

CALIFORNIA VICTIM COMPENSATION BOARD MEETING AGENDA

September 14, 2023 10:00 a.m. 400 R Street, Room 330 Sacramento, CA 95811

Additional Location:

Contra Costa District Attorney's Office 900 Ward Street Martinez, CA 94553

BOARD MEETING MATERIALS

Item 1.	Approval of Minutes Minutes of the July 20, 2023, Board Meeting DRAFT Minutes attached	Action Item
Item 2.	Approval of Minutes Minutes of the August 24, 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 Copy of Annual Report attached	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.	Request for Authority to Begin Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 640, et seq.) Copy attached	Action Item
Item 8.	Jesse Wagner (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item

ITEM 1



OPEN MEETING MINUTES JULY 20, 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, July 20, 2023, at 9:59 a.m. Also present was Member Evan Johnson, acting for, and in the absence of, Malia Cohen, Controller, and Member Diana Becton, District Attorney.

Executive Officer Lynda Gledhill, and Acting Chief Counsel Laura Simpton attended in person at 400 R Street, Sacramento, California. Board Liaison, Andrea Burrell, was also present and recorded the meeting.

Item 1. Approval of the Minutes of the May 18, 2023, Board Meeting

Member Johnson moved approval of the Minutes for the May 18, 2023, Board Meeting. The motion was seconded by Member Becton. 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.) No one offered any public comment.

Item 3. Executive Officer Statement

Executive Officer Gledhill updated the Board on a few items:

To start, Ms. Gledhill informed the Board that CalVCB has seen an increase in processing times. Over the past year, the Program has seen a steady increase in vacancies, recruiting and retaining qualified staff has been a major challenge. As a result, the number of days it takes to process an application or reimburse a bill has also increased.

Program management has different ways of managing workload, hiring strategies, and efforts to reduce workload and bring staff on board quicker; however, the result has been an overall increase in processing times. This information will be reflected in the annual report that will be presented to the Board in September.

We recognize that these hiring issues are not unique to CalVCB, but since our vacancies impact the timeline for payments to victims, we have prioritized a concentrated effort over the next several months to target faster hiring practices and retention of staff. We are still well

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within our 90-day statutory requirement, but it is something that we track closely and wanted to bring to the Board's attention.

Ms. Gledhill continued, stating the CalVCB team has been partnering with the Department of Technology (CDT) on several efforts to improve and modernize our technology systems. One such effort is with the Department of Technology's Technology Modernization Fund (TMF) team, which conducted a thorough analysis and is considering the feasibility implementing an accounting adjustment module to the Cares System, which is CalVCB's major claims processing system.

Despite being approved for \$1.65 million to support this modernization effort with additional analysis, it was determined that it would not be fiscally responsible to continue pursuing modernization efforts due to the existing limitations within the Cares System, which is quite a few years old and not based on modern technology.

CalVCB and CDT's Technology Modernization Team agreed to work together to explore options to replace the Cares System with a more modern, agile solution and to pursue a proof of concept through the TMF partnership. The CalVCB is currently exploring this option and continues to work closely with the CDT team. Once this is complete, CalVCB will seek funding approval from the TMF selection committee and will keep the Board informed of this important project.

Next, Ms. Gledhill shared a major accomplishment by the Board. The Administration Division and the Information Technology Division worked for more than a year on a CDT-delegated project developing a web-based system called the Victim Pass-Through System (VPT). This tracks and processes the payments made by offenders to victims or their designated payees.

The California Department of Corrections and Rehabilitation (CDCR) collects the payments from offenders across the state and passes it to CalVCB. The new VPT system that went live on July 10, 2023, enables the Board to provide accurate, secure, and efficient services to victims of crime. The VPT system has historical data as far back as February 2006, and 3.9 million records of payments collected from offenders totaling upwards of \$172 million.

Previously, these records were managed by a myriad of Excel worksheets and manual processes. The new VPT system was designed, developed, and tested all by CalVCB staff - the Restitution Recovery Unit, which manages this program, the Information Technology Division, the training team who helped develop all the training materials, and with great leadership from the executive team. This will make a substantial change not only for staff but for victims.

Finally, Ms. Gledhill reminded everyone that effective January 1, 2023, CalVCB has the authority to pay PC 4900 claims directly if sufficient funds are available as appropriated by the

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Legislature. With the change in how claims are paid, the legislature also requested that CalVCB submit an annual report to the Joint Legislative Budget Committee (JLBC) on approved claims that were paid in the prior fiscal year. The report is due on or before September 1 of each year. Staff is currently drafting that report and will provide it to the JLBC, and a copy will be provided to all the Board members.

Chairperson Ravel thanked Ms. Gledhill for the updates. Chair Ravel stated he understands about the recruitment and retention issues and acknowledged departments are experiencing similar issues across the state.

Item 4. Legislative Update

The Legislative Update was presented by Deputy Executive Officer Katie Cardenas.

Ms. Cardenas noted that the Legislature is in summer recess and will return on August 14 for the final weeks of the session.

Ms. Cardenas updated the Board on the status of several bills:

- AB 1187 by Assembly Member Quirk-Silva would authorize CalVCB to reimburse services provided by Child Life Specialists. This bill is awaiting its final vote on the Senate Floor.
- AB 997 by Assembly Member Gipson, which would require CalVCB to compensate mental health services for individuals with successful erroneous conviction claims, has been placed on the Suspense File in the Senate Appropriations Committee and will be considered in August.
- AB 1186 by Assembly Member Bonta, which would require CalVCB to distribute payment of juvenile restitution orders, will be heard in the Senate Appropriations Committee in August.
- SB 544 by Senator Laird, which would amend the Bagley-Keene Open Meeting Act to remove certain teleconference requirements, will be heard in the Assembly Appropriations Committee in August.
- AB 56 by Assembly Member Lackey, which would expand eligibility for compensation by CalVCB to include solely emotional injuries from certain felony violations, has been placed on the Senate Inactive File.

Chairperson Ravel thanked Ms. Cardenas for the updates.

Item 5. Contract Update

The Contract Update was presented by Deputy Executive Officer Shawn Ramirez.

Ms. Ramirez stated that the Contract Report included two contracts that require Board action.

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DRAFT

First, Ms. Ramirez requested the Board's approval of the contract with Civilian, Inc. in the amount of \$3 million. This contract will provide a comprehensive statewide public awareness campaign to increase awareness of Californians regarding CalVCB's programs and services.

Second, Ms. Ramirez requested the Board's approval of the contract with the State Controller's Office (SCO) in the amount of \$324,000 for a three-year term ending June 30, 2026. This is to provide ongoing and uninterrupted services for the Victim Pass Thru Program; a program that exchanges information with the SCO Payment Delivery System.

Chairperson Ravel thanked Ms. Ramirez.

Member Johnson questioned what metrics CalVCB had in place to make sure the outreach program with Civilian, Inc. is a success.

Ms. Gledhill responded that there are very clear metrics required in the contract to measure how many people are being reached and whether or not that successfully translates into knowledge of the program and applications. The language is very specific about CalVCB targeting certain areas of the state and communities that may not have knowledge of the program.

Member Johnson moved to approve the Executive Officer's execution of the contract with Civilian, Inc. in the amount of \$3 million. The motion was seconded by Member Becton. By a unanimous vote of the Board, the motion passed.

Member Ravel moved to approve the Executive Officer's execution of the contract with the State Controller's Office in the amount of \$324,000. The motion was seconded by Member Becton. The motion passed based on the votes of Member Becton and Chair Ravel; Member Johnson abstained from voting on this item.

Item 6. Proposal to Approve the Trauma Recovery Center Grant Award

The Proposal to Approve the Regional Trauma Recovery Center Grant Award was presented by Deputy Executive Officer Katie Cardenas.

Ms. Cardenas reminded the board that CalVCB is charged with administering the trauma recovery center grant process and as a part of the 2022-23 Budget Act, \$5 million was provided to establish a Regional Trauma Recovery Center (TRC) Pilot Program. with satellite offices in rural or underserved areas. The TRC satellite offices were required to be affiliated with existing TRCs.

CalVCB posted a Notice of Funds Available (NOFA) on September 14, 2022, for the regional TRC pilot program in both Northern and Central California. The pilot program for Central

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DRAFT

California was awarded to Amanacer Community Counseling Service to provide services in San Joaquin and Kern Counties. This grant was executed on June 1, 2023.

CalVCB received one application for Northern California and on November 17, 2022, the Board approved awarding \$2.5 million to the Alameda County District Attorney's Office to provide TRC services in Sacramento and Sonoma Counties. On May 1, 2023, the Alameda County District Attorney's Office officially notified CalVCB that they would not be accepting the previously awarded grant.

On May 5, 2023, CalVCB reposted the Northern California NOFA and received one application from the Solano Sexual Assault Nurse Examiner-Sexual Assault Response Team (SANE-SART). This organization currently operates the Solano Courage Center TRC. The application met the minimum qualifications and received a passing score.

The application described how SANE-SART will partner with the Monarch Justice Center in Napa and the Family Justice Center in Santa Rosa – neither of which currently has a TRC. The large geographic area and rural nature of these counties creates barriers to access services and heightens risk, especially for domestic violence victims. Both Napa and Sonoma Counties have a relatively large immigrant population and there are many challenges faced by migrant workers and their families in the region. The application also highlighted that Sonoma County has a high number of labor trafficking victims.

A recent needs assessment in Napa County revealed that mixed-status families, the Latino community, and the LGBTQ community are underserved and have limited access to mental health providers. Thus, the TRC cited a need for mental health providers. Specifically, there are only three providers per 100,000 people currently available in Napa, compared to California's overall rate of five providers per 100,000 people.

The TRC pilot award will allow SANE-SART to expand TRC services to Napa and Sonoma Counties by partnering with Aldea, a community social services and behavioral health agency with over 50 years of experience providing trauma-informed care in underserved communities. This program will also add a team of six mental health child and adult clinicians to provide essential trauma recovery services. Mental health services will be provided in-person and virtually.

Staff recommended awarding SANE-SART a grant for \$2.5 million to establish and run the satellite offices.

Chair Ravel thanked Ms. Cardenas, and stated he is happy that a qualified applicant will be serving a community that is currently underserved.

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Member Becton moved to adopt the Proposed Regional Trauma Recovery Center Grant Award. The motion was seconded by Member Johnson. By a unanimous vote of the Board, the motion passed.

Closed Session

The Board adjourned into Closed Session with the Chief Executive Officer and Acting Chief Counsel at 10:28 a.m. pursuant to Government Code section 11126, subdivision (e) to discuss pending litigation and pursuant to Government Code Section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1 through 104 of the Victim Compensation Program.

Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126, subdivision (c)(3) at 10:43 a.m.

Member Becton moved to approve items 1 through 104 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 July Board meeting. Member Johnson seconded the motion. The motion was approved by a unanimous vote of the Board and the meeting was adjourned at 10:44 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, September 14, 2023.

ITEM 2



OPEN MEETING MINUTES AUGUST 24, 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, August 24, 2023, at 10:02 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-31, Daniel Saldana

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 Saldana.

On July 24, 2023, Daniel Saldana filed an application as an erroneously convicted person with the California Victim Compensation Board. That application was based on his 1990 convictions for attempted murder and related charges, which were vacated and dismissed during state habeas proceedings in May of 2023. Also, during that same hearing the court granted a 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 \$1,705,340, which represents \$140 per day for each of the 12,181 days Mr. Saldana was wrongfully imprisoned.

Mr. Saldana has been represented throughout these proceedings by Michael Romano of the Three Strikes Project at Stanford Law School. As this claim involves a finding of factual innocence, no appearance was requested by the Office of the Attorney General; however, Deputy Attorney General Dina Petrushenko is present and also prepared to address the Board.

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

Michael Romano thanked the Board for processing the claim quickly.

Chair Ravel thanked Mr. Romano for appearing before the Board and for his comments and asked if Mr. Saldana wanted to address the Board.

Mr. Saldana just wanted to thank the Board.

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

Ms. Petrushenko, 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. 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 Saldana. 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 August Board meeting. Member Becton seconded the motion. The motion was adopted by a unanimous vote of the Board and the meeting was adjourned at 10:08 a.m.

Next Board Meeting

The next Board meeting is scheduled for Thursday, September 14, 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





ANNUAL REPORT 2022-2023







MISSION • VISION • VALUES

OUR MISSION

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

OUR VISION

CalVCB helps victims of crime restore their lives.

OUR VALUES

INTEGRITY | We are honest and ethical.

RESPECT | We treat everyone with courtesy and decency.

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

DEDICATION | We serve with devotion and professionalism.

COLLABORATION | We create an atmosphere of teamwork.

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

At CalVCB, we are committed to fostering a culture of Diversity, Equity, Inclusion, and Accessibility (DEIA) in every aspect of our operations. We recognize that our strength lies in the unique perspectives, backgrounds, and experiences of our team members, stakeholders, and partners. Our dedication to DEIA is a fundamental value that guides our decision-making and shapes our organizational identity.

STRATEGIC FRAMEWORK 2021-2024

CalVCB executive staff prioritizes assessing the strengths and weaknesses of the organization. In early 2023, CalVCB contracted with an external vendor to conduct an indepth staff opinion survey. The results allowed the executive team to refine and revise the 2021-24 strategic plan and better achieve the three overarching goals:

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

The organization will continue to use the Strategic Framework 2021-2024 as a roadmap for how to pursue its values and goals and fulfill our mission. "We take seriously our responsibility to assist violent crime victims with financial support and access to resources," said Executive Officer Lynda Gledhill. "Our employees don't just come to work – they come to make a difference. We will always look for ways to improve and better meet the needs of victims and their families."

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Message from the Executive Officer

CalVCB is united to serve victims of crime by helping them pay for the expenses necessary to restore their lives. We help victims pay for medical and mental health care, income loss, funeral and burial expenses, home security, and more.

In Fiscal Year 2022-23, CalVCB took significant strides to better assist victims, their families, service providers, victim advocates, and stakeholders as presented in this report.

In January, California was the site of back-to-back mass shootings in Monterey Park and Half Moon Bay. These tragedies amplified the need for financial assistance especially for people living paycheck to paycheck. Governor Gavin Newsom met with a victim in the hospital concerned about how he would pay for his medical bills. The Governor, as well as several members of the Legislature, and various government agencies, later shared information about CalVCB's program and services online. This example illustrates how the compensation we provide can be life changing because it can give victims the resources they need to focus on recovery.

Working with the Governor, Legislature, and stakeholders CalVCB also:

- Successfully increased benefit limits for funeral and burial assistance, relocation expenses, and crime scene clean-up costs. The higher rates, which took effect on July 1, 2022, allowed CalVCB to provide \$6 million more in compensation than the previous year, even though application numbers remained the same.
- Used \$23 million from the Fiscal Year 2022-23 state budget to continue expanding Trauma Recovery Centers (TRCs) statewide. Of note, we awarded \$2.5 million in grants to two existing TRCs to establish satellite offices in San Joaquin, Kern, Sonoma, and Napa counties that will focus on treating underserved populations.
- Engaged in conversations with providers that resulted in CalVCB increasing its mental health provider rates and simplifying the billing process. These changes, which took effect in December 2022, help incentivize providers to treat victims of crime which expands access to care.
- Adopted new and amended regulations to clarify the process for compensating those who are erroneously
 convicted of a crime and significantly reduced the amount of time it takes to pay these claims.
- Worked diligently to identify living survivors who may qualify for California's Forced or Involuntary
 Sterilization Compensation Program and make them aware of how to apply for the reparations due to them.



Our
dedicated
staff are
committed to
continuously
improving
how we do
our work so
we can better
serve victims
of crime.

Message from the Executive Officer

CalVCB also dedicated significant efforts to improving communication and outreach. This year we partnered with the Office of Data and Innovation (ODI) on two important initiatives. First, we worked with ODI to uncover gaps and identify opportunities to better connect victims of crime with compensation and resources. This project, which was completed in April 2023, is being used to inform a \$3 million, three-year outreach campaign which will target underserved populations. CalVCB also partnered with ODI to improve the navigability and content on our public website. Because of this effort, the website is now easier to navigate and understand.

CalVCB leaders and outreach specialists also attended more in-person conferences and trainings as the state phased out COVID restrictions. I met with compensation program leaders from around the country, and spearheaded California's Victim Services State Coordination Council, to identify opportunities for CalVCB to grow and evolve.

During these opportunities to connect with advocates and stakeholders, we shared the importance of victim compensation as a lifelong benefit. Even if victims of crime do not need help right now, they may need it later, and CalVCB will be here to assist them by paying for crime related expenses.

Our dedicated staff are committed to continuously improving how we do our work so we can better serve victims of crime. I'm proud of what our organization has accomplished this year and know our efforts in the upcoming year will further improve the support we provide to victims across California.

Lynda Gledhill

Lynda Gledhill

Executive Officer

Board Members



Amy Tong | Secretary of the Government Operations Agency

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



Malia M. Cohen | California State Controller

State Controller Malia M. Cohen was elected in November 2022, following her service on the California State Board of Equalization (BOE), the nation's only elected tax commission responsible for administering California's \$100 billion property tax system. She was elected to the BOE in November 2018 and was Chair in 2019 and 2022.



Diana Becton | Contra Costa County District Attorney

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

Executive Staff



Lynda Gledhill | Executive Officer

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

Natalie Mack | Chief Deputy Executive Officer

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

Katie Cardenas | Deputy Executive Officer, External Affairs and Compliance Division

Katie Cardenas joined the California Victim Compensation Board in June 2023 as the Deputy Executive Officer of External Affairs. Prior to coming to CalVCB, Cardenas spent 10 years at the California State Auditor's Office, where she held positions in the administrative division, and as both senior auditor and auditor evaluator.

Kim Gauthier | Chief Counsel

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

Executive Staff

Shawn Ramirez | Deputy Executive Officer, Administration Division

Shawn Ramirez became the Deputy Executive Officer of the Administration Division in May 2023. Ramirez has most recently served as the Assistant Chief of Human Resources and the Departmental Labor Relations Officer for the Department of Motor Vehicles. She has held roles with the California Corrections Health Care Services, California Department of Human Resources, Franchise Tax Board, Department of Developmental Services, Department of Fish and Wildlife, Department of State Hospitals, and California Public Employees' Retirement System.

Abdul Shaik | Deputy Executive Officer, Information Technology Division

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

Vincent Walker | Deputy Executive Officer, Victim Compensation Program

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

Overview



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

Compensation program leaders and victim advocates worldwide look to CalVCB as a model for assisting victims of violent crime. Our department is seen as an innovator in the victims' rights mission, and we routinely field questions and serve on panels to help others.

In California, our leaders constantly advocate on behalf of victims and have successfully increased benefit limits for victims, as well as compensation rates for providers who do the critical work of assisting victims in their recovery.

In Fiscal Year 2022-23, we eliminated barriers to treatment for victims. In December 2022, CalVCB raised mental health provider rates and hourly reimbursement rates. In January 2023, CalVCB implemented Senate Bill 877 to compensate crime victims for mental health treatment obtained outside of California.

As a result of CalVCB's efforts, during this Fiscal Year, CalVCB received 39,003 applications, only 12 fewer than the year before, and paid \$46.7 million in compensation, an increase of more than \$6 million. In 2022-23, CalVCB's average application processing time was 55 days.

Those who benefit from CalVCB are victims of child abuse, domestic violence, human trafficking, assault, homicide, elder abuse, sexual assault, vehicular manslaughter, and stalking. We do not just serve victims of violent crime, but also those erroneously convicted and survivors of state-sponsored forced or involuntary sterilization.

CalVCB reimburses claimants for crime-related expenses when other sources, such as health insurance, auto insurance or workers' compensation, are not available or are exhausted. Reimbursed expenses can cover medical and mental health treatment, income loss, and funeral or burial expenses, among others.

A total of up to \$70,000 in expenses can be paid to an eligible claimant per crime. The compensation awarded to a claimant is accessible until all available funds are exhausted. Victims are encouraged to apply, even if they are not sure they will need the use of their benefits because once eligible for compensation, benefits are lifelong and can be used immediately or years later as circumstances dictate. We provide ongoing reimbursement for medical, mental health, relocation, income loss or other compensation types as needs arise related to the crime.

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

Overview

FISCAL YEAR 2022-23 STATISTICS

For the period July 1, 2022 – June 30, 2023

CalVCB APPLICATIO	N DATA
Applications Received	39,003
Application Processed	37,400
Allowed	30,165
Denied	5,704
Duplicate	1,531

PAYMENTS BY CATEGORY	
Crime Scene Cleanup	\$22,319
Dental	\$1,119,627
Funeral and Burial	\$17,201,866
Home Modification	\$51,648
Income Support Loss	\$9,212,772
Medical	\$5,296,349
Mental Health	\$9,541,182
Relocation	\$3,484,843
Residential Security	\$648,686
Vehicle Purchase or Modification	\$153,330
Total	\$46,732,622

PAYMENTS BY CRIME CATEGORY		
Arson	\$69,043	
Assault	\$14,234,568	
Child Abuse	\$2,960,740	
DWI/DUI	\$1,454,934	
Homicide	\$17,173,201	
Kidnapping	\$5,056,976	
Human Trafficking	\$4,727,691	
Other	\$329,285	
Not Covered or Unspecified	\$19,071	
Not Yet Determined	\$7,911	
Other	\$1,073,471	
Other Vehicular	\$1,598,667	
Robbery	\$1,246,110	
Sexual Assault	\$1,706,665	
Stalking	\$130,745	
Terrorism	\$520	
Total	\$46,732,622	

APPLICATIONS RECEIVED BY RACE/ETHNICITY	
American Indian/Alaska Native	330
Asian	1,170
Black/African American	5,649
Hispanic or Latino	15,611
Multiple Races	1,397
Native Hawaiian and Other Pacific Islander	174
Not Reported	7,343
Not Yet Determined	726
Some Other Race	336
White Non-Latino/Caucasian	6,306
Total	39,003

Serving Victims



CalVCB is united to serve victims of violent crime. We do this primarily by compensating victims for crime-related expenses. Our role in helping victims rebuild their lives extends beyond that core charge.

Notably, in Fiscal Year 2022-23, CalVCB increased mental health provider rates to better compensate those who assist victims and their families.

Additionally, CalVCB funds nearly two dozen Trauma Recovery Centers in the state, including in underserved communities with the addition of several new satellite offices in rural areas. CalVCB also provides short- and long-term assistance to victims of mass violence events, including the Monterey Park and Half Moon Bay shootings in January 2023. Lastly, CalVCB compensates those who were wrongly convicted of crimes, victims of human trafficking, and victims of state-sponsored forced sterilization.

Improving Mental Health Reimbursements

CalVCB made significant changes to its mental health guidelines and reimbursement rates in December 2022 following extensive research and feedback from providers. The Board voted to increase reimbursement rates by 30 percent to maintain a fair reimbursement rate consistent with industry standards and in an effort to boost the number of providers who are willing to treat

CalVCB claimants. The rate change came as a result of surveys conducted with Medicare, insurance companies, and other state compensation programs, as well as feedback from providers and advocates.

The Board also authorized changes to how mental health providers submit bills and treatment plans. The modifications eliminated some of the steps identified as hurdles to providers, allowing for a more streamlined process that doesn't disrupt a claimant's access to necessary treatment and support.

Expanding Trauma Recovery Centers

CalVCB currently funds 22 Trauma Recovery
Centers (TRC) statewide, as well as four satellite
offices created to assist rural and underserved
communities. The TRC program, which began in
2014, provides trauma-informed mental health
treatment and case management to underserved
crime victims who may not be eligible for victim
compensation. Research indicates that victims who
receive TRC services are happier, less likely to suffer
symptoms of Post-Traumatic Stress Disorder (PTSD),
more likely to cooperate with law enforcement to
solve crimes, and more likely to return to work.

Serving Victims

TRCs are funded by annual appropriations from the Restitution Fund and the Safe Neighborhood and Schools Fund. The Fiscal Year 2022-23 state budget also provided \$23 million in additional funding for TRCs. The money boosted grant awards for current TRCs and provides more funding for awards to be made over the next three years. It also allocates \$120,000 to each TRC to provide flexible emergency cash assistance to victims for costs, such as transportation, childcare, food, emergency shelter or other urgent expenses.

Beginning in 2023, CalVCB also funds satellite offices through a Regional Pilot Program, which was created in the 2022-23 state budget. The pilot program was open to existing CalVCB-funded TRCs in Northern and Central California to better help and assist crime victims in rural or underserved communities. CalVCB awarded \$2.5 million grants to two existing TRCs to establish satellite offices in San Joaquin, Kern, Sonoma, and Napa counties.

Compensating Those Erroneously Convicted of a Crime

Under California law, a person erroneously convicted of a felony and incarcerated in a California state prison may file a claim with CalVCB under Penal Code section 4900. To prevail, claimants typically must prove by a preponderance of evidence that they did not commit the offense for which they were convicted and imprisoned. But in limited circumstances where the claimant's conviction has been reversed under specified conditions, CalVCB must approve the claim unless the Attorney General timely objects with clear and convincing proof of guilt.

During Fiscal Year 2022-23, CalVCB received 40 claims. During that same time, the Board approved nine claims totaling \$7.7 million.

Compensation for approved claims is calculated at the statutory rate of \$140 per day of incarceration served solely as a result of the erroneous conviction. Effective June 30, 2022, a new process was implemented by Assembly Bill 160 to enable CalVCB's direct payment of approved claims from a designated fund. Previously, an approved claim merely resulted in a recommendation to the Legislature to appropriate funds for payment, a process that often spanned several months. As a result of this new process, CalVCB issued payment to all nine claimants within about 30 days following the Board's approval.

Overseeing Compensation for Victims of State-Sponsored Forced Sterilization

California's Forced or Involuntary Sterilization Compensation Program began in Fiscal Year 2021-22.

CalVCB oversees the reparations program, which compensates victims of state-sponsored forced sterilization that occurred at state-run hospitals, homes, and institutions until 1979, as well as inmates sterilized at California Department of Corrections and Rehabilitation facilities after 1979. Through June 30, 2023, CalVCB has approved about 100 applications and compensated victims \$1.45 million.

When the legislation establishing the program was introduced, experts estimated that approximately 600 survivors of state-sponsored sterilization were still living; however, ensuring they're aware of the program's existence has been challenging due to incomplete records kept by the facilities that performed the procedures and the amount of time that has passed since the procedures occurred.

In Fiscal Year 2022-23, CalVCB collaborated with the Department of State Hospitals and the Department

Serving Victims

of Developmental Services to identify contact information of potential claimants. As workers located records at Patton State Hospital and Napa Hospital, CalVCB sent outreach letters directly to potential victims.

To assist with educating other potential victims, CalVCB contracted with a marketing firm to develop an advertising and outreach campaign for the program. Radio, television, and digital ads in English and Spanish are being disseminated across the state as part of this effort.

CalVCB has also embarked on several campaigns to raise awareness. In October 2022, Public Affairs and Outreach created a social media toolkit for use by external stakeholders, advocates, and partner agencies. CalVCB has also sent posters and fact sheets to thousands of skilled nursing facilities, public libraries statewide, and all state prisons.

Responding to Mass Violence Events

California experienced back-to-back mass shootings in January 2023. In the immediate aftermath, CalVCB embarked on an awareness campaign to inform victims and their families of the compensation and resources available to them. Connecting with these victims was challenging due to language barriers and community fears of trusting government.

CalVCB worked with state and local partners to connect with trusted messengers in the community.

Our message was amplified by Governor Gavin

Newsom and several lawmakers, all of whom spoke to victims about the program, and posted links and resources to their social media accounts. Executive

Officer Lynda Gledhill also participated in several television and radio interviews about compensation available to victims and their families, thus raising awareness in those communities about CalVCB.

By the end of Fiscal Year 2022-23, CalVCB had received 71 applications from the Monterey Park shooting and 44 applications from the Half Moon Bay shooting to cover funeral/burial expenses, medical care, and income and support loss. Victims and their families have seven years from the date of the shootings to apply and are encouraged to do so because CalVCB provides lifelong benefits until all eligible funds are exhausted.

Due to this application timeline, CalVCB continues to accept applications from victims of several mass violence shootings, as noted below.

MASS SHOOTING	VICTIMS CAN APPLY UNTIL
Route 91 Harvest Festival in Las Vegas	October 1, 2024
Borderline Bar and Grill in Thousand Oaks	November 7, 2025
Gilroy Garlic Festival	July 18, 2026
Downtown Sacramento	April 3, 2029
Monterey Park	January 21, 2030
Half Moon Bay	January 23, 2030

Serving Communities and Partners



CalVCB partners with victims and victim advocates to improve services and remove barriers to accessing compensation. Our team partners with leaders at every level of government and with grassroots groups to expand our reach.

CalVCB's outreach in Fiscal Year 2022-23 moved from a digitally focused approach during the pandemic, to an in-person and online hybrid model. Our executive, outreach, and program teams attended national conferences, participated in county events, served as panelists and speakers at forums, and held monthly webinars to help others better understand how compensation and restitution work.

Our efforts all factor into one of our strategic goals to promote access to CalVCB services and improve the CalVCB experience.

Leading the Victim Services State Agency Coordination Council

The Victim Services State Agency Coordination Council, created in January 2022 and led by Executive Officer Lynda Gledhill, collaborated on several victim outreach efforts this year. The council meets throughout the year to work towards improving accessibility to victim services by centralizing information and reducing barriers.

Of note, CalVCB oversaw the creation of a <u>one-page</u> <u>flyer</u> detailing the resources and services available to victims statewide. More than a dozen departments and agencies are represented on the council

because they provide state-level crime victim services. These organizations now share the digital flyer to victims seeking assistance.

Additionally, CalVCB joined with several other departments on the council to develop a social media campaign during National Crime Victims' Rights Week in April. The social media posts allowed council members to share victim assistance messages to their unique audiences.

Reaching Underserved Populations

CalVCB partnered with California's Office of Data and Innovation (ODI) to uncover gaps and identify opportunities to better connect victims of crime with compensation and resources. The two organizations worked together to analyze crime statistics and application data, as well as geographic and demographic trends. The results of this evaluation identified regions and victims that are underserved.

This project, which was completed in April 2023, is being used to inform a \$3 million, three-year outreach campaign, which will target underserved populations and connect victims with the

Serving Communities and Partners

compensation and services they need. This outreach campaign involves the creation of new branding tools and advertisements that are culturally relevant, professional, and accessible. Information about victim compensation services will be promoted digitally, through traditional media such as radio ads, and through advertising in businesses.

Improving Accessibility for Victims

CalVCB also recognized the opportunity to make our program more accessible to victims. In spring 2023, CalVCB partnered with ODI to improve the CalVCB website. During a six-week sprint, ODI evaluated the website and found content meant to help victims was hard to read and translate. ODI analysts determined that the average user found it difficult to understand how to get compensated or apply for benefits.

CalVCB collaborated with ODI to implement solutions in May 2023. Because of this effort, the website is now easier to navigate and understand. Of significant importance, CalVCB and ODI worked together to lower the reading levels of key webpages to improve accessibility and equity without changing the meaning. The average grade level when the project began was Grade 9 with several pages rated at Grades 10-14. The average grade level is now Grade 6.

Conducting Outreach to Increase Awareness

CalVCB increased its in-person outreach efforts during Fiscal Year 2022-23. The executive team joined outreach specialists to attend and speak at events throughout California. Events included conferences targeted to members of the Indigenous community, law enforcement, victim advocates, and members of the community. These in-person

opportunities allowed members of the CalVCB team to directly interact with those who use our program as well as those who assist victims.



Attending events throughout the state, like this one at California State University Stanislaus, gives CalVCB the opportunity to engage in one-on-one interaction with the community members to spread awareness about how we help victims and their families.

CalVCB staff created publication toolkits containing useful information for victims and distributed them to first responders. For example, CalVCB sent business card-sized fact sheets in English and Spanish to law enforcement agencies in every county in the state. These cards are immediately given to victims after a crime occurs to make them aware of the resources CalVCB can provide.

Connecting with Stakeholders

CalVCB also increased its stakeholder engagement in the past fiscal year. Executive Officer Lynda Gledhill meets with the CalVCB Victim Compensation Advisory Committee quarterly. The committee, which is comprised of district attorneys, victim service providers, and victim advocates from across

Serving Communities and Partners

the state, discusses emerging issues and how to best serve crime victims.

In fall 2022, CalVCB also began sending a semimonthly Advocate Newsletter to more than 1,400 stakeholders to further connect with those on the front lines of assisting victims. The newsletter includes changes or modifications to CalVCB policy, updates on the Forced or Involuntary Sterilization Compensation Program, invitations to participate in monthly webinars and in-person trainings and events, and reminders about different facets of the program to highlight areas that could benefit underserved communities.

CalVCB staff also holds events to benefit stakeholders and victims. In October 2022, staff collected travel-sized items for victims of domestic violence, and assembled more than 100 bags containing shampoo, soap, toothpaste, deodorant, and other necessities. The bags were donated to the Wellspring Women's Center in Sacramento. In April 2023, CalVCB staff held its annual denim drive



Executive Officer Lynda Gledhill dropped off more than 100 bags of travel-size toiletries to Wellspring Women's Center Development and Communication Associate Jessica Mougharbel.

to support victims of sexual assault. Employees donated more than 100 pieces of new and gently used denim clothing to the organization WEAVE (When Everyone Acts Violence Ends).

Serving as a National Leader

CalVCB is the first and largest compensation program in the nation and continues to serve as a model for other states. To that end, Gledhill continues to serve as an elected board member of the National Association of Crime Victim Compensation Boards.

In June, she and Deputy Executive Officer Vincent Walker attended the 2023 National Association of Crime Victim Compensation Board National Conference. The Association's annual conference included two full days of workshops and discussions on a wide range of the most critical challenges facing crime victim compensation programs. Managers from across the country were invited to join in peer-to-peer exchanges on the best strategies to meet current issues and to engage with expert speakers on a variety of topics.

In addition to widespread outreach through interviews and presentations, Gledhill often participates in meetings with national compensation managers to discuss trends that impact all programs. In January she attended a meeting held by the federal Office of Victims of Crime in Washington, DC, to discuss how federal regulations governing federal funding might change in the future. Her input and expertise on how California navigates issues is invaluable in the growth and development of compensation programs at all levels.

Excellence in Service



The foundation for effectively serving victims and building a network to support them starts within the organization. CalVCB is dedicated to giving employees the tools and opportunities to grow and challenge themselves. Our team works tirelessly to help victims heal and rebuild, which is not only crucial for the victims themselves, but also for their families and communities.

Engaging Employees

In Fiscal Year 2022-23, the CalVCB executive team focused on staff engagement and organizational improvements. CalVCB contracted with an outside company to conduct an employee engagement survey during winter 2023. The survey results highlighted that the vast majority of CalVCB employees feel connected to their teams, appreciated by their supervisors, believe the organization promotes ethical conduct, and have a clear understanding of how their work contributes to the overall mission of CalVCB.

The survey also identified areas for improvement regarding better communicating organization changes, hiring, and workload. To this end, the CalVCB executive team took steps to make progress in these areas such as establishing division meetings, focusing on recruiting and time to hire, and prioritizing strategic projects.

CalVCB is proud that collectively, employees believe the organization has integrity, exemplifies excellence, and values different points of view.

Remaining Connected in a Digital World

In January 2022, CalVCB established a long-term hybrid working policy, which balances the value of in-person collaboration with the personal, financial, environmental, and social benefits of telework. Teams take advantage of their time together in the office to work through challenging issues, celebrate successes, and build working relationships.

Improving Information Technology

CalVCB further enhanced its cyber security measures with focused phishing campaigns, procuring and implementing new and improved cyber security technologies, as well as information technology devices, and addressing security risks through improved patch management processes and other initiatives.

In addition, CalVCB developed a new web-based system to track and process restitution payments made by offenders to the victims or their designated payees. The new system, which went live in summer 2023, has historical data as far back as February 2006 and contains nearly 4 million records of payments.

Excellence in Service

Committing to Staff Development

CalVCB diligently works to develop staff through both internal and external training opportunities. The organization's Training Unit develops courses and tools specifically for CalVCB employees and employees are directed to other state training programs, when necessary. In Fiscal Year 2022-23, CalVCB's Training Unit offered more than 70 eLearning trainings and 16 internal virtual instructor led trainings for CalVCB staff. Many employees took multiple classes. The internal virtual instructor-led trainings had a total of 196 attendees, and internal eLearning trainings had a total of 2,537 attendees.

Recognizing Excellence

Each quarter, CalVCB holds an all staff meeting and recognizes an employee or team of employees for their outstanding work. Awardees are nominated by a coworker, and a group of their peers across all divisions evaluate and score award submissions. The highly coveted awards come with a letter of commendation for the winner's personnel file, a framed certificate, and a profile in our internal newsletter.

During Fiscal Year 2022-23, awardees from across the organization were recognized for dedication, communication, and teamwork. Those recognized helped to build bridges across divisions, made major contributions to strategic initiatives, and successfully implemented process improvements. Gledhill recognizes staff at every level of the organization, which reinforces that every person's job is critical to the success of the organization.









By the Numbers

CalVCB's Appropriation for FY 2022/23 was \$201,700,000

2022-23 CalVCB BUDGET		
Victim Compensation	\$186,233,900	
Fiscal Services	\$15,446,000	
Good Samaritan	\$20,000	

FUNDING SOURCES	
General Fund	\$32,536,900
Restitution Fund This includes a \$39,500,000 transfer from the General Fund to the Restitution Fund.	\$110,637,000
Federal Fund	\$36,000,000
Forced Sterilization Fund	\$6,449,000
Safe Neighborhood Fund	\$16,077,000





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ITEM 5

CALIFORNIA VICTIM COMPENSATION BOARD LEGISLATIVE UPDATE SEPTEMBER 14, 2023

AB 997 (Gipson) Exoneration: Mental Health Services

This bill would require CalVCB to compensate mental health services for individuals with successful erroneous conviction claims.

Status: Held on the Suspense File in the Senate 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. It would specify that CalVCB shall not pursue reimbursement or recover in a separate action against a person who was adjudicated, or against the person's parent or guardian, for an offense committed while the person was a minor.

Status: On the Senate 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: On the Senate Floor

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 Assembly Floor

SB 544 (Laird) Bagley-Keene Open Meeting Act: Teleconferencing

This bill would amend the Bagley-Keene Open Meeting Act to remove certain teleconference requirements, while ensuring remote public access to state body meetings via audio, online platforms, or physical attendance. It would require a majority of the members of the state body

to be physically present at the same location for at least half of the meetings of that state body. The provisions of the bill would be repealed on January 1, 2026.

Status: On the Assembly Floor

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 Senate Floor

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: Held on the Suspense File in the Assembly Appropriations Committee

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: Held on the Suspense File in the Senate Appropriations Committee

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: Held 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 in the crime or the victim's or a derivative victim's failure to cooperate with law enforcement.

Status: Held on the Suspense File in the Senate 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: Failed in the Assembly Accountability and Administrative Review 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: Failed passage in the Assembly Revenue and Tax 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: Held 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: On the Senate Floor

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: On the Senate Floor

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: Signed by the Governor (Chapter 105, Statutes of 2023)

ITEM 6

CALIFORNIA VICTIM COMPENSATION BOARD CONTRACT REPORT SEPTEMBER 14, 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		
No approvals requested.		
Informational		
Contractor Name: Department of State Hospitals Contract Number: S22-005 A1	Contract Amount: \$250,000.00 Term: 7/22/2022 – 6/30/2024	Contract was amended to remove reporting requirements and decrease dollar amount from \$450,000 to \$250,000. The unused funds will be redistributed to victims of the Forced or Involuntary Sterilization Compensation Program. Original contract for \$450,0000 was approved by the Board on July 21, 2022. The Contractor shall work with the Department of Developmental Services and the Department of Corrections and Rehabilitation, in consultation with stakeholders to establish markers or plaques at

Contractor Name: Department of Corrections and Rehabilitation Contract Number: S22-007 A1	Contract Amount: \$250,000.00 Term: 7/22/2022 – 6/30/2024	designated sites that acknowledge the wrongful sterilization of thousands of vulnerable people. Assembly Bill 137, State Government, section 21 (Chapter 1.6) mandates CalVCB contract with the Department of State Hospitals. Contract was amended to remove reporting requirements and decrease dollar amount from \$500,000 to \$250,000. The unused funds will be redistributed to victims of the Forced or Involuntary Sterilization Compensation Program Original contract for \$500,0000 was approved by the Board on July 21, 2022. The Contractor shall work with the Department of Developmental Services and the Department of State Hospitals, in consultation with stakeholders to establish markers or plaques at designated sites that acknowledge the wrongful sterilization of thousands of vulnerable people. Assembly Bill 137, State Government, section 21 (Chapter 1.6) mandates CalVCB contract with
		1.6) mandates CalVCB contract with the Department of Corrections and Rehabilitation.
Contractor Name: Department of Developmental Services	Contract Amount: \$50,000.00	Contract was amended to remove reporting requirements.
Contract Number: S22-006 A1	Term: 7/22/2022 – 6/30/2024	Original contract for \$50,0000 was included in the July 2022 Contract Report in the "Informational" Section.
		The Contractor shall work with the Department of Developmental Services and the Department of Corrections and Rehabilitation, in consultation with stakeholders to

	establish markers or plaques at designated sites that acknowledge the wrongful sterilization of thousands of vulnerable people. Assembly Bill 137, State Government, section 21 (Chapter 1.6) mandates CalVCB contract with the Department of Developmental Services.
Contract Amount: \$63,087.50 Term: 7/27/2023 – 7/26/2024	This procurement is for the renewal of the Blackboard Learning Management System software support and maintenance. The Blackboard solution provides CalVCB with a centralized learning platform to manage training registration, attendance, completion of training, reporting, and access to e-learning training courses and materials.
	This was procured utilizing the Competitive – Informal method for IT acquisitions below \$1 mil.
Contract Amount: \$53,778.00 Term: N/A	This procurement is for a license upgrade from Foundation to Enterprise licenses for the Backup Solution to protect CalVCB's data at multiple data centers. This was procured utilizing Statewide Contract #1-19-70-19R.
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 State Administrative Manual section
	\$63,087.50 Term: 7/27/2023 – 7/26/2024 Contract Amount: \$53,778.00 Term: N/A Contract Amount: \$50,000.00 Term:

		Postal Service metered accounts with revolving fund checks.
Contractor Name: County of Alameda Contract Number: S23-001	Contract Amount: \$0.00 Term: 7/28/2023 – 6/30/2026	The Contractor shall establish a process by which the Contractor may pay expenses, through the Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made.
		Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor's Scope of Work.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of Placer Contract Number: S23-006	Contract Amount: \$0.00 Term: 7/25/2023 – 6/30/2026	The Contractor shall establish a process by which the Contractor may pay expenses, through the Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made.
		Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor's Scope of Work.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of Riverside	Contract Amount: \$0.00	The Contractor shall establish a process by which the Contractor may pay expenses, through the Joint Powers Revolving Fund, on an

Contract Number: S23-007	Term: 8/7/2023 – 6/30/2026	emergency basis when a claimant would suffer substantial hardship if the payment was not made.
		Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor's Scope of Work.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of Sacramento	Contract Amount: \$0.00	The Contractor shall establish a process by which the Contractor
Contract Number: S23-008	Term: 7/28/2023 – 6/30/2026	may pay expenses, through the Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made.
		Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor's Scope of Work.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of San Bernardino	Contract Amount: \$0.00	The Contractor shall establish a process by which the Contractor
Contract Number: S23-009	Term: 7/25/2023 – 6/30/2026	may pay expenses, through the Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made.
		Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund

		account to pay qualifying claims as identified on the contractor's Scope of Work.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of San Francisco	Contract Amount: \$0.00	The Contractor shall establish a process by which the Contractor may pay expenses, through the
Contract Number: S23-011	Term: 7/01/2023 – 6/30/2026	Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made.
		Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor's Scope of Work.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of San Joaquin	Contract Amount: \$0.00	The Contractor shall establish a process by which the Contractor may pay expenses, through the
Contract Number: S23-012	Term: 7/25/2023 – 6/30/2026	Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made.
		Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor's Scope of Work.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol

		1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Alameda County, District Attorney's Office Contract Number: S23-018	Contract Amount: \$838,533.00 Term: 7/20/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Contra Costa County, District Attorney's Office Contract Number: S23-019	Contract Amount: \$460,977.00 Term: 7/26/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Fresno County, District Attorney's Office Contract Number: S23-020	Contract Amount: \$269,109.00 Term: 7/20/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Los Angeles County, District Attorney's Office	Contract Amount: \$1,260,006.00	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of

Contract Number: S23-021	Term: 8/17/2023 – 6/30/2026	the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Monterey County, District Attorney's Office Contract Number: S23-023	Contract Amount: \$350,949.00 Term: 7/20/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Napa County, District Attorney's Office Contract Number: S23-024	Contract Amount: \$165,000.00 Term: 8/11/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Orange County, District Attorney's Office Contract Number: S23-025	Contract Amount: \$335,367.00 Term: 7/20/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol

		1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Riverside County, District Attorney's Office Contract Number: S23-026	Contract Amount: \$496,209.00 Term: 7/26/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: San Bernardino County, District Attorney's Office Contract Number: S23-027	Contract Amount: \$449,859.00 Term: 8/13/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: San Diego County, District Attorney's Office Contract Number: S23-028	Contract Amount: \$712,509.00 Term: 7/26/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: San Francisco County, District Attorney's Office	Contract Amount: \$275,931.00	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of

Contract Number: S23-029	Term: 7/20/2023 – 6/30/2026	the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: San Joaquin County, District Attorney's Office Contract Number: S23-030	Contract Amount: \$593,163.00 Term: 7/20/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: San Luis Obispo County, District Attorney's Office Contract Number: S23-031	Contract Amount: \$283,089.00 Term: 7/26/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: San Mateo County, District Attorney's Office Contract Number: S23-032	Contract Amount: \$242,862.00 Term: 7/26/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol

		1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Santa Barbara County, District Attorney's Office Contract Number: S23-033	Contract Amount: \$297,792.00 Term: 7/26/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Santa Clara County, District Attorney's Office Contract Number: S23-034	Contract Amount: \$891,729.00 Term: 8/17/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Solano County, District Attorney's Office Contract Number: S23-036	Contract Amount: \$233,559.00 Term: 7/11/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Sonoma County, District Attorney's Office	Contract Amount: \$233,559.00	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of

Contract Number: S23-037	Term: 7/26/2023 – 6/30/2026	the Restitution Fund for future victims. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: Ventura County, District Attorney's Office Contract Number: S23-039	Contract Amount: \$224,949.00 Term: 7/26/2023 – 6/30/2026	The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims.
		This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).

ITEM 7

Request for Approval to Begin the Rulemaking Process for Title 2. California Victim Compensation Board Article 5. Indemnification of Victims of Crime Title 2, §§ 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50

September 14, 2023

Action Requested

Staff propose to amend and adopt the regulations located at sections 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50 of Title 2 for processing victim applications under Government Code sections 13950, et seq.

It is requested that the Board authorize staff to begin the rulemaking process for these proposed regulatory changes. This request includes submission of the Proposed Regulations and Initial Statement of Reasons to the California Office of Administrative Law (OAL). This also includes publication of the Notice of Rulemaking Action, followed by a public comment period.

Background

CalVCB was the first established and remains one of the largest victim compensation programs in the nation. A person is eligible for victim compensation if, as a direct result of a qualifying crime, they suffered a pecuniary loss. (Gov. Code, §§ 13955, 13957.) "Crime" is defined as a crime or public offense that would constitute a misdemeanor or felony offense. (Gov. Code, § 13951, subd. (b).) A crime is a "qualifying crime" for purposes of the California Victim Compensation Board (CalVCB), if the victim sustained a physical injury or an emotional injury and a threat of physical injury. (Gov. Code, § 13955, subd. (f)(1) & (2).) Victims of sexual assault, human trafficking, child molestation, or child abuse are only required to show they sustained an emotional injury. (Gov. Code, § 13955, subd. (f)(3).) An application for compensation must be filed within seven years of the qualifying crime, seven years after the victim attains 21 years of age, or seven years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained, whichever is later. (Gov. Code, § 13953, subd. (a).) The Board may for good cause grant an extension of the time period to file an application. (Gov. Code, § 13953, subd. (b).) An applicant may be found to be ineligible for compensation if they failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of the person who committed the qualifying crime or were involved in the events leading to the qualifying crime. (Gov. Code, § 13956.)

If CalVCB determines a qualifying crime occurred, CalVCB can help pay certain bills and expenses, as authorized by the Legislature, that are a direct result of the crime the application was based on. (Gov. Code, §13957.) Eligible services include medical and dental care, mental health services, income loss, funeral and burial expenses, relocation, and residential security, among others enumerated in statute. (Gov. Code, § 13957.) However, CalVCB is a payor of last resort, meaning that, if a person is eligible for compensation, CalVCB provides compensation for costs that are not covered by other sources. (Gov. Code, §§ 13951 and 13954.)

The regulations governing victim compensation (Cal. Code Regs., tit. 2, §§ 601 et seq.) have not been significantly revised since 2012. As a result, several modifications are needed to provide clarity, transparency, and consistency. The revision of Section 649.4 clarifies when a felon is eligible for compensation. The revision of Section 649.7 clarifies the requirements for a complete application. The revision of Section 649.15 provides additional factors that may be considered as good cause for filing applications beyond the statutory deadline. The revision of Section 649.16 clarifies who qualifies as a derivative victim. The revision of Section 649.18 identifies ineligible funeral and burial expenses and clarifies the order of payment when there are multiple applications related to a single decedent.

The revision of Section 649.19 clarifies the evidence that will be considered and payments that may be made to improve or restore residential security. The revision of Section 649.24 clarifies and expands on the circumstances that may render service providers ineligible for reimbursement. The revision of Section 649.28 clarifies and expands on CalVCB's ability to oversee medical, medical-related, and mental health providers who seek reimbursement from CalVCB for services provided. The revision of Section 649.50 clarifies when a person is eligible or ineligible for compensation due to their involvement in a vehicle-related qualifying crime.

A copy of the draft Proposed Regulations and Initial Statement of Reasons, as well as the Notice of Rulemaking Action are attached. In the Proposed Regulations, deleted text appears in strikethrough and new text is underlined.

Recommendation

It is recommended that the Board authorize staff to begin the rulemaking process. This includes authorization for the Executive Officer to submit the Proposed Regulations and Initial Statement of Reasons to OAL. This also includes authorization to publish the Notice of Rulemaking Action, followed by a public comment period.

Certification

I certify that at its September 14, 2023,	Board Meeting,	the California	Victim (Compensation	Board
adopted the proposed recommendation	١.				

Andrea Burrell	
Board Liaison	

ITEM 7A

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 2. CALIFORNIA VICTIM COMPENSATION BOARD ARTICLE 5. INDEMNIFICATION OF VICTIMS OF CRIME TITLE 2, §§ 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50

As Submitted by California Victim Compensation Board on September 29, 2023

§ 649.4 Eligibility of Felons.

- (a) The CalVCB Board shall accept, review, and determine eligibility of an application or a petition for relief to file a late application, from a person who has been convicted of a violent felony as defined in California Penal Code section 667.5, subdivision (c); or is required to register as a sex offender pursuant to California Penal Code section 290; or who is incarcerated in a correctional institution, in the same manner as other applicants, in accordance with Government Code sections 13955 and 13956. The CalVCB shall not refuse to accept an application because the applicant is presently incarcerated, because the applicant is required to register as a sex offender, or has been convicted of a violent felony and has not been discharged from probation or released from a correctional institution and discharged from parole, or because the applicant has not been released from a county jail or county prison and discharged from post-release community supervision.
- (b) The Board shall not compensate an individual who has been convicted of a violent felony as defined in California Penal Code section 667.5, subdivision (c) for any loss incurred during the following periods:
 - (1) The applicant is incarcerated in a correctional institution.
 - (2) The applicant is on parole, probation, mandatory supervision, or post-release community supervision.
 - (b)(1) The CalVCB shall not grant assistance to a person who has been convicted of a violent felony committed on or after January 1, 1989, when the assistance is to compensate for pecuniary loss sustained after the person was convicted of the violent felony and before the person is discharged from probation, has been released from a correctional facility and is discharged from parole, or has been released from a county jail or county prison and discharged from post-release community supervision, if any.
 - (2) The CalVCB shall grant assistance to a person otherwise eligible for assistance who has been convicted of a violent felony to compensate for pecuniary loss sustained as a result of victimization when the loss was incurred after discharge from probation, parole, or post-release community supervision.
 - (3) The pecuniary loss for which reimbursement is barred because it was sustained after the person was required to register as a sex offender or had been convicted of a violent felony and before the person was discharged from parole, or released from a county jail or county prison and discharged from post-release community supervision will not become reimbursable if the person is no longer required to register as a sex offender or upon the person's discharge from probation or release from a correctional institution and discharge from parole.
- (c) As used in this section, "parole" includes "supervised release." The Board shall not compensate an individual who is required to register as a sex offender pursuant to California Penal Code section 290 for any loss incurred during the period they are required to register.
- (d) The Board may compensate an applicant who has been convicted of a violent felony as defined in California Penal Code section 667.5, subdivision (c) for losses incurred after the applicant is released from a correctional institution and/or discharged from probation, parole, or post-release community supervision.

- (e) The Board may compensate an applicant, who was required to register as a sex offender pursuant to California Penal Code section 290, for losses incurred after the applicant is discharged from the registration requirements of that Section.
- (f) The Board shall not grant compensation to an applicant for any expenses incurred due to a victim's death or injury while the victim is incarcerated in a correctional institution.

NOTE: Authority cited: Section <u>13920</u> 13974, Government Code. Reference: Sections 13951, 13955 and 13956, Government Code.

§ 649.7 Complete Application.

Applications for assistance as specified in Section Pursuant to Government Code section 13952, applications for assistance of the code will be deemed to be complete within the meaning of Section 13952, subdivision (c) of the code only if:

- (a) The applicant provides all <u>the</u> information <u>requested on the application and</u> <u>as directed</u> in the instructions <u>for completing the application</u>. to, and as elicited on, the application which the Board shall-require to be certified under penalty of perjury or upon information and belief. As part of the application the <u>applicant must provide</u> <u>Board shall require</u> the following information:
 - (1) The <u>applicant seeking compensation must provide their</u> name, <u>residence residential</u> address, and if different, mailing address, date of birth and telephone number. <u>If the applicant uses an address that is different from their residential address to receive mail, then the mailing address must also be provided. of the applicant seeking restitution from the Fund.</u>
 - (2) A designation as prescribed on the application as to whether the applicant is a victim, or a deceased victim, or a person who legally assumed the obligation to pay for a deceased victim's medical or funeral and burial expenses. or in the event of a death caused by a crime, a person who legally assumed the obligation, or who voluntarily paid the medical or burial expenses incurred as a direct result of the qualifying crime (Section 13957(a)(9)(A) and (C) of the code).
 - (3) If the person who signs signing the application as the applicant is someone a person other than the actual direct victim or derivative victim seeking assistance, the application must include some designation and supporting documentation as to the person's legal authority of such person to apply for benefits on behalf of the victim or derivative victim (for example, a minor's parent or legal guardian, for a child; or a court appointed conservator for an adults adjudicated who has been determined to be incompetent.)
 - (4) A description of the date, nature, location, and circumstances of the qualifying crime.
 - (5) Except in the case where the applicant has no pecuniary loss, a complete statement of the losses including but not limited to the cost of medical care or burial expense, the loss of wages the victim-has incurred to date, or the loss of support the derivative victim has incurred to date, for which they-claim assistance. This statement must include the date or dates that medical, mental health or other professional services were provided to the victim or derivative victim, and a description of the services provided, affirmation along with a statement that the services were in fact received, and affirmation that such services were required as a direct result of the qualifying crime and for no other reason. If mental health counseling or psychotherapy services were provided, the statement must include a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting.

- (6) The application must be signed under penalty of perjury by the victim, derivative victim, or other eligible applicant, attesting that the information provided in the application is true and correct to the best of their knowledge. Applications signed by an authorized representative must be signed under information and belief.
- (7) (6) A signed authorization permitting the VCP Board staff or a joint powers victim witness center employee, or both, to verify the contents of the application.
- (8) The Board may accept electronically signed applications and communications if the signature meets the following criteria:
 - (A) It is unique to the person using it;
 - (B) It is capable of verification; and
 - (C) It is under the sole control of the person using it.
- (9) (7) If the applicant is represented by an attorney or other authorized person, the application must include the name, address and telephone number of the such representative. If the representative is an attorney, the application must include the attorney's California State Bar license number and the taxpayer identification number.
- (10) (8)—A statement indicating whether the victim, the victim's survivors, or the derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime. If the applicant indicates that they have commenced or intend to commence a civil action for damages, they must include, if represented, their attorney's name, or any other parties in connection with the qualifying crime, along with the name, telephone number and address. of any attorney representing the applicant in such civil proceedings.
- (11) (9) A promise to contact and repay the VCP Board if the applicant receives any payments from the offender, a civil suit, an insurance policy, or any other governmental or private agency to cover expenses that the VCP Board has already paid.
- (12) (10) A statement disclosing all collateral benefits for which the victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible. Collateral benefits include, but are not limited to, including any private or public insurance or benefits, any form of public or private assistance, any salary or bereavement leave, and any restitution paid by the perpetrator(s) of the qualifying crime. payable from private or public programs of assistance for which the victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible.
- (b) In addition to the information as specified in subparagraph (a) above, applicants seeking types of assistance as set forth in <u>Government Code section</u> 13957 of the code shall provide the following information relative to each category of assistance claimed:
 - (1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized a statement from the professional treating provider for itemizing all medical or mental health expenses incurred as of the date of the application including was filed; and the provider's license number, of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. Providers of services A service provider who are is not required to obtain a professional or occupational license but is authorized by law to offer such services as part of their on-going ongoing business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their

Federal Employer Identification Number. The VCP Board may require the submission of mental health treatment session or progress notes in order to determine whether the treatment will best aid the victim or derivative victim and is necessary as a direct result of the qualifying crime. Session notes will be kept in a confidential locked file and after review, shall be returned to the provider or destroyed by the VCP Board upon request of the treating provider.

- (2) If loss of income is claimed to have occurred as a direct result of the qualifying crime, the applicant shall produce evidence of income loss as well as a statement of disability from the treating medical or mental health provider, as described in Section 649.32 of these regulations.
- (3) If funeral or burial expenses are claimed to have been incurred as a direct result of the qualifying crime, the applicant shall provide an itemized statement for all funeral or burial expenses incurred.
- (4) If rehabilitative services are claimed, the applicant shall produce that evidence of that need, and documentation for rehabilitation as specified in Section 649.25 649.24(c) of these regulations.
- (c) A copy of the crime report evidencing the commission of the qualifying crime, including and setting forth the circumstances and factual events surrounding the crime it. In order to expedite the processing of the application, applicants will be are encouraged to obtain and submit, along with the with their application, a copy of the crime report as prepared by the law enforcement agency to which the qualifying crime was reported. In cases in which If the applicant or his or her their representative are is unable to obtain the crime report or declines to do so obtain such crime report, VOC the Board employees or the joint powers victim witness center employees shall obtain the crime report.

No <u>An</u> application shall <u>not</u> be deemed complete until VOC the <u>Board</u> or its contract agencies have received a copy of the crime report, unless VCP <u>Board</u> staff <u>or employees of its contract agencies are is otherwise able to verify that a qualifying crime occurred.</u>

- (d) If a crime report is missing information or not yet available, the Board may accept a summary report for purposes of determining eligibility when the following criteria are met:
 - 1. It must be signed and dated by a law enforcement officer with personal knowledge of the investigation; and
 - 2. It must provide sufficient, specific facts to support any findings or conclusions reached; and
 - 3. It must include the officer's title and badge number, and the law enforcement agency's name, phone number, and address.
- (d) All applications and supplemental claims must be certified under penalty of perjury by the victim or derivative victim where the victim or derivative victim is the applicant, or shall be attested to under information and belief if completed by an applicant other than the victim or derivative victim, or by an authorized representative.

NOTE: Authority cited: Section <u>13920</u> 13974, Government Code. Reference: Sections 13951, 13952, 13952.5, 13954, 13956, 13957, 13957.2, 13957.5, 13957.7 and 13963, Government Code

§ 649.15 Good Cause for Filing Late Applications.

(a) A petition request for relief from the period of limitations on grounds of good cause must be filed with the Board in writing not no more than 30 calendar days following the date notice is mailed to the applicant and/or his or her their representative of the late filing. The request, and shall include a the statement under penalty of perjury which describes the reasons the applicant was unable to file their claim within the applicable limitations period. An applicant failing to petition for submit a request for

relief in writing within the 30 <u>calendar</u> days set forth herein will have his or her their application recommended for denial.

- (b) An applicant seeking relief from the period of limitations on the filing of an application shall, with their request for relief and accompanying statement, submit any corroborating documents which serve to verify the stated justification(s) for late filing.
- (c) (b) In determining whether good cause exists justifying to justify the late filing of an application, the VCP Board staff may consider other factors in determining whether good cause exists, including, but not limited to the following: shall consider all of the following factors:
 - (1) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss while testifying during the prosecution or in the punishment of the person accused or convicted of the crime.
 - (2) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss when the person convicted of the crime is scheduled for a parole hearing or released from incarceration. An applicant seeking relief from the period of limitations on the filing of an application shall, with his orher petition for relief and accompanying statement, submit any corroborating documents which serve to verify the stated justifications for late filing.
 - (1) The physical, emotional, psychological, or developmental condition of the victim (for example, victim's age, cultural or linguistic barriers, disabilities, mental health diagnosis);
 - (2) Whether the victim sought treatment for interpersonal crimes upon which the application is based (for example, sexual assault, child molestation, domestic violence, human trafficking, or child abuse) within one year of the filing date; or
 - (3) Whether the victim incurred a new pecuniary loss within one year of the filing date as a direct result of the qualifying crime.
- (d) (e) If VCP Board staff does not find good cause for the late filing and recommends that the application be denied, the applicant may request a hearing to determine the existence or nonexistence of good cause.
- (e) (d) In all cases the determination by the Board as to the existence or nonexistence of good cause constitutes the final administrative determination on the issue, subject only to a proper motion for reconsideration upon a showing of new and additional evidence not reasonably available at the time of the initial hearing. Nothing in this Section shall be construed to prevent an applicant or his or her their representative from filing the above stated declaration and petition request for relief upon a showing of good cause simultaneously with the late application.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13953 and 13954, Government Code.

§ 649.16 Applications by Derivative Victims.

- (a) The period of limitations for filing an application is tolled for derivative victims when the Board accepts and files an application that was submitted by, a victim or on behalf of, a victim for the same qualifying crime is accepted by the VCP.
- (b) An applicant shall only be eligible once as a derivative victim of a crime regardless of the number of direct victims for that same crime.
- (c) A derivative victim's application shall be denied if the direct victim's application is denied for lack of a qualifying crime.

- (d) The Board shall determine the eligibility of a derivative victim's application regardless of whether the direct victim has applied to the Board for the crime on which the derivative victim's application is based.
- (e) An applicant shall either be eliqible as a direct or derivative victim. An applicant cannot be eliqible as both a direct victim and a derivative victim for the same qualifying crime.

NOTE: Authority cited: Sections 13920, 13955, 13957, and 13957.5 and 13974, Government Code. Reference: Sections 13951, 13952 and 13953, Government Code.

§ 649.18 Reimbursement of Funeral/Burial Expenses.

- (a) As funeral practices vary across cultures, the <u>The</u> following traditional funeral and burial expenses, or their equivalent expenses, may be reimbursed:
 - (1) Burial costs, including but not limited to expenses for: the burial vault; casket; costs associated with the transport of the body; cremation charges; labor cost for opening and closing the grave; headstone; marker, or tombstone and the charge for its setting; the single-width, single-depth grave site; and, endowment care -- a one-time charge controlled by state law that ensures permanent maintenance of the grave.
 - (2) Funeral service costs, including but not limited to expenses for: preparation of the body for viewing; newspaper notices; copies of the death certificate; flowers for gravesite, chapel, and hearse; photography costs; musician's fees; burial clothing; cost of transport to the burial site; onsite funeral service fees for chapels or other memorial service locations; licensed security guard services; gravesite service fees and costs; including equipment charges; and; items necessary for performing services in other cultural traditions.
 - (3) Memorial service costs including flowers, and pictures, and picture frames at the service.
 - (4) If a double grave or headstone has been chosen, reimbursement may be made based upon an estimate of a single grave or headstone or half the cost of the double grave or headstone, whichever is the less expensive.
- (b) The following expenses are not reimbursable by the CalVCB-Board: coroner's charges; finance or interest charges or processing fees on a funeral/burial bill; a pre-purchased funeral or grave for the victim; alcoholic beverages; any expenses based upon a CalVCB an application filed by a mortuary, cemetery or other third-party service provider.
- (c) If more than one applicant seeks reimbursement of funeral/burial expenses for the same deceased victim, the total amount paid by the Board shall not exceed the maximum amount as set forth in statute. Eligible bills will be paid in the order in which they are received.

Note: Authority cited: Section 13920, Government Code. Reference: Section 13957(a)(8)(B), Government Code.

§ 649.19 Residential Security Home Security Device or System.

- (a) The VCP Board will may reimburse the costs of a victim or derivative victim's new or additional residential security upon verification that the expense is necessary as a direct result of the crime. home-security device or system. Examples of home security device or system items installing or increasing residential security include, but are not limited to the following:
 - (1) Alarms, keypads, cameras, and motion detectors;

- (2) Installation costs;
- (3) Monitoring costs;
- (4) Window bars and security doors; and
- (5) Replacing or increasing the number of locks; and-
- (6) Replacement of doors and windows damaged as a direct result of the qualifying crime and necessary to secure the premises.
- (b) Examples of items which do not qualify as "installing or increasing residential security" and are not reimbursable include, but are not limited, to the following:
 - (1) Weapons (guns or non-lethal weapons);
 - (2) Guard dogs; and
 - (3) Self-defense courses.
- (c) Evidence to support this may include, but is not limited to, the following:
 - (1) The qualifying crime occurred in the victim's or derivative victim's home;
 - (2) The victim or derivative victim obtained an Emergency Protective Order, Temporary Restraining Order, or Restraining Order After Hearing against the suspect; or
 - (3) A mental health provider or law enforcement official determined the expenses to be necessary as a direct result of the crime.

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957, Government Code.

§ 649.24. Reimbursement to Service Providers Ineligible for Reimbursement.

- (a) A provider who fails to submit requested documentation to verify losses or injury may be found to be ineligible for reimbursement by VCP. if any of the following circumstances apply:
 - (1) A provider fails to submit requested documentation to verify the victim's or derivative victim's losses or injury.
 - (2) A provider fails to submit requested documentation to verify the services provided.
 - (3) A provider provides, or causes another to provide, false information to the Board.
 - (4) A provider misrepresents a victim's or derivative victim's disability, injury, or other need for treatment or services.
 - (5) A provider fails to comply with statutes and regulations established by their licensing, oversight, or governing bodies.
 - (6) A provider fails to comply with any statutes or regulations governing claims before the Board.

- (7) A provider fails to comply with a corrective action plan imposed by the Board. A corrective action plan need not be imposed as a prerequisite to a finding of ineligibility based upon any of the preceding circumstances.
- (b) A provider who fails to adhere to statutes and regulations established by their licensing, oversight, or governing bodies may be found to be ineligible for reimbursement by VCP. The finding of ineligibility may extend to pending and future claims. The finding of ineligibility does not prevent reimbursement to victims or derivative victims for pecuniary losses.
- (c) The Board shall notify the provider of the finding of ineligibility, the extent, and duration of ineligibility, and allow the provider 45 calendar days to challenge it. A finding of ineligibility is final if no challenge is timely received.
- (d) The provider may challenge the finding of ineligibility by requesting an informal hearing before a hearing officer. The hearing officer will schedule the informal hearing, which may be on the written record, with at least ten calendar days' notice to the provider, taking into consideration the availability of the provider, any witnesses, and the hearing officer. After the hearing concludes and the administrative record is closed, the hearing officer shall prepare a proposed decision for the Board's consideration. The Board's determination of the provider's eligibility is final upon its vote.
- (e) A provider who disagrees with the Board's final determination of ineligibility may challenge the Board's final decision by filing a writ of mandate.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13954 and 13957.2(a), Government Code.

- § 649.28. Oversight of Medical, Medical-Related, and Mental Health-Counseling-Providers

 (a) A provider of outpatient medical, medical-related, or mental health counseling related services who receives payment from, or whose services were reimbursed by, the Victim Compensation Program Board may be subject to shall be subject to a clinical or fiscal audit, or both, to ensure that treatment and reimbursement were authorized by law.
- (b) A provider shall make all necessary clinical and fiscal records available to <u>the</u> Board-staff-for review upon request for up to three years after the date that reimbursement was paid.
- (c) A corrective action plan may be imposed by the Board if any of the following circumstances apply:
 - (1) A provider fails to comply with a clinical or fiscal audit.
 - (2) A provider fails to submit requested documentation to verify the victim's or derivative victim's losses or injury.
 - (3) A provider fails to submit requested documentation to verify the services provided.
 - (4) A provider provides, or causes another to provide, false information to the Board.
 - (5) A provider misrepresents a victim's or derivative victim's disability, injury, or other need for treatment or services.
 - (6) A provider fails to comply with statutes and regulations established by their licensing, oversight, or governing bodies.
 - (7) A provider fails to comply with any statutes or regulations governing claims before the Board.

- (d) The corrective action plan shall identify the provider's noncompliance, the methods by which the provider must correct the noncompliance, and the deadline for correction.
- (e) The Board shall notify the provider of the corrective action plan and allow the provider 45 calendar days to challenge it. A corrective action plan is automatically imposed if no challenge is timely received.
 - (1) The provider may challenge imposition of the corrective action plan by requesting an informal hearing before a hearing officer. The hearing officer will schedule the informal hearing, which may be on the written record, with at least ten calendar days' notice to the provider, taking into consideration the availability of the provider, any witnesses, and the hearing officer. After the hearing concludes and the administrative record is closed, the hearing officer shall prepare a proposed decision for the Board's consideration. The Board's determination on imposition of a corrective action plan is not subject to further review.
 - (2) The imposition of a correction action plan does not constitute a final decision by the Board for purposes of review by writ of mandate.
- (f) A provider who fails to comply with a corrective action plan may be found ineligible for reimbursement pursuant to Section 649.24.

Note: Authority cited: Section 13920(c), Government Code. Reference: Sections 13954, 13957(a)(2) and 13957.2(a), Government Code.

§ 649.50 Involvement in a Vehicle-Related Qualifying Crime.

- (a) A victim or derivative victim who was the driver of a vehicle, aircraft, or water vehicle may be found to have been involved in the events leading to the qualifying crime if one of the following was present:
 - (1) the victim or derivative victim was driving the vehicle with a blood alcohol content exceeding the legal limit;
 - (2) the victim or derivative victim was driving while under the influence of alcohol and/or drugs:
 - (3) the victim or derivative victim was cited or arrested by law enforcement based on events leading to the qualifying crime; or
 - (4) the victim's or derivative victim's conduct was the primary cause of the vehicle collision.
- (b) A victim or derivative victim who is a passenger in a vehicle driven by a person under the influence of alcohol or drugs may be found to have been involved in the events leading to the vehicle-related qualifying crime if one of the following was present:
 - (1) the victim or derivative victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs; or
 - (2) the victim or derivative victim was under the influence of alcohol or drugs and if sober should have reasonably known that the driver was under the influence of alcohol or drugs.
- (c) Subsection (b) shall not apply to passengers in a vehicle if:
 - (1) the victim is under 14-18 years of age; or
 - (2) the victim is under 18 years of age and the driver of the vehicle was a parent, guardian of the victim, or an adult who had responsibility for the victim; or.

- (3) (2) the victim died. and the applicant is requesting funeral/burial expenses incurred on behalf of the victim. If this subdivision applies, the application may be partially allowed for funeral and burial expenses only.
- (d) A victim or derivative victim may be found to have been involved in the events leading to the qualifying crime of a hit and run (<u>California</u> Vehicle Code section 20001) if both of the following are present:
 - (1) the victim or derivative victim acted in a blatant, wrongful or provoking manner; and or
 - (2) the victim's or derivative victim's conduct contributed to the events leading to the qualifying crime or was the primary cause of the vehicle collision.
- (e) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when evaluating the factors listed in subsections (a), and (b), and (d).

NOTE: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13955 and 13956, Government Code.

ITEM 7B

Title 2. California Victim Compensation Board Article 5. Indemnification of Victims of Crime Title 2, §§ 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50

INITIAL STATEMENT OF REASONS

PROBLEM STATEMENT

CalVCB was the first established and remains one of the largest victim compensation programs in the nation. A person is eligible for victim compensation if, as a direct result of a qualifying crime, they suffered a pecuniary loss. (Gov. Code, §§ 13955, 13957.) "Crime" is defined as a crime or public offense that would constitute a misdemeanor or felony offense. (Gov. Code, § 13951, subd. (b).) A crime is a "qualifying crime" for purposes of the California Victim Compensation Board (CalVCB), if the victim sustained a physical injury or an emotional injury and a threat of physical injury. (Gov. Code, § 13955, subd. (f)(1) & (2).) Victims of sexual assault, human trafficking, child molestation. or child abuse are only required to show they sustained an emotional injury. (Gov. Code, § 13955, subd. (f)(3).) An application for compensation must be filed within seven years of the qualifying crime, seven years after the victim attains 21 years of age, or seven years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained, whichever is later. (Gov. Code, § 13953, subd. (a).) The Board may for good cause grant an extension of the time period to file an application. (Gov. Code, § 13953, subd. (b).) An applicant may be found to be ineligible for compensation if they failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of the person who committed the qualifying crime or were involved in the events leading to the qualifying crime. (Gov. Code, § 13956.)

If CalVCB determines a qualifying crime occurred, CalVCB can help pay certain bills and expenses, as authorized by the Legislature, that are a direct result of the crime the application was based on. (Gov. Code, §13957.) Eligible services include medical and dental care, mental health services, income loss, funeral and burial expenses, relocation, and residential security, among others enumerated in statute. (Gov. Code, § 13957.) However, CalVCB is a payor of last resort, meaning that, if a person is eligible for compensation, CalVCB provides compensation for costs that are not covered by other sources. (Gov. Code, §§ 13951 and 13954.)

The regulations governing victim compensation (Cal. Code Regs., tit. 2, §§ 601 et seq.) have not been significantly revised since 2012. As a result, several modifications are needed to provide clarity, transparency, and consistency. The revision of Section 649.4 clarifies when a felon is eligible for compensation. The revision of Section 649.7 clarifies the requirements for a complete application. The revision of Section 649.15 provides additional factors that may be considered as good cause for filing applications beyond the statutory deadline. The revision of Section 649.16 clarifies who qualifies as a derivative victim. The revision of Section 649.18 identifies ineligible funeral and burial expenses and clarifies the order of payment when there are multiple applications related to a single decedent. The revision of Section 649.19 clarifies the evidence that will be considered and payments that may be made to improve or restore residential security. The revision of Section 649.24 clarifies and expands on the circumstances that may render service providers ineligible for reimbursement. The revision of Section 649.28 clarifies and expands on CalVCB's ability to oversee medical, medical-related, and mental health providers who seek reimbursement from CalVCB for services provided.

The revision of Section 649.50 clarifies when a person is eligible or ineligible for compensation due to their involvement in a vehicle-related qualifying crime.

BENEFITS

The proposed regulations comply with the current law governing victim compensation, clarify existing policies and practices, and provide the public with the specificity needed for applicants to successfully obtain compensation. The regulations also interpret and implement general aspects of the law, to ensure their consistent application in specific circumstances. By doing so, they will provide clear guidance to the public and enable the Board to decide these claims in a more uniform and efficient manner.

PURPOSE

<u>Section 649.4</u>: The purpose of this revised regulation is to clarify the requirements to accept applications from violent felons, sex offenders and individuals who are incarcerated in a correctional facility. This regulation will also clarify when an individual regains eligibility for benefits after satisfaction of all sentencing requirements. The purpose of the deletion of Section 13974 and inclusion of 13920 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose of each subdivision follows.

- Section 649.4, subdivision (a): The revised subdivision clarifies that this subdivision only applies to violent felons as defined in Penal Code section 667.5, subdivision (c), sex offenders who are required to register according to Penal Code section 290, and incarcerated individuals. This revision expands the word "accept" to include "review and determine eligibility" to clarify the process for the public. The revised regulation retains the requirement that applications from these populations must be accepted in the same manner as other applicants. The changes do not materially alter any provision of this Section.
- Section 649.4, subdivision (b): This revised subdivision simplifies the language of prior subdivision (b) to clarify that persons convicted under Penal Code section 667.5, subdivision (c), cannot be awarded any compensation from the Board while they are incarcerated, on parole, probation, mandatory supervision, or post-release community supervision. The simplified language makes the purpose of the subdivision clearer and more accessible to the public. This provision is largely the same as the provision formerly numbered Section 649.4, subdivision (b). The changes do not materially alter any provision of this Section.
 - Section 649.4, subdivision (b)(1): The revised subdivision clearly state
 which individuals are not eligible for compensation during the specified
 period.
 - Section 649.4, subdivision (b)(2): The revised subdivision clearly state
 which individuals are not eligible for compensation during the specified
 period.
- Section 649.4, subdivision (c): The revised subdivision retains the requirement that an individual who is required to register pursuant to Penal Code section 290 shall not be awarded any benefits by the Board while required to register. The

simplified language makes the purpose of the subdivision clearer and more accessible to the public. The purpose of the deletion of the sentence of "parole" includes "supervised release" is for the simplification of the language. The changes do not materially alter any provision of former Section 649.4, subd. (b).

- Section 649.4, subdivision (d): This added subdivision clarifies that an individual convicted under Penal Code section 667.5, subdivision (c), may receive benefits after the individual is released from a correctional facility and/or discharged from probation, parole, mandatory supervision, or post-release community supervision. The simplified language makes the purpose of the subdivision clearer and more accessible to the public. The changes do not materially alter any provision of former Section 649.4, subd. (b).
- Section 649.4, subdivision (e): This added subdivision clarifies an individual may obtain benefits after they are no longer required to register under Penal Code section 290. This subdivision is necessary due to the new tiered sex offender registration requirements enacted under Penal Code section 290, subdivision (d). The simplified language makes the purpose of the subdivision clearer and more accessible to the public. The changes do not materially alter any provision of former Section 649.4, subd. (b).
- Section 649.4, subdivision (f): This added subdivision further clarifies that the Board will not compensate an applicant for expenses incurred due to death or injury while the person is incarcerated. The example provides further transparency to the public.

<u>Section 649.7</u>: The purpose of this revised regulation is to clarify and explain what information must be included for an application filed with the Board to be deemed complete and to adopt digital signature standards consistent with current statutes and case law. This revision also adds standards for determining when a summary may be provided in lieu of a crime report. The purpose of the deletion of Section 13974 and inclusion of 13920 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose of each subdivision follows.

- **Section 649.7, subdivision (a)**: The revised subdivision clarifies the information that must be provided in an application for the application to be deemed complete.
 - Section 649.7, subdivision (a)(1): The revised subdivision clarifies the applicant's name, contact information, and birthdate must be provided.
 - Section 649.7, subdivision (a)(2): The revised subdivision expands on the designations an applicant may use to identify their relationship to the victim or derivative victim. The changes do not materially alter any provision of this Section.
 - Section 649.7, subdivision (a)(3): The revised subdivision explains that supporting documentation is required as to the person's legal authority to apply for benefits on behalf of a victim.

- Section 649.7, subdivision (a)(4): No revisions to this subdivision are proposed.
- Section 649.7, subdivision (a)(5): The revised subdivision clarifies the
 documentation required to establish pecuniary loss, consistent with
 existing statutes, and eliminates examples and other language to prevent
 confusion.
- Section 649.7, subdivision (a)(6): The added subdivision requires applications be signed under penalty of perjury and clarifies that victims and derivative victims must attest the information is true and correct to the best of their knowledge, while representatives need only attest to their information and belief.
- Section 649.7, subdivision (a)(7): The revised subdivision is renumbered to accommodate addition of another subdivision and changes "VCP" to "Board" for consistency.
- Section 649.7, subdivision (a)(8): The added subdivision allows the Board to accept electronic signatures if they meet certain criteria, consistent with existing statutes and case law.
 - Section 649.7, subdivision (a)(8)(A): The added subdivision specifies an electronic signature must be unique.
 - Section 649.7, subdivision (a)(8)(B): The added subdivision specifies an electronic signature must be verifiable.
 - Section 649.7, subdivision (a)(8)(C): The added subdivision specifies an electronic signature must be made by the person who is purporting to sign the application.
- Section 649.7, subdivision (a)(9): The revised subdivision is renumbered to accommodate a new subdivision and clarifies that, if the applicant is represented by counsel, their attorney's information, including their bar number, must be included in the application.
- Section 649.7 subdivision (a)(10): The revised subdivision is renumbered to accommodate a new subdivision and changes "VCP" to "Board" for consistency throughout the regulatory scheme. The revision also includes a requirement that the applicant provide the name of their attorney, if they are pursuing damages in civil proceedings.
- Section 649.7, subdivision (a)(11): The revised subdivision is renumbered to accommodate a new subdivision and changes "VCP" to "Board" for consistency throughout the regulatory scheme.
- Section 649.7, subdivision (a)(12): The revised subdivision is renumbered to accommodate a new subdivision and adds a requirement that the application include a statement detailing any collateral benefits

that are or may be available to the victim and provides examples of such benefits for clarity.

Section 649.7, subdivision (b): The revised subdivision includes the phrase Government Code to clarify the provision cited in this subdivision.

- Section 649.7, subdivision (b)(1): The revised subdivision explains the applicant must provide information about service providers if they are requesting compensation for professional services.
- Section 649.7, subdivision (b)(2): The revised subdivision cross references Section 649.32 to clarify the documentation required for an applicant seeking compensation for loss of income.
- Section 649.7, subdivision (b)(3): The revised subdivision explains funeral and burial expenses must be a direct result of the qualifying crime and an itemized statement must be provided.
- Section 649.7, subdivision (b)(4): The revised subdivision cites to the correct provision, as the formerly cited provision no longer exists.
- Section 649.7, subdivision (c): The revised subdivision requires a crime report be provided in order for an application to be deemed complete and, in the event the applicant or their representative is unable to obtain a crime report, authorizes the Board to obtain the report for them.
- Section 649.7, subdivision (d): The revised subdivision allows applicants to provide or the Board to obtain a summary report in lieu of a crime report, if it adheres to the following enumerated standards. The former subsection is deleted as its requirements are moved to (a)(6).
 - Section 649.7, subdivision (d)(1): The added subdivision specifies that, to be accepted in lieu of a crime report, the summary report must be signed by a law enforcement officer who has personal knowledge of the investigation.
 - Section 649.7, subdivision (d)(2): The added subdivision specifies that, to be accepted in lieu of a crime report, the summary report must provide facts sufficient to support its conclusions.
 - Section 649.7, subdivision (d)(3): The added subdivision specifies that, to be accepted in lieu of a crime report, the summary report must include information identifying the officers' and law enforcement agency's identifying information.

<u>Section 649.15</u>: The purpose of this revised subdivision is to expand the circumstances in which an applicant may submit a request for relief from the period of limitations for filing an application and clarify the considerations used to assess good cause. The purpose of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose for each subdivision follows.

- Section 649.15, subdivision (a): The revised subdivision details the procedure
 that must be used to submit a request for relief from the period of limitations for
 filing an application. The revision also replaces the term "petition" with "request"
 for accuracy. The revision replaces the term "his or her" with "their" for inclusivity.
 The revision replaces "30 days" with "30 calendar days" for clarity and
 consistency. Finally, the revision replaced "in subsection (b)" with specific
 language.
- Section 649.15, subdivision (b): The added subdivision requires an applicant submit, along with their request for relief and accompanying statement, documentation necessary for the Board to verify the applicant's justification for the late filing, if any are available.
- Section 649.15, subdivision (c): The revised subdivision removes language duplicated in Government Code section 13953, subdivision (b)(1) and (2) and identifies other factors the Board has discretion to consider when determining when good cause exists.
 - Section 649.15, subdivision (c)(1): The revised subdivision allows the Board to consider the physical, emotional, psychological, or developmental condition of the victim when determining whether good cause was shown.
 - Section 649.15, subdivision (c)(2): The revised subdivision allows the Board to consider whether the victim sought treatment for interpersonal crimes upon which the application is based within one year of the filing date when determining whether good cause was shown.
 - Section 649.15, subdivision (c)(3): The added subdivision allows the Board to consider whether a victim incurred a new pecuniary loss within one year of the filing date when determining whether good cause was shown.
- Section 649.15, subdivision (e): The revised subdivision replaces "VCP" with "Board" for consistency.
- **Section 649.15, subdivision (f):** The revised subdivision replaces the word "petition" with "request" for accuracy and consistency. It also replaces "his or her" with "their" for inclusivity.

<u>Section 649.16:</u> The purpose of this revised regulation is to clarify the relationship between a victim and derivative victim's applications, and the limitations on a derivative victim's application for compensation. The purpose of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

• **Section 649.16, subdivision (a)**: The revised subdivision clarifies the period of limitation for filing an application for derivative victims' applications.

- **Section 649.16, subdivision (b)**: No revisions to this subdivision were proposed.
- Section 649.16, subdivision (c): The added subdivision clarifies that a
 derivative victim's application will be denied if the direct victim's application is
 denied for lack of a qualifying crime.
- Section 649.16, subdivision (d): The added subdivision explains that a derivative victim is eligible for compensation regardless of whether the direct victim has applied for compensation.
- **Section 649.16, subdivision (e)**: The added subdivision clarifies that an applicant cannot be both a direct victim and a derivative victim.

<u>Section 649.18</u>: The purpose of this revised regulation is to clarify what funeral and burial expenses can be reimbursed. The specific purpose for each subdivision follows.

- Section 649.18, subdivision (a): The revised subdivision explains the types of funeral and burial expenses that may be reimbursed. This subdivision removed "As funeral practices vary across cultures" and "traditional" for inclusivity.
 - Section 649.18, subdivision (a)(1): The revised subdivision is clearer and more concise, as it no longer includes the unnecessary phrase "expenses for" and adds a previously omitted hyphen.
 - Section 649.18, subdivision (a)(2): The revised subdivision is clearer and more concise, as it no longer includes an unnecessary comma or the superfluous phrase "expenses for."
 - Section 649.18, subdivision (a)(3): No revisions to this subdivision were proposed.
 - Section 649.18, subdivision (a)(4): No revisions to this subdivision were proposed.
- Section 649.18, subdivision (b): The revised subdivision adds "alcoholic beverages" to the list of expenses that are not reimbursable by the Board for processing transparency. The word "CalVCB" is also replaced with "Board" for consistency.
- Section 649.18, subdivision (c): The revised subdivision clarifies that the Board is not authorized to exceed the statutory maximum for funeral and burial expenses when there is more than one application for the same deceased victim. It also clarifies and explains the order in which bills will be paid when there are multiple bills and applicants. It specifies that eligible bills will be paid in the order in which they are received.

<u>Section 649.19</u>: The purpose of this revised regulation is to clarify the evidence needed to approve residential security expenses. The purpose of the deletion of Section 13974

of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose for each subdivision follows.

- Section 649.19, subdivision (a): The revised subdivision expands on the examples of covered residential security costs. The revision also clarifies expenses must be directly related to the crime to conform with statute.
 - Section 649.19, subdivision (a)(1)-(5): No changes were proposed to this subdivision.
 - Section 649.19, subdivision (a)(6): The added subdivision expands the list of covered expenses to include the replacement of doors and windows that are damaged during the crime and necessary to secure the premises.
- Section 649.19, subdivision (b): No changes were proposed to this subdivision.
- **Section 649.19, subdivision (c)**: The addition of this subdivision clarifies what evidence is required to be eligible for reimbursement of residential security.
 - Section 649.19, subdivision (c)(1): The added subdivision explains that victims may be eligible for residential security if the crime occurred in their home.
 - Section 649.19, subdivision (c)(2): The added subdivision explains that victims may be eligible for residential security if they obtained an Emergency Protective Order, Temporary Restraining Order, or Restraining Order After Hearing against the suspect.
 - Section 649.19, subdivision (c)(3): The added subdivision explains that victims may be eligible for residential security if a mental health provider or law enforcement official determined the expense is necessary as a direct result of the crime.

<u>Section 649.24</u>: The purpose of this revised regulation is to clarify and expand the circumstances under which a provider may be found ineligible for reimbursement, explain the consequences of such a finding, and designate the process for challenging a finding of ineligibility. The purpose of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose for each subdivision follows.

- Section 649.24, subdivision (a): The revised subdivision explains what acts or omissions may result in finding a provider is ineligible for reimbursement.
 - Section 649.24, subdivision (a)(1): The added subdivision authorizes the Board to find a provider ineligible for reimbursement when the provider does not provide documentation necessary for the Board to ensure payment is authorized by existing laws and regulations. This provision is largely the same as the provision formerly numbered Section 649.24, subdivision (a).

- Section 649.24, subdivision (a)(2): The added subdivision authorizes
 the Board to find a provider ineligible for reimbursement when the
 provider does not provide documentation necessary for the Board to
 confirm the victim or derivative victim actually received the services for
 which the provider is seeking reimbursement.
- Section 649.24, subdivision (a)(3): The added subdivision authorizes the Board to find a provider ineligible for reimbursement when the provider provides, or causes someone else to provide, false information to the Board.
- Section 649.24, subdivision (a)(4): The added subdivision authorizes the Board to find a provider ineligible for reimbursement when the provider misrepresents the victim's or derivative victim's disability, injury, or other need for treatment or services.
- Section 649.24, subdivision (a)(5): The added subdivision, formerly numbered Section 649.24, subdivision (b), authorizes the Board to find a provider ineligible for reimbursement when the provider fails to comply with the rules and practices required by their licensing, oversight, or governing bodies.
- Section 649.24, subdivision (a)(6): The added subdivision authorizes the Board to find a provider ineligible for reimbursement when the provider's conduct does not comply with other statutes or regulations governing their conduct in connection with a claim pending before the Board.
- Section 649.24, subdivision (a)(7): The added subdivision authorizes
 the Board to find a provider ineligible for reimbursement if the provider
 has failed to comply with a corrective action plan and clarifies that a
 provider may be found ineligible for reimbursement based upon the other,
 enumerated circumstances, even if no corrective action plan was
 imposed.
- Section 649.24, subdivision (b): The revised subdivision defines the scope of a
 finding a provider is ineligible for reimbursement, authorizes the Board to rely on
 a prior finding a provider is ineligible for reimbursement when considering other
 pending or future claims submitted by that provider, and clarifies that a provider's
 ineligibility for reimbursement does not necessarily bar reimbursement of a victim
 or derivate victim.
- Section 649.24, subdivision (c): The added subdivision specifies the
 information that must be included in the Board's notice to the provider of a finding
 of ineligibility and the time limitations for challenging a finding of ineligibility. It
 explains that, if no challenge is lodged within the prescribed time, the finding is
 final.
- Section 649.24, subdivision (d): The added subdivision explains the procedures for challenging a finding of ineligibility by way of an informal hearing

before the Board. This includes the process for scheduling the informal hearing, which may be on the written record, after which the hearing officer will draft a proposed decision for the Board's consideration. This subdivision also confirms the Board's decision is final upon its vote to adopt or reject the proposed decision on the issue of ineligibility.

Section 649.24, subdivision (e): The added subdivision explains that the
Board's final decision of ineligibility for reimbursement is subject to review only by
a writ of mandate, which must be initiated by the provider by filing a petition for
writ of mandate.

<u>Section 649.28</u>: The purpose of this revised regulation is to expand the Board's current authority to audit outpatient mental health counseling providers to include all medical, medical-related, and mental health providers. This Section further authorizes the Board to impose a corrective action plan for providers under specified circumstances, the scope of the corrective action plan, and the consequences of failing to comply with the corrective action plan. Finally, this provision explains the procedures for challenging imposition of a corrective plan and clarifies that, while all providers *may* be audited, not all providers necessarily will be audited. The specific purpose for each subdivision follows.

- Section 649.28, subdivision (a): The revised subdivision broadens the scope of this provision to allow the Board to perform clinical or fiscal audits of a broader array of service providers, in the event additional oversight is needed for medical, medical-related, or mental health providers, as opposed to just mental health counseling providers. This revision also replaces the mandatory language that all providers "shall" be subject to audit with permissible language that all providers "may" be audited.
- **Section 649.28, subdivision (b):** The revised subdivision replaces the term "staff" with "Board" for consistency throughout these regulations.
- Section 649.28, subdivision (c): The added subdivision specifies the seven circumstances under which a corrective action plan may be imposed, which provides notice to providers of the acts or omissions that will warrant imposition of a corrective action plan and ensures uniform imposition of corrective action plans among providers.
 - Section 649.28, subdivision (c)(1): The added subdivision authorizes imposition of a corrective action plan when a provider fails to comply with a clinical or fiscal audit.
 - Section 649.28, subdivision (c)(2): The added subdivision authorizes imposition of a corrective action plan when a provider fails to submit requested documentation to verify the victim's loss or injury.
 - Section 649.28, subdivision (c)(3): The added subdivision authorizes imposition of a corrective action plan when a provider fails to submit requested documentation to verify services rendered.

- Section 649.28, subdivision (c)(4): The added subdivision authorizes imposition of a corrective action plan when a provider submits false information to the Board.
- Section 649.28, subdivision (c)(5): The added subdivision authorizes imposition of a corrective action plan when a provider misrepresents the victim's injury, disability, or other need for services.
- Section 649.28, subdivision (c)(6): The added subdivision authorizes imposition of a corrective action plan when a provider fails to comply with the statutes and regulations established by their licensing, oversight, or governing bodies.
- Section 649.28, subdivision (c)(7): The added subdivision authorizes imposition of a corrective action plan when a provider fails to comply with any statutes or regulations governing claims before the Board.
- Section 649.28, subdivision (d): The added subdivision explains a corrective action plan must specify the conduct or circumstances that warranted imposition of a corrective action plan, the method by which the provider must correct the noncompliance, and the deadline for doing so.
- Section 649.28, subdivision (e): The added subdivision ensures providers are afforded notice of the corrective action plan and the time limits for challenging imposition of a corrective plan, as well as the fact that imposition of the corrective action plan is automatic if unchallenged.
 - Section 649.28, subdivision (e)(1): The added subdivision explains the procedures for challenging the imposition of a corrective action plan by way of an informal hearing before the Board. This includes the process for scheduling the informal hearing, which may be on the written record, after which the hearing officer will draft a proposed decision for the Board's consideration. This subdivision confirms that the Board's decision on whether to adopt or deny the proposed decision concerning the imposition of a corrective action plan is not subject to further administrative review, such as reconsideration or appeal.
 - Section 649.28, subdivision (e)(2): The added subdivision notifies providers that the Board's decision to impose a corrective action plan does not amount to a final decision subject to review by writ of mandate. As such, the provider must satisfy administrative remedies either by complying with the corrective action plan, in which case the corrective action plan will expire, or by failing to comply with the corrective action plan, in which case the provider may be found ineligible for reimbursement, which is a final decision subject to review by writ of mandate.
- Section 649.28, subdivision (f): The added subdivision notifies providers that failure to comply with a corrective action plan may result in a finding they are ineligible for reimbursement, as is further discussed in Section 649.24, *supra*.

<u>Section 649.50</u>: The purpose of this revised regulation is to clarify the language and eliminate unnecessary words. The purpose of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose of each subdivision follows.

- Section 649.50, subdivision (a): The revised subdivision removes unnecessary language to promote clarity. The simplified language makes the purpose of the subdivision clearer and more accessible to the public. The changes do not materially alter any provision of this Section.
 - Section 649.50, subdivisions (a)(1)-(4): No revisions to this subdivision were proposed.
- Section 649.50, subdivision (b): The revised subdivision removes unnecessary language to promote clarity. The simplified language makes the purpose of the subdivision clearer and more accessible to the public. The changes do not materially alter any provision of this Section.
 - Section 649.50, subdivisions (b)(1)-(2): No revisions to this subdivision were proposed.
- Section 649.50, subdivision (c): The revised subdivision clarifies this Section only applies to passengers in a vehicle.
 - Section 649.50, subdivision (c)(1): The revised subdivision removes the 14-year-old age limitation to ensure all similarly situated minors are treated equitably.
 - Section 649.50, subdivision (c)(2): The revised subdivision clarifies that an applicant who is eligible for benefits under this subdivision may only receive funeral and/or burial expenses.
- **Section 649.50**, **subdivision (d)**: The revised subdivision adds "California" in front of the Vehicle Code reference for consistency and removes superfluous language.
 - Section 649.50, subdivision (d)(1): The revised subdivision changes "and" to "or" for clarity.
 - Section 649.50, subdivision (d)(2): The revised subdivision clarifies that an individual can be involved if they are also a primary cause of the qualifying crime.
- Section 649.50, subdivision (e): The revised subdivision adds subdivision (d) to the involvement factors listed in subdivisions (a) and (b). The changes do not materially alter any provision of this Section.

NECESSITY

As detailed below, the proposed regulations and revisions are needed to clarify, specify, and provide transparency of current policies and procedures. The regulations are also needed to interpret and implement general aspects of the law, which will provide clear guidance to the parties and ensure consistent decisions by the Board.

<u>Section 649.4</u>: The revision is necessary to clarify the requirements to accept applications from violent felons, sex offenders and individuals who are incarcerated in a correctional facility. The revision clarifies when an individual regains eligibility for benefits after satisfaction of all sentencing requirements. The necessity of the deletion of Section 13974 and inclusion of 13920 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- Section 649.4, subdivision (a): The revision is necessary to clarify that this subdivision only applies to violent felons as defined in Penal Code section 667.5, subdivision (c), sex offenders who are required to register according to Penal Code section 290 and incarcerated individuals. The addition of "review and determine eligibility" is necessary to provide transparency of the application process to the public. The proposed revision retains the requirement that applications from these populations must be accepted in the same manner as other applicants.
- Section 649.4, subdivision (b): The revision is necessary to simplify the
 regulatory language to clarify that persons convicted under Penal Code section
 667.5, subdivision (c), cannot be awarded any compensation from the Board
 while they are incarcerated, on parole, probation, mandatory supervision, or postrelease community supervision. The simplified language makes the purpose of
 the subdivision clearer and more accessible to the public.
 - Section 649.4, subdivision (b)(1): The revision is necessary to clearly states which individuals are not eligible for compensation during the specified period.
 - Section 649.4, subdivision (b)(2): The revision is necessary to clearly states which individuals are not eligible for compensation during the specified period.
- Section 649.4, subdivision (c): The revision is necessary to retain the requirement that an individual who is required to register pursuant to Penal Code section 290 is ineligible for compensation by the Board while required to register. The deletion of the sentence of "parole" includes "supervised release" is necessary for simplification of the language. The simplified language makes the purpose of the subdivision clearer and more accessible to the public.
- Section 649.4, subdivision (d): The revision is necessary to clarify that an individual convicted under Penal Code section 667.5, subdivision (c), may receive benefits after the individual is released from a correctional facility and/or discharged from probation, parole, mandatory supervision, or post-release

community supervision. The simplified language makes the purpose of the subdivision clearer and more accessible to the public.

- Section 649.4, subdivision (e): The revision is necessary to allow an individual to obtain benefits after they are no longer required to register under Penal Code section 290. This subdivision is necessary due to the new tiered sex offender registration requirements enacted under Penal Code section 290, subdivision (d).
- Section 649.4, subdivision (f): The revision is necessary to clarify a victim cannot be compensated if expenses are incurred while they are incarcerated. The example is necessary to provide further transparency to the public.

<u>Section 649.7</u>: The revision to this regulation is necessary to clarify and explain what information must be included for an application to be deemed complete and to adopt digital signature standards consistent with current statutory and case law. This revision also adds standards for determining when a summary may be provided in lieu of a crime report. The necessity of the deletion of Section 13974 and inclusion of 13920 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- Section 649.7(a): The proposed change to this subdivision is necessary for clarity. The provision that applications shall be certified under penalty of perjury was moved to Section 649.7, subdivision (a)(6).
 - Section 649.7, subdivision (a)(1): The revised subdivision is necessary for clarity. The changes do not materially alter any provision of this Section, which states that an applicant must provide their name and contact information.
 - Section 649.7, subdivision (a)(2): The revised subdivision is necessary for clarity. The changes do not materially alter any provision of this Section which states the applicant must designate whether they are a victim, derivative victim, or a person who legally assumed the obligation to pay for a deceased victim's medical or funeral and burial expenses.
 - Section 649.7, subdivision (a)(3): The revised subdivision is necessary to explain that supporting documentation is required as to the person's legal authority to apply for benefits on behalf of a victim.
 - Section 649.7, subdivision (a)(4): No changes were made to this subdivision.
 - Section 649.7, subdivision (a)(5): This revised subdivision is necessary because it removes the examples of pecuniary losses because the list was not exhaustive and could unnecessarily confuse the public. Additionally, the revision is necessary to be consistent with statute by requiring the provider to affirm that professional services were received and that they were necessary as a direct result of the qualifying crime. Other changes to this subdivision were made for clarification purposes only.

- Section 649.7, subdivision (a)(6): This revision is necessary because it clarifies which applicants must sign their applications under penalty of perjury to the best of their knowledge and allows authorized representatives to attest only under "information and belief," as authorized representatives are unable to attest to the "truth" or "correctness" of the statements themselves.
- Section 649.7, subdivision (a)(7): The revision is necessary because the change from "VCP" to "Board" provides clarity and consistency throughout the regulatory scheme. The revision also updates the numbering of this subdivision to consecutively follow the previous subdivision.
- Section 649.7, subdivision (a)(8): The addition is necessary to allow the Board to accept digital signatures if they meet certain criteria, consistent with existing statutory and case law.
 - Section 649.7, subdivision (a)(8)(A): The added subdivision is necessary as it specifies an electronic signature must be unique.
 - Section 649.7, subdivision (a)(8)(B): The added subdivision is necessary as it specifies an electronic signature must be verifiable.
 - Section 649.7, subdivision (a)(8)(C): The added subdivision is necessary as it specifies an electronic signature must be made by the person who is purporting to sign the application.
- Section 649.7, subdivision (a)(9): The revised subdivision is necessary solely for clarity. The changes do not materially alter any provision of this Section, which requires the applicant to include the name, address, telephone number and California State Bar license number of any attorney representing the applicant. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.
- Section 649.7 subdivision (a)(10): The revised subdivision is necessary solely for clarity. The changes do not materially alter any provision of this Section, which requires the applicant to identify any civil action initiated to recover monetary damages from the perpetrators of the qualifying crime. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.
- Section 649.7, subdivision (a)(11): The revised subdivision is necessary because to change "VCP" to "Board" for consistency throughout the regulatory scheme.
- Section 649.7, subdivision (a)(12): The revised subdivision is necessary solely for clarity. The proposed changes do not materially alter any provision of this Section, which clarifies that the applicant must disclose all collateral benefits the victim, the victim's survivors, or derivative victim

have applied for or may be eligible for in their application. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.

- Section 649.7, subdivision (b): The revised subdivision is necessary to clarify
 the specific code referenced in the subdivision. The changes do not materially
 alter any provision in this subdivision.
 - Section 649.7, subdivision (b)(1): The revised subdivision is necessary to explain the applicant must provide information about service providers if they are requesting compensation for professional services.
 - Section 649.7, subdivision (b)(2): The revised subdivision is necessary because it lists the required evidence an applicant must provide if they are claiming loss of income as a result of a qualifying crime. The change is also necessary because it references the California Code of Regulations, title 2, Section 649.32 for clarity. That previously promulgated Section sets verification requirements regarding loss of income reimbursement, among other provisions.
 - Section 649.7, subdivision (b)(3): The revised subdivision is necessary solely for clarity. The changes do not materially alter any provision of this Section, which requires an applicant to provide an itemized statement for all funeral or burial expenses incurred as a direct result of a qualifying crime.
 - Section 649.7, subdivision (b)(4): The revised subdivision is necessary because it identifies the requirements an applicant must meet to obtain rehabilitative services. The revised subdivision is also necessary because it will correct a citation error. The subdivision previously cited, California Code of Regulations, title 2, Section 649.24, subdivision (c), which does not exist. The correct regulatory Section to be referenced is Section 649.25.
- Section 649.7, subdivision (c): The revised subdivision is necessary solely for clarity. The changes do not materially alter any provision in this Section. Removing the acronyms "VOC" and "VCB" and replacing them with references to the "Board" is necessary for uniformity throughout the applicable regulatory scheme.
- Section 649.7, subdivision (d): This revised subdivision is necessary because it clarifies that the Board may accept a summary report from law enforcement if certain criteria are met. The former subsection is deleted as its requirements are moved to (a)(6). The specific need for each subdivision follows.
 - Section 649.7, subdivision (d)(1): This revised subdivision is necessary to clarify that the summary crime report must be signed and dated by a law enforcement officer with personal knowledge of the investigation.

- Section 649.7, subdivision (d)(2): The revised subdivision is necessary to clarify that the summary crime report must provide sufficient, specific facts to support any findings or conclusions reached.
- Section 649.7, subdivision (d)(3): The revised subdivision is necessary to clarify that the summary crime report must include the officer's title and badge number, the law enforcement agency name, phone number and address.

<u>Section 649.15</u>: The revision to this regulation is necessary to clarify the procedure for requesting relief from the time limitations for filing an application and to expand upon the list of factors that may be considered when determining whether the applicant showed good cause for filing an application beyond the statutory deadline. This revision was also necessary to remove provisions duplicating the Government Code. The specific need for each subdivision follows.

- Section 649.15, subdivision (a): The revision is necessary to explain the
 process by which an applicant may submit a request for relief from the period of
 limitations on grounds of good cause. This subdivision replaced the term
 "petition" with "request" for accuracy. This subdivision also replaced the term "his
 or her" with "their" for inclusivity. This subdivision replaced "30 days" with "30
 calendar days" for clarity and consistency. Finally, the revision replaced "in
 subsection (b)" with specific language.
- Section 649.15, subdivision (b): The additions of this subdivision are necessary
 to ensure that the Board has all necessary documentation to verify the
 applicant's justification for the late filing in order to make an informed and wellreasoned decision.
- Section 649.15, subdivision (c): The changes to this subdivision are necessary to afford the Board greater discretion and to authorize the Board's consideration of other factors, in addition to those mandated by Government Code section 13953, subdivisions (b)(1) and (2), when determining whether good cause exists. This is necessary to expand the grounds upon which the Board may grant an applicant's request for relief consistent with statutory language. This is necessary to ensure applicants are aware of factors that will be considered in evaluating late filed applications and that those factors are consistently applied. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.
 - Section 649.15, subdivision (c)(1): The addition is necessary to allow the Board to consider the physical, emotional, psychological, or developmental condition of the victim when determining whether there is good cause for their late filing.
 - Section 649.15, subdivision (c)(2): The addition is necessary to allow the Board to consider whether the victim sought treatment for interpersonal crimes upon which the application is based within one year of the filing date.

- Section 649.15, subdivision (c)(3): The addition is necessary to allow the Board to consider whether a victim incurred a new pecuniary loss within one year of the filing date.
- Section 649.15, subdivision (d): The revision is necessary to replace "VCP" with "Board" for consistency throughout the regulatory scheme. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.
- Section 649.15, subdivision (e): The revision is necessary to replace "petition" with "request" for accuracy and consistency with other subdivisions. It also replaces "his or her" with "their" for inclusivity. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the pervious subdivision.

<u>Section 649.16</u>: The proposed changes to this subdivision are necessary to provide clarity, transparency to the public, and ensure applications are processed consistently. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- Section 649.16, subdivision (a): The revision to this subdivision is necessary for clarity. The changes do not materially alter any provision of this Section which states that when the Board accepts and files an application that was submitted by, or on behalf of, a victim for a qualifying crime, the period of limitations for filing an application is tolled for derivative victims for the same qualifying crime.
- Section 649.16, subdivision (b): No changes were made to this subdivision.
- Section 649.16, subdivision (c): The addition of this subdivision is necessary to clarify that the Board shall deny a derivative victim's application if the Board denies a direct victim's application for lack of a qualifying crime. This is necessary to provide transparency to the public about application eligibility determinations.
- Section 649.16, subdivision (d): The addition of this subdivision is necessary to clarify that the Board shall determine the eligibility of a derivative victim's application regardless of whether a direct victim has filed an application with the Board. This is necessary to ensure all applications are processed consistently.
- Section 649.16, subdivision (e): The addition of this subdivision is necessary because it prevents an applicant from filing two applications for the same qualifying crime by clarifying that an applicant cannot be eligible as both a direct victim and a derivative victim for the same qualifying crime. This is necessary to ensure victims do not exceed the statutory benefit limitations. Additionally, it is necessary so that all applications are processed consistently.

<u>Section 649.18</u>: The revision to this Section is necessary to clarify what funeral and burial expenses can be reimbursed, which expenses cannot be reimbursed, and how

payment will be made when multiple applications are filed on behalf of the same deceased victim. The specific need for each subdivision follows.

- Section 649.18, subdivision (a): This subdivision is needed to explain the types
 of funeral and burial expenses that may be reimbursed. This subdivision
 removed "As funeral practices vary across cultures" and "traditional" for
 inclusivity. This revision was necessary because, although the subdivision
 acknowledged cultural differences in funeral practices, explicitly identifying
 "traditional" funeral and burial expenses as the type of expenses reimbursed by
 the Board may be confusing and/or alienating to victims.
 - Section 649.18, subdivision (a)(1) through (4): No substantive changes are proposed to these subdivisions.
- Section 649.18, subdivision (b): This subdivision is necessary to add "alcoholic beverages" to be consistent with the list of expenses that are not reimbursable by the Board. This subdivision also replaced "CalVCB" with "Board" for consistency throughout the regulatory scheme.
- Section 649.18, subdivision (c): This subdivision is necessary to clarify that the Board is not authorized to exceed the statutory maximum for funeral and burial expenses for a deceased victim, even when there is more than one application for the same deceased victim, and to explain how funeral and burial expenses will be paid when more than one application is filed on behalf of the same deceased victim.

<u>Section 649.19</u>: The revisions to this Section are needed to clarify what evidence is necessary to approve residential security expenses. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- Section 649.19, subdivision (a): The revisions are necessary to expand on the examples of covered residential security costs. The revision is necessary to clarify expenses must be directly related to the crime to conform with statute.
 - Section 649.19, subdivision (a)(1)-(5): No changes were proposed to this subdivision.
 - Section 649.19, subdivision (a)(6): The addition to the subdivision is necessary to expand the list of covered expenses to include the replacement of doors and windows that are damaged during the crime and necessary to secure the premises.
- Section 649.19, subdivision (b): No changes were proposed to this subdivision.
- Section 649.19, subdivision (c): The addition of this subdivision is necessary to clarify what evidence is required to be eligible for reimbursement of residential security. This subdivision also replaces "VCP" with "Board" for consistency throughout the regulatory scheme.

- Section 649.19, subdivision (c)(1): The addition to the subdivision is necessary to explain and provide transparency that victims may be eligible for residential security if the crime occurred in their home.
- Section 649.19, subdivision (c)(2): The addition to the subdivision is necessary to explain and provide transparency that victims may be eligible for residential security if they obtained an Emergency Protective Order, Temporary Restraining Order, or Restraining Order After Hearing against the suspect.
- Section 649.19, subdivision (c)(3): The addition to the subdivision is necessary to explain and provide transparency that victims may be eligible for residential security if a mental health provider or law enforcement official determined the expense is necessary as a direct result of the crime.

<u>Section 649.24</u>: The revision to this regulation is necessary to ensure providers have notice of what acts or omissions can lead to a finding they are ineligible for reimbursement from the Board, the impact such a finding of ineligibility may have on other pending or future claims, and the process to challenge a finding of ineligibility. This revision is also necessary for the Board to safeguard the Restitution Fund by deterring and ultimately excluding noncompliant and/or incompetent providers from the victim compensation program. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- Section 649.24, subdivision (a): The revision to this subdivision is necessary to alert providers what acts or omissions may render them ineligible for reimbursement and to ensure the Board has authority to render such a finding of ineligibility under enumerated circumstances.
 - Section 649.24, subdivision (a)(1): The added subdivision is necessary
 to notify providers they may be found ineligible for reimbursement if they
 fail to comply with a request for documentation verifying the alleged
 losses or injuries. This subdivision is also necessary to ensure the Board
 only reimburses service providers for treatments and services authorized
 by law.
 - Section 649.24, subdivision (a)(2): The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they fail to comply with a request for documentation verifying the services provided. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when the claimed services cannot be verified.
 - Section 649.24, subdivision (a)(3): The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they provide, or cause someone else to provide, false information to the Board. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when they make false representations to the Board.

- Section 649.24, subdivision (a)(4): The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they misrepresent the nature of a victim's or derivative victim's disability, injury, or other need for treatment or services. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when the provider makes misrepresentations to the Board.
- Section 649.24, subdivision (a)(5): The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they fail to comply with statutes and regulations established by their licensing, oversight, or governing bodies. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when the provider fails to satisfy the competency requirements of their licensing, oversight, or governing body.
- Section 649.24, subdivision (a)(6): The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they fail to comply with statutes and regulations governing claims before the Board. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when the provider fails to comply with the Board's own requirements for processing a claim.
- Section 649.24, subdivision (a)(7): The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they fail to comply with a corrective action plan. The specific circumstances under which a corrective action plan may be imposed and challenged are set forth in Section 649.28. This subdivision is also necessary to clarify that a provider may be found ineligible for reimbursement based upon the other enumerated circumstances, even if no corrective action plan was imposed. This subdivision ensures the Board has the authority to find a provider ineligible for reimbursement when the provider fails to comply with a corrective action plan.
- Section 649.24, subdivision (b): The revision to this subdivision is necessary to notify providers of the consequences of a finding they are ineligible for reimbursement, which may extend to current and future claims. Providing the Board with a range of authorized consequences is necessary to deter and exclude noncompliant and/or incompetent providers from receiving reimbursement from the victim compensation program. This revision is also needed to confirm that a finding a provider is ineligible for reimbursement will not necessarily bar direct reimbursement to victims or derivative victims for pecuniary loss incurred as a direct result of the crime.
- Section 649.24, subdivision (c): The added subdivision is necessary to ensure
 providers are afforded adequate notice of a finding of ineligibility, as well as the
 extent and duration of their ineligibility, and the 45-day deadline for challenging
 the finding. This subdivision is also necessary to ensure providers are afforded
 notice that, if it is not challenged, a finding of ineligibility will become final.

- Section 649.24, subdivision (d): The added subdivision is necessary to
 establish the procedure for challenging a finding of ineligibility by way of an
 informal hearing. Specifically, it provides an informal hearing may be scheduled,
 the matter may be decided on the written record, a hearing officer will draft a
 proposed decision, and the Board will vote to adopt or reject the proposed
 decision. This provision is also necessary to provide notice that the Board's vote
 is a final decision.
- Section 649.24, subdivision (e): The added subdivision is necessary to confirm the availability of judicial review after the Board's final decision on the issue of ineligibility and to clarify that this review must be initiated by the provider by filing a petition for writ of mandate.

<u>Section 649.28</u>: The revision in this Section is necessary to expand the Board's current authority to audit outpatient mental health counseling providers to also include medical, medical-related, and mental health providers. The revisions provide necessary confirmation of the Board's authority to not only audit any of these providers, but to also impose a corrective action plan in specified circumstances. The revisions provide needed guidance as to the content of the corrective action plan, the procedure for challenging its imposition, and the consequences of failing to comply. The specific need for each revised subdivision follows.

- Section 649.28, subdivision (a): This subdivision, as revised, is needed to
 broaden the Board's authority to perform clinical or fiscal audits, at its discretion,
 of all mental health providers as well as all providers of medical and medicalrelated services. This expanded authority is necessary for the Board to ensure its
 reimbursements to the many types of providers it pays were authorized by law,
 and to take corrective action when indicated.
- **Section 649.28, subdivision (b):** This subdivision replaced the term "staff" with "the Board" to ensure uniformity throughout the regulatory scheme.
- Section 649.28, subdivision (c): This subdivision is needed to establish the
 seven circumstances under which a corrective action may be imposed. It is also
 necessary to ensure providers are afforded adequate notice of the types of acts
 or omissions that may warrant imposition of a corrective action plan. Finally,
 these revisions are needed to ensure uniform imposition of corrective action
 plans among providers.
 - Section 649.28, subdivision (c)(1): The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider fails to comply with a clinical or fiscal audit.
 - Section 649.28, subdivision (c)(2): The added subdivision is necessary
 to confirm that a corrective action plan may be imposed if the provider
 fails to submit requested documentation to verify the victim's loss or
 injury.

- Section 649.28, subdivision (c)(3): The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider fails to submit requested documentation to verify services rendered.
- Section 649.28, subdivision (c)(4): The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider submits false information to the Board.
- Section 649.28, subdivision (c)(5): The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider misrepresents the victim's injury, disability, or other need for services.
- Section 649.28, subdivision (c)(6): The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider fails to comply with the statutes and regulations established by their licensing, oversight, or governing bodies.
- Section 649.28, subdivision (c)(7): The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider fails to comply with any statutes or regulations governing claims before the Board.
- Section 649.28, subdivision (d): The added subdivision is necessary to confirm
 the required contents of a corrective action plan and deadline for challenging its
 imposition. These required contents, in turn, are needed to provide adequate
 notice to the providers.
- Section 649.28, subdivision (e): The added subdivision is necessary to ensure
 providers are afforded notice of the corrective action plan and the deadline for
 challenging its imposition. It also explains that the corrective action plan is
 automatically imposed if unchallenged.
 - Section 649.28, subdivision (e)(1): The added subdivision is needed to explain the procedure for challenging the imposition of a corrective action plan by way of an informal hearing before the Board, including the process for scheduling the informal hearing, which may be on the written record, after which the hearing officer will draft a proposed decision for the Board's consideration. This subdivision confirms that the Board's decision on whether to adopt or deny the proposed decision concerning the imposition of a corrective action plan is not subject to further administrative review, such as reconsideration or appeal.
 - Section 649.28, subdivision (e)(2): The added subdivision is necessary to notify providers that the Board's decision to impose a corrective action plan does not amount to a final decision subject to review by writ of mandate. As such, the provider must satisfy administrative remedies either by complying with the corrective action plan, in which case the corrective action plan will expire, or by failing to comply with the corrective action plan, in which case the provider may be found ineligible for reimbursement, which is a final decision subject to review by writ of mandate.

• Section 649.28, subdivision (f): The added subdivision is necessary to notify providers that failure to comply with a corrective action plan may result in a finding they are ineligible for reimbursement pursuant to Section 649.24.

<u>Section 649.50</u>: The revision is necessary to clarify the language of the existing and eliminate unnecessary words. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need of each subdivision follows.

- Section 649.50, subdivision (a): The revision is necessary to simplify language to promote clarity. The simplified language makes the purpose of the subdivision clearer and more accessible to the public. The changes do not materially alter any provision of this Section.
 - Section 649.50, subdivisions (a)(1)-(4): No revisions to this subdivision were proposed.
- Section 649.50, subdivision (b): The revision is necessary to simplify the
 language to promote clarity. The simplified language makes the purpose of the
 subdivision clearer and more accessible to the public. The changes do not
 materially alter any provision of this Section.
 - Section 649.50, subdivisions (b)(1)-(2): No revisions to this subdivision were proposed.
- Section 649.50, subdivision (c): The revision is necessary to clarify this Section only applies to passengers in a vehicle consistent with the preceding subsection, which is referenced.
 - Section 649.50, subdivision (c)(1): The revision is necessary to remove the 14-year-old age limitation to ensure all similarly situated minors are treated equitably.
 - Section 649.50, subdivision (c)(2): The revision is necessary to clarify that an applicant who is eligible for benefits under this subdivision may only receive funeral and/or burial expenses.
- Section 649.50, subdivision (d): The revision is necessary for consistency and removes superfluous language.
 - Section 649.50, subdivision (d)(1): The revision is necessary to change "and" to "or" for clarity.
 - Section 649.50, subdivision (d)(2): The revision is necessary to clarify that an individual can be involved if they are also a primary cause of the qualifying crime.

• Section 649.50, subdivision (e): The revision is necessary to add subdivision (d) to the involvement factors listed in subdivisions (a) and (b). The changes do not materially alter any provision of this Section.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of these regulations.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to revise, interpret, and implement the current law governing victim compensation. When an application for compensation is approved, victims can submit bills for reimbursement of losses. Compensation is awarded after a bill is verified. In fiscal year 2021-2022, CalVCB received 39,015 applications and provided \$40.35 million in compensation to victims; in fiscal year 2020-2021, CalVCB received 40,640 applications and provided \$52.74 million in compensation to victims; in fiscal year 2019-2020, CalVCB received 50,699 applications and provided \$58.69 million in compensation to victims; in fiscal year 2018-2019, CalVCB received 52,973 applications and provided \$61.88 million in compensation to victims. The amount paid in compensation has remained relatively stable over the past four years and CalVCB does not anticipate a significant change in future payouts. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

The Board has determined that the selected alternative will not affect:

(A) The creation or elimination of jobs within the State of California,

The proposed regulations do not impact jobs because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

(B) The creation of new businesses or the elimination of existing businesses within the State of California, and

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

(C) The expansion of businesses currently doing business within the State of California.

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

CalVCB has determined that the proposed regulations do not impact worker safety or the state's environment because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has no evidence indicating any potential significant adverse impact on business as a result of this proposed action. The Board has determined that the proposed regulations do not affect business because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has determined that there are no other reasonable alternatives to this rulemaking action.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has no evidence indicating any potential adverse impacts to small business are expected as a result of this proposed action. The Board has determined that the proposed regulations do not affect small businesses because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

ITEM 7C





TITLE 2. CALIFORNIA VICTIM COMPENSATION BOARD ARTICLE 5. INDEMNIFICATION OF VICTIMS OF CRIME Title 2, §§ 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50

[Notice Published September 29, 2023]

The California Victim Compensation Board (CalVCB) proposes to adopt the regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

CalVCB has not scheduled a public hearing on this proposed action; however, the Board will schedule and hold a hearing if it receives a written request for a public hearing from any interested person, or their authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested individual, or their authorized representative, may submit written comments relevant to the proposed regulatory action. To be considered, written comments must be received by 5:00 p.m. on November 13, 2023. CalVCB will consider only comments received at its office by this deadline. Written comments may be mailed to:

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

Written comments may also be submitted by facsimile (FAX) at (916) 491-6441 or by e-mail to regulations@victims.ca.gov.

AUTHORITY AND REFERENCE

Government Code section 13920 authorizes CalVCB to adopt these proposed regulations. The proposed regulations are intended to implement, interpret, and make specific Government Code sections 13950 through 13963.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

CalVCB was the first established and remains one of the largest victim compensation programs in the nation. A person is eligible for victim compensation if, as a direct result of a qualifying crime, they suffered a pecuniary loss. (Gov. Code, §§ 13955, 13957.) "Crime" is defined as a crime or public offense that would constitute a misdemeanor or felony offense. (Gov. Code, § 13951, subd. (b).) A crime is a "qualifying crime" for purposes of the California Victim Compensation Board (CalVCB), if the victim sustained a physical injury or an emotional injury and a threat of physical injury. (Gov. Code, § 13955, subd. (f)(1) & (2).) Victims of sexual assault, human trafficking, child molestation, or child abuse are only required to show they sustained an emotional injury. (Gov. Code, § 13955, subd. (f)(3).) An application for compensation must be filed within seven years of the qualifying crime, seven years after the victim attains 21 years of age, or seven years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained, whichever is later. (Gov. Code, § 13953, subd. (a).) The Board may for good cause grant an extension of the time period to file an application. (Gov. Code, § 13953, subd. (b).) An applicant may be found to be ineligible for compensation if they failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of the person who committed the qualifying crime or were involved in the events leading to the qualifying crime. (Gov. Code, § 13956.)

If CalVCB determines a qualifying crime occurred, CalVCB can help pay certain bills and expenses, as authorized by the Legislature, that are a direct result of the crime the application was based on. (Gov. Code, §13957.) Eligible services include medical and dental care, mental health services, income loss, funeral and burial expenses, relocation, and residential security, among others enumerated in statute. (Gov. Code, § 13957.) However, CalVCB is a payor of last resort, meaning that, if a person is eligible for compensation, CalVCB provides compensation for costs that are not covered by other sources. (Gov. Code, §§ 13951 and 13954.)

The regulations governing victim compensation (Cal. Code Regs., tit. 2, §§ 601 et seg.) have not been significantly revised since 2012. As a result, several modifications are needed to provide clarity, transparency, and consistency. The revision of Section 649.4 clarifies when a felon is eligible for compensation. The revision of Section 649.7 clarifies the requirements for a complete application. The revision of Section 649.15 provides additional factors that may be considered as good cause for filing applications beyond the statutory deadline. The revision of Section 649.16 clarifies who qualifies as a derivative victim. The revision of Section 649.18 identifies ineligible funeral and burial expenses and clarifies the order of payment when there are multiple applications related to a single decedent. The revision of Section 649.19 clarifies the evidence that will be considered and payments that may be made to improve or restore residential security. The revision of Section 649.24 clarifies and expands on the circumstances that may render service providers ineligible for reimbursement. The revision of Section 649.28 clarifies and expands on CalVCB's ability to oversee medical, medical-related, and mental health providers who seek reimbursement from CalVCB for services provided. The revision of Section 649.50 clarifies when a person is eligible or ineligible for compensation due to their involvement in a vehicle-related qualifying crime.

Anticipated Benefits of the Proposed Regulation:

The proposed regulations comply with the current law governing victim compensation, clarify existing policies and practices, and provide the public with the specificity needed for applicants to successfully obtain compensation. The regulations also interpret and implement general aspects of the law, to ensure their consistent application in specific circumstances. By doing so, they will provide clear guidance to the public and enable the Board to decide these claims in a more uniform and efficient manner.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The proposed regulations are not inconsistent or incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost impacts on a representative, private individual, or business: The Board is not aware of any cost impacts that a representative, private person, or business would necessarily incur in reasonable compliance with the proposed action.

Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.

Significant effect on housing costs: None

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to interpret and implement the current law governing victim compensation. When an application for compensation is approved, victims can submit bills for reimbursement of losses. Compensation is awarded after a bill is verified. In fiscal year 2021-2022, CalVCB received 39,015 applications and provided \$40.35 million in compensation to victims; in fiscal year 2020-2021, CalVCB received 40,640 applications and provided \$52.74 million in compensation to victims; in fiscal year 2019-2020, CalVCB received 50,699 applications and provided \$58.69 million in compensation to victims; in fiscal year 2018-2019, CalVCB received 52,973 applications and provided \$61.88 million in compensation to victims. The amount paid in compensation has remained relatively stable over the past four years and

CalVCB does not anticipate a significant change in future payouts. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

CalVCB has determined that the proposed regulations will not affect:

(A) The creation or elimination of jobs within the State of California,

The proposed regulations do not impact jobs because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

(B) The creation of new businesses or the elimination of existing businesses within the State of California, and

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

(C) The expansion of businesses currently doing business within the State of California.

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

<u>The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:</u>

CalVCB has determined that the proposed regulations do not impact the health and welfare of California residents, worker safety, or the state's environment because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

SMALL BUSINESS DETERMINATION

CalVCB has determined that the proposed regulations do not affect small businesses because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), CalVCB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private individuals than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CalVCB invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed regulatory revisions may be directed to:

Neil Ennes, Legislative Coordinator California Victim Compensation Board P.O. Box 48 Sacramento, CA 95812-0048 Telephone: (916) 491-3728

The backup contact person for inquiries concerning the proposed regulatory revisions is:

Kim Gauthier California Victim Compensation Board P.O. Box 48 Sacramento, CA 95812-0048 Telephone: (916) 491-3605

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Neil Ennes at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at 400 R Street Sacramento, CA 95811 and on the website https://victims.ca.gov. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies may be obtained by contacting Neil Ennes at the P.O. Box or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, CalVCB may adopt the proposed regulations substantially as described in this notice. If CalVCB makes modifications which are sufficiently related to the original proposed text, it will make the modified text available to the public at least 15 days before CalVCB adopts the regulation as revised. Please send requests for copies of the modified regulation to the attention of Neil Ennes at the P.O. Box indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Neil Ennes at the above P.O. Box address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline and strikeout can be accessed through CalVCB's website at https://victims.ca.gov.

* * * * * END * * * * *

ITEM 8

OF THE STATE OF CALIFORNIA

In the Matter of:

Jesse Wagner

Claim No. 22-ECO-25

Proposed Decision

(Penal Code § 4900, subd. (b))

I. Introduction

On July 11, 2022, the California Victim Compensation Board (CalVCB) received a claim from Jesse Wagner (Wagner) seeking compensation as an erroneously convicted person pursuant to Penal Code section 4900. As subsequently revised, the claim is based upon three of Wagner's 2005 convictions for robbery, false imprisonment, and impersonating a police officer, which were vacated and dismissed in 2017, without a finding of factual innocence. Wagner requests compensation in the amount of \$360,220 for 2,573 days imprisonment, which includes a prior prison term enhancement and multiple alleged parole violations. The revised claim expressly excludes any request for compensation for Wagner's three other vacated convictions, for which he was allegedly imprisoned an additional 612 days. Wagner, who initially represented himself, is represented by attorney Stephen Allen.

The Attorney General, represented by Deputy Attorney General Britton Lacy, opposes Wagner's claim. The Attorney General argues that clear and convincing evidence demonstrates Wagner's guilt and, alternatively, the maximum amount of compensation amounts to \$322,700 for 2,305 days imprisonment, excluding any parole violation and prior prison term enhancement.

A hearing ensued on February 28, 2023, at which Wagner appeared with counsel and testified. The administrative record closed the same day, and the matter was assigned to CalVCB Senior Attorney Laura Simpton. As explained below, it is recommended that CalVCB deny Wagner's claim

because the overall weight of evidence, which includes the trial record in combination with other admissible evidence, demonstrates guilt by clear and convincing evidence.

II. Procedural History

A. Trial Proceedings

Wagner was arrested on August 8, 2003, and charged by information with nine felonies in San Bernardino County Superior Court case number FCA020520.¹ Three of the charges related to victim Pedro P. (Pedro) and alleged that, on April 18, 2003, Wagner had impersonated a police officer, kidnapped Pedro, and robbed Pedro (i.e., counts 1 through 3, respectively).² The next three charges related to victim Jamie Z. (Jamie) and alleged that, on July 26, 2003, Wagner had impersonated a police officer, kidnapped Jamie, and robbed Jamie (i.e., counts 4 through 6, respectively).³ The final three charges concerned different incidents. Specifically, count 7 alleged that, on March 17, 2003, Wagner was an ex-convict in a custodial facility when presenting Alberto M. (Alberto) for booking at the West Valley Detention Center.⁴ Count 8 alleged that, on April 20, 2003, Wagner was an ex-convict in a custodial facility when presenting Pablo Q. (Pablo) for booking at the West Valley Detention Center.⁵ Count 9 alleged that, on August 8, 2003, Wagner was in possession of a deadly weapon (i.e., an ASP baton).⁶ The information finally alleged as enhancements that Wagner had a prior 1994 conviction for unlawful sexual intercourse and had served a prior term of imprisonment.⁷

Following a jury trial, Wagner was convicted on May 12, 2005, of impersonating a police officer, false imprisonment of Pedro as a lesser-included offense to kidnapping, and robbery of Pedro (i.e.,

¹ Wagner Application (App.) at pp. 1, 4; Attorney General Response Letter (AGRL) Exhibit (Ex.) 1 at 74; AGRL Ex. 12 at pp. 3095-3099.

² Pen. Code, §§ 146a, 209, 211. Throughout this proposed decision, the victims' last names are omitted to preserve their privacy.

³ Pen. Code, §§ 146a, 209, 211.

⁴ Pen. Code, § 4571.

⁵ Pen. Code, § 4571.

⁶ Pen. Code, § 12020, subd. (a)(1). An ASP baton is a telescoping metal baton typically used by law enforcement. (See AGRL at p. 4.)

⁷ Pen. Code, §§ 261.5, subd. (c); 667.5.

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counts 1 through 3).8 The jury acquitted Wagner of all three counts related to Jamie (i.e., counts 4 through 6). The jury convicted Wagner of the remaining three counts for twice being a felon in a custodial facility (i.e., counts 7 and 8) and possessing a deadly weapon (i.e., count 9).9 In a bifurcated proceeding, the trial court found the prior conviction and prison term allegations to be true.¹⁰

On November 3, 2006, the court sentenced Wagner to an aggregate term of nine years and four months imprisonment. This prison sentence consisted of five years for robbery (i.e., count 3), plus eight-month consecutive terms for each of the remaining five counts (i.e., counts 1, 2, 7, 8 and 9), plus one year for the prior prison term enhancement. 11 Because Wagner spent some time released on bail while awaiting trial, the court awarded 1,153 days actual custody credits, in addition to 173 days conduct credits. 12

Wagner appealed to the Fourth District of the California Court of Appeal, which affirmed the judgment, and the California Supreme Court denied review. 13 Wagner pursued multiple habeas petitions in state and federal court, which were all denied. 14

B. Custodial Release

Wagner completed his prison term and was released on parole on September 9, 2011, not September 11, 2011, as he alleged in the claim form. 15 By then, he had been imprisoned for a total of 2,924 days. This calculation consists of 1,771 days from the imposition of sentence on November 3, 2006, plus 1,153 days for actual custody credit awarded at sentencing. 16 Of that amount, 2,305 days solely resulted from counts 1 through 3, while the remaining 619 days resulted from counts 7 through 9

⁸ Pen. Code, §§ 146a, 236, 211

⁹ AGRL Ex. 13 at pp. 3215-3216.

¹⁰ AGRL Ex. 13 at pp. 3215-3216.

¹¹ AGRL Ex. 14 at pp. 3502-3503.

¹² AGRL Exs. 14 at p. 3503; 16 at p. 3678.

¹³ AGRL Exs. 75 (*People v. Wagner*, Court of Appeal, Fourth District, case number E041850), 76 (People v. Wagner, California Supreme Court, case number S166746).

¹⁴ AGRL Exs. 77-86, 134-137.

¹⁵ AGRL at p. 52; AGRL Exs. 70 at p. 3984, 71 at p. 3985, 72 at p. 3987; but see Wagner App. at p. 1.

¹⁶ AGRL at pp. 52-53; AGRL Exs. 14 at p. 3503, 70 at p. 3984.

¹⁷ AGRL at pp. 53-54.

| 18 AGRL at p. 53 n.15; AGRL Exs. 58 at pp. 3929-3930; 70 at p. 3984, 71 at p. 3985, 74 at p. 3994.

¹⁹ AGRL Exs. 70-73, 125 at pp. 4479-4480.

²⁰ AGRL Ex. 87.

²¹ AGRL Ex. 114 at p. 4292.

²² AGRL Ex. 88 at pp. 4066-4067.

²³ Pen. Code, § 1473.7, subd. (a)(2).

²⁴ AGRL Exs. 88, 89.

and the enhancement.¹⁷ In 2012, Wagner was sentenced to 140 days for violating the terms of his parole, though it appears he served approximately 71 days at most.¹⁸ Wagner's parole finally terminated on February 23, 2015.¹⁹

C. Vacated Convictions (Counts 1 through 3 and 7 through 9)

On April 21, 2017, Wagner filed, pro se, a motion to vacate his three convictions related to Pedro (i.e., counts 1 through 3) based upon new evidence of actual innocence pursuant to recently enacted Penal Code section 1473.7, subdivision (a)(2). Wagner's proffered evidence consisted of a supposedly inconsistent statement made by Pedro to Wagner's investigator regarding the items stolen during the robbery, as well as Pedro's application for an immigration U-visa based upon his status as the victim of a crime.²⁰ A hearing ensued on June 9, 2017, at which Wagner represented himself. While the prosecutor filed an opposition that "dispute[d] certain aspects of his argument," the prosecutor subsequently conceded that relief was warranted under section 1473.7 as to counts 1 through 3.²¹ The prosecutor opposed Wagner's improper request, raised for the first time in the reply, for the same relief for his three remaining convictions (i.e., counts 7 through 9).²²

Ruling from the bench on June 9, 2017, the court granted Wagner's motion to vacate counts 1 through 3 pursuant to Penal Code section 1473.7, subdivision (a)(2). Under this subdivision, a conviction may be reversed when evidence of "actual innocence" requires vacating the conviction in the interests of justice.²³ The court denied Wagner's request to vacate counts 7 through 9 and, instead, set the matter for resentencing to consider motions to reduce and/or dismiss these remaining felony convictions.²⁴ A final order issued thereafter on June 12, 2017, which confirmed solely counts 1

28 || 30 AGRL Ex

through 3 were dismissed pursuant to subdivision (a)(2) of section 1473, leaving intact counts 7 through 9.²⁵

On July 12, 2017, Wagner filed, pro se, a motion to vacate counts 7 through 9 pursuant to Penal Code section 1473, subdivision (a)(2). In a challenge to his guilt for counts 7 and 8, the motion offered new evidence showing that a felon may obtain permission to enter prison grounds. The motion also cited new caselaw questioning the constitutionality of Penal Code section 4571. The motion further requested, in the alternative, that these three remaining felony convictions be reduced to misdemeanors pursuant to Penal Code section 17 and dismissed pursuant to Penal Code section 1203.4.²⁶ Incidentally, as noted in the motion, Wagner was attending law school and hoped to be admitted to the California State Bar to practice law.²⁷ On August 25, 2017, based upon the parties' agreement, the court dismissed Wagner's convictions on counts 7 and 8 pursuant to section 1203.4, then reduced his conviction on count 9 to a misdemeanor pursuant to section 17, and finally dismissed that misdemeanor conviction pursuant to Penal Code section 1203.4a.²⁸

One year later on May 4, 2018, Wagner, assisted by counsel Stephen Allen, filed a motion for a finding of factual innocence pursuant to Penal Code section 1485.55.²⁹ The motion also requested the destruction and sealing of Wagner's arrest records pursuant to Penal Code section 851.8, which requires the absence of mere probable cause to arrest Wagner for the offenses that led to his imprisonment.³⁰ Wagner, still assisted by counsel, filed a separate motion to seal his arrest records

²⁵ AGRL Ex. 117.

^{? || &}lt;sup>26</sup> AGRL Ex. 118 at pp. 4334-4335.

²⁷ AGRL Ex. 118 at pp. 4331-4332.

²⁸ AGRL Ex. 119 at pp. 4334-4335. Under Penal Code section 1203.4, a conviction may be dismissed following successful completion of probation. Under Penal Code section 1203.4a, a misdemeanor conviction that did not result in probation may be dismissed if the defendant "lived an honest and upright life" thereafter.

²⁹ Under Penal Code section 1485.55, a finding of "factual innocence" requires a preponderance of evidence that the defendant did not commit the charged offenses for which he had been convicted. A factual innocence finding is only available after the conviction has been reversed.

³⁰ AGRL Ex. 121 at pp. 4387-4397.

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pursuant to Penal Code section 851.91, which applies whenever no conviction follows an arrest.³¹ The prosecution opposed the motion on August 14, 2018.³² At a hearing on August 17, 2018, the court ordered the records sealed pursuant to section 851.91 for counts 1 through 6 only (i.e., the incidents related to Pedro and Jaime) but declined to seal the remaining counts 7 through 9. With the parties' agreement, the remaining issues related to factual innocence under sections 851.8 and 1485.55 were taken off calendar.³³

The following year on September 13, 2019, Wagner, with the assistance of counsel, filed another motion in the San Bernardino County Superior Court for a finding of factual innocence under Penal Code section 1485.55. The motion focused upon the new evidence related to counts 1 through 3 concerning Pedro, but nevertheless mentioned all counts, and sought an unlimited finding of factual innocence.³⁴ The prosecution opposed the motion on January 6, 2020.³⁵ On March 6, 2020, following a hearing, the court denied Wagner's motion.³⁶

D. First CalVCB Proceeding

On August 14, 2017, with the assistance of counsel Robert McKernan, Wagner submitted his first claim (i.e., claim 17-ECO-14) to CalVCB as an erroneously convicted offender pursuant to Penal Code section 4900. The claim requested compensation for 4,210 days, consisting of 2,590 days for Wagner's imprisonment on counts 1 through 3 and portions of counts 7 through 9, plus another 1,620 days for time spent on parole.³⁷ The claim form, which was signed by Wagner under penalty of perjury, averred that he had been released from prison and discharged from parole on February 15, 2016, less than two years earlier.³⁸

^{22 || 31} AGRL Ex. 122 at pp. 4412-4424.

^{23 || 32} AGRL Ex. 123.

^{24 | 33} AGRL Ex. 124 at pp. 4477-4478.

³⁴ AGRL Ex. 126 at pp. 4482-4494.

³⁵ AGRL Ex. 128 at pp. 4510-4536; see also AGRL Ex. 129.

³⁶ AGRL Ex. 131 at p. 4617.

³⁷ AGRL Ex. 90 at 4079-4171 (Wagner's first claim).

³⁸ AGRL Ex. 90 at pp. 4080, 4087, 4145 (claimant's signatures).

At that time, the deadline imposed by Penal Code section 4901 to submit a claim to CalVCB was limited to two years following release from custody, including termination of parole.³⁹ Relying upon the sworn information provided by Wagner, it appeared to CalVCB that his claim was timely. CalVCB therefore deemed the claim filed and requested a response from the Attorney General.

But as the Attorney General subsequently informed CalVCB, Wagner was actually discharged from parole one year earlier in February 2015, after being released from prison in September 2011.⁴⁰ Thus, Wagner's claim was untimely by six months. Consequently, on March 27, 2019, CalVCB rejected Wagner's first claim 17-ECO-14 for untimeliness, without the Board's consideration of the merits, in accordance with section 642 of title 2 of the California Code of Regulations.⁴¹ Wagner did not challenge this final determination by seeking a writ of mandate.

E. Second CalVCB Proceeding

Effective January 1, 2020, Penal Code section 4901 was amended to extend the deadline to submit a claim to CalVCB as an erroneously convicted person. Specifically, the deadline was extended from two years to "a period of 10 years after judgment of acquittal, dismissal of charges, pardon granted, or release from custody, whichever is later." Following this change in the law, Wagner submitted a second claim to CalVCB, as detailed below.

1. Second Claim

Shortly before midnight at 11:45 p.m. on Saturday, July 9, 2022, Wagner personally submitted a second claim (i.e., claim 22-ECO-25) to CalVCB via email, without the assistance of an attorney. CalVCB was the sole recipient, and no representative for the Attorney General was included in the email. The claim form listed only three felony counts (i.e., impersonating an officer, unlawful detention, and robbery). However, it also requested compensation for the entire duration of Wagner's imprisonment in case number FVA020520 for all six convictions, which he calculated as 2,925 days for

³⁹ Former Pen. Code, § 4901 (West 2016).

⁴⁰ AGRL Exs. 70-73, 125 at pp. 4479-4480.

⁴¹ AGRL Ex. 125 at pp. 4479-4481; see also Former Cal. Code of Regs. tit. 2, § 642, operative Nov. 3, 2010 (Register 2010, No. 41), amended Jan. 1, 2023 (Register 2022, No. 47.)

⁴² Pen. Code, § 4901, as amended by Stats.2019, c. 473 (S.B.269), § 2, eff. Jan. 1, 2020.

 nine years and four months. In an attachment describing the challenged convictions, Wagner explained that he had been charged with nine felonies and convicted of six, three of which were vacated pursuant to subdivision (a)(2) of Penal Code section 1473.7, while the remaining three had been reduced to misdemeanors and dismissed pursuant to Penal Code section 1203.4. Wagner provided the following four documents to support his claim: (1) a transcript from a hearing on June 9, 2017, at which the court granted his motion to vacate counts 1 through 3 pursuant to section 1473.7; (2) the written order confirming counts 1 through 3 were vacated pursuant to section 1473.7; (3) the court's minute order dated June 9, 2017; and (4) the court's minute order dated August 17, 2018, which revealed that counts 4 through 6 had also been vacated pursuant to section 1473.7, but not counts 7 through 9, and that the records for counts 1 through 6 had been sealed pursuant to Penal Code section 851.91. Neither the claim form nor the attachment identified which particular counts related to which particular offenses. Unlike the prior claim, this form listed the date of Wagner's release from prison as September 11, 2011 and the date of discharge from parole as "2015." 43

On Monday, July 11, 2022, Wagner's claim was forwarded to CalVCB Senior Attorney Laura Simpton as the assigned hearing officer.⁴⁴ Three days later on July 14, 2022, the hearing officer emailed Wagner and requested clarification regarding the dates of his imprisonment for which he was seeking compensation, as it significantly differed from his first claim. The email included the Attorney General's representatives. Given the limited information submitted, the hearing officer described the claim as "based upon Mr. Wagner's six convictions" and opined that it "appears to fall within subdivision (b) of Penal Code section 4900, as all six of his convictions were vacated and dismissed pursuant to Penal Code section 1473.7, subdivision (a)(2)." The hearing officer specifically noted that Wagner's first claim 17-ECO-14, which had been rejected as untimely under the law in effect at that time, had requested compensation for a different number of days of imprisonment. The hearing officer attached a copy of Wagner's second claim 22-ECO-25 for the Attorney General, as well as a copy of

⁴³ Wagner Email to CalVCB, sent at 11:45 p.m. on Saturday, July 9, 2022, with Wagner App. attached. ⁴⁴ Cal. Code Regs., tit. 2, § 640, subds. (a)-(e) (detailing process to receive, review, and file claims under Penal Code section 4900).

Wagner's first claim 17-ECO-14.⁴⁵ This email exchange on July 14, 2022, was the first time that the Attorney General learned of Wagner's second claim.

Wagner responded by email sent after business hours on July 14, 2022, and received the next morning on July 15, 2022. In it, Wagner confirmed that he was seeking compensation for his entire prison sentence for nine years and four months, which he now calculated as 2,931 days from his arrest and incarceration on September 3, 2003, until his release on September 11, 2011.⁴⁶ Notably, Wagner did not deny that he was seeking compensation for all six of his convictions, as opposed to just three. Nor did Wagner explain that only three of those six convictions had been vacated pursuant to Penal Code section 1473.7.

On July 15, 2022, the hearing officer notified the parties that Wagner's claim, as clarified, was deemed filed. The hearing officer requested a response from the Attorney General within 45 days of the filing date pursuant to Penal Code section 4902, subdivision (d), which the hearing officer calculated as August 29, 2022 (i.e., 45 days added to July 15, 2022).⁴⁷ Wagner did not challenge or otherwise question the deadline for the Attorney General's response.

2. Attorney General's Extensions of Time

On August 22, 2022, the Attorney General requested a single, 45-day extension of time to October 13, 2022, which was approved without objection on August 23, 2023. On September 21, 2022, the Attorney General requested a second extension of 15 days to October 28, 2022. While recognizing that a second extension is not statutorily authorized for claims under subdivision (b) of Penal Code section 4900, the Attorney General explained that Wagner's claim fell within both subdivisions (a) and (b) of section 4900. Specifically, of the six convictions for which Wagner sought compensation, only three had been vacated pursuant to subdivision (a)(2) Penal Code section 1473.7 as required to trigger subdivision (b) of section 4900 (i.e., counts 1 through 3). The remaining three convictions fell within subdivision (a) of section 4900, which allowed unlimited extensions for the

⁴⁵ CalVCB emails to the parties, sent at 10:53 a.m. and 10:58 a.m. on July 14, 2022, with attachments.

⁴⁶ Wagner email to parties, sent at 6:38 p.m. on July 14, 2022.

⁴⁷ CalVCB email to the parties, sent at 7:14 a.m. on July 15, 2022.

⁴⁸ Pen. Code, § 4902, subd. (d).

Attorney General's response upon a showing of good cause (i.e., counts 7 through 9). The Attorney General added that Wagner had no opposition to the requested extension.⁴⁹ Having received no objection from Wagner, the hearing officer approved the second extension on September 22, 2022, to October 28, 2022.

Several weeks later on October 11, 2022, Wagner replied that he was adding counsel Stephen Allen as his attorney. That same day, the hearing officer requested confirmation from Allen whether he was representing Wagner in the current administrative proceeding. Allen eventually confirmed his representation on October 28, 2022, the same day the Attorney General's response letter was due.

3. Attorney General's Response Letter

On October 28, 2022, immediately after counsel's confirmation, the Attorney General submitted a response letter in opposition to Wagner's claim, along with 143 exhibits spanning over 4,792 pages. The response letter reiterated that solely counts 1 through 3 fell within subdivision (b) of Penal Code section 4900, while counts 7 through 9 fell within subdivision (a) of section 4900. Consequently, compensation was required under subdivision (b) for counts 1 through 3 unless the Attorney General proved guilt by clear and convincing evidence. By comparison, compensation was required under subdivision (a) for counts 7 through 9 only if Wagner proved his innocence by a preponderance of evidence.

By email sent November 1, 2022, the hearing officer requested the parties confer regarding a hearing date on Wagner's claim under subdivisions (a) and (b) of Penal Code section 4900. In addition, the hearing officer encouraged Wagner to submit a pre-hearing brief due to the complex issues raised in the Attorney General's response regarding the shifting burden of proof for the various counts, as well as the precise number of days spent in custody that solely resulted from each of the challenged counts. Upon receiving the parties' reply, the hearing officer set the hearing for February 28, 2023, with pre-hearing briefs due January 9, 2023.

⁴⁹ Attorney General Application and Declaration of Good Cause for Additional Extension of Time, dated September 21, 2022.

4. Pre-Hearing Brief and Motion for Summary Judgment

Two months later on January 9, 2023, Wagner timely submitted the pre-hearing brief. In it, Wagner continued to request compensation for all six of his convictions in case number FVA020520. which he now calculated as \$401,100 for 3,185 days and included custodial time for three alleged parole violations.⁵⁰ Wagner also submitted a motion for summary judgment, which demanded approval of his entire claim based upon the Attorney General's supposedly untimely response. In it, Wagner asserted that his claim was solely based upon counts 1 through 3, which had been vacated pursuant to subdivision (a)(2) of Penal Code section 1473.7, and excluded counts 7 through 9, which had merely been dismissed pursuant to Penal Code section 1202.4 and 1202.4a.⁵¹ Despite this assertion, Wagner continued to request compensation for time served on counts 7 through 9. Wagner further asserted that his claim entirely fell within subdivision (b) of Penal Code section 4900, which required CalVCB's approval unless the Attorney General timely submitted a response within 45 days, subject to a single extension for 45 additional days. Wagner admitted that he had expressly agreed to the Attorney General's request for a second, 15-day extension of time to October 28, 2022, but he nevertheless insisted that the Attorney General's response was due no later than October 7, 2022. which was 90 days after Wagner emailed a copy of his application to CalVCB only, sent just before midnight on Saturday, July 9, 2022.52

The hearing officer requested a response from the Attorney General to Wagner's motion for summary judgment, which was timely received on February 8, 2023. The Attorney General argued that Wagner's claim of untimeliness was waived, barred by estoppel and laches, and ultimately meritless.⁵³ The Attorney General attached an email exchange with Wagner on September 20, 2022, in which Wagner stated, "Sure I will agree to the extension," in response to the proposed second

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^{25 | 50} Pre-Hearing Brief (submitted as "Claimants [sic] Hearing Brief") at pp. 20-22.

⁵¹ Motion for Summary Judgment (submitted as "Motion for Calculation of Claim on PC 4902(d) Without Hearing Due to Procedural Default by Respondent"), dated January 9, 2022, at p. 7.

⁵² Motion for Summary Judgment at p. 4.

⁵³ Attorney General Response to Motion for Summary Judgment (AGRMSJ), at pp. 1-18.

extension of time.⁵⁴ In that same exchange, Wagner inquired if the Attorney General "will be opposing the claim?"⁵⁵

5. Claim Hearing

A hearing on the claim occurred on February 28, 2023. Wagner and his counsel Stephen Allen appeared, and Deputy Attorney General Britton Lacy appeared for the Attorney General. After the parties discussed Wagner's motion for summary judgment and the procedural posture of the claim, Wagner expressly withdrew any request for compensation as to counts 7 through 9. Wagner then testified on the merits, subject to cross-examination, regarding his revised claim of innocence as to counts 1 through 3. The hearing concluded with no other witnesses or evidence proffered by either party. Both parties presented closing argument, and neither party requested an opportunity to submit a post-hearing brief. Accordingly, the record closed once the hearing adjourned.⁵⁶

III. Factual Summary

A. Criminal Offenses

In 2003, Wagner worked as a bounty hunter for a bail bond agency in San Bernardino County. On his own initiative, Wagner wore clothes resembling a police uniform, including a badge, bullet proof vest, and tactical belt with what appeared to be a taser, as well as handcuffs, flashlight, metal baton, and radio with microphone.⁵⁷ In addition, Wagner personally owned and operated, at different times, two white Crown Victoria vehicles, both of which had been refurbished to resemble a police cruiser, complete with lights and sirens and, in at least one of the vehicles, a police scanner.⁵⁸ Also, Wagner carried a badge that identified him as a "Detective" with the "Special Investigations Unit of the State of California," and he carried business cards that identified him as "Detective J. Wagner" with the

⁵⁴ AGRMSJ Ex. 6.

⁵⁵ AGRMSJ Ex. 6.

⁵⁶ CalVCB Hearing, conducted via Zoom on February 28, 2023, saved as MPF video file, at 1:14 through 1:46:15.

⁵⁷ AGRL at pp. 3-4; AGRL Exs. 2 at pp. 504-513; 75 at p. 3996; 106 (video)

⁵⁸ AGRL Exs. 2 at pp. 514-516; 75 at 3996; 106 (video).

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⁶⁷ AGRL Ex. 2 at pp. 542-543; 16 at p. 3715.

⁶⁶ AGRL Exs. 2 at pp. 526-540; 16 at p. 3714.

nonexistent "State Warrants Service" of the "State of California" for "Fugitive Recovery Service." 59 Wagner, who was also known as Jesse Prabhan Ariyamitr, had short brown hair, brown eyes, and a tanned skin tone, although his declared ethnicity was white. 60 He was 28 years old, approximately five feet nine inches tall, and weighed around 160 pounds. 61

Wagner's female friend Claudine L. occasionally accompanied him in his Crown Victoria as a "ride-along" when he was supposedly searching for fugitives. 62 Claudine appeared to be Hispanic, with brown eyes, brown hair, and a Spanish surname. 63 Claudine spoke Spanish better than Wagner and sometimes translated for him. According to Claudine, Wagner only stopped Mexicans and appeared to target undocumented immigrants, whom he referred to by a racist slur and expletives.⁶⁴ As Claudine told investigators and testified at trial, Wagner often parked near the Noa Noa Bar and waited for patrons to exit, after which he would stop them for alleged traffic violations.⁶⁵ Claudine recalled that, on one occasion, two men, whom Wagner had stopped after leaving the Noa Noa Bar, subsequently approached their parked Crown Victoria and accused Wagner of stealing their money, which Wagner denied and then drove off.66 Claudine also recalled that Wagner had once stopped to help police while she was riding with him.⁶⁷ Afterwards, they drove around, possibly to a bar in Fontana where Wagner arrested someone, but then Wagner and Claudine had an argument, and he

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⁵⁹ AGRL Ex. 31 at p. 3781.

⁶⁰ AGRL Exs. 29-30, 33-35 at pp. 3779-3781, 3783-3785; 39 at p. 3791; 47 at p. 3849; 53 at p. 3866; 54 at p. 3902; 57 at p. 3912; 91 at p. 4164. Wagner's physical characteristics are noted solely for identification purposes.

⁶¹ AGRL at pp. 23-24; AGRL Ex. 18 at pp. 3737-3738.

⁶² AGRL Exs. 75 at p. 3996; 106 (video). Although this witness is frequently referred to as "Claudia" in the administrative record, she identified herself as "Claudine" when testifying at trial. Her last name is omitted to preserve her privacy. (AGRL Ex. 2 at pp. 500-501.) Also, her physical characteristics are noted solely for purposes of identification.

⁶³ AGRL Exs. 17 at pp. 3712-3716; 33 at p. 3786; 139 at p. 4776.

⁶⁴ AGRL Exs. 2 at pp. 212-213, 458-459; 4 at p. 892, 17 at pp. 3713-3715.

⁶⁵ AGRL Exs. 2 at pp. 517-522 (trial testimony); 16 at p. 3714 (police interview).

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dropped her off early.⁶⁸ In addition to Claudine, Wagner took several other women on these "ridealong" excursions.69

1. Prior Convictions

Though Wagner falsely portrayed himself as a law enforcement officer, he was actually a convicted felon. In 1994, then-19 year old Wagner pleaded no contest to felony sexual intercourse with a minor and, in exchange, the remaining charges for forcible rape and forcible penetration were dismissed. 70 Wagner initially received probation, but his probation was revoked and a three-year sentence imposed in 1998, when he was 23 years old, after he was charged and convicted again with unlawful sexual intercourse with a minor, this time as a misdemeanor.⁷¹ Previously, in 1992, then 16year-old Wagner sustained a misdemeanor juvenile adjudication for impersonating a police officer. 72 Specifically, Wagner stopped several cars and detained the occupants while wearing clothing similar to a police uniform, including a duty belt with baton, replica .45 caliber BB gun, flashlight, and portable police scanner, and while driving his personal vehicle with a dash-mounted flashing red light.⁷³

As a result of Wagner's criminal history, he was barred from working as a bounty hunter. By law, ex-felons are prohibited from acting as bail agents. ⁷⁴ In addition, ex-felons, who had been imprisoned, are prohibited from entering any prison or jail without the warden's informed consent. 75 A violation of this law is punishable as a felony. Nevertheless, Wagner detained and arrested fugitives

⁶⁸ AGRL Exs 2 at pp. 500-632; 16 at pp. 3714-3716; 106 (videos).

⁶⁹ AGRL Ex. 17 at p. 3719 (Angelia N.); 3720 (Alicia F.); 3721 (Rhonda H.); 3722 (Rachel B.).

⁷⁰ Pen. Code, §§ 261 (forcible rape), 261.5, subd. (c) (statutory rape), 289 (forcible penetration); see also AGRL at pp. 48-49; AGRL Ex. 42 at pp. 3837-3840; 44, 45, 46 at p. 3848.

⁷¹ Ibid; see also AGRL at p. 49; AGRL Exs. 47-49; see also People v. Jesse A. Wagner, Napa County Superior Court case number 9401202-01; People v. Jesse Adrian Wagner, Butte County Municipal Court case number 97-8057. (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

⁷² Pen. Code, § 146, subd. (a); AGRL Ex. 39 at pp. 3791-3818.

⁷⁴ Pen. Code, § 1299.04, subd. (a)(5); see also AG Ex. 75 at p. 3996.

⁷⁵ Pen. Code, § 4571; *People v. Gyersvold* (2014) 230 CalApp.4th 746, 751-752 (presuming "the Legislature intended for section 4571 to continue requiring actual knowledge of the ex-convict's prior conviction for the consent to be valid").

for a bail bond agency, sometimes entering their homes to do so, and then transported them to jail for booking. Upon delivering the fugitives to law enforcement, Wagner entered the jail grounds while dressed as a law enforcement official and without disclosing his prior felony conviction.⁷⁶

2. March 17, 2003 (Count 7)

On March 17, 2003, Wagner entered the West Valley Detention Center, without permission to do so as an ex-felon, when booking Alberto M. on an outstanding warrant. Wagner signed the booking application, which listed him as the arresting and transporting officer. At no time did Wagner identify himself as a convicted felon.⁷⁷

3. April 18, 2003 (Counts 1 through 3)

On the night of Friday, April 18, 2003, Pedro and his brother Miguel P. (Miguel), along with their cousin Mauro C. (Mauro) and brother-in-law Omar S. (Omar), were drinking at the Noa Noa Bar. The men had been paid earlier that day. Pedro had between \$200 and \$250 cash in his wallet, while Mauro had about \$300. Pedro and Miguel were both undocumented immigrants from Mexico. The foursome left together in a car driven by Pedro, likely around 10:30 p.m.⁷⁸

Earlier that evening, around 9:40 p.m., Wagner was located 15 miles away from the Noa Noa Bar. He assisted a sheriff's deputy break up a fight. The deputy recalled that Wagner drove a white Crown Victoria, and a Hispanic female was seated inside. Wagner, who appeared to be wearing a black uniform with patches, identified himself as a bail recovery agent. The deputy last saw Wagner at the scene around 10:00 p.m. It would have taken Wagner approximately 18 minutes to drive from that location to the Noa Noa Bar.⁷⁹

Meanwhile, Pedro had only driven about a mile from the Noa Noa Bar when a white Crown Victoria appeared behind him with a flashing red light. Thinking it was an unmarked patrol car, Pedro

⁷⁶ AGRL at pp. 4-5; AGRL Exs. 75 at p. 3996; 106 (video recordings of multiple arrests).

⁷⁷ AGRL at p. 5; AGRL Exs. 2 at pp. 525-558; 3 at pp. 634-344, 649-672; 4 at pp. 874-886; 7 at pp. 1611-1644.

⁷⁸ AGRL at pp. 5-6; AGRL Exs. 3 at pp. 663, 682-688, 713-720; 15 at pp. 3672-3673 ("at about 2230 hours"); 23 at p. 3752; 24 at p. 3756.

⁷⁹ AGRL at pp. 5-6; AGRL Ex. 5 at pp. 1256-1275.

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pulled over to the side of the road and stopped, and the Crown Victoria stopped behind him. A male stepped out of the Crown Victoria. He looked Hispanic, with short black hair, and appeared to be wearing a blue police uniform. Pedro thought the male was a police officer. Pedro estimated the male's height as 5'5" or 5'6" and weight as 180 to 190 pounds. A Hispanic female, who was "a little bit heavy seat [sic]," remained seated in the front seat of the Crown Victoria.80

The male approached Pedro's car, threatened to deport him, and asked all four occupants to exit the vehicle. The male said only a few words in broken Spanish, the rest in English. He searched all four men and kept the wallets belonging to Pedro and Mauro. At one point, the male placed Pedro and Mauro in the back of the Crown Victoria. Pedro recalled that the female, who was still seated in the front of the car, spoke some Spanish to him after he explained that he did not speak English. Mauro, who spoke some English, recalled that the female only laughed and did not speak to him. Mauro also heard a police scanner while seated in the Crown Victoria. After about 30 minutes, the male released all four men. Pedro and Mauro asked for their wallets, and the male said he left them in Pedro's car. When Pedro and Mauro returned to Pedro's car, they found their wallets, but all of their cash was gone.81

The foursome drove back to the Noa Noa Bar in search of the white Crown Victoria, which they spotted parked nearby. Once the male noticed them, he quickly drove away, with the lights activated, and the female still seated inside. Pedro pursued but eventually lost the Crown Victoria on the highway.82

Shortly thereafter, at approximately 2:45 a.m. on April 19, 2003, Pedro and Mauro reported the robbery to police. By then, approximately four hours had passed since Pedro had been stopped by the male driving the Crown Victoria. Police had no suspects at that time.83

⁸⁰ AGRL at pp. 6, 23-24; AGRL Exs. 3 at pp. 664-706; 15 at pp. 3668, 3673-3674; 17 at p. 3736; 24 at pp. 3674-3756.

⁸¹ AGRL at pp. 6-7; AGRL Exs. 3 at pp. 389-390, 678-702, 711; 15 at p. 3673; 17 at p. 3736.

⁸² AGRL at p. 7; AGRL Exs. 3 at pp. 390, 691-693, 708-709; 15 at p. 3673; 17 at p. 3674.

⁸³ AGRL at p. 7; AGRL Exs. 3 at pp. 390, 691-693, 708-709; 15 at p. 3673; 17 at p. 3674.

had robbed him.⁸⁴ Specifically, Pedro identified Wagner as the robber on the following four occasions: (1) when shown a police flyer with multiple pictures of Wagner, (2) when shown photographs of Wagner before trial; (3) at trial when shown a photograph of Wagner; and (4) in person at the courthouse in 2017. But when observing Wagner in person during the trial, Pedro denied that he was the robber, explaining that the robber appeared heavier.⁸⁵ By then, Wagner had lost weight, grown his hair, and wore glasses.⁸⁶ Nonetheless, as determined by the appellate court, Pedro's identification of Wagner was reliable under the circumstances.⁸⁷ Moreover, Pedro's passenger Mauro also identified Wagner as the robber, although Mauro did not testify at trial.⁸⁸

Months later, after additional investigation, Pedro eventually identified Wagner as the male who

Significantly, when testifying at trial through an interpreter, Pedro stated that the robber took his cash, as well as "the social security," his Mexican ID, and his "working permit." Pedro reiterated, "My social security and also my working permit" were taken by the robber, along with the cash. 90

Claudine's trial testimony describing Wagner's actions during their ride-along excursions included details that largely matched Pedro's account, even though the timing of events differed. Those details included the location of a traffic stop near the Noa Noa Bar, her presence as a passenger in Wagner's vehicle, Wagner's poor Spanish, his animosity towards Mexicans, and a subsequent encounter with two men who accused Wagner of stealing their money.⁹¹

⁸⁴ AGRL at pp. 22-23; AGRL Exs. 17 at p. 3736; 75 at pp. 4000-4006.

²³ | 85 AGRL at p. 22; AGRL Exs. 3 at pp. 666, 670, 704-705; 17 at p. 3736; 97 at p. 4189.

^{24 | 86} AGRL Ex. 1 at pp. 141-142.

⁸⁷ AGRL Ex. 75 at pp. 4000-4006.

⁸⁸ AGRL Ex. 17 at p. 3736.

⁸⁹ AGRL Ex. 3 at p. 710.

⁹⁰ AGRL Ex. 3 at p. 710.

⁹¹ AGRL Exs. 2 at pp. 517-543.

4. April 20, 2003 (Count 8)

Two nights later on April 20, 2003, Wagner entered the West Valley Detention Center, without permission to do so as an ex-felon, when booking Pablo Q. 92 Wagner wore a long-sleeved dark shirt with an apparent gold sheriff's badge emblazoned on the chest, khaki pants, and a duty belt with various items attached. He was accompanied by Claudine, who recorded the unlawful arrest and transport of Pablo on Wagner's camera. As depicted in the video, Wagner climbed over a fence surrounding Pablo's home around 2:00 a.m., knocked on the front door, and shouted Pablo's name. Pablo soon opened the front door. As Wagner gave directions in Spanish, Pablo exited his home, turned around, and placed his hands on the stucco exterior of the home while Wagner frisked him. Pablo continued to comply while Wagner cuffed Pablo's hands behind his back. Despite the lack of any resistance, Wagner thrice kicked one of Pablo's legs to the side, causing Pablo to collapse to his knees. Wagner next led Pablo, who was still in handcuffs, to the backseat of his Crown Victoria. Wagner drove Pablo to the jail, arriving at approximately 2:30 a.m. Claudine briefly appeared at the beginning of the video, smiling and wearing civilian clothes. 93

5. July 26, 2003 (Counts 4 through 6 – Not Guilty)

Several months later on the afternoon of July 26, 2003, Jamie Z. (Jamie) reported to law enforcement that he had been robbed, while driving away from the Noa Noa Bar, around 1:00 a.m. that morning. According to Jamie, a white car with a spotlight appeared behind him as he was driving, and Jamie pulled over to the side of the road thinking it was a patrol car. The white car stopped behind Jaime, and a male stepped out. A female remained seated in the front of the white car, laughing. The male appeared to be Hispanic, with short dark hair, wearing a dark blue or black police uniform with tactical belt. The male shouted directions in broken Spanish for Jamie to exit his car, cuffed Jamie, and then pushed Jaime onto the hood while searching his pockets. The male removed Jamie's wallet, which had approximately \$900 cash in it, and kept it. The male eventually uncuffed Jamie and allowed him to leave on foot. During this exchange, the male threatened to call immigration and laughed at

⁹² AGRL at p. 5; AGRL Exs. 2 at pp. 525-558; 3 at pp. 634-344, 649-672; 4 at pp. 874-886; 7 at pp. 1611-1644.

⁹³ AGRL Exs. 14 at pp. 3555-3557; 17 at p. 3734-3735; 160 (video 2), spanning 7 minutes 42 seconds.

Jamie. After Jamie finally arrived home, he decided to report the incident to police, even though he still believed the robber was a police officer.⁹⁴

One of Wagner's videos, which was apparently filmed at 1:08 a.m. on July 26, 2003, depicts the view from the front window of his car entering the freeway. His voice and the voice of a female are audible, as well as a police scanner and siren. At one point, the female jokes about the high rate of speed. After just two minutes, the video abruptly transitions to the inside of the booking facility on an unknown date. Subsequent footage on this same video, which appears to have been filmed the next day at 1:46 a.m. on July 27, 2003, shows a person handcuffed and seated on the curb next to a stopped car. So

After further investigation, Jamie identified some photographs of Wagner as the robber, but not in others.⁹⁷ Jamie was unable to identify Wagner at trial, who by then had grown his hair, lost weight, and wore glasses.⁹⁸ Also, Wagner's defense presented his bank statement, which reflected an ATM purchase at 12:54 a.m. on July 26, 2003, at a gas station in Norco, approximately 18 miles from the Noa Noa Bar.⁹⁹ The jury ultimately acquitted Wagner of all counts related to Jamie.

6. Uncharged Incidents

Several months earlier, as captured on video recorded on the night of April 7, 2003, Wagner burst into an apartment after the male occupant declined to come outside. Wagner wore a tan, short-sleeved polo shirt with a gold badge and bulletproof vest underneath, khaki pants, and a duty belt with multiple attachments. Without ever identifying himself, Wagner kicked the door open, drew a weapon from his belt that resembled a firearm or taser, and entered the apartment. With his weapon raised, Wagner repeatedly shouted at the occupant and ordered him to the ground "or you're gonna get shot."

⁹⁴ AGRL Exs. 3 at pp. 757-818; 20 at pp. 3744-3746.

⁹⁵ AGRL Ex. 160 (video 3) up to 2 minutes 39 seconds.

⁹⁶ AGRL Ex. 160 (video 3) between 23:29 and 25:17.

⁹⁷ AGRL Ex. 16 at p. 3708,

⁹⁸ AGRL Ex. 1 at pp. 141-142.

⁹⁹ AGRL Ex. 14 at p. 3604. The distance between these two locations was calculated with Google Maps. (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

Wagner subsequently handcuffed two men inside the apartment and escorted them outside to his Crown Victoria. Wagner let one of the men go and transported the other to a jail in Riverside County. 100

In May 2003, Humberto M. (Humberto) reported to police that approximately \$4,000 was stolen from him during a supposed traffic stop earlier that evening near the Noa Noa Bar. Humberto was driving with a friend and his younger brother when he observed what appeared to be an unmarked police car with flashing red and blue lights and an audible siren. Humberto pulled over, and the supposed patrol car stopped behind him. The male driver, who was wearing a blue uniform like a police officer, approached. In broken Spanish, he ordered the occupants out of the car and then searched them and their wallets. The male confiscated all of the cash but returned their wallets and told them to go to the police station to collect their money. Several months later, Humberto and his passengers all identified Wagner as the robber. 101

Sometime in May 2003, Clemente G. (Clemente) was allegedly stopped by a Crown Victoria while driving home from a bar. The driver of the Crown Victoria appeared to be a Hispanic male wearing a dark police uniform. As the driver searched Clemente, he took \$480 cash from his wallet. The driver told Clemente to contact his parole officer for a refund. The next day, Clemente asked his parole officer for his cash, but his parole officer had no idea what he was talking about. Clemente only realized then that he had been robbed. However, Clemente did not formally report the robbery until August 18, 2003, while in custody for another offense. Clemente identified a photograph of Wagner as the robber. 102

¹⁰⁰ AGRL Ex. 160 (video 1) spanning 12 minutes 32 seconds; see also AGRL Exs. 3 at pp. 551-567, 836; 14 at pp. 3549-3554.

¹⁰¹ AGRL at p. 40; AGRL Exs. 12 at pp. 2963-3977; 16 at p. 3724. At one point, the district attorney charged Wagner with the robbery and kidnap of Humberto M., and Wagner was held to answer, but the charges were subsequently omitted from the information without explanation. (AGRL at p. 40; AGRL Ex. 12 at p. 2900.)

¹⁰² AGRL at pp. 39-40; AGRL Ex. 16 at pp. 3696-3697, 3705, 3707. No charges were filed for this alleged incident, possibly due to the delayed report and impeachment by Clemente's lengthy criminal history.

One night in 2003, Wagner stopped Julio F. (Julio). Wagner was driving his Crown Victoria, while dressed as a police officer. Wagner searched Julio and then handcuffed him. Wagner did not keep any of Julio's property, likely because Julio did not have any cash. According to Julio, Wagner threatened to plant drugs and arrest him but decided to let him go after about 15 minutes. Julio reported this incident only after police contacted him on August 27, 2003.¹⁰³

7. August 8, 2003 (Count 9)

By late July 2003, the San Bernardino County Sheriff's Department had received multiple reports of robberies committed by a police imposter. During a shift briefing on the robbery spree, one deputy realized that the imposter's description matched Wagner, whom he had recently encountered. Specifically, Wagner had reported a kidnapping in progress, which the deputy ultimately determined to be unfounded. When the deputy initially arrived on scene, Wagner identified himself as "Detective Wagner" for the State of California. Wagner was wearing a dark blue police uniform, but the deputy did not recognize the particular agency. The deputy noticed that Wagner's Crown Victoria vehicle had a spotlight, caged rear seat, and audible police scanners. At the deputy's request, Wagner handed him a business card that identified him as "Detective J. Wagner" with the "State Warrants Service." The deputy provided this card to his commander, who then gave it to the detectives investigating the robberies. The detectives discovered that the telephone number listed on the business card was for Wagner's personal cell and the address was for Wagner's bail bond employer. Based on this discovery, the detectives issued an alert for Wagner's arrest 104

On August 8, 2003, the same deputy was on patrol when he spotted Wagner's Crown Victoria stopped on the side of the road. It was parked next to another car that had been in a crash. Wagner was dressed in a police uniform with a badge, and he carried handcuffs, radio, taser, and pellet gun on his belt. Wagner also carried an ASP baton, despite lacking any authorization to possess this deadly weapon. The deputy exited his patrol car and engaged Wagner in conversation until backup arrived.

¹⁰³ AGRL at p. 41; AGRL Exs. 12 at pp. 2981-2983; 16 at pp. 3707, 3709. No charges were filed for this alleged incident. It is not clear whether Julio appears on any of the videos submitted in this proceeding.

¹⁰⁴ AGRL at p. 7; AGRL Ex. 16 at pp. 3676-3677.

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was a bail bond recovery agent. Wagner also admitted that the Crown Victoria was his personal vehicle and that he had purchased all of the additional equipment to make it look like a patrol car. Wagner was arrested for possessing a deadly weapon, as well as impersonating a police officer. 105 Wagner was released on bail on August 11, 2003, using a different agent than his employer. 106

During this discussion, Wagner admitted he was not a police officer. Wagner stated, instead, that he

В. **Wagner's Inconsistent Statements**

1. **Post-Arrest Interview**

Two days later on August 13, 2003, Wagner was interviewed by the investigating detective. At the outset of the interview, Wagner claimed that two of his fellow bail bond agents were "the ones doing the robberies, not him." Wagner identified these agents by name and provided a description of both agents and their cars. Specifically, one was a white male who drove a black Crown Victoria, the other was a Black male who drove a blue Crown Victoria. Neither spoke Spanish. According to Wagner, the agents targeted "Mexicans" who were driving along the road, and then, after the agents took the victims' money, they also stole their cars. Wagner denied ever using the lights and siren on his Crown Victoria to stop other cars, claiming instead that he only employed those devices to block traffic to avoid being hit. Wagner also denied ever having a female ride along with him, but then later, he claimed he only did so once with a female named "Paulette" from the sheriff's department. Wagner failed to mention Claudine or any of the other women had had ridden with him. When asked about his criminal history, Wagner only disclosed that he had been arrested for arson but claimed to have been exonerated. He failed to mention his prior convictions for sexual intercourse with a minor or his juvenile adjudication for impersonating a peace officer. 107

2. Polygraph Interview

Wagner resumed the interview on August 21, 2003, this time joined by his attorney. Wagner initially repeated his accusations against the other bail bond agents and claimed that he was present

¹⁰⁵ AGRL Exs. 18 at pp. 3737-3740; 19 at p. 3741.

¹⁰⁶ AGRL Exs. 16 at pp. 3678, 3683; 19 at p. 3741.

¹⁰⁷ AGRL Ex. 16 at pp. 3683-3687.

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108 AGRL Ex. 16 at pp. 3702-3704.

27 ¹⁰⁹ AGRL Ex. 7 at pp. 1681-1690.

for two of their robberies. But then Wagner accused his boss of committing all the robberies, adding that his boss also drove a white Crown Victoria and spoke Spanish. Wagner continued to deny ever having a female in his car when looking for fugitives, but he accused his boss of doing so. After a lunch break, Wagner submitted to a polygraph interview. Some of Wagner's answers were inconsistent with his earlier statements. For example, Wagner revealed his juvenile adjudication for impersonating a peace officer but failed to acknowledge his other convictions for sexual intercourse with a minor. Ultimately, the polygraph examiner opined that Wagner had been deceptive. 108

3. **Trial Testimony**

At trial in 2005, Wagner testified in his own defense. Wagner admitted to purchasing some law enforcement gear but claimed that several items, such as his bullet proof vest and handcuffs, were provided by his employer. Wagner also admitted taking several females, including Claudine, on "ridealongs" in his Crown Victoria while searching for fugitives. However, Wagner insisted that he only stopped, detained, and arrested individuals who were wanted by his employer for skipping bail. He claimed that Claudine lied when she testified otherwise. He acknowledged his "limited" ability to speak Spanish. Wagner denied any encounter with Pedro on the night of April 18, 2003. He further denied being in the vicinity of the Noa Noa Bar that evening. Wagner insisted, instead, that he remained with the deputy until 10:30 p.m., after which he drove Claudine home and dropped her off around midnight.¹⁰⁹ Wagner also denied any encounter with Jaime on July 26, 2003. Wagner claimed, instead, that at 1:00 a.m. that morning, he was at an ARCO gas station in Norco, fueling a Nissan Ultima and wearing street clothes, approximately 18 miles from the Noa Noa Bar on Cedar Avenue in Bloomington. 110

C. **Subsequent Offenses**

Following Wagner's conviction and imprisonment for a nine-year term, he was released on parole on September 9, 2011. But as detailed below, he reoffended several times.

¹¹⁰ AGRL Exs. 6 at pp. 1423-1595; 7 at pp. 1598-1899; 8 at pp. 1902-1918; 14 at p. 3604.

1. Parole Violation

In 2012, Wagner violated the terms of his parole. Specifically, Wagner engaged in surveillance for his former bail bond employer in violation of his parole condition that he not use, possess, or access surveillance equipment. In addition, Wagner made contact with a minor female in violation of his parole condition to refrain from contact with females between the ages of 13 and 18 years. 111 After Wagner admitted both violations in a single accusatory filing, he was sentenced to an additional 140 days, although the actual amount of time served is unclear. 112 At best, it appears that Wagner may have been arrested for these violations on January 6, 2012, and then released 71 days later on or about March 16, 2012. 113 Despite Wagner's assertion that he was thrice violated for parole resulting in three separate sentences of 140 to 180 days for each, the record does not support his claim. 114

2. Misdemeanor Conviction for Tear Gas Possession

In 2013, Wagner was arrested, again, for impersonating a peace officer, along with possession of body armor and tear gas. This arrest followed a parole search of Wagner's home, where a plastic silver "police" badge, body armor, and tear gas were discovered inside. The search was prompted by Wagner's vehicle, which was a black Ford Interceptor with dash mounts for a police mobile data computer, and no door handles on the interior of the rear passenger doors. A video recovered on Wagner's cell phone captured his admission that he was going to arrest somebody. Wagner was charged with all three offenses as felonies. Wagner ultimately pleaded guilty to misdemeanor possession of tear gas and, in exchange, the remaining charges were dismissed. He was sentenced

¹¹¹ AGRL at p. 53; AGRL Ex. 58 at pp. 3929-3930.

¹¹² AGRL at p. 53; AGRL Exs. 58 at pp. 3929-3930 (CDCR charge sheet for single parole revocation, dated January 2012);70 at p. 3984 (CDCR chronology noting single instance of parole revocation which resulted in 140 days in January 2012), 71 at p. 3985 (CDCR worksheet noting 140 day parole revocation sentence starting January 2012), 74 at p. 3994 (CDCR stipulation to parole revocation signed by Wagner in January 2012).

¹¹³ AGRL Exs. 58 at p. 3929, 70 at p. 3984, 71 at p. 3985.

¹¹⁴ Motion for Summary Judgment at p. 8 (citing AGRL Exs. 58, 70, 71, and 74).

¹¹⁵ Pen. Code, §§ 146a, 31360, 12403.7.

¹¹⁶ AGRL Exs. 53 at pp. 3867-3901.

¹¹⁷ AGRL Ex. 54 at pp. 3902-3903.

to probation only with minimal jail time. 118 It does not appear that this new conviction triggered a separate violation of Wagner's parole.

3. Felony Convictions for Forgery

In 2014, Wagner was convicted of felony forgery and felony forgery of an official seal related to process-server cards. By law, Wagner's criminal record disqualified him from working as a process server. The fraudulent cards were discovered during a parole search of Wagner's home, along with numerous receipts for completed process that were signed by Wagner as the official process server, despite his disqualification for this line of work. For both felony convictions, Wagner received three years of probation.¹¹⁹ It does not appear that these new felony convictions triggered a separate violation of Wagner's ongoing parole. Wagner's parole finally terminated on February 23, 2015.¹²⁰

C. New Exculpating Evidence

In 2017, Wagner gathered potentially exculpating evidence to challenge his convictions pursuant to Penal Code section 1473.7, subdivision (a)(2). This included a declaration from his private investigator regarding a conversation with Pedro, as well as a declaration from another investigator regarding Pedro's immigration status. The prosecution initially opposed the motion, albeit with some concessions, and then later withdrew its opposition to the extent that relief was warranted as to counts 1 through 3 only.

1. Chavez Declaration

A four-page, typed document entitled "DECLARATION OF PETE CHEVEZ [sic]" was signed by private investigator Pete Chavez (Chavez) on April 11, 2017. According to this declaration, Chavez called Pedro around 7:00 p.m. on March 14, 2017, introduced himself as an investigator for Wagner, and asked Pedro to confirm the items that had supposedly been taken during the robbery. Chavez specifically asked whether Pedro's social security card and work permit had been stolen, and Pedro allegedly responded, "No, I wasn't here legally at the time, I didn't have papers, I did not own a Social

¹¹⁸ AGRL at p. 49; AGRL Exs. 53-55 (2013 misdemeanor for possession of tear gas in violation of Pen. Code, 22810, resulting in probation with 36 days jail).

¹¹⁹ Pen. Code, §§ 470, 472; AGRL at p. 49; AGRL Ex. 57 at pp. 3910-3928.

¹²⁰ AGRL Exs. 70-73, 125 at pp. 4479-4480.

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"confession ... coupled with [Chavez's] review of the Opinion in [appellate court] case E041850," that Pedro "provided false testimony when testifying in the trial of *People v. Wagner* that he was robbed." 122 A report prepared by Chavez, dated March 14, 2017, consistently reflects Pedro's alleged response during their telephone conversation, but it omits any opinion as to the veracity of Pedro's testimony. 123

Security card or a work permit." ¹²¹ In the declaration, Chavez opined, based upon Pedro's supposed

Pedro's Immigration U-Visa

Though omitted from this administrative proceeding, Wagner's motion referenced another declaration from private investigator John Samson, who was an expert on immigration. As described in the motion, Samson opined that Pedro must have falsely testified that his social security card was stolen during the robbery because, as an undocumented immigrant, Pedro could not have possessed a social security card. Samson further explained that a U-visa is available to victims of crime, upon certification from law enforcement, and it has led to some fraudulent crime reports by undocumented immigrants seeking a visa. As confirmed by the prosecutor, the District Attorney's Office provided Pedro with a U-visa certification on May 4, 2013, which was renewed in October 2015, and again in November 2015. No certification was requested by Pedro before 2013. 124

3. **Prosecutor's Response**

In a written opposition, the prosecutor acknowledged that Pedro's "testimony about losing documents was likely false," but he nevertheless insisted that Pedro's account of being robbed of cash may have been accurate. 125 The prosecutor confirmed that Pedro had sought a U-visa roughly eight years after the trial in 2013. Nonetheless, the prosecutor urged Pedro's significant delay "cast serious doubt on the theory that a potential U-visa motivated false testimony here." 126 Otherwise, the

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¹²¹ AGRL Ex. 90 at p. 4122. 24

¹²² AGRL Exs. 28 at pp. 3775-3778; 87 at pp. 4036-4041; 90 at pp. 4120-4123.

¹²³ AGRL Ex. 27 at p. 3774.

¹²⁴ AGRL Ex. 87 at pp. 4055-4057.

¹²⁵ AGRL Ex. 90 at pp. 4138-4139; 114 at pp. 4305-4306.

¹²⁶ AGRL Ex. 114 at pp. 4305-4306.

prosecutor generally "dispute[d] certain aspects of [Wagner's] argument." The prosecutor maintained the proffered new evidence was insufficiently substantial to undermine "confidence in the outcome" as required for relief under Penal Code section 1473.7, subdivision (a)(2). 128

But then at the hearing on the motion, the prosecutor "concede[d] Mr. Wagner's entitlement to relief as to Counts 1, 2 and 3." Specifically, the prosecutor was "dropping our opposition to vacating those convictions" because "after considerable thought, discussions [*sic*] determined that we lack confidence in the proprietary of those convictions in light of the new statute." Thus, the prosecution's concession, upon which the court relied when granting relief, merely admitted that Wagner's new evidence was sufficiently credible such that, had it been introduced at trial, a different verdict was reasonably probable.

This construction is consistent with the prosecutor's subsequent opposition to Wagner's motion for a finding of factual innocence. The prosecutor emphasized that the "People did not stipulate here to any particular facts, and certainly not that Mr. Wagner 'did not perform the acts' that were accused." The prosecutor explained that his prior concession to relief under Penal Code section 1473.7 merely reflected his office's view that "a key witness's admission of dishonesty on a significant point, even if explainable, could not be called harmless as a matter of law, even though those "false statements were comparatively trivial and explainable under [the] circumstances." The prosecutor maintained that the overall weight of evidence persuasively showed that "Wagner did indeed rob [Pedro] and his companion – at least of money, and likely of another, possibly misdescribed item." 133

¹²⁷ AGRL Ex. 114 at p. 4295.

¹²⁸ AGRL Ex. 114 at p. 4296.

¹²⁹ AGRL Ex. 88 at p. 4066.

¹³⁰ AGRL Ex. 88 at p. 4066.

¹³¹ AGRL Ex. 128 at p. 4520.

¹³² AGRL Ex. 128 at pp. 4520-4521.

¹³³ AGRL Ex. 128 at p. 4521.

4. Unfiled Stipulated Facts

The prosecutor signed a document on June 8, 2017, entitled "Stipulated Facts for Purposes of Penal Code §1473.7 Hearing." ¹³⁴ In this document, the parties agreed, inter alia, that Pedro received a U-visa certification from the District Attorney's Office in 2013 and again in 2015; a deputy testified at trial that Wagner remained on site until at least 10:00 p.m. on the night of the robbery; the process by which both Pedro and Jamie identified Wagner "came under criticism at trial;" and the trial judge found Pedro's identification "so halting" and insufficient to permit the prosecution to refer to Wagner as the perpetrator during questioning. ¹³⁵ Contrary to Wagner's assertions, these stipulations do not include any concession that Claudine was not in the car during the robbery, only that Claudine "did not testify to witnessing the specific crimes against [Pedro]," and that Claudine "was not a large or heavyset person," whereas Pedro had described the female passenger as "relatively heavyset." ¹³⁶ Ultimately, the stipulated facts are limited and do not include any concession of Wagner's actual or factual innocence.

Despite Wagner's contrary claim, it does not appear that this document was filed in court. Most obviously, this document lacks a filed stamp. Moreover, the deputy district attorney never referenced this document during the hearing on June 9, 2017, one day after signing it. Neither did the deputy district attorney reference this document in his subsequent response to Wagner's petition to seal the records filed August 14, 2018.¹³⁷ Finally, in his opposition to Wagner's motion for a finding of factual innocence, the deputy district attorney expressly denied any prior concession, either directly or by implication, as to Wagner's innocence. ¹³⁸

5. Court Order

Immediately following the hearing on June 9, 2017, the court granted Wagner's motion based upon its review and consideration of "the Motion and the pleadings in support thereof and arguments

¹³⁴ AGRL Exs. 90 at pp. 4142-4145 (Wagner's copy); 115 at pp. 4310-4310 (Attorney General's copy).

¹³⁵ AGRL Ex. 90 at pp. 4142-4145; 115 at pp. 4310-4313.

¹³⁶ AGRL Ex. 115 at pp. 4312-4313.

¹³⁷ AGRL Ex. 123 at pp. 4465-4476.

¹³⁸ AGRL Ex. 128 at p. 4511.

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§1473.7(a)(2)...."139 The court specifically found "that there is Newly Discovered Evidence of Actual Innocence that requires those convictions and sentences to be vacated."140 As such, the court's decision did not amount to a finding that Wagner was factually innocent, only that Wagner's proffered new evidence was sufficiently credible that, had it been introduced at trial, a different verdict was reasonably probable as required for relief under subdivision (a)(2) of section 1473.7.

of counsel, and the People have conceded the Defendant's Motion pursuant to Penal Code

D. Attorney General's Inculpating Evidence

In this administrative proceeding, the Attorney General presents extensive evidence in opposition to Wagner's claim. In addition to the trial record, the Attorney General's evidence includes interviews with Pedro, investigator Chavez, and Wagner, as well as other impeaching evidence against Wagner.

1. **Pedro Interview**

In January 2018, investigators from the Office of the Attorney General interviewed Pedro in person. Pedro consistently described driving home from the Noa Noa Bar with his brother Miguel, cousin Mauro, and brother-in-law Omar, being pulled over by what he thought was a patrol car, and the ensuing cash robbery. When asked specifically what items were stolen. Pedro responded. "Money." When asked if anything else was taken, Pedro replied, "The only thing was taken from me was the card I used to work." He added, "Well the card that we use for work, all people that come here undocumented." Pedro initially agreed that it was "like a fake social security card" but then added "the green card, you guys call it a green card, for residency." Pedro insisted that the card "was mine, in my name, all my information." Pedro clarified that just one card, which had his picture on it, was tossed.

When asked about his seemingly inconsistent statements to Wagner's investigator, Pedro noted that he had been asleep when he received the call. Once the investigator mentioned Wagner's name, Pedro felt like his "head was going to explode" because he was so "scared of that man" that he had moved to a different county. Pedro added that, when he had told the investigator that his social

¹³⁹ AGRL Ex. 89 at p. 4077.

¹⁴⁰ AGRL Ex. 89 at p. 4078.

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security card was not stolen, he was only "trying to explain that he [Wagner] threw it away." Pedro further clarified that he did not have a social security or work permit at the time of the robbery, although he now does. Pedro stated, "I told him I never said that he took a work permit, I never said that, what I did say was that he took the card that I used for work and threw it away, that is what I had said." 141

After receiving the investigator's call, Pedro was afraid that Wagner may come looking for him. Despite his fear, Pedro was willing to go to court again if needed, adding "I have nothing to hide." Pedro recalled that, sometime after receiving the call, he went to the courthouse for a hearing on Wagner's motion. Pedro immediately recognized Wagner, who was "looking at me kind of ugly." One of the attorneys approached Pedro and informed him that he was not needed and was free to leave. 142

At the end of the interview, Pedro provided the investigators with his brother Miguel's telephone number. Pedro lacked any contact information for his cousin Mauro, and Omar had since passed away. 143 A review of Pedro's criminal history report reflects a misdemeanor conviction for assault with a deadly weapon in 2003 and a misdemeanor conviction for driving under the influence of alcohol in 2008, along with an arrest for driving on a suspended license in 2009. 144

2. **Miguel Interview**

In January 2018, investigators interviewed Pedro's brother Miguel over the telephone. Miguel's description of the events surrounding the robbery were consistent with Pedro's account. Miguel stated that none of his property was stolen, adding that he was not carrying a wallet that night, as he had recently arrived in the United States from Mexico. Miguel was reluctant to speak to the investigators because he feared it might provoke Wagner to look for him and possibly report him. Miguel added that, where he came from, he was used to the police committing assaults and robbery. 145

¹⁴¹ AGRL Ex. 97 at pp. 4183-4193.

¹⁴² AGRL Ex. 97 at p. 4190.

¹⁴³ AGRL Ex. 97 at p. 4191.

¹⁴⁴ AGRL Exs. 60-63, 142-143.

¹⁴⁵ AGRL Ex. 98 at pp. 4194-4198.

4. Investigator Chavez Interview

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On November 29, 2017, investigators interviewed Wagner's investigator Chavez by telephone. Chavez, who was fluent in both Spanish and English, consistently described his conversation with Pedro as reflected in his declaration. Specifically, Chavez asked Pedro, in Spanish, about what items were stolen during the robbery, and Pedro "said the only thing taken was money." Chavez next asked Pedro about the work permit and social security card, to which Pedro responded that "those things were not stolen," adding "he did not have a social security card or a work permit because he was here illegally, he did not have documents." Chavez reiterated that Pedro had told him that "the only thing that he lost was money because he was here illegally, couldn't have a social security card or work permit...." However, Chavez denied reading the appellate court's decision in Wagner's case and was not sure if Wagner had ever provided a copy to him, despite the contrary representation in his declaration. Chavez also denied writing the declaration, insisting that Wagner had prepared it. Chavez confirmed his professional opinion, as stated in the declaration, that he believed Pedro had falsely testified about the robbery, but he emphasized that his opinion was based upon the information provided by Wagner. Chavez acknowledged that his opinion would be different if, for example, other passengers in Pedro's car had corroborated Pedro's account. Chavez expressed surprise that the deputy district attorney had dismissed the case without speaking to him or having him testify in court. 146

5. Wagner Interview

On November 20, 2017, investigators interviewed Wagner in the presence of his counsel. At that time, Wagner was in his second year of law school at American Institute of Law. Contrary to his prior statements, Wagner admitted using his personal Crown Victoria with added lights and siren to stop "quite a few" cars, resulting in approximately a dozen arrests. He also admitted to staking out the Noa Noa Bar on a frequent basis to look for fugitives. He further admitted to having multiple women ride-along with him while searching for fugitives. He denied arresting anyone who was not a fugitive. He also denied keeping any property from his detainees or threatening them with deportation. He

¹⁴⁶ AGRL Ex. 99 at pp. 42199-4203.

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specifically denied stopping anyone on the night of April 18, 2003, insisting instead that he remained on scene with the deputy for at least an hour between 9:45 p.m. and 10:45 p.m. Immediately afterwards, he dropped off Claudine at her home. Wagner added, for the first time, that he next drove to Temecula to meet with his coworker "Arlin" at their office, arriving around 11:00 p.m., where he printed out an employment form that she needed to move into a new apartment. Then Wagner finally returned home, which was also located in Temecula. Wagner denied any animosity toward illegal immigrants or Mexicans, noting that his wife and best friend are Hispanic. 147

Throughout the interview, Wagner made multiple false statements, some of which he later corrected. For instance, Wagner initially claimed to have attended "Chico State" after high school, but then admitted he actually attended Butte Community College. When asked if he had ever presented himself as a police officer before the events that resulted in his conviction, Wagner replied, "I can't think of a time, or an event," despite his juvenile adjudication for this exact offense. The investigator replied by noting Wagner's juvenile adjudication, which Wagner falsely characterized as merely a "fake bomb" prank on school grounds. Wagner also denied having presented himself as a police officer any time after his conviction, even though he was arrested for this exact offense in 2013, and he ultimately pleaded to a single count of misdemeanor possession of tear gas. Wagner admitted having a prior felony conviction for statutory rape, but contrary to the report and complaint, as well as his own admissions to police, Wagner falsely described a consensual encounter with his supposedly 15-year old girlfriend.

¹⁴⁷ AGRL Ex. 105 at pp. 4250-4289.

¹⁴⁸ AGRL Ex. 105 at p. 4276.

¹⁴⁹ AGRL Ex. 39 at pp. 3792-3794 (juvenile probation report describing Wagner dressed up in a blue uniform with a baton and BB gun attached to his belt, carrying a portable scanner, and driving a car with a dash-mounted flashing red light, which he used to stop other drivers).

 $^{^{150}}$ AGRL Exs. 53 at pp. 3872, 3874; 54 at p. 3902; 105 at p. 4275.

¹⁵¹ AGRL Exs. 40 at pp. 3823-3826, 3828 (reporting victim as 14 years old and a virgin when Wagner physically forced himself on her, against her wishes, and Wagner later admitted to the detective that the victim did not want to have sex with him, but he nevertheless penetrated her four or five times); 105 at p. 4278.

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6. Wagner's Jail Calls

A decade earlier in 2006, Wagner twice called Arlin M. (Arlin) while he was incarcerated, and their conversations were recorded. During the first call placed on January 26, 2006, Arlin acknowledged receipt of a letter from Wagner, and Wagner urged her to write back. Wagner next discussed the details of his criminal case. After noting that the victim in the robbery that resulted in his sole conviction had testified that the incident occurred around 11:00 p.m., Wagner said that he had planned to subpoena Arlin to show that he had been in Temecula with her at that time but supposedly a "cop stole all of my paperwork." 152 Wagner asked Arlin where she lived and worked. Their call finally ended with Arlin promising to send Wagner a letter. 153

During the second call on February 8, 2006, Wagner asked Arlin how to spell her last name and whether his attorney had called her yet. Wagner also asked Arlin if she remembered moving into her apartment around May 2003, "where they verified the income and stuff," to which Arlin responded, "Un huh" and "Yeah." 154 Wagner again asked Arlin if she remembered "the papers that I gave you ... to verify the income" for the apartment, adding that he wanted "to make sure that was for that apartment cause that's what I told my lawyer and I don't want to look like I was lying or anything..."155 Arlin replied, "Ah, yeah, it was in, in ah, in May." 156 Wagner reiterated that he had told his attorney that he had been with Arlin "like 1130 1145 in Temecula" at their office, and warned that his attorney would call her to confirm his alibi. 157 Wagner professed his innocence and suggested, contrary to his initial statement to police, that the robber was a cop from Fontana. Wagner next asked Arlin for her birthdate and email address, and he provided Arlin with his mother's email address. The conversation ended immediately thereafter. 158

¹⁵² AGRL Ex. 102 at p. 4223.

¹⁵³ AGRL Ex. 102 at pp. 4221-4228. 24

¹⁵⁴ AGRL Ex. 103 at p. 4231.

¹⁵⁵ AGRL Ex. 103 at p. 4232.

¹⁵⁶ AGRL Ex. 103 at p. 4232.

¹⁵⁷ AGRL Ex. 103 at p. 4232.

¹⁵⁸ AGRL Ex. 103 at pp. 4229-4240.

7. **Arlin Interview**

Investigators twice interviewed Arlin over the telephone. During the first interview on November 29, 2017, Arlin confirmed that she had worked with Wagner in 2003, when she was approximately 22 years old, and she had even accompanied him on a few ride-alongs, for which he paid her \$100 to translate. Arlin recalled Wagner had threatened one detainee with deportation. Arlin last heard from Wagner about two years ago. Arlin acknowledged that Wagner had asked her to sign some documents, but she never did. Arlin could not recall the specifics of the documents but told investigators she would search her emails for a copy. Arlin initially denied any recollection of meeting Wagner to obtain paperwork late at night in Temecula in 2003. 159

After this interview, Arlin forwarded several emails to the investigators, which they discussed in a second interview on November 30, 2017. The first email was sent to Arlin on February 9, 2006, from Wagner's mother. It attached a declaration for Arlin's signature that averred she had been with Wagner on April 18, 2003, at 11:45 p.m. in Temecula. Arlin vaguely recalled once meeting Wagner to obtain a paystub as proof of employment for her purchase of a car, but she did not recall the specific date or time. The second email was sent to Arlin on May 4, 2006, from George Lanterman, 160 who had previously called Arlin to discuss Wagner. This email attached a declaration averring that Arlin had been with Wagner on April 18, 2003, at 11:30 p.m. at a Denny's and then at the office in Temecula. The third email was sent to Arlin on July 14, 2006, from Wagner's mother, and it mentioned a third declaration. As Arlin recalled, she had refused to sign the first two declarations because they were not accurate, and when Arlin explained her reason to Wagner's mother, she had dropped off a third declaration at Arlin's work, but it was also inaccurate. Because of the inaccuracies, Arlin declined to sign any of the declarations. 161

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¹⁵⁹ AGRL Ex. 100 at pp. 4204-4216.

¹⁶⁰ No one by this name appears in the list of licensed attorneys by the California State Bar. According to a Google search, an individual by this name appears in a LinkedIn profile, which describes him as a private investigator in Victorville, California. (Evid. Code, § 452, subd. (h); Cal. Code of Regs., tit. 2, § 617.8.)

¹⁶¹ AGRL Ex. 101 at pp. 4217-4220.

E. CalVCB Hearing

Wagner and counsel for both parties appeared at the CalVCB hearing on February 28, 2023. As detailed below, the parties initially discussed Wagner's motion for summary judgment and related arguments, after which Wagner testified subject to cross-examination on the merits of his claim.

1. Legal Argument

At the outset of the hearing, Wagner maintained that subdivision (b) of Penal Code section 4900 mandated approval of his claim because the Attorney General failed to file an objection within the statutory deadline of 90-days, regardless of Wagner's express agreement to allow an extension of time for the Attorney General to do so. The hearing officer questioned whether subdivision (b) exclusively applied, given Wagner's request for compensation for the entire duration of his imprisonment for all six of his convictions, including counts 7 through 9, which did not qualify under this subdivision. After conferring with counsel, Wagner expressly withdrew any request for compensation for counts 7 through 9. Based upon this express withdrawal, the hearing officer determined that the revised claim, which previously fell within both subdivisions (a) and (b) of section 4900, now solely fell within subdivision (b). The hearing officer added that, when processing all claims under section 4900, CalVCB's goal is to ensure a fair administrative hearing, which may be impaired if CalVCB refused to allow an extension of time that both parties had agreed upon. The hearing officer noted another instance in which both parties had agreed to suspend the mandated deadline to decide a claim under subdivision (b) of section 4900 in order to ensure a fair hearing for the claimant.

Wagner next argued that the district attorney's concession to vacate his convictions pursuant to the "actual innocence" provision in Penal Code section 1473.7, subdivision (a)(2), along with the court's order granting this relief, was equivalent to a finding of factual innocence that is binding in this proceeding. Wagner's counsel conceded, however, that the order did not constitute a finding of factual

¹⁶² CalVCB Hearing, conducted via Zoom on February 28, 2023, saved as MPF video file, at 1:14 through 17:25.

¹⁶³ *Ibid*. (referring to Michael Hanline, PC 4900 claim number 16-ECO-10, approved Nov. 17, 2022).

¹⁶⁴ CalVCB Hearing at 17:25 through 21:32.

¹⁶⁵ CalVCB Hearing at 21:32 through 1:08:32.

innocence within the meaning of Penal Code section 1485.55, which compels automatic approval of a claim for compensation when supported by a court finding of factual innocence.¹⁶⁴

2. Wagner's Testimony

Proceeding to the merits of his revised claim, Wagner testified on his own behalf. He denied committing the offenses that led to his convictions in counts 1 through 3. He insisted he had never met Pedro and it was mere coincidence that he shared so many characteristics with Pedro's description of the alleged robber. Wagner alleged that the robbery described by Pedro was common and other culprits had been arrested for committing the same type of robberies around that time. Wagner claimed Pedro had lied about everything at trial and suggested Pedro may have lied about the entire incident in order to obtain an immigration U-visa. Wagner claimed that, according to an unreported conversation with the prosecutor, Pedro intended to assert his Fifth Amendment right against self-incrimination at the hearing on Wagner's motion to vacate counts 1 through 3 pursuant to Penal Code section 1473.7, subdivision (a)(2). Wagner added that he personally overheard Pedro say that he would not testify. Wagner further claimed that the prosecutor made additional concessions regarding his innocence during informal conversations that were not reflected in the official transcript.

Wagner denied drafting the declaration for investigator Chavez, even though the declaration misspelled the investigator's name. Wagner insisted the investigator had reviewed the appellate court decision and portions of the trial transcript, regardless of the investigator's contrary statements to the Attorney General. Wagner further insisted, despite evidence to the contrary, that he had consistently accepted responsibility for his criminal actions in counts 7 through 9 and never sought compensation for those particular crimes. When pressed on whether he had challenged those convictions under the actual innocence provision in Penal Code section 1473.7, subdivision (a)(2), Wagner initially claimed he did not recall doing so but then added that, if he did, then it would have been based upon the prejudicial effect of Pedro's false testimony infecting the entire trial.¹⁶⁵

¹⁶⁹ Pen. Code, § 4900.

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

Wagner insisted that the document with stipulated facts had been filed in court, but the supposed "filed stamp" that he cited as proof is missing. 166 Wagner further insisted that the court relied upon the stipulated facts when granting his motion to vacate counts 1 through 3 pursuant to Penal Code section 1473.7, subdivision (a)(2). But the court's order merely reflects that the judge considered "the Motion and the pleadings in support thereof and arguments of counsel...." 167 Wagner readily admitted that he was released from prison on September 9, 2011, contrary to the representation in his second claim form that he was released on September 11, 2011, or the representation in his first claim form that he was released on February 15, 2016. No explanation was offered for these discrepancies. Also, Wagner denied that his trial defense attorney knew that Pedro was undocumented. However, the trial transcript confirms that his attorney unsuccessfully sought permission to impeach Pedro by asking about his status as "an illegal immigrant" in order to show that "the social security card [allegedly stolen] was either not his or was gotten under some false pretenses...." Finally, Wagner reiterated his innocence and emphasized that Pedro had failed to testify in this administrative proceeding. 168 No other witnesses or evidence was offered at the hearing.

IV. Determination of Issues

Penal Code section 4900, subdivision (a), allows a person, who has been erroneously convicted and imprisoned for a felony offense that they did not commit, to submit a claim for compensation to CalVCB for the injury sustained. Typically, under subdivision (a) of section 4900, claimants bear the burden to prove by a preponderance that (1) the crime with which they were convicted either did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous conviction. Once such a claim is received and filed, Penal Code section 4902 requires the Attorney General to submit a written response within 60 days pursuant to Penal Code

¹⁶⁶ AGRL Exs. 90 at pp. 4142-4145 (Wagner's copy), 115 at pp. 4310-4313 (Attorney General's copy).

¹⁶⁷ AGRL Ex. 89 at p. 4077.

¹⁶⁸ AGRL Ex. 3 at p. 678.

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section 4902.¹⁷¹ Unlimited extensions are available upon a showing of good cause. Thereafter, under Penal Code section 4903, an informal administrative hearing before a hearing officer ensues, at which the claimant and Attorney General may present evidence concerning innocence and injury.¹⁷² Upon the requisite showing of innocence and injury, then pursuant to Penal Code section 4904, CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury sustained if sufficient funds are available, upon appropriation by the Legislature, at a rate of \$140 per day.¹⁷³

A different procedure applies under subdivision (b) of Penal Code section 4900 for claimants whose convictions were reversed under specified circumstances. For those qualifying claims, CalVCB's approval is mandated, even without a preponderance of evidence that the claimant did not commit the crime for which they were convicted. The Specifically, subdivision (b) compels approval of the claim for compensation, without a hearing and within 60 days, when the following three elements are met. First, the claimant's conviction must have been vacated either by a writ of habeas corpus or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated conviction must have been dismissed on remand, or the claimant must have been acquitted upon retrial. Third, the Attorney General must decline to object to the claim within the allotted period of time. The Attorney General must decline to object to the claim within the claimant sustained injury through their erroneous conviction, then CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the Legislature. CalVCB's approval of the claim is statutorily required, regardless of whether or not the record proves the claimant is more likely innocent than guilty.

If the Attorney General elects to object to a claim under subdivision (b) of Penal Code section 4900, he must do so in writing, within 45 days from when the claimant files the claim, and with clear

¹⁷¹ Pen. Code, § 4902, subd. (a).

¹⁷² Pen. Code, §4903, subd. (a).

¹⁷³ Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

¹⁷⁴ Pen. Code, § 4900, subd. (b).

¹⁷⁵ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

¹⁷⁶ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

¹⁸² *Ibid*.

and convincing evidence that the claimant is not entitled to compensation. Only a single extension of time for an additional 45 days is allowed for good cause. Upon receipt of the objection, a hearing ensues before a hearing officer, at which the Attorney General bears the burden to prove, by clear and convincing evidence, that the claimant committed the acts constituting the offense. To meet that burden, the Attorney General may not rely solely on the trial record for the vacated conviction. The Attorney General fails to meet this burden, then CalVCB shall approve payment to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient funds are available upon appropriation by the Legislature. Even then, the burden remains upon the claimant to demonstrate injury by a preponderance of the evidence.

"The standard of proof known as clear and convincing evidence demands a degree of certainty greater than that involved with the preponderance standard, but less than what is required by the standard of proof beyond a reasonable doubt." Specifically, this "intermediate standard 'requires a finding of high probability." In other words, the proponent must persuade the decisionmaker "that it is highly probable that the fact is true." Nothing more, and nothing less, is required.

When determining whether the Attorney General has satisfied their burden of proof, the Board may broadly consider "any other information that it deems relevant to the issue before it," even if inadmissible under the traditional rules of evidence, so long as "it is the sort of evidence on which

¹⁷⁹ Pen. Code, §§ 4903, subd. (d), 4904.

¹⁷⁷ Pen. Code, §§ 4902, subd. (d), 4903, subd. (b); Cal. Code Regs., tit. 2, § 644, subd. (e).

 $^{^{178}}$ Pen. Code, § 4903, subd. (d); Cal. Code Regs., tit. 2, § 645, subd. (g).

¹⁸⁰ Pen. Code, § 4904; Cal. Code Regs., tit. 2, § 644, subd. (e).

¹⁸¹ Conservatorship of O.B. (2020) 9 Cal.5th 989, 998-999.

¹⁸³ CACI 201 (Highly Probable – Clear and Convincing Proof)

¹⁸⁴ See *Nevarrez v. San Marino Skilled Nursing & Wellness Centre, LLC* (2013) 221 Cal.App.4th 102, 113-114 (declining to define clear and convincing standard to additionally require that "the evidence must be 'so clear as to leave no substantial doubt' and 'sufficiently strong as to command the unhesitating assent of every reasonable mind" as this superfluous language is "dangerously similar to that describing the burden of proof in a criminal case").

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reasonable persons are accustomed to rely in the conduct of serious affairs."¹⁸⁵ This broad standard for admissibility necessarily includes "the prior testimony of witnesses [that] claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for which claimant had an opportunity to object."¹⁸⁶ It may also include the "claimant's denial of the commission of the crime; reversal of the judgment of conviction; acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the crime..."¹⁸⁷

Nevertheless, CalVCB's broad authority to consider all relevant evidence may be statutorily limited as a result of a stipulation or finding during the criminal proceedings. Specifically, if the prosecutor "stipulates to or does not contest the factual allegations underlying one or more of the grounds for granting a writ of habeas corpus or a motion to vacate a judgment, the facts underlying the basis for the court's ruling or order shall be binding on [CalVCB]." CalVCB is also bound by "the express factual findings made by the court ... during proceedings on a petition for habeas corpus, motion to vacate judgment pursuant to Penal Code section 1473.6, or an application for a certificate of factual innocence...." While these statutory provisions omit appellate court proceedings, an appellate court's determination of claims that were, or could have been, raised on direct appeal, may be binding under the doctrines of res judicata and collateral estoppel. In addition, CalVCB is bound to approve a claim within 30 days when a "court has granted a writ of habeas corpus or when, pursuant to Section 1473.6, the court vacates a judgment, and [] the court has found that the person is factually innocent, under any standard for factual innocence applicable in those proceedings...." 191

This statutory provision for automatic approval based upon an implied finding of factual innocence

¹⁸⁵ Cal. Code Regs., tit. 2, § 641, subds. (c) and (f).

¹⁸⁶ Cal. Code Regs., tit. 2, § 641, subd. (b).

¹⁸⁷ Cal. Code Regs., tit. 2, § 641, subd. (a).

¹⁸⁸ Pen. Code, § 1485.5, subd. (a).

¹⁸⁹ Pen. Code, § 1485.5, subd. (c); see also Pen. Code, § 4903, subd. (c).

¹⁹⁰ See *Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 206 (explaining "Res judicata, or claim preclusion, precludes parties or their privies from relitigating a cause of action finally resolved in a prior proceeding" and "Collateral estoppel precludes relitigation of issues argued and decided in a prior proceeding").

¹⁹¹ Pen. Code, § 1485.55, subd. (a).

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plainly excludes vacation of a conviction under the actual innocence provision of Penal Code section 1473.7, subdivision (a)(2). Finally, CalVCB may not deny a claim under Penal Code section 4900 solely because the claimant failed to obtain a court finding of factual innocence. 192

Motion for Summary Judgment is Denied

At the threshold, Wagner's motion for summary judgment lacks merit. When initially submitted on July 9, 2022, Wagner's claim for compensation under Penal Code section 4900 fell within both subdivisions (a) and (b). It was only at the hearing on February 28, 2023, when he explicitly withdrew his request for compensation as to counts 7 through 9, that his claim exclusively fell under subdivision (b). Accordingly, the maximum 90-day deadline under subdivision (b) did not apply when the Attorney General timely objected on October 28, 2022. And even assuming otherwise, approval of a claim under subdivision (b) is mandated when "the Attorney General declines to object within the allotted period of time...." 193 But here, the Attorney General never declined to object; rather, the Attorney General merely requested, with Wagner's express approval, a second extension of time to decide whether or not to object. CalVCB, in turn, approved the joint request in order to ensure a fair hearing for both parties. 194 By agreeing to the extension on September 20, 2022, and failing to challenge timeliness until months later on January 9, 2023, Wagner waived any error as to the timing of the Attorney General's objection submitted on October 28, 2022. Similarly, Wagner's belated challenge to the timeliness of the Attorney General's objection is barred by estoppel, given the determinantal reliance by the Attorney General, as well as CalVCB, upon Wagner's express approval for the second

¹⁹² Pen. Code, § 1485.55, subd. (d); Cal. Code of Regs., tit. 2, § 645, subd. (f).

¹⁹³ Pen. Code, § 4902, subd. (d).

¹⁹⁴ See Code Civ. Proc., § 1094.5, subd. (b) (authorizing mandamus where administrative proceeding lacked "a fair trial").

¹⁹⁵ See, e.g., *Munoz v. City of Tracy* (2015) 238 Cal.App.4th 354, 360 (finding parties' agreement to postpone the trial date necessarily extended the statute of limitations, such that defendant waived grounds for motion to dismiss by agreeing to trial postponement); Zavala v. Board of Trustees (1993) 16 Cal.App.4th 1755, 1761 (finding plaintiff waived any objection to defendant's failure to verify their answer when she failed to object to the lack of verification prior to trial).

extension of time. ¹⁹⁶ For these same reasons, laches precludes Wagner's requested relief, as he unreasonably delayed several months before raising any timeliness challenge. ¹⁹⁷ Indeed, by the time Wagner raised his timeliness challenge on January 9, 2023, the 60-day deadline for CalVCB to approve an unopposed claim under subdivision (b) of Penal Code section 4900 had already passed over a month earlier on December 6, 2022, by Wagner's count. ¹⁹⁸

Wagner alternatively argues that the Attorney General's objection was untimely, even if the second extension of time applies, because the deadline to submit the objection commenced as soon as he emailed his claim to CalVCB just minutes before midnight on Saturday, July 9, 2022. By Wagner's calculation, the Attorney General's deadline expired 105 days later (i.e., 90 days by statute plus 15 days for the second extension) on October 22, 2022, which was six days before the Attorney General objected to the claim on October 28, 2022. 199

But this belated argument is likewise waived and barred by estoppel and laches for all of the same reasons detailed above. This argument is also meritless, as it is premised upon an absurd interpretation of the relevant statutes.²⁰⁰ Wagner's view of subdivision (d) of Penal Code section 4902 would require the Attorney General to oppose a claim, despite having no knowledge, whatsoever, that the claim even existed. In order to ensure both parties receive a fair hearing, the Attorney General's statutory deadline to submit an objection to a claim under Penal Code section 4900 must be understood to commence only after the Attorney General has received notice of the claim by CalVCB

¹⁹⁶ See, e.g., *Ventura29 LLC v. City of San Buenaventura* (2023) 87 Cal.App.5th 1028, 1042 (explaining doctrine of equitable estoppel "provides that a person may not deny the existence of a state of facts if that person has intentionally led others to believe a particular circumstance to be true and to rely upon such belief to their detriment").

¹⁹⁷ See, e.g., *Kapner v. Meadowlark Ranch Assn.* (2004) 116 Cal.App.4th 1182, 1190 ("Laches may bar equitable relief where the party seeking relief has delayed enforcing a right and there is prejudice arising from the delay").

¹⁹⁸ Motion for Summary Judgment at pp. 2, 4 (asserting objection due no later than October 7, 2022).

¹⁹⁹ Motion for Summary Judgment at pp. 6-7.

²⁰⁰ City of San Jose v. Superior Court (2017) 2 Cal.5th 608, 616 ["courts must generally follow the plain meaning of statutory language, unless a literal interpretation would result in absurd consequences the Legislature did not intend").

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B. Binding Determinations

Attorney General's response was timely received on October 28, 2022.

In this administrative proceeding, CalVCB is bound by the stipulated or uncontested factual allegations underlying the basis for the court's ruling to vacate Wagner's convictions for counts 1 through 3 pursuant to Penal Code section 1473.7, subdivision (a)(2).²⁰³ These undisputed factual allegations include Pedro's conversation with investigator Chavez and Pedro's first request for U-visa certification from the District Attorney's Office in 2013. It also includes the prosecutor's concession that Pedro's "testimony about losing documents was likely false."²⁰⁴ CalVCB must assume, in accordance with the court's ruling, that these factual allegations are sufficiently credible such that, had they been presented at trial, a different result was reasonably probable. Otherwise, CalVCB is not bound by any other legal arguments or conclusions raised in Wagner's motion.²⁰⁵ Nor is CalVCB bound by the unfiled stipulations entered into by Wagner and the deputy district attorney, as there is no evidence that these stipulations were ever presented to, considered by, or relied upon by the court when vacating counts 1 through 3.²⁰⁶ CalVCB assumes that the appellate court's determination as to the reliability of Pedro's identification is not binding, though it may be considered in combination with

with a request for a response.²⁰¹ Indeed, CalVCB's recently adopted regulations, effective January

2023, confirming this approach.²⁰² As such, the Attorney General's 90-day deadline commenced on

July 15, 2022, when CalVCB notified both parties that Wagner's claim, as clarified, had been filed and

requested a response from the Attorney General. Combined with the 15-day second extension, the

²⁰¹ See Code Civ. Proc., § 1094.5, subd. (b) (authorizing mandamus where administrative proceeding lacked "a fair trial"); see also *Doe v. Regents of University of California* (2021) 70 Cal.App.5th 494, 513 ("Generally, a fair process requires notice of the charges and an opportunity to be heard").

²⁰² Cal. Code Regs., tit. 2, § 640, subds. (b), (d), & (e) (effective Jan. 1, 2023).

²⁰³ Pen. Code, §§ 1485.5, subd. (a), 1473.7, subd. (a)(2); see also AGRL at pp. 20-21; Wagner Prehearing Brief at pp. 7-13.

²⁰⁴ AGRL 114 at p. 4306; Pen. Code, § 1485.5, subd. (a).

²⁰⁵ Pen. Code, § 1485.5, subd. (a) (binding CalVCB to the unopposed or stipulated "factual allegations" that form the basis for the court's ruling to vacate the conviction).

²⁰⁶ But even assuming otherwise, none of those stipulations would alter the result in this proceeding or otherwise preclude a determination that the administrative record proves Wagner's guilt by clear and convincing evidence.

the overall evidence in this administrative proceeding.²⁰⁷ Similarly, CalVCB acknowledges that it may not deny Wagner's claim solely because the superior court's rejected his motion for a finding of factual innocence.²⁰⁸

C. Clear and Convincing Proof of Guilt

After considering all of the evidence and argument presented by the parties, and taking into consideration the binding determinations above, the administrative record amply proves Wagner's guilt on counts 1 through 3 by clear and convincing evidence. The evidence includes the trial record, in combination with police reports, post-conviction investigation and interviews, and Wagner's testimony in this proceeding. On balance, the weight of inculpating evidence renders it highly probable that Wagner robbed Pedro, falsely imprisoned Pedro, and impersonated a police officer while doing so. Wagner's claim for compensation must therefore be denied.

1. Inculpating Evidence

Most significantly, Pedro's account of the crimes is compelling. Even assuming Pedro's trial testimony regarding the specific documents taken during this encounter was false, rather than a mere translation error, Pedro nevertheless provided a vivid and disturbing description of the false imprisonment by a police impersonator and ensuing cash robbery, as well as Pedro's desperate attempt to reclaim his property by chasing after the culprit. Pedro identified Wagner as the robber on multiple occasions, even if he was unable to do so at the trial when Wagner had lost weight, grown his hair, and wore glasses. Though not a perfect match, Pedro's description of the robber's physical appearance, uniform, vehicle, and female passenger all bore a striking resemblance to Wagner, his uniform, his vehicle, and his frequent passenger Claudine. As found by the appellate court, as well as this hearing officer, Pedro's identification of Wagner was reliable under the circumstances. Pedro's credibility is bolstered by his decision to report the crimes to police within hours of their occurrence, despite his own undocumented status, as well as his recent and consistent description of the cash robbery almost 15 years later. It is further bolstered by Pedro's delay in seeking a U-visa until almost a

²⁰⁷ Pen. Code, § 1485, subds. (a) & (c); Cal. Code Regs., tit. 2, §641, subd. (f).

²⁰⁸ Pen. Code, § 1485.55, subd. (d); Cal. Code Regs., tit. 2, §645, subd. (f).

Pedro's recent statements to the Attorney General's investigators, in which his continued fear of Wagner was apparent.

decade after the crimes occurred. The absence of any testimony by Pedro in this administrative

Further, multiple independent sources corroborate Pedro's account. His passenger Mauro provided a consistent police report of the crimes at the same time as Pedro. Mauro also identified Wagner as the robber from a photograph.²⁰⁹ Pedro's other passenger Miguel consistently described the incident when speaking to investigators 15 years later, despite his continued fear of retribution as a result of his undocumented status. Regardless of Pedro's assumed false testimony regarding the immigration documents, these separate recollections bolster Pedro's credibility that the other crimes occurred and were committed by Wagner.

Claudine's testimony and statements to police further incriminate Wagner. Based on her first-hand observations, Claudine described actions by Wagner that largely mirrored the description of the crimes reported by Pedro and Mauro, including the location of a traffic stop near the Noa Noa Bar, her presence as a passenger in Wagner's vehicle, Wagner's poor Spanish, and his animosity towards Mexicans. In addition, Claudine's recollection of two men accusing Wagner of robbery while parked near the Noa Noa Bar is remarkably similar to Pedro's account, even though Claudine's timeline of this event is different. Any differences between Claudine's physical appearance and the description of the female provided by Pedro and Mauro were insignificant, especially considering that Wagner's own video showed Claudine on a ride-along in his vehicle just two days after this robbery occurred.²¹⁰

Moreover, Wagner's shifting version of events reflects a consciousness of guilt that further incriminates him. When initially interviewed on August 13, 2003, Wagner readily admitted that "Mexicans" had been robbed, but he insisted that the culprits were his fellow bail bond agents.

Wagner also denied ever stopping cars or having a female ride-along. One week later on August 21, 2003, Wagner accused his boss of committing the robberies while continuing to deny having female

²⁰⁹ AGRL Ex. 17 at p. 3736.

²¹⁰ AGRL Ex. 160 (video 2).

1 passengers. But when testifying at trial in 2005, Wagner admitted stopping cars and having female 2 3 4 5 6 7 8 9 10

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ride-alongs. He also offered an alibi for the first time, claiming he had assisted a deputy until 10:30 p.m., while Claudine was a passenger in his Crown Victoria, after which he took her home, dropping her off around midnight. But then in 2006, Wagner was recorded, twice, pressuring Arlin to provide him with a different alibi, which she ultimately refused to do because it was not accurate. Over a decade later in 2017, Wagner offered this second alibi to the Attorney General's investigators, claiming that he left the deputy between 9:45 p.m. and 10:45 p.m., dropped off Claudine, and then met Arlin at a Denny's, after which they arrived at their office in Temecula around 11:00 p.m. Finally, at the administrative hearing in 2023, Wagner seemingly abandoned both alibi defenses, as well as his accusations against his former boss and fellow bail bond agents, and focused, instead, on Pedro's motive to fabricate the entire incident for a U-visa.

All of these inconsistent statements by Wagner cannot be true. Wagner could not have been with Claudine up until midnight but also with Arlin at 11:00 p.m. These false statements as to his whereabouts when the robbery occurred tend to show consciousness of guilt. 211 Similarly, Wagner's initial false denials about having a female ride-along and stopping cars also shows consciousness of quilt, as only the robber would have known that these relatively innocuous details were incriminating. Wagner's subsequent efforts to pressure Arlin to provide a false alibi on his behalf also reflect his consciousness of guilt. 212 While such evidence, alone, is insufficient to prove guilt beyond a reasonable doubt, this prohibition does not apply in this administrative proceeding in which the standard of proof is clear and convincing.²¹³

Wagner's admitted guilt to counts 7 through 9 further implicates him in counts 1 through 3 for Pedro's robbery, false imprisonment, and impersonation of a peace officer. In March 2003, just one month before the crimes involving Pedro, Wagner transported Alberto in his Crown Victoria to a detention center while portraying himself as an officer (i.e., count 7). In April 2003, just two days after

²¹¹ CALCRIM 2.03 (Consciousness of Guilt – Falsehood).

²¹² CALCRIM 2.04 (Efforts by Defendant to Fabricate Evidence).

²¹³ CALCRIM 2.03 & 2.04.

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the crimes involving Pedro, Wagner was dressed like a police officer when he used excessive force to transport Pablo in his Crown Victoria to a detention center (i.e., count 8). A few months later in August 2003, Wagner was again dressed as a police officer and driving his Crown Victoria while in possession of a deadly weapon (i.e., ASP baton) typically used by law enforcement (i.e., count 9). These admitted facts reflect a common scheme or plan, as well as a custom and practice, that are consistent with the crimes described by Pedro, Mauro, and Miguel. To wit, between March and August 2003, Wagner regularly dressed as peace officer, drove a vehicle that appeared to be a patrol car, and falsely represented himself as a peace officer when doing so.²¹⁴

Wagner's other bad acts, some of which resulted in separate criminal proceedings, further implicate him in Pedro's robbery, false imprisonment, and impersonating a peace officer. According to Jamie, Wagner robbed him in July 2003, while dressed as a peace officer, driving a white vehicle that resembled a patrol car, with a Hispanic female in the front seat, in the vicinity of the Noa Noa Bar. Although the jurors had a reasonable doubt of Wagner's guilt for these offenses based upon Wagner's purchase of gas around the same time over 18 miles away, their doubt does not preclude consideration of Jamie's persuasive account in this administrative proceeding, especially considering Wagner's video that showed him driving at a high rate of speed, around this same time, with a female ride-along and audible police scanner.²¹⁵ According to Humberto, Wagner robbed him in May 2003, while dressed as a peace officer, driving a vehicle that resembled a patrol car, in the vicinity of the Noa Noa Bar. According to Julio, and confirmed by Wagner's video, Wagner stopped, searched, and handcuffed him in 2003, while dressed as a peace officer and driving a vehicle that resembled a patrol car. As early as 1992, then 16-year-old Wagner had dressed as a peace officer, drove a vehicle with a

²¹⁴ Evid. Code, §§ 1101, subd. (b) (allowing evidence of prior bad acts to show motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake or accident even when inadmissible to prove propensity), 1105 (allowing evidence of habit or custom to prove propensity); Cal. Code Regs., tit. 2, § 641 (allowing all relevant evidence, even if otherwise barred by statutory rule, "if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs").

²¹⁵ Evid. Code, §§ 1101, subd. (b), 1105; Cal. Code Regs., § 641; see also *People v. Steele* (2002) 27 Cal.4th 1230, 1245, fn. 2 (allowing admission of prior bad acts, even if charges resulted in an acquittal, because the acts "need be proven only by a preponderance of the evidence" for admission under Evid. Code, § 1101).

dash-mounted flashing red light, and stopped several cars, which resulted in a juvenile adjudication for impersonating a peace officer. And as late as 2013, Wagner possessed a false police badge, drove a vehicle that resembled a patrol car, and admitted arresting someone.

Viewed in context, Wagner's prior bad acts reflect a common intent, plan, and practice to falsely portray himself as a peace officer in order to falsely imprison and rob Hispanic males of their cash in the vicinity of the Noa Noa Bar. This distinctive pattern reinforces Wagner's identity as the robber because the likelihood that all of these victims would have mistakenly identified him as the culprit of the same type of crimes, committed under the same type of unusual circumstances, appears increasingly remote.²¹⁶

Considered separately or as a whole, the inculpating evidence demonstrates Wagner's guilt to a high probability in Pedro's robbery, false imprisonment, and impersonation of a peace officer. The result is the same, even excluding consideration of all of Wagner's prior bad acts.

2. Exculpating Evidence

Wagner's exculpating evidence pales in comparison. It includes the prosecutor's concession that Pedro likely lied about the theft of identification documents during the robbery. It also includes investigator Chavez's declaration, and related report, detailing his conversation with Pedro in which Pedro admitted that no social security card or work permit was stolen during the robbery. It further includes Chavez's opinion that Pedro likely provided false testimony that he was robbed. However, Chavez later explained during his interview with the Attorney General's investigators that this opinion was based upon the limited information provided by Wagner and would be different if, for example, other passengers in Pedro's car had corroborated Pedro's account. Chavez also denied, contrary to the representation in his sworn declaration, that he had read the appellate court opinion and was not sure whether Wagner had ever provided it to him. Chavez also denied, contrary to Wagner's testimony in the administrative hearing, that he had written this declaration, insisting that Wagner had

²¹⁶ See, e.g., *People v. Winkler* (2020) 56 Cal.App.5th 1102, 1149 (explaining the "doctrine of chances" as a "probability-based calculation that arises from a history of prior similar acts," leaving the trier of fact to decide "whether the uncharged incidents are so numerous that it is objectively improbable that so many accidents would befall the accused").

prepared it for him. Accordingly, the exculpatory weight of Chavez's declaration is minimal, even assuming that Pedro lied about the theft of a social security card and work permit during the cash robbery.

Pedro's pursuit of a U-visa is similarly insignificant. It appears highly improbable that Pedro would have made up the robbery in 2003 in order to obtain a U-visa, but then waited until 2013 to pursue it. If anything, Pedro's extended delay to request certification for a U-visa tends to bolster his credibility that the cash robbery occurred, as he was willing to risk deportation throughout this entire time while assisting the prosecution against Wagner, including testifying at his trial in 2005.

The remainder of Wagner's proffered exculpating evidence largely consists of his own assertions of innocence. But Wagner is not a credible witness. His lengthy and persistent criminal history, which includes several felony convictions as well as misdemeanor conduct involving dishonesty, impeaches his character for truthfulness.²¹⁷ This history commenced at age 16 when he impersonated a peace officer, followed by felony rape of a minor, and then felony unauthorized entry into a custodial facility as an ex-convict felon on multiple occasions, during the same period of time as the challenged convictions. This history continued after his release from prison, when Wagner was arrested yet again for impersonating a peace officer and ultimately convicted of misdemeanor possession of tear gas, followed by two more felony convictions for forgery. As a result, Wagner's testimony in this administrative proceeding, as well as his statements to the Attorney General investigators and trial testimony, is viewed with caution.

Wagner's credibility is further impeached by his demonstrably false statements to CalVCB. Starting with his first claim in August 2017, when Wagner was a law school student, he falsely declared, under penalty of perjury, that he had been released from prison on February 15, 2016, and discharged from parole on that same date. In fact, Wagner had been discharged from parole one year earlier in February 2015 and released from prison in September 2011. This false representation appears intentional in order to circumvent the two-year deadline imposed by statute at that time. Even in his second claim, after the deadline had been extended to ten years, Wagner incorrectly declared

²¹⁷ Evid. Code, § 787; *People v. Wheeler* (1992) 4 Cal.4th 284, 293.

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that he had been released from imprisonment on September 11, 2011, when he had actually been released two days earlier on September 9, 2011. Wagner also denied ever challenging his guilt as to counts 7 through 9, even though he did exactly that in his second motion for relief under Penal Code section 1473.7, subdivision (a)(2), which he filed pro se. Wagner also denied ever seeking compensation for counts 7 through 9, even though his second claim did up until the administrative hearing, and his first claim also sought compensation for a portion of the sentence on those counts.²¹⁸ In addition, Wagner falsely denied preparing the declaration for Chavez, as confirmed not only by Chavez's contrary statement to the Attorney General's investigators, but also by the multiple misspellings of Chavez's name in that declaration. And in his interview with the Attorney General regarding this claim, Wagner falsely described the circumstances of his juvenile adjudication for impersonating a peace officer and felony conviction for rape of a minor.

Most significantly, Wagner's own version of events of what occurred on the night of Pedro's robbery is inconsistent, refuted by multiple witnesses, and ultimately implausible. As previously detailed, Wagner provided drastically inconsistent statements when speaking to police on August 8, 2003, and August 21, 2003; when testifying at trial in 2005; when speaking to Attorney General investigators in 2017; and when testifying at the administrative hearing in 2023. He initially accused his fellow bail bond agents of robbing the "Mexicans," but then he claimed it was his boss who had committed all of the robberies. At trial, he asserted one alibi defense, but then presented an inconsistent alibi defense to the Attorney General, which was repudiated by his own witness. Finally, at the CalVCB hearing, Wagner accused Pedro of lying about whether the robbery even occurred.

Beyond these significant inconsistencies, Wagner's latest version of events is farfetched. Even though Wagner admits he never met Pedro, Pedro nevertheless reported the robbery, false imprisonment, and impersonation of a peace officer within hours after these crimes occurred, and Pedro's description to police overwhelmingly matched Wagner, Wagner's vehicle, Wagner's passenger, and the location Wagner routinely frequented. The matching characteristics included

²¹⁸ See Email from Wagner, sent at 6:38 p.m. on July 14, 2022 (calculating length of imprisonment as 2,931 days from the start of his arrest and incarceration on September 3, 2003, through his alleged released on September 11, 2011, with no exclusions for time served on counts 7 through 9).

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Wagner's skin tone, short black hair, dark uniform that may have been blue or black, white Crown Victoria equipped with lights and siren, female passenger who spoke Spanish, and Wagner's limited Spanish-speaking ability. The only rational explanation for these extraordinary number of coincidences is that Wagner did, in fact, falsely arrest Pedro, rob Pedro of his cash, and impersonate a peace officer while doing so.

Overall, Wagner's objectively unlikely version of events lacks any credible value, even when considered in combination with the other proffered exculpating evidence.

3. High Probability of Guilt

On balance, clear and convincing evidence in the administrative record demonstrates Wagner's guilt of Pedro's robbery, false imprisonment, and impersonating a peace officer. The inculpating evidence, which includes the trial record, police reports, and post-conviction investigation and interviews, is compelling. Wagner was repeatedly identified by Pedro and separately identified by his passenger Mauro as the culprit who robbed them of their cash after leaving the Noa Noa Bar. Aspects of their account was independently corroborated by Pedro's other passenger Miguel, as well as by Wagner's passenger Claudine. Pedro's version of events is further bolstered by Wagner's unusual practice of dressing as a peace officer and driving a vehicle that resembled a patrol car, with a female passenger in the front seat, in the vicinity of the Noa Noa Bar. By comparison, Wagner's claim of innocence lacks any credibility, as he is thoroughly impeached by his prior convictions, inconsistent statements, implausible version of events, and consciousness of guilt. Indeed, Wagner's repeated attempts to minimize or outright deny damaging aspects of his criminal past preclude any confidence in his current claim of innocence.

All in all, the totality of evidence demonstrates Wagner's guilt by a high probability. This conclusion is not altered by the court's decision to vacate Wagner's convictions pursuant to the actual innocence provision in Penal Code section 1473.7, subdivision (a)(2). That decision did not amount to a finding that Wagner was actually innocent. Instead, it merely reflected the court's determination that Wagner's proffered new evidence was sufficiently credible such that, had it been introduced at trial, a different verdict was reasonably probable. The court's lack of confidence in the jury's verdict, which requires proof beyond a reasonable doubt that satisfies the formal rules of admissibility, does not

prevent CalVCB from concluding, based upon all of the additional information presented in this informal administrative proceeding, that clear and convincing evidence proves Wagner's guilt of robbery, false imprisonment, and impersonating a peace officer.

V. CONCLUSION

In accordance with subdivision (b) of Penal Code section 4900, the undersigned hearing officer recommends that CalVCB deny Wagner's claim. The overall weight of evidence, which includes the trial record in combination with other admissible evidence, provides clear and convincing evidence of guilt. Wagner is, therefore, ineligible for compensation as an erroneously convicted person.

Date: August 8, 2023

Laura Simpton Hearing Officer

California Victim Compensation Board