstated retroactively, which rendered her income and work history
21 irrelevant to AFDC eligibility under 42 U.S.C. § 602(a)(24), the judge observed that "these
22 circumstances go to a claim of legal innocence rather than sufficiency of the evidence."¹⁸ The
23 magistrate judge declined to resolve this claim, as it had not been exhausted in state court or raised in
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25 ¹⁴ M&C Letter at pp. 5-6.

26 ¹⁵ F&R at pp. 1-18.

27 ¹⁶ F&R at p. 15.

28 ¹⁷ F&R at pp. 13, 15.

¹⁸ F&R at pp. 15-16.

1 the petition. Nevertheless, the magistrate judge was “puzzled” by the ALJ’s decision to reinstate
2 Turner’s SSI benefits, without reconsidering her eligibility, given her income and work history.¹⁹
3 Accordingly, the magistrate judge recommended denying Turner’s habeas petition, which was adopted
4 by the district court on February 4, 2002.²⁰

5 **D. First CalVCB Proceeding for Consolidated 2001 Claim**

6 While still imprisoned for perjury, Turner submitted Government Claim numbers 343484 and
7 343837 to CalVCB’s predecessor, the California Victim Compensation and Government Claims Board
8 (VCGCB), on March 9, 1999, and March 17, 1999, respectively.²¹ Both government claims requested
9 compensation as an erroneously convicted person under Penal Code section 4900 based upon
10 Turner’s 1996 perjury conviction. Following Turner’s release from prison on or about November 27,
11 1999, she submitted a third Government Claim number 513787 on March 5, 2001, which also
12 requested compensation under Penal Code section 4900. All three government claims were
13 consolidated as a single claim under section 4900, and pursuant to Penal Code section 4903, an
14 administrative hearing ensued.²²

15 At the hearing on August 12, 2002, Turner appeared and insisted she was innocent of perjury.
16 She asserted that none of her statements on the AFDC application were untrue or, alternatively, any
17 false statements related to her income and work history were immaterial. The Attorney General, who
18 was represented at that time by Deputy Attorney General Michael Farrell, opposed the claim. The
19 Attorney General further asserted, under then-existing provisions of former Penal Code section 4903,
20 that compensation was barred by Turner’s failure to prove that she did not, “by any act or omission on
21 [her] part, either intentionally or negligently, contribute to the bringing about of [her] arrest or

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23 ¹⁹ F&R at pp. 10-16.

24 ²⁰ Docket for *Turner v. Hickey, et al.*, U.S. District Court (E.Cal.) case number 2:99-cv-01537, available
25 online via Pacer at <https://pacer.uscourts.gov/>.

26 ²¹ Prior to 2016, VCGCB processed government claims, which are required by Government Code
27 section 945.4 before a litigant may file suit for money or damages against a public entity. In 2016,
28 responsibility for processing these claims was transferred to the Department of General Services, and
VCGCB was renamed as CalVCB. A government claim is not required if the claimant solely requests
relief under Penal Code section 4900.

²² AGRL Ex. 3 at p. 11 (Proposed Decision dated November 10, 2002).

1 conviction....”²³ The hearing officer recommended Turner’s claim be denied because, given her still
2 valid conviction for perjury, she “cannot meet her burden of proof that she did not commit the offense
3 for which she was convicted.”²⁴ The hearing officer further recommended that, even assuming
4 Turner’s false statements were not material as a matter of law, she failed to satisfy her burden of proof
5 to show that those false statements did not contribute to her conviction. The hearing officer therefore
6 recommended Turner’s request for compensation under Penal Code section 4900 be denied.

7 The Board considered Turner’s consolidated 2001 claim under Penal Code section 4900 on
8 November 22, 2002. Turner appeared. The Board remanded the matter back to the hearing officer
9 with instructions to consider claimant’s written argument and any additional evidence she may
10 submit.²⁵ Turner submitted additional evidence on December 20, 2002, and January 3, 2003, which
11 was reviewed and considered by the hearing officer but did not change the proposed decision.²⁶

12 The Board considered Turner’s consolidated 2001 claim for a second time on February 28,
13 2003. Turner appeared, again. After review and discussion of the proposed decision, the Board
14 deferred a final decision at Turner’s request.²⁷

15 Almost two years later on December 12, 2005, the hearing officer requested Turner provide
16 any additional information relevant to her consolidated 2001 claim. After being advised that Turner’s
17 then-counsel intended to petition for a writ of corum nobis to overturn her perjury conviction, the
18 hearing officer agreed to leave the administrative record open until January 31, 2006. Additional
19 information was subsequently received, though none of it was new or related to the petition for writ of
20 corum nobis. Accordingly, the hearing officer issued an Addendum to the Proposed Decision, dated

21 _____
22 ²³ AGRL Ex. 3 at p. 12; former Pen. Code, § 4903, as added by Stats. 1941, c. 106, p. 1130, § 15
(West 2009).

23 ²⁴ AGRL Ex. 3 at pp. 13.

24 ²⁵ AGRL Ex. 3 at p. 9 (Addendum to Proposed Decision); see also Board Meeting Minutes for
25 November 22, 2002, at p. 2, attached to CalVCB email to the parties entitled “*Prior Proceeding Records*
– *Turner PC 4900 Claim No. 20-ECO-14*,” sent January 4, 2023.

26 ²⁶ AGRL Ex. 3 at p. 9.

27 ²⁷ AGRL Ex. 3 at p. 9; see also Board Meeting Minutes for February 28, 2003, at p. 9, attached to
28 CalVCB email to the parties entitled “*Prior Proceeding Records – Turner PC 4900 Claim No. 20-ECO-*
14,” sent January 4, 2023.

1 March 22, 2006, which recommended that Turner’s consolidated 2001 claim under Penal Code section
2 4900 be denied for all of the reasons detailed in the original Proposed Decision.²⁸

3 For a third time, the Board considered Turner’s consolidated 2001 claim on August 31, 2006.
4 This time, the Board voted to adopt the proposed decision and deny Turner’s claim as an erroneously
5 convicted person under Penal Code section 4900.²⁹ Turner received notice of the Board’s final
6 decision to deny her consolidated 2001 claim on September 11, 2006.³⁰ Thereafter, Turner did not
7 challenge the Board’s decision by filing a petition for writ of mandate. Accordingly, the Board’s 2006
8 decision denying Turner’s consolidated 2001 claim was, and remains, final.³¹

9 **E. California Department of Social Services Proceeding**

10 Nine years later on April 15, 2015, Turner filed a claim with the California Department of Social
11 Services (CDSS) seeking to vacate her perjury conviction on the basis that the statements in her
12 AFDC application were, as a matter of law, immaterial as a result of her retroactive designation as an
13 ongoing SSI recipient throughout her suspension. In a CDSS decision issued July 3, 2015, the ALJ
14 denied Turner’s request for lack of jurisdiction but nevertheless opined that there was “ample evidence
15 of the county’s error which was the basis for the perjury conviction she seeks to overturn.”³² However,
16 in reaching this opinion, the ALJ failed to consider that, in the criminal context, the test for materiality is
17 determined “not on whether, as a historical fact, the false statement probably did influence the
18 outcome of the proceedings, but instead, on whether the false statement, at the time it was made, had
19 the tendency to probably influence the outcome of the proceedings.”³³

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23 ²⁸ AGRL Ex. 3 at pp. 9-10.

24 ²⁹ Board Meeting Minutes for August 31, 2006, at p. 3, attached to CalVCB email to the parties entitled
25 “*Prior Proceeding Records – Turner PC 4900 Claim No. 20-ECO-14*,” sent January 4, 2023.

26 ³⁰ Reply Ex. at p. 2 (authenticating Decl. of Phillip Cooke); Reply Ex. 4 at p. 22.

27 ³¹ Cal. Code of Regs., tit. 2, § 619.2, subd. (e) (“The decision of the board is effective upon its vote”).

28 ³² Turner Application (App.), received June 22, 2020, at pp. 12-14. The pagination refers to the
continuous pages of this 30-page PDF file.

³³ *Chein v. Shumsky*, *supra*, 373 F.3d at 984.

1 **F. Motion to Vacate**

2 Several years later on February 13, 2018, Turner filed a motion in the Tehama County Superior
3 Court seeking to vacate her perjury conviction on the basis of newly enacted Penal Code section
4 1473.7. Subdivision (a)(2) of this section specifically provides that a conviction may be vacated on the
5 basis of newly discovered evidence of actual innocence that requires vacation of the conviction or
6 sentence as a matter of law or in the interests of justice.³⁴ At a hearing on the motion, Turner’s
7 appointed counsel conceded the superior court lacked jurisdiction because the court had previously
8 denied a petition for writ of corum nobis for the same conviction. Based on this concession, the
9 superior court denied the motion. Turner appealed. In an unpublished decision issued November 19,
10 2019, the Third District Court of Appeal reversed, finding that jurisdiction was conferred by section
11 1473.7 regardless of any prior corum nobis petition. The appellate court remanded for the superior
12 court to hold a hearing on the merits of Turner’s claim under section 1473.7.³⁵

13 The hearing ensued on June 10, 2020. Neither the defense nor prosecution addressed the
14 appropriate standard for determining materiality as an element of perjury. As previously noted, a false
15 statement is material if it “might have been used to affect” the proceeding in which it was made, as
16 determined at that time, even if “it did not, in fact, affect [that] proceeding....”³⁶ Instead, Turner’s
17 counsel insisted that Turner’s statements were not material in hindsight, given her retroactive status as
18 a SSI recipient because, whether “she puts zero or \$2 million” on the AFDC application, “it would not
19 have counted....”³⁷ In opposition, the prosecutor solely argued that the misapplication of

20 _____
21 ³⁴ Pen. Code, § 1473.7, subd. (a)(2), added by Stats.2016, c. 739 (A.B.813), § 1, eff. Jan. 1, 2017.

22 ³⁵ AG Ex. 1 at pp. 1-2.

23 ³⁶ Pen. Code, § 123. For example, at the time Turner applied for AFDC benefits, she was not actually
24 receiving SSI benefits and, therefore, her failure to disclose her income and her work history could
25 probably have influenced the outcome of her application. The subsequent administrative determination
26 to retroactively reinstate her SSI benefits was not, at all, a foregone conclusion, as the SSA ALJ may
27 have readily denied her appeal for excess resources based upon a determination that the testimony
28 regarding the horse’s ill health was not credible. Indeed, had Turner accurately disclosed her income
and work history on the AFDC application, it may have triggered additional reconsideration of her SSI
benefits on that particular basis, as well as excess resources. (See F&R 16 n.2.)

³⁷ Turner Supplemented Application (Supp. App.), signed August 26, 2022, at p. 14. The pagination
refers to the continuous pages in this 26-page PDF file.

1 administrative law by the county when considering Turner’s income and work history on her AFDC
2 application did not amount to new “evidence” of innocence within the meaning of Penal Code section
3 1473.7, subdivision (a)(2).³⁸

4 While expressing uncertainty and some confusion, the Tehama County Superior Court
5 ultimately granted Turner’s motion to vacate her perjury conviction in case number NCR41247
6 pursuant to subdivision (a)(2) of Penal Code section 1473.7.³⁹ The court’s decision was memorialized
7 in a written order filed the same day.⁴⁰

8 Turner subsequently petitioned to seal her arrest and related records in case number
9 NCR41247 pursuant to Penal Code section 851.91, which applies whenever an arrest did not result in
10 a conviction and the underlying charge may not be refiled for any reason.⁴¹ The petition was granted
11 on September 9, 2020. Notably, the court did not find or otherwise declare that Turner was factually
12 innocent of perjury, which requires either the absence of probable cause to arrest (i.e., Pen. Code, §
13 851.865), or a preponderance of evidence that the claimant did not commit the offense (i.e., Pen.
14 Code, § 1485.55).⁴²

15 **G. Second CalVCB Proceeding**

16 On June 22, 2020, Turner submitted another claim to CalVCB for compensation under Penal
17 Code section 4900. As in the first proceeding, Turner’s 2020 claim was based upon her 1995 perjury
18 conviction in case number NCR41247. As support, Turner attached the recent order vacating her
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21 ³⁸ Turner Supp App. at pp. 15-22. Incidentally, the prosecutor’s argument was supported by published
22 case law. See *People v. Perez* (2020) 47 Cal.App.5th 994, 999, decided April 20, 2020 (holding that
23 new appellate opinion did not qualify as “newly discovered evidence” under Pen. Code, § 1473.7, as
24 the statute contemplates, instead, “testimony, writings and similar things described in Evidence Code
section 140”).

25 ³⁹ Turner Supp. App. at pp. 22-24 (judge noting that “I’m still not certain that I have the proper answer”
26 and “If that all sounds confusing, it is because I have a difficult confusion in my mind as to how the
supreme court will effectually decide...”); AGRL Ex. 4 at pp. 25-26.

27 ⁴⁰ AGRL Ex. 5 at p. 29 .

28 ⁴¹ Turner Reply Ex. 7 at p. 48; Pen. Code, § 851.91, subd. (a)(1).

⁴² Pen. Code, §§ 851.8, 851.865, 1485.55.

1 perjury conviction pursuant to Penal Code section 1473.7, subdivision (a)(2).⁴³ Turner requested
2 compensation for three years imprisonment, plus eight days presentence, for a total of 1,103 days for
3 her now-vacated perjury conviction, amounting to \$154,420.

4 **1. Intervening Statutory and Regulatory Changes**

5 During the 14 years since the Board denied Turner’s consolidated 2001 claim in 2006, multiple
6 statutory changes governing Penal Code section 4900 claims had occurred. Under Penal Code
7 section 4901, the deadline to submit such a claim was extended, effective January 1, 2020, to “a
8 period of 10 years after judgment of acquittal, dismissal of charges, pardon granted, or release from
9 custody, whichever is later.”⁴⁴ Previously, a two-year deadline following acquittal, pardon, or custodial
10 release had applied.⁴⁵ Moreover, the burden under Penal Code section 4903 for claimants to show
11 that they did not contribute to their erroneous conviction, either negligently or intentionally, was
12 repealed in 2009 and 2013, respectively.⁴⁶ Instead, section 4903 currently bars compensation for
13 otherwise eligible claimants only “if the board finds, by a preponderance of the evidence that a
14 claimant pled guilty with the specific intent to protect another from prosecution for the underlying
15 conviction for which the claimant is seeking compensation.”⁴⁷ Also, Penal Code sections 851.865 and
16 1485.55 were added, which require automatic approval of a Penal Code section 4900 claim, within 30
17 days and without a hearing, for claimants who obtained a court finding of factual innocence.⁴⁸ Finally,
18 the rate of compensation under Penal Code section 4904 was increased from \$100 per day of
19 imprisonment to \$140 per day for confinement both pre- and post-conviction.⁴⁹

20 New regulations governing Penal Code section 4900 claims were also adopted. Effective
21 2010, section 642 of title 2 of the California Code of Regulations (CCR 642) authorized CalVCB to

22 ⁴³ Turner App. at p. 3.

23 ⁴⁴ Pen. Code, § 4901, as amended by Stats.2019, c. 473 (S.B.269), § 2, eff. Jan. 1, 2020.

24 ⁴⁵ Pen. Code, § 4901, as amended by Stats.2019, c. 473 (S.B.269), § 2, eff. Jan. 1, 2020.

25 ⁴⁶ Pen. Code, § 4903, as amended by Stats.2009, c. 432 (A.B.316), and by Stats.2013, c. 800
26 (S.B.618).

27 ⁴⁷ Pen. Code, § 4903, subd. (e).

28 ⁴⁸ Pen. Code, §§ 851.865, 1485.55, both added by Stats. 2013, c. 800 (S.B. 618).

⁴⁹ Pen. Code, § 4904, as amended by Stats.2015, c.422 (S.B. 635), eff. Jan. 1, 2016.

1 reject claims, without consideration by the Board, that “are untimely or are otherwise not in compliance
2 with Penal Code sections 4900 and 4901.”⁵⁰ Before issuing a final rejection, CCR 642 requires notice
3 to the claimant and an opportunity to present evidence that will overcome the rejection. This rejection
4 process is invoked in approximately half of all claims submitted to CalVCB where, as a matter of law,
5 the Board lacks authority (i.e., jurisdiction) to grant the requested relief under section 4900.

6 **2. Rejection of Turner’s 2020 Claim**

7 On July 31, 2020, at CalVCB’s invitation, Deputy Attorney General Barton Bowers submitted an
8 informal response on behalf of the Attorney General to Turner’s 2020 claim. The Attorney General
9 specifically rejected any statutory construction based upon the language of Penal Code sections 4900
10 et seq. that would limit claimants to a single claim per challenged conviction. The Attorney General
11 opined that “a claim meeting all the requirements of section 4900 et seq. is authorized even if a
12 previous claim has already been presented.”⁵¹ Nonetheless, the Attorney General urged the Board to
13 reject Turner’s 2020 claim for lack of jurisdiction on the basis of res judicata.⁵²

14 On August 20, 2020, the hearing officer notified Turner pursuant to CCR 642 that her 2020
15 claim appeared to be barred from consideration by the doctrine of res judicata and, therefore
16 jurisdiction was lacking to consider it. The hearing officer allowed Turner 30 days to submit proof to
17 cure the identified jurisdictional deficiency.⁵³

18 In response, Turner submitted an amended application on September 3, 2020, which attached
19 various documents related to her perjury conviction. Turner reduced her request for compensation to
20 \$90,720 for 648 days imprisonment, which still appeared to include arrests and detentions for other
21 offenses besides her perjury conviction.⁵⁴ However, Turner, acting pro se, did not address the issue of
22 res judicata.

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24 ⁵⁰ Former Cal. Code of Regs., tit. 2, § 642, operative Nov. 3, 2010 (Register 2010, No. 41), amended
25 Jan. 1, 2023 (Register 2022, No. 47).

26 ⁵¹ AG Informal Response Letter (IRL), dated July 31, 2020, at p. 2.

27 ⁵² AG IRL, dated July 31, 2020.

28 ⁵³ CalVCB 30-Day Letter, dated August 20, 2020 (citing former CCR 642).

⁵⁴ Turner Amended App. at pp. 1, 7, 44-46.

1 By letter dated September 25, 2020, the hearing officer issued a final decision denying Turner's
2 2020 claim on the basis of res judicata. As it explained, the submitted new materials failed to cure the
3 identified jurisdictional deficiency. Accordingly, under CCR 642, Turner's 2020 claim was rejected
4 without consideration by the Board.⁵⁵

5 On November 18, 2020, Turner's newly retained counsel Phillip Cooke requested
6 reconsideration by way of a meet-and-confer letter. The letter attached several exhibits, most of which
7 had previously been submitted.⁵⁶ The hearing officer responded by letter dated November 23, 2020,
8 reiterating that the rejection of Turner's 2020 claim was final and, if Turner disagreed, she may file a
9 petition for writ of mandate.

10 **H. Writ of Mandate against CalVCB**

11 On December 21, 2020, Turner's counsel filed a petition for writ of mandate in the Sacramento
12 County Superior Court challenging CalVCB's rejection of her 2020 claim under Penal Code section
13 4900. Deputy Attorney General Bowers appeared as counsel for CalVCB. In opposition to the
14 petition, CalVCB argued that res judicata barred Turner's 2020 claim, regardless of the various
15 statutory changes to the law governing Penal Code section 4900 claims. CalVCB maintained that
16 such a result was "necessary to the well-ordered functioning of the judicial process... regardless of the
17 sympathy [the plaintiff's] plight might arouse in an individual case."⁵⁷

18 On October 15, 2021, the superior court granted the writ, in part, without resolving the merits.
19 The superior court concluded that CalVCB had erred by treating res judicata as a basis to withhold
20 jurisdiction. According to the court, CalVCB should have exercised jurisdiction over Turner's claim and
21 only then required "the Attorney General to establish, if it wished, the res judicata effect of the denial of
22 the first claims" as an affirmative defense.⁵⁸ The court recognized CCR 642 but did not "read [it] to

24 ⁵⁵ CalVCB Disposition Letter, dated September 25, 2020.

25 ⁵⁶ Turner M&C Letter with Exhibits 1 through 3.

26 ⁵⁷ Respondent's Brief in Opposition to the Petition for Writ of Mandate, at p. 7 (quoting *Slater v.*
27 *Blackwood* (1975) 15 Cal.3d 791, 797) in *Turner v. CalVCB*, Sacramento County Superior Court case
number 34-2020-80003558, available online at <https://services.saccourt.ca.gov/PublicCaseAccess/>.

28 ⁵⁸ AG Ex. 2 at p. 6.

1 authorize the rejection of a claim based on a sua sponte determination about res judicata.”⁵⁹
2 Ultimately, the “court express[ed] no opinions about the merits of Turner’s 2020 claim for
3 compensation or the merits of any prospective res judicata defense.”⁶⁰

4 The court ordered Turner to prepare a proposed judgment and writ, which was not finalized
5 until nine months later. As set forth in the final judgment and writ, CalVCB was directed “to set aside
6 its rejection on jurisdictional grounds” of Turner’s 2020 claim for compensation under Penal Code
7 section 4900 and conduct “further proceedings consistent with applicable law....”⁶¹ Consequently,
8 Turner’s 2020 claim was remanded to CalVCB on July 20, 2022.

9 I. Additional Statutory and Regulatory Changes

10 By July 2022, the statutes governing Penal Code section 4900 claims had undergone
11 additional changes since Turner’s 2020 claim had been rejected. Specifically, Senate Bill (SB) 446,
12 effective January 1, 2022, added subdivision (b) to section 4900, which compels CalVCB to approve a
13 claim when the claimant’s conviction was vacated pursuant to Penal Code section 1473.7, subdivision
14 (a)(2), without conviction upon remand, and the Attorney General declines to object with clear and
15 convincing evidence of guilt.⁶² SB 446 also amended subdivision (a) of Penal Code section 1485.55 to
16 confirm that a court finding of factual innocence includes “any standard for factual innocence
17 applicable in those proceedings” that results in either a grant of habeas relief or vacated conviction
18 pursuant to Penal Code section 1473.6.⁶³ In addition, Assembly Bill (AB) 200, effective June 30, 2022,
19 revised the payment process for approved claims so that, in lieu of recommending the Legislature
20 appropriate compensation for granted claims, CalVCB instead approves payment for those claims “if
21 sufficient funds are available, upon appropriation by the Legislature.”⁶⁴

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23 ⁵⁹ AG Ex. 2 at p. 7 n.4.

24 ⁶⁰ AG Ex. 2 at p. 7.

25 ⁶¹ Final Judgment and Writ in *Turner v. CalVCB*, 34-2020-80003558, filed July 20, 2022, attached to
26 CalVCB email to parties, sent July 28, 2022.

27 ⁶² Pen. Code, § 4900, subd. (b), as added Stats.2021, c. 490 (S.B.446), § 3, eff. Jan. 1, 2022.

28 ⁶³ Pen. Code, § 1485.55, subd. (a), as amend. by Stats.2021, c. 490 (S.B.446), § 2, eff. Jan. 1, 2022.

⁶⁴ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

1 Also, proposed amendments to multiple regulations governing Penal Code section 4900 claims
2 were pending. One proposed amendment to CCR 642 expressly recognized that “Successive or
3 duplicative claims are not in compliance with Penal Code sections 4900 and 4901. The Board will
4 consider on the merits only a single claim by a claimant challenging the same underlying conviction.”⁶⁵
5 The proposed amendments were eventually filed and became operative January 1, 2023.

6 **J. Remanded Second CalVCB Proceeding**

7 Meanwhile, CalVCB assigned Turner’s remanded 2020 claim to Senior Attorney Laura
8 Simpton, as the previously assigned hearing officer was not available.⁶⁶ On July 28, 2022, the hearing
9 officer notified the parties that CalVCB had set aside its rejection of Turner’s 2020 claim in accordance
10 with the writ and requested an appearance from counsel for each party. Phillip Cooke confirmed his
11 appearance as counsel for Turner. Deputy Attorney General Heather Gimle appeared as counsel for
12 the Attorney General. The hearing officer requested Turner’s counsel submit any additional
13 documentation or argument in support of her 2020 claim within two weeks, to be followed by a
14 response from the Attorney General, which should address any procedural bar to Turner’s claim
15 including res judicata. The hearing officer specifically noted the proposed amendment to CCR 642
16 regarding successive and duplicative claims.

17 On September 14, 2022, Turner submitted supplemental documentation, along with a cover
18 letter urging approval of the 2020 claim. Turner revised the amount of her requested compensation
19 yet again, this time seeking \$82,200 for having allegedly spent a total of 580 days in prison as a result
20 of her perjury conviction.⁶⁷ Her sole support consisted of a largely illegible document entitled “Status
21 Summary,” which included “April 29, 1998,” as one of several listed dates.⁶⁸ Because the cover letter

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23 ⁶⁵ Cal. Code Regs., tit. 2, § 642, subdivision (a)(2), as initially proposed to the Office of Administrative
24 Law on April 1, 2022, modified June 2, 2022, modified again July 20, 2022, and filed November 23,
25 2023; operative Jan. 1, 2023 (Register 2022, No. 47); see also CalVCB website for September 2022
26 Meeting Materials at pp. 72-74, accessible online at [https://victims.ca.gov/uploads/2022/09/September-
2022-Board-Meeting-Materials.pdf](https://victims.ca.gov/uploads/2022/09/September-2022-Board-Meeting-Materials.pdf).

26 ⁶⁶ Cal. Code of Regs., tit. 2, § 619.5, subd. (e) (requiring remanded matters “be returned to the hearing
27 officer who prepared the proposed decision, if practicable”).

27 ⁶⁷ Turner Supp. App. at p. 3.

28 ⁶⁸ Turner Supp. App. at p. 8.

1 cited to exhibits that were not attached, the hearing officer requested Turner provide the exhibits within
2 one week, but no response was received.

3 On September 23, 2022, the hearing officer requested the Attorney General provide a
4 response to Turner's supplemented claim. The response letter and supporting exhibits were timely
5 submitted on November 22, 2022, following a single extension of time. In it, the Attorney General
6 reversed its position, entirely, and urged the Board to approve Turner's 2020 claim pursuant to
7 subdivision (b) of Penal Code section 4900. The Attorney General expressly argued, contrary to its
8 prior position before CalVCB and the superior court, that res judicata did not apply. The Attorney
9 General did not address any other potential procedural bars to the Board's consideration of Turner's
10 2020 claim. Also, the Attorney General failed to address or otherwise dispute the requested amounts
11 of compensation for Turner's 2020 claim.

12 On November 28, 2022, the hearing officer acknowledged the Attorney General's concession,
13 which was not binding upon CalVCB, and requested additional briefing from Turner on various
14 procedural grounds that potentially barred consideration of Turner's 2020 claim. At Turner's request,
15 the hearing officer also provided copies of any remaining records from Turner's first CalVCB
16 proceeding over 16 years earlier, most of which had been discarded in accordance with its seven-year
17 retention policy.⁶⁹

18 Following an extension of time, Turner timely submitted the reply on January 27, 2023. In it,
19 Turner insisted that she was entitled to compensation under the current statutory scheme for Penal
20 Code section 4900 claims and no procedural bars applied. Turner also increased the amount of
21 requested compensation up to \$82,600 for 590 days in custody, consisting of 578 days imprisonment
22 between April 29, 1998, and November 27, 1999, plus "12 days in county jail arising out of the same
23 legal issues."⁷⁰ No evidentiary support was cited or attached to support this request for a larger
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26 ⁶⁹ CalVCB email to the parties entitled "Prior Proceedings Records – Turner PC 4900 Claim No. 20-
27 ECO-14), sent January 4, 2023; see also Attachment of Email Exchange to Claimant's Prehearing
28 Brief, submitted March 24, 2023.

⁷⁰ Turner Reply at p. 7.

1 amount of compensation. Other portions of the reply cited various exhibits, none of which were
2 attached.

3 On February 6, 2023, the hearing officer requested Turner provide a copy of the exhibits that
4 were cited but not attached to the reply. Most were ultimately received on February 21, 2023. None
5 related to the number of days that Turner was incarcerated for her perjury conviction.

6 On February 21, 2023, the hearing officer inquired whether Turner wished to appear for a
7 hearing with a hearing officer, at which new evidence or legal arguments may be received. Turner
8 requested a hearing, which ensued on March 30, 2023. Counsel Phillip Cook appeared on Turner's
9 behalf, who did not appear. Deputy Attorney General Heather Gimle appeared on behalf of the
10 Attorney General. No new evidence or testimony was presented. Instead, Turner's counsel reiterated
11 the arguments raised in the Reply to the Attorney General's concession. The Attorney General
12 submitted the matter on the pleadings. The administrative record closed once the hearing
13 adjourned.⁷¹

14 III. Determination of Issues

15 Penal Code section 4900 allows a person, who has been erroneously convicted and
16 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
17 CalVCB.⁷² Typically, claimants bear the burden to prove by a preponderance that (1) the crime with
18 which they were convicted either did not occur or was not committed by them and (2) they suffered
19 injury as a result of their erroneous conviction.⁷³ If the claimant satisfies their burden for both
20 elements, then CalVCB shall approve payment for the purpose of indemnifying the claimant for the
21 injury if sufficient funds are available, upon appropriation by the Legislature.⁷⁴ Payment is calculated
22 at the rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.⁷⁵

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25 ⁷¹ PC 4900 Zoom Hearing, dated March 31, 2023, spanning 22:36 minutes, saved as MP4 video file.

26 ⁷² Pen. Code, § 4900, subd. (a).

27 ⁷³ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

28 ⁷⁴ Pen. Code, § 4904.

⁷⁵ Pen. Code, § 4904.

1 In limited circumstances, a different procedure may apply for claimants whose convictions have
2 been reversed. First, under Penal Code section 1485.55 or 851.865, if the claimant received a court
3 finding of factual innocence, then CalVCB must automatically approve the claim, within 30 days and
4 without a hearing, in an amount calculated pursuant to Penal Code section 4904 for the injury
5 sustained.⁷⁶ Second, under subdivision (b) of Penal Code section 4900, if the claimant's conviction
6 was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7,
7 subdivision (a)(2), the charges were dismissed on remand, and the Attorney General declines to object
8 with clear and convincing proof of guilt, then CalVCB must approve the claim within 60 days in an
9 amount to be calculated pursuant to Penal Code section 4904 for the injury sustained.⁷⁷ Unless one of
10 these narrow statutory exceptions applies, then the claimant bears the burden to prove innocence and
11 injury by a preponderance of the evidence under subdivision (a) of Penal Code section 4900.

12 **A. Approval under Subdivision (b) of Penal Code section 4900**

13 Despite its previous opposition, the Attorney General now asserts that Turner's 2020 claim
14 should be granted.⁷⁸ Absent some procedural bar, Turner's 2020 claim falls within subdivision (b) of
15 Penal Code section 4900. Specifically, Turner's 1995 conviction was vacated pursuant to Penal Code
16 section 1473.7, subdivision (a)(2); the charge was dismissed upon remand; and the Attorney General
17 has declined to object in this administrative proceeding. No finding is rendered as to the weight of
18 evidence offered in support of Turner's claim of innocence. Although Turner's seemingly false
19 statements on the AFDC application concerning her income and work history may have contributed to
20 her erroneous conviction, this is no longer a basis to deny relief under Penal Code section 4900.

21 If Turner's 2020 claim is approved, then her demonstrated injury amounts to 578 days
22 imprisonment between April 29, 1998, and November 27, 1999. These dates are based upon
23 counsel's undisputed representation, which is partially corroborated by the legible portions of the
24 "Status Summary" document submitted by claimant, as well as the likely duration of actual

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26 ⁷⁶ Pen. Code, §§ 851.865; 1485.55, subd. (a), 4902, subd. (a); see also Cal. Code of Regs., tit. 2,
§ 640, subd. (e)(1)-(2), eff. Jan. 1, 2023.

27 ⁷⁷ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

28 ⁷⁸ AGRL at pp. 1-2, 7.

1 imprisonment for a three-year sentence reduced by half for good conduct credits.⁷⁹ However, the
2 record fails to support a finding of injury for Turner’s inconsistent requests for additional compensation
3 for unspecified dates ranging from 2, 12, 70, or even 525 days.⁸⁰ Contrary to Turner’s position, the
4 Abstract of Judgment reflects zero days of presentence credits awarded for her perjury conviction.⁸¹
5 Moreover, the trial court denied Turner’s motion for any additional presentence credits.⁸²

6 Thus, unless otherwise barred, Turner is entitled to indemnification pursuant to Penal Code
7 section 4904 in the amount of \$80,920 for her demonstrated injury of 578 days imprisonment if
8 sufficient funds are available upon appropriation by the Legislature.

9 **B. Procedural Bars Not Applicable**

10 Multiple procedural bars may bar relief for a second claim as an erroneously convicted person.
11 For instance, the statutory language in Penal Code sections 4900 and 4901 authorizes claimants to
12 submit “a claim” to CalVCB, as opposed to multiple claims.⁸³ CCR 642, as amended effective January
13 1, 2023, confirms that successive or duplicative claims fail to comply with sections 4900 and 4901 and,
14 therefore, may be rejected by a hearing officer without consideration by the Board.⁸⁴ Res judicata and
15 collateral estoppel, which preclude relitigating a claim on any basis that was or could have been
16 raised, applies to unchallenged final agency decisions.⁸⁵ Finally, retroactive application of new laws to
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20 ⁷⁹ Reply at p. 7; Turner Supp. App. at p. 8 (“Status Summary”); see also Pen. Code, § 4019 (awarding
two days conduct credit for every four days served).

21 ⁸⁰ These figures were calculated by subtracting 578 days of demonstrated incarceration from the
22 requested compensation for a total of 1,103 days in the original 2020 claim (i.e., 525 days difference),
648 days in the amended claim (i.e., 70 days difference), 580 days in the supplemented claim (i.e., 2
23 days difference), and 590 days in the reply (i.e., 12 days difference).

24 ⁸¹ Turner App. at p. 24; Supp. App. at p. 9.

25 ⁸² Turner Amend. App. at p. 47.

26 ⁸³ Pen. Code, §§ 4900, subd. (a), 4901, subds. (a) & (c).

27 ⁸⁴ Cal. Code of Regs., tit. 2, § 642, subd. (a)(2).

28 ⁸⁵ *Y.K.A. Industries, Inc. v. Redevelopment Agency of City of San Jose* (2009) 174 Cal.App.4th 339,
355 (recognizing “a form of res judicata, of giving collateral estoppel effect to the administrative
agency’s decision, because that decision has achieved finality due to the aggrieved party’s failure to
pursue the exclusive judicial remedy for reviewing administrative action”).

1 an agency’s final decision is generally prohibited.⁸⁶ However, in this remanded proceeding, the
2 Attorney General declines to invoke any of these procedural bars as an affirmative defense to Turner’s
3 2020 claim. As explained below, CalVCB likewise declines to apply any of these bars to Turner’s 2020
4 claim under these unique circumstances.

5 **1. Res Judicata**

6 The Attorney General expressly disavows any res judicata defense to Turner’s 2020 claim
7 because of intervening statutory changes since her first claim was denied in 2006.⁸⁷ While such an
8 exception to res judication was recognized in the criminal cases recently cited by the Attorney General,
9 other cases in the civil context have declined to do so.⁸⁸ CalVCB proceedings are not criminal, despite
10 the location of the operative statutes in the Penal Code, as no punishment is imposed whatsoever.⁸⁹
11 Instead, CalVCB proceedings are administrative in nature and solely result in “a civil determination”
12 regarding the claimant’s eligibility for compensation as an erroneously convicted person.⁹⁰ As such,
13 criminal case law is of limited value. The Attorney General further suggests, based upon the cited
14 criminal cases, that an exception for “realism and rationality” applies to res judicata. But this exception
15 appears limited to the criminal context, which excludes CalVCB proceedings.⁹¹

16 In any event, CalVCB declines to invoke res judicata as a procedural bar to Turner’s 2020
17 claim. The Attorney General’s position, though not binding, is a significant consideration. Another

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19 ⁸⁶ Pen. Code, § 3 (“No part of [the Penal Code] is retroactive, unless expressly so declared”); see also
20 Code of Civ. Proc., § 1094.5, subd. (b) (limiting mandamus relief for final decisions in which the agency
21 prejudicially abused its discretion under the law); Cal. Code Regs., tit. 2, §§ 618.1, subd. (f)(1) (“final
22 decision is made by the board”), 619.2, subd. (e) (“decision of the board is effective upon its vote”).

23 ⁸⁷ AGRL at pp. 5-6.

24 ⁸⁸ See *Slater v. Blackwood*, *supra*, 15 Cal.3d at p. 797 (“where the only “mistake” made in the earlier
25 proceedings was in assuming that the law would remain unchanged, there is no discretion to reject the
26 defense of res judicata”).

27 ⁸⁹ See *People v. Mosley* (2015) 60 Cal.4th 1044, 1066 (defining punishment in the criminal context as
28 involving “physical restraint, ... affirmative disability or restraint” for punitive purposes).

⁹⁰ See *Diola v. State Board of Control* (1982) 135 Cal.App.3d 580, 588 n.7 (“the board’s section 4900
determination is a civil determination of culpability”).

⁹¹ *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 343 (“the rule of collateral estoppel in criminal cases
is not to be applied with the hypertechnical and archaic approach of a nineteenth century pleading
book, but with realism and rationality”).

1 significant consideration is the superior court’s order, which faulted CalVCB for failing to “require[] the
2 Attorney General to establish, if it wished, the res judicata effect of denial of the first claim[].”⁹² A final
3 consideration is the new factual development by which Turner’s conviction was vacated and dismissed
4 since her first claim was denied. Given these unique circumstances, res judicata does not apply.

5 **2. Statutory language**

6 Though not addressed by the Attorney General, Turner challenges the remaining procedural
7 bars that may apply to successive or duplicative claims. Despite the language in Penal Code sections
8 4900 and 4901 and in CCR 642 as amended, Turner insists that compensation is mandated for her
9 second claim under Penal Code sections 851.865 and 1485.55.⁹³ Under those sections, CalVCB
10 “shall” approve a claim submitted under Penal Code section 4900 for payment calculated pursuant to
11 Penal Code section 4904 when a court has rendered a finding of factual innocence.

12 At the threshold, Turner lacks standing to raise such an assertion, as she was not found
13 innocent under Penal Code section 861.865 or 1485.55. A finding of factual innocence under section
14 851.865 requires the absence of even a reasonable cause to arrest.⁹⁴ A finding of factual innocence
15 under section 1485.55 requires a preponderance of the evidence that the crime charged was not
16 committed by the petitioner.⁹⁵ By comparison, Turner’s conviction was vacated pursuant to Penal
17 Code section 1473.7, subdivision (a)(2), due to new evidence of actual innocence that requires
18 vacation in the interests of justice, and her records were subsequently sealed pursuant to Penal Code
19 section 851.91 because her arrest did not result in a conviction.⁹⁶ Turner did not move for or receive a
20 finding of factual innocence as specifically provided by subdivision (b) of section 1485.55 for persons
21 whose convictions were vacated pursuant to subdivision (a)(2) of section 1473.7.⁹⁷ Nor may Turner

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23 ⁹² AG Ex. 2 at p. 6-7.

24 ⁹³ Turner Reply at pp. 8, 10.

25 ⁹⁴ Pen. Code, §§ 851.8, 851.86, 851.865.

26 ⁹⁵ Pen. Code, § 1485.55; see also *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 (confirming
same standard of proof for innocence finding under all subdivisions of § 1485.55).

27 ⁹⁶ Claimant asserts, incorrectly, that her “records have been sealed pursuant to Penal Code § 851.85
and § 851.86.” (Reply at p. 6.)

28 ⁹⁷ Pen. Code, § 1485.55, subd. (b).

1 qualify for a finding of factual innocence under the broad language in subdivision (a) of section
2 1485.55, as that subdivision is expressly limited to persons whose convictions were vacated pursuant
3 to Penal Code section 1473.6 or a writ of habeas corpus.⁹⁸ Accordingly, neither section 851.865 nor
4 1485.55 apply to Turner's 2020 claim.

5 Moreover, Penal Code sections 851.865 and 1485.55 merely supplement, rather than supplant,
6 the procedural requirements for presenting a claim to CalVCB. Both of these statutes cross-reference
7 Penal Code sections 4900 and 4904.⁹⁹ Indeed, Penal Code section 851.85 requires a court who
8 issues a finding of factual innocence within the meaning of section 851.865 to "inform the defendant of
9 the availability of indemnity for persons erroneously convicted pursuant to Chapter 5 (commencing
10 with Section 4900) ... and the time limitations for presenting those claims.¹⁰⁰ As further confirmation,
11 the timing and verification requirements imposed by Penal Code section 4901 apply to all claims under
12 section 4900, regardless if based upon a finding of factual innocence.¹⁰¹ As such, a properly
13 presented claim to CalVCB that complies with sections 4900 and 4901 is still required for claimants
14 with a court finding of factual innocence to obtain compensation as calculated by section 4904. This
15 same reasoning applies to claimants who fall within subdivision (b) of section 4900, as a properly
16 presented claim is still required to obtain compensation.¹⁰² None of the statutes cited by Turner
17 require CalVCB to approve a second claim for compensation after properly denying the first in a final
18 decision.

19 Nonetheless, as Turner notes,¹⁰³ CalVCB did not rely upon the statutory language as a basis to
20 reject Turner's 2020 claim. Turner further notes that, despite this statutory language, her 2001
21 consolidated claim consisted of three separate government claims for compensation all under Penal
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23
24 ⁹⁸ Pen. Code, § 1485.55, subd. (a).

25 ⁹⁹ Pen. Code, §§ 851.865, subd. (a), 1485.55.

26 ¹⁰⁰ Pen. Code, § 851.86.

27 ¹⁰¹ Pen. Code, § 4901, subd. (a).

28 ¹⁰² Pen. Code, §§ 4900, subd. (b).

¹⁰³ Reply at p. 8.

1 Code section 4900.¹⁰⁴ Under these unique circumstances, CalVCB declines to rely upon the statutory
2 language, alone, to bar consideration of Turner’s 2020 claim.

3 **3. CCR 642**

4 Turner suggests that the new language in CCR 642, which specifically bars the Board’s
5 consideration of a successive or duplicative claim, impermissibly conflicts with the statutory language
6 in Penal Code sections 851.865, 1485.55, and 4900.¹⁰⁵ But as explained above, none of these
7 statutes compel CalVCB to approve a second claim for compensation after properly denying the first in
8 a final decision. Moreover, Penal Code section 4906 expressly authorizes CalVCB to “make all
9 needful rules and regulations consistent with the law for the purpose of carrying into effect this
10 chapter.¹⁰⁶ Accordingly, CCR 642 constitutes a proper exercise of CalVCB’s rulemaking authority and
11 discretion in accordance with the statutory provisions governing Penal Code section 4900 claims.

12 Arguably, the new language in CCR 642 may be prospectively applied to reject Turner’s 2020
13 claim, as such claims do not implicate a vested right.¹⁰⁷ But in an abundance of caution, CalVCB
14 declines to do so where it would result in the denial of a claim for which approval would have otherwise
15 been required.¹⁰⁸

16 **4. Retroactivity**

17 Citing *In re Estrada* (1965) 63 3d. 740, which retroactively applied a new law to decrease the
18 punishment for a previously committed offense, Turner maintains that all recent changes to the laws
19

20 ¹⁰⁴ Reply at p. 8.

21 ¹⁰⁵ Reply at p. 10; Cal. Code Regs., tit. 2, § 642, subd. (a)(2), as amended operative Jan. 1, 2023
22 (Register 2022, No. 47).

23 ¹⁰⁶ Pen. Code, § 4906.

24 ¹⁰⁷ See 58 Cal.Jur.3d Statutes § 36 (West 2023) (“The legislature may change the rules of procedure,
25 and such changes may be made applicable to pending actions without regard to whether they accrued
26 before or after such changes provided that under the guise of a mere change of procedure, vested
27 rights are not destroyed or the obligation of contracts impaired”); see also *Tennison v. California Victim*
28 *Comp. & Gov’t. Claims Bd.* (2007) 152 Cal.App.4th 1164, 1182 (holding that “application for monetary
compensation pursuant to section 4900 is neither fundamental nor vested”).

¹⁰⁸ See *McHugh v. Protective Life Ins. Co.* (2021) 12 Cal.5th 213, 235 (explaining that the presumption
barring retroactive application of a new law applies where “the new law implicates fundamental fairness
concerns, including by “foist[ing] upon past conduct new and onerous legal consequences”).

1 governing Penal Code section 4900 claims should retroactively apply to her 2020 claim as well.¹⁰⁹
2 But as previously explained, proceedings under section 4900 are administrative, not criminal, and
3 merely result in a civil determination of the claimant's eligibility for compensation as an erroneously
4 convicted person.¹¹⁰ As such, any new laws that alter the basis for obtaining compensation under
5 Penal Code section 4900 may not be retroactively applied to reverse a final decision by the Board.¹¹¹

6 But here, Turner seeks to apply the current laws governing Penal Code section 4900 claims to
7 her pending 2020 claim; she does not challenge or otherwise attack the Board's 2006 decision to deny
8 her 2001 consolidated claim. While the end result may be the same, the distinction in procedural
9 posture is significant. Typically, CalVCB prospectively applies current law to pending claims under
10 section 4900, regardless of when the claim was submitted or the challenged conviction imposed.¹¹² As
11 no other procedural bar precludes consideration of her 2020 claim, the current laws may be
12 prospectively applied.

13 In sum, none of the potential procedural bars to Turner's 2020 claim apply under the unique
14 circumstances detailed above. These circumstances include the Attorney General's concession to
15 grant the claim, the court's order faulting CalVCB for failing to require the Attorney General to raise an
16 affirmative defense of res judicata before denying the claim, and the new fact of the recent reversal
17 and dismissal of Turner's underlying conviction. As no procedural bar applies, Turner's 2020 claim
18 falls within subdivision (b) of Penal Code section 4900, for which her demonstrated injury amounts to
19 \$80,920 days for having been imprisoned 578 days solely as a result of her erroneous conviction for
20 perjury.

23 ¹⁰⁹ Reply at pp. 9-10.

24 ¹¹⁰ Pen. Code, § 4904; *Diola, supra*, at 135 Cal.App.3d at p. 588 n.7.


25 ¹¹¹ Pen. Code, § 3; Code of Civ. Proc., § 1094.5, subd. (b); Cal. Code Regs., tit. 2, §§ 618.1, subd.
26 (f)(1) 619.2, subd. (e).

27 ¹¹² *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 288-290 (while recognizing a new law generally may
28 not be retroactively applied to change the legal consequences of past conduct, the new law may still be
prospectively applied if it merely relates to the procedure to be followed in the future, even if it draws
upon facts existing prior to its enactment).

1 **V. Conclusion**

2 Pursuant to subdivision (b) of Penal Code section 4900, in combination with the superior
3 court's writ and the Attorney General's concession, the undersigned hearing officer recommends that
4 CalVCB grant Turner's 2020 claim but approve payment only in the amount of \$80,920 if sufficient
5 funds are available, upon appropriation by the Legislature,¹¹³ as indemnification for the injury sustained
6 by her 578 days imprisonment solely as a result of her recently vacated perjury conviction. No
7 compensation is recommended for the remaining 12 days of Turner's claim due to the absence of any
8 demonstrated injury for those unspecified dates.

9
10 Date: April 14, 2023

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

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25 ¹¹³ Of the initial \$7 million appropriated by Senate Bill 154 (i.e., the Budget Act of 2022) for CalVCB's
26 payment of approved claims under Penal Code section 4900, no funds currently remain to pay
27 Turner's claim. Nonetheless, as Senate Bill 154 recognized, "Upon order of the Department of
28 Finance, [this] amount ... may be increased by an amount not in excess of any total unpaid claim
amounts pursuant to Sections 4900 and 4904 of the Penal Code." (S.B. 154, Ch. 43 at p. 851.)
Accordingly, any additional appropriations will be applied to outstanding claims, in the order approved,
absent a contrary directive from the Legislature or Department of Finance.

ITEM 9

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

8
9 In the Matter of:

10 **Patrick Willis**

11 Claim No. 22-ECO-38

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On December 12, 2022, Patrick Willis (Willis) submitted a claim for compensation as an
14 erroneously convicted person to the California Victim Compensation Board (CalVCB) pursuant to
15 Penal Code section 4900. The claim is based upon Willis' 2013 convictions for two counts of first-
16 degree murder with special circumstances,¹ which were vacated by a writ of habeas corpus in 2019
17 and then dismissed in 2021 after the jury was unable to reach a verdict upon retrial. Willis requests
18 compensation in the amount of \$441,840 for 3,156 days imprisonment. Willis is represented by
19 Lindsay Battles of McLane, Bednarski & Litt.

20 The Attorney General is represented by Deputy Attorney General Sharon Loughner. By letter
21 dated March 15, 2023, the Attorney General declined to object to Willis' claim. The administrative
22 record closed that same day, and the matter was assigned to CalVCB Senior Attorney Laura Simpton.
23 As required by subdivision (b) of Penal Code section 4900, CalVCB is mandated to approve payment
24 to Willis in the amount of \$441,840 if sufficient funds are available, upon appropriation by the
25 Legislature, as indemnification for the demonstrated injury sustained by his 3,156 days imprisonment
26 solely as a result of his vacated convictions.

27 _____
28 ¹ Pen. Code, §§ 187, subd. (a) (murder), 190.2, subd. (a) (forcible penetration, multiple murders).

1 **II. Factual and Procedural History**

2 The naked body of Cheryl W. (Cheryl) was discovered on the morning of January 29, 1992,
3 located by a creek near Hillside Avenue in Oakland.² She had been penetrated by two beer bottles,
4 both of which remained inserted inside her body. A noose was hung around her neck. Her face was
5 bloody, and her body covered in bruises. Cheryl ultimately died from strangulation at approximately
6 5:00 a.m. A neighbor heard a woman scream for several minutes at approximately 10:30 p.m. the
7 night before, and another neighbor heard screaming around 4:00 or 5:00 a.m. that morning. A
8 toxicology test revealed low amounts of alcohol, heroin, and codeine. Eleven years later in 2003,
9 sperm from inside Cheryl's mouth was matched to Willis' DNA. In addition, biological material from
10 under Cheryl's fingernails was matched to Willis' DNA in 2009. Sperm from someone other than Willis
11 was found inside Cheryl's vagina but in an insufficient quantity to extract a DNA profile.³ A low amount
12 of DNA was detected on the beer bottles, which may have been from Cheryl but not Willis.⁴

13 Two weeks after Cheryl's death, Marsha G. (Marsha) was discovered at 3:00 a.m. on February
14 11, 1992, in the same area near Hillside Avenue in Oakland. She was covered in blood and exposed
15 from the waist down, with her pants around her knees. Marsha had been stabbed 33 times, with
16 wounds to her head, neck, arms, and body. She died from blood loss, likely within minutes.
17 Paramedics tried unsuccessfully to resuscitate Marsha, as her body was still warm. Twine and a pool
18 of blood were located on another street nearby, possibly where the attack commenced. A toxicology
19 test revealed that Marsha had ingested cocaine within eight hours of her death. Nineteen years later
20 in 2011, sperm from inside Marsha's mouth was matched to Willis' DNA. Sperm from someone else

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23 _____
24 ² The victims' last names are omitted due to the nature of the crimes. This victim is referred to by the
25 same first name that appears in the appellate court's decision, although claimant uses a different name
26 for the victim in this proceeding. (Willis Application ("App.") Ex. 1 at p. 2; Willis Memorandum (Memo.)
at p. 4.)

27 ³ Willis App. Ex. 1 at pp. 2-3 (habeas decision); Ex. 9 at pp. 7, 10, 14-15; see also Pen. Code,
§1485.55, subd. (c) (binding CalVCB to court's factual findings during habeas proceeding.

28 ⁴ Willis Memo. at p. 6; Ex. 9 at p. 14.

1 was found inside Marsha's vagina but in an insufficient quantity for DNA testing. Skin cells from
2 someone else were also found on Marsha's pubic hair.⁵

3 Cheryl and Marsha were both young, African American women, who worked as prostitutes in
4 Oakland. Willis, who was 28 years old in 1992, lived two blocks from Hillside Avenue, near the
5 location where Cheryl and Marsha's bodies were found.⁶ As Willis told police in 2011, he sold
6 narcotics in 1992 and would exchange sexual favors for narcotics.⁷ Willis denied killing Cheryl or
7 Marsha. By the time of his arrest, when Willis was 47 years old, he worked as a driver for patient
8 transport.⁸

9 Within weeks of Cheryl and Marsha's deaths, two other female sex workers, T.P. and S.W.,
10 were killed by strangulation in Oakland.⁹ DNA evidence from both T.P. and S.W. was eventually
11 matched to Monte Crawford (Crawford), who confessed to both of their murders.¹⁰ Crawford pleaded
12 no contest and remains in prison serving a life sentence for the murders of T.P. and S.W. Crawford's
13 DNA did not match any evidence recovered from Cheryl or Marsha.¹¹ The same genetic marker,
14 which may be found in up to 40 percent of certain racial groups, was detected on a vaginal swab for
15 Cheryl and a rectal swab for T.P., even though both Crawford and Willis were excluded as the
16 potential source.¹²

17 Two days after Marsha's death on February 13, 1992, her friend and fellow prostitute Deborah
18 N. spoke to police, and she provided a recorded statement the following week.¹³ According to
19 Deborah, she last saw Marsha around 2:00 a.m. on February 11, 1992, about an hour before Marsha's
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21 ⁵ Willis App. Ex 1 at pp. 3-4 see also Exs. 8 at pp. 9-21, 19 at p. 1; Willis Memo at pp. 7-9.

22 ⁶ Willis App. Ex. 1 at pp. 13 n.5, 14.

23 ⁷ Willis Memo. at p. 9; Ex. 5 at p.3.

24 ⁸ Willis Memo. at p. 32.

25 ⁹ To avoid confusion and respect their privacy, these two victims are referred to solely by their initials.

26 ¹⁰ Willis Memo. at pp. 5, 9-10.

27 ¹¹ Willis Ex. 1 at p. 13 n.6; see also Willis Memo. at pp. 10-12; Exs. 8 at p. 9, 9 at p. 15.

28 ¹² Willis Ex. 1 at p. 13 n.6; Willis Memo. at p. 11.

¹³ Willis Memo. at p. 15; Ex. 12, 14. This witness's last name is omitted to preserve her privacy.

1 body was found. At that time, Marsha was riding in a car driven by Marke T., who had just dropped off
2 Deborah.¹⁴ Earlier that night, Deborah overheard Marke ask someone for money to purchase drugs to
3 exchange with Marsha for sex. When later questioned by police, Marke could not recall whether he
4 gave a ride to Marsha or Deborah, although he initially acknowledged that Deborah looked familiar and
5 thought he might have given her a ride a few weeks earlier.¹⁵ Nevertheless, Marke's DNA did not
6 match any evidence recovered from Marsha's body. Moreover, Marsha was excluded as the source of
7 blood located on a glove inside Marke's car. Blood was also detected on the passenger door and seat
8 cover of Marke's car, but it was never tested.¹⁶ Deborah passed away in 2008.¹⁷

9 **A. Trial Proceedings**

10 Following the DNA match to both Cheryl and Marsha, Willis was arrested on October 6, 2011,
11 and charged with their murders in Alameda County Superior Court case number 170279.¹⁸ A jury trial
12 ensued in 2012. Despite the passage of 20 years since the victims' death in 1992, trial counsel failed
13 to move to dismiss for undue charging delay or seek any other relief, such as admission of Deborah's
14 hearsay statement to mitigate the resulting prejudice. As a result, the jury did not hear Deborah's
15 interview describing her last sighting of Marsha in Marke's car. The jury also did not hear any
16 evidence that Marsha and Cheryl worked as prostitutes, which may have provided a benign
17 explanation for the presence of Willis' DNA inside both of their mouths at the time of their death.

18 Instead, the jury heard the prosecution's DNA expert testify about "sperm persistence theory."
19 Specifically, the expert opined that sperm can live for up to two weeks in the vaginal cavity of a living
20 person, but only about six hours in the oral cavity because saliva constantly rinses the sperm away.
21 The DNA expert further opined that, since normal ejaculate contains several millions of sperm, the
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23
24 ¹⁴ Marke's last name is omitted because he was never charged, much less convicted, in this case.
(Willis Ex. 1 at p. 8.)

25 ¹⁵ Willis Ex. 1 at p. 9.

26 ¹⁶ Willis Exs. 1 at p. 9; 8 at p. 5; cf. Exs. 8 at p. 12 (forensic report concluding small stain on seat was
27 not blood); 20 at p. 1 (photograph of car door with faint stains).

28 ¹⁷ Willis Ex. 1 at pp. 7-8.

¹⁸ Willis Memo. at p. 37; Exs. 1 at p. 11, 6(m) at p. 2.

1 presence of only a few sperm would suggest the ejaculate was not recent.¹⁹ The expert estimated that
2 Willis had ejaculated in Cheryl's mouth between 11:00 p.m. and 3:00 a.m., given the amount of sperm
3 present at the time of her death at approximately 5:00 a.m. The expert further estimated that Willis
4 had ejaculated in Marsha's mouth within six hours of her death (i.e., after 8:00 p.m.), given her
5 estimated time of death between 2:00 and 3:00 a.m.²⁰ These estimates assumed that Willis produced
6 an average amount of sperm and the entire ejaculate was deposited inside the victim's mouth.

7 Based upon the DNA evidence, the jury found Willis guilty of both counts of first-degree murder
8 on July 22, 2013. The jury also found special circumstances for sexual penetration by force and
9 multiple murders, as well as an enhancement for use of a deadly weapon. The jury did not find true
10 the enhancement for forced oral copulation as to either victim.²¹ On September 20, 2013, Willis was
11 sentenced to two, concurrent sentences of life in prison without parole (LWOP).²²

12 **B. Combined Appeal and Habeas Proceeding**

13 Willis appealed the judgment to the First District of the California Court of Appeal. While the
14 appeal was pending, he also filed a petition for a writ of habeas corpus, which alleged, inter alia,
15 ineffective assistance of counsel for failing to challenge the charging delay. At oral argument, the
16 Attorney General questioned the sufficiency of evidence to convict Willis but noted that no such legal
17 challenge had been raised.²³ In a consolidated decision filed April 29, 2019, the appellate court
18 granted habeas relief due to counsel's ineffectiveness and dismissed the direct appeal as moot. The
19 appellate court concluded that:

20 [Willis'] right to a fair trial required either that the charges against him be dismissed or
21 that the defense be permitted to introduce the police report containing the hearsay
22 evidence of what [Deborah] observed at 2:00 a.m. the night of [Marsha's] killing. Trial

23 ¹⁹ Willis Ex. 1 at p. 4.

24 ²⁰ Willis Ex. 1 at pp. 4, 9-10.

25 ²¹ Willis Ex. 1 at p. 5.

26 ²² Willis Ex. 1 at p. 6; Docket for *People v. Willis*, Court of Appeal, First Appellate District, case number
27 A139858, available online at <https://appellatecases.courtinfo.ca.gov/>. (Cal. Code Regs., tit. 2, § 617.8
(official notice).)

28 ²³ Willis Ex. 2 at p. 12.

1 counsel thus provided ineffectiveness in failing to file a motion challenging the pre-
2 charging delay.²⁴

3 As the appellate court explained, “there is a substantial likelihood” that Deborah’s testimony “would
4 have raised a reasonable doubt as to [Willis’] involvement in [Marsha’s] murder.”²⁵ And even though
5 Deborah’s testimony solely related to Marsha’s murder, “it is reasonably probable” the jury would have
6 also doubted Willis’ involvement in Cheryl’s murder, given the prosecution’s “premise” that the same
7 person killed both victims.²⁶ Consequently, the appellate court vacated both of Willis’ convictions for
8 first-degree murder with special circumstances. The appellate court added that, in the event of a retrial
9 upon remand, evidence of Deborah’s hearsay statements to police, as well as both victims’ work as
10 prostitutes, should be admitted into evidence for the jury’s consideration.²⁷

11 **C. Remanded Trial Proceeding**

12 While awaiting retrial, Willis was released on bond from custody on May 27, 2020.²⁸ By then,
13 he had been imprisoned for 3,156 days from his arrest on October 6, 2011, until his release on May
14 27, 2020.²⁹ During those nine years in prison, Willis earned his GED and worked as a porter.³⁰

15 A second trial ensued in 2021. In accordance with the appellate court’s directive, the second
16 jury heard Deborah’s statement of the last time she saw Marsha in Marke’s car, as well as evidence
17 that Marsha and Cynthia both worked as prostitutes. The jury also heard about the untested blood in
18 Marke’s car.³¹ Moreover, Willis testified that he was a drug dealer when the murders occurred, and he
19 often traded crack cocaine for oral sex with local prostitutes.³² A mistrial was declared on May 4,
20

21 ²⁴ Willis Ex. 1 at p. 13.

22 ²⁵ Willis Ex. 1 at p. 12.

23 ²⁶ Willis Ex. 1 at pp. 12-13.

24 ²⁷ Willis Ex. 1 at pp. 14-15.

25 ²⁸ Willis Memo. at p. 32.

26 ²⁹ Willis Memo. at pp. 1, 32.

27 ³⁰ Willis Memo. at p. 32.

28 ³¹ Willis Ex. 21(a) at pp. 7-9.

³² Willis Memo. at p. 30.

1 2021, after the jurors were split 11-to-1.³³ On the prosecution’s motion, the entire case was dismissed
2 on May 24, 2021.³⁴

3 **D. CalVCB Proceedings**

4 On December 12, 2022, Willis submitted a claim to CalVCB seeking compensation as an
5 erroneously convicted person under subdivision (b) of Penal Code section 4900. Specifically, Willis
6 requested \$441,840 for having been confined a total of 3,156 days as a result of his vacated
7 convictions in case number 170279.³⁵ On December 14, 2022, after confirming compliance with Penal
8 Code sections 4900 and 4901, CalVCB filed the claim and requested a response from the Attorney
9 General within 45 days as required by subdivision (d) of Penal Code section 4902.³⁶ Following a
10 single request for an extension of time, the Attorney General timely submitted a declination letter on
11 March 15, 2023. As the letter explained, “The Attorney General’s Office investigated the claim and,
12 within the meaning of Penal Code section 4902, subdivision (d), does not object to compensation.”³⁷
13 The administrative record closed later the same day.

14 **III. Determination of Issues**

15 Penal Code section 4900 allows a person, who has been erroneously convicted and
16 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
17 CalVCB.³⁸ Typically, claimants bear the burden to prove by a preponderance that (1) the crime with
18 which they were convicted either did not occur or was not committed by them and (2) they suffered
19 injury as a result of their erroneous conviction.³⁹ If the claimant satisfies their burden for both
20 elements, then CalVCB shall approve payment for the purpose of indemnifying the claimant for the
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23 ³³ Willis Ex. 3 at pp. 1, 8-9 (noting 11 to 1 split); Willis Memo. at p. 3 (alleging split in favor of acquittal).

24 ³⁴ Willis Ex. 4 at pp. 1-2.

25 ³⁵ Willis Memo. at pp. 32-33.

26 ³⁶ Cal. Code Regs., tit. 2, § 640, subd. (d).

27 ³⁷ Declination Letter, dated March 15, 2023, signed by Deputy Attorney General Sharon Loughner.

28 ³⁸ Pen. Code, § 4900, subd. (a).

³⁹ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

1 injury if sufficient funds are available, upon appropriation by the Legislature.⁴⁰ Payment is calculated
2 at the rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.⁴¹

3 Under subdivision (b) of Penal Code section 4900, CalVCB's approval is mandated for certain
4 claimants, even without a preponderance of evidence that the claimant did not commit the crime for
5 which they were convicted.⁴² Specifically, subdivision (b) compels approval of the claim for
6 compensation, without a hearing and within 60 days, when the following three elements are met. First,
7 the claimant's conviction must have been vacated either by a writ of habeas corpus or pursuant to
8 Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated
9 conviction must have been dismissed on remand, or the claimant must have been acquitted upon
10 retrial. Third, the Attorney General must decline to object to the application in this administrative
11 proceeding.⁴³ If all three of these elements are satisfied, and CalVCB finds that the claimant sustained
12 injury through their erroneous conviction, then CalVCB shall approve payment for the purpose of
13 indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the
14 Legislature.⁴⁴ CalVCB's approval of the claim is statutorily required, regardless of whether or not the
15 record proves the claimant is more likely innocent than guilty.

16 If the Attorney General objects, he must do so in writing, within 45 days from when the claimant
17 files the claim, and with clear and convincing evidence that the claimant is not entitled to
18 compensation. Only a single extension of time for 45 days is allowed for good cause. The Attorney
19 General bears the burden to prove, by clear and convincing evidence, that the claimant committed the
20 acts constituting the offense.⁴⁵ To meet that burden, the Attorney General may not rely solely on the
21 trial record for the vacated conviction to establish that the claimant is not entitled to compensation.⁴⁶ If

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23 ⁴⁰ Pen. Code, § 4904.

24 ⁴¹ Pen. Code, § 4904.

25 ⁴² Pen. Code, § 4900, subd. (b).

26 ⁴³ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

27 ⁴⁴ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

28 ⁴⁵ Pen. Code, § 4902, subd. (d).

⁴⁶ Pen. Code, § 4903, subd. (d); Cal. Code Regs., tit. 2, § 645, subd. (g).

1 the Attorney General fails to meet this burden following a hearing on the claim, then CalVCB shall
2 approve payment to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient
3 funds are available upon appropriation by the Legislature.⁴⁷

4 **A. Innocence**

5 Here, Willis' claim falls within the mandatory approval provision of subdivision (b) of Penal
6 Code section 4900, as all three of the required elements are met. First, Willis' first-degree, special-
7 circumstance, murder convictions in case number 170279 were vacated pursuant to a writ of habeas
8 corpus. Second, all charges against Willis in that case were dismissed upon remand following a retrial
9 that ended with a hung jury. Third, the Attorney General declined to object in this administrative
10 proceeding. Consequently, CalVCB is required by subdivision (b) to approve compensation for the
11 injury sustained by Willis if sufficient funds are available, upon appropriation by the Legislature.⁴⁸ No
12 finding is made as to the weight of evidence offered in support of Willis' claim regarding innocence.

13 **B. Injury**

14 By statute, the amount of compensation "shall be a sum equivalent to one hundred forty dollars
15 (\$140) per day of incarceration served, and shall include any time spent in custody, including a county
16 jail, that is considered to be part of the term of incarceration."⁴⁹ This compensation is "for the purpose
17 of indemnifying the claimant for the injury" sustained "through their erroneous conviction and
18 imprisonment..."⁵⁰ The requisite injury "may be established by showing that, but for the erroneous
19 conviction, the claimant would not have been in custody."⁵¹

20 Here, as requested by Willis without objection from the Attorney General, Willis' injury amounts
21 to \$441,840, representing \$140 per day of his 3,156 days imprisonment.⁵² This custodial calculation

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23 ⁴⁷ Pen. Code, §§ 4903, subd. (d), 4904.

24 ⁴⁸ Pen. Code, §§ 4900, subd. (b), 4904.

25 ⁴⁹ Pen. Code, § 4904.

26 ⁵⁰ Pen. Code, § 4904.

27 ⁵¹ Cal. Code of Regs., tit. 2, § 640, subd. (f).

28 ⁵² Willis Memo at p. 32-33 (requesting compensation in the amount of \$441,840 for 3,156 days);
Attorney General Declination (declining to object to Willis' claim seeking "compensation in the amount
of \$441,840 for 3,156 days of incarceration").

1 includes the date of Willis' arrest on October 6, 2011, until the date of his release on May 27, 2020.⁵³
2 But-for his erroneous convictions in case number 170279, Willis would have been free for all 3,156
3 days of his imprisonment.

4 **IV. Conclusion**

5 As mandated by subdivision (b) of Penal Code section 4900, the undersigned hearing officer
6 recommends that CalVCB grant Willis' claim and approve payment in the amount of \$441,840 if
7 sufficient funds are available,⁵⁴ upon appropriation by the Legislature, as indemnification for the injury
8 sustained by his 3,156 days of imprisonment solely as a result of his vacated convictions for first-
9 degree special circumstance murder.

10 Date: April 6, 2023



11 _____
12 Laura Simpton
13 Hearing Officer
14 California Victim Compensation Board
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22 _____
23 ⁵³ CalVCB accepts and relies upon Willis' unopposed custodial calculation of 3,156 days. (Willis
24 Memo. at pp. 1, 32; cf. Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3
25 Cal.App.4th 882, 886 (construing "days" for custody credit to include partial days)).

26 ⁵⁴ Of the initial \$7 million appropriated by Senate Bill 154 (i.e., the Budget Act of 2022) for CalVCB's
27 payment of approved claims under Penal Code section 4900, no funds currently remain. Nonetheless,
28 as Senate Bill 154 recognized, "Upon order of the Department of Finance, [this] amount ... may be
increased by an amount not in excess of any total unpaid claim amounts pursuant to Sections 4900
and 4904 of the Penal Code." (S.B. 154, Ch. 43 at p. 851.) Accordingly, any additional appropriations
will be applied to outstanding claims, in the order approved, absent a contrary directive from the
Legislature or Department of Finance.