

CALIFORNIA VICTIM COMPENSATION BOARD MEETING AGENDA

May 16, 2024
 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 of the March 21, 2024, Board Meeting DRAFT Minutes attached	Action Item
Item 2.	Public Comment on Items Not on the Agenda The Board will receive comments from the public on matters that are not on the agenda. The Board may not discuss or take any action on any item raised during public comment except to decide whether to place the matter on a subsequent agenda. (Gov. Code, § 11125.7.) No materials for this item	
Item 3.	Executive Officer Statement No materials for this item	Information Item
Item 4.	Legislative Update Copy of Legislative Update attached	Information Item
Item 5.	Contract Update Copy of Contract Report attached	Information Item
Item 6.	Mental Health Guidelines Copy attached	Action Item
Item 7.	Abel Soto (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item

ITEM 1

DRAFT

California Victim Compensation Board

Open Meeting Minutes

March 21, 2024, Board Meeting

The California Victim Compensation Board (Board) convened its meeting in open session upon the call of the Chair, Gabriel Ravel, General Counsel of the Government Operations Agency, acting for, and in the absence of Amy Tong, Secretary of the Government Operations Agency, at 400 R Street, Room 330, Sacramento, California, on Wednesday, March 21, 2024, at 10:11 a.m. Also, present was Member Evan Johnson, acting for, and in the absence of, Malia Cohen, Controller. Appearing via Zoom was Member Diana Becton, District Attorney.

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

Item 1. Approval of the Minutes of the January 31, 2024, Board Meeting

Member Johnson moved approval of the Minutes for the January 31, 2024, 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.) Ms. Burrell advised that if anyone wishes to make public comment on agenda items 7 through 10, there will be a separate call for public comment when each item is heard by the Board.

There was no public comment.

Item 3. Executive Officer Statement

Executive Officer Gledhill updated the Board on several items:

To start, Ms. Gledhill advised that the CalVCB has submitted the draft legislative report for the Forced or Involuntary Sterilization Compensation

DRAFT

Program to the Governor's office for review. This is an annual report required by statute which provides information about the CalVCB's outreach efforts and demographic data. A small number of applications are still being processed and once finalized, the data in the report will be updated so it is current. The report will be shared with the Board, the legislature, and the public later this spring. The CalVCB is proud of the efforts made to implement a successful program that provided compensation to survivors of this injustice and is thankful to the stakeholders and partners who helped to find survivors.

In early March, the CalVCB submitted the final regulations that were discussed and approved at the January 31, 2024, Board Meeting, which is the final step in the rulemaking process. Ms. Gledhill anticipates a July 1, 2024, effective date.

On February 5, 2024, the Federal Office of Victims of Crime (OVC) proposed changes to the VOCA Victim Compensation Program guidelines. The OVC administers the crime victim's fund which provides funding to states for Victim Compensation and Victim Assistance programs that offer support and services to those affected by violent crimes. In California, VOCA grants help fund both the CalVCB and the California Office of Emergency Services (CalOES). The fund is financed by fines paid by convicted offenders and other settlement payments. The OVC publishes federal guidelines for the use of these funds by the state, and they were last amended for victim compensation grants in May 2001.

The proposed changes announced in February have been in development since 2022 with input from stakeholders, including the states. Ms. Gledhill attended a meeting about the regulations in Washington, DC last year. The proposed updates reflect changes to federal statutes, including the VOCA Fix Act of 2021 and also reflect an updated policy environment regarding victim compensation. If enacted, the updates could lead to significant changes in who is eligible for compensation, what factors can be considered to determine eligibility, and what expenses can qualify for reimbursement. Public comment on these proposed rule changes must be received by April 5, 2024. The CalVCB is currently working with the administration to determine whether the organization should submit public comments. Given the current budget climate, of particular concern is the financial sustainability of the proposed changes that could significantly increase outgoing costs. It is not anticipated that any additional federal funding will come with these changes. If the

DRAFT

CalVCB does submit public comments, those will be shared with the Board. The CalVCB will continue to monitor these federal changes and update the Board throughout the process.

Ms. Gledhill informed the Board of an administrative issue related to paying erroneous convicted felon (PC 4900) claims approved by the Board. The CalVCB received a \$7 million dollar appropriation to pay PC 4900 claims in the Budget Act of 2023; however, this amount was nearly \$100,000.00 too low to pay the three claims approved by the Board at the January 31, 2024, meeting. Two of the approved claims were paid in full and a partial claim payment was made on the third claim. The CalVCB has received approval from the Department of Finance to make full payment on the third claim, and a second check was mailed to that claimant. For the rest of the fiscal year, the CalVCB will need to seek approval from the Department of Finance to increase the appropriation before being able to pay approved PC 4900 claims. This will increase the processing time to get the final payments to victims. The CalVCB will continue to work closely with the Department of Finance on this issue.

Ms. Gledhill briefly touched on some issues to be discussed in greater detail during this Board Meeting. Specifically, she previewed one of the action items on the agenda - the CalVCB's recommendation for awarding grants to trauma recovery centers. The CalVCB received 19 applications requesting approximately \$35.8 million in funding. The CalVCB estimates \$12.5 million in available funding for grant awards and therefore will not be able to award all applicants at the level requested. Ms. Gledhill explained that the CalVCB's recommendation is to award the top nine applicants who scored more than 50 out of 100 possible points in the scoring process. The process for determining the amount of awards largely matches the methodology used last year. If the Board adopts this recommendation, the CalVCB will fund seven existing TRCs (all of the TRCs previously funded) and one new TRC.

Another issue Ms. Gledhill previewed was the update regarding the CalVCB's Civilian Statewide Marketing contract. Civilian aims to launch this marketing campaign during National Crime Victim's Rights Week, which begins on April 21, 2024. The CalVCB has worked closely with Civilian to prepare for this launch and looks forward to the campaign and to increasing public awareness and engagement.

DRAFT

Ms. Gledhill continued her report, noting for the month of April the CalVCB has additional activities planned to recognize National Crime Victims' Rights Week and Sexual Assault Awareness Month. The CalVCB will be sharing a toolkit with its partners and the public to spread awareness about victim services and resources. The CalVCB will also be hosting its annual Denim Drive throughout the month of April to collect new or gently used denim. The denim will be donated to the Community Against Sexual Harm (CASH), which is based in Sacramento. CASH assists human trafficking victims by providing survivor-led peer support and harm reduction services, while also providing education about the harm inflicted on women. CASH maintains a closet used to help survivors get back on their feet and everything collected during the Denim Drive will be used to help those survivors directly. Denim Day will be officially observed on April 24, 2024.

Ms. Gledhill concluded her Executive Officer Statement.

Chairperson Ravel inquired, with respect to the proposed VOCA changes, whether those would require statutory and regulatory changes to conform. Ms. Gledhill stated that yes, there would be several areas where statutory and regulatory changes would be required in order to conform at the state level. At this time, it is unclear what the timeline would be in terms of the enactment date. California has a more robust legislative session than many other states. Some states only meet once every other year, so it is anticipated the federal government will have to take that into consideration as almost every state would need to make some kind of statutory change in order to be compliant.

Regarding PC 4900 payouts, Chairperson Ravel noted an observed increase in the volume of claims and inquired if there has been any discussion with the Department of Finance about increasing the annual appropriation to account for that increased volume and to alleviate the administrative burden on the CalVCB and on claimants. Ms. Gledhill advised that the CalVCB has had and will continue to have these discussions with the Department of Finance as we transition into a new fiscal year.

Seeing no other questions, Chairperson Ravel thanked Ms. Gledhill for the updates.

Item 4. Legislative Update

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

DRAFT

Ms. Cardenas advised that since her report at the January 31, 2024, meeting, several key bills have been introduced that could impact the CalVCB. The deadline for bill introduction was February 16, 2024, and the CalVCB is in the process of analyzing the bills. Ms. Cardenas provided the following updates:

- AB 2307 by Assemblymember Davies would authorize the CalVCB to reimburse up to \$1,000 for self-defense courses. This bill passed out of the Assembly Public Safety Committee and was referred to the Assembly Appropriates Committee.
- AB 2979 by Assemblymember Fong would exclude Victim Compensation and Good Samaritan payments received from the CalVCB from the definition of gross Income under the Revenue and Taxation Code. It was introduced as a spot bill and amended with specific language this week. It has been referred to the Assembly Public Safety Committee.
- SB 1430 by Senator Glazer would require the Department of Justice to issue a certificate of innocence to an individual with a finding of factual innocence. It would also require an individual's criminal record to be annotated by the Department of Justice and other law enforcement agencies. This bill is scheduled to be heard in the Senate Public Safety Committee on April 16. The CalVCB is evaluating the impact this bill's language may have on the process for erroneous conviction claims.

Ms. Cardenas concluded her updates. Seeing no questions or public comments, 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 was informational only and offered to answer any questions the Board had regarding the items listed in the report.

DRAFT

Seeing no comments or questions from the Board, Chairperson Ravel thanked Ms. Ramirez for the update.

Item 6. Update on Marketing Campaign with Civilian, Inc.

The update on the marketing campaign with Civilian, Inc. was provided by Deputy Executive Officer Katie Cardenas.

Ms. Cardenas stated that as Ms. Gledhill shared in her Executive Statement, the CalVCB is excited to share the progress made on the three-year, \$3 million dollar marketing campaign since the contract with Civilian was approved in July of 2023. The CalVCB has worked closely with Civilian to plan its Statewide Awareness Campaign, which it plans to launch the week of April 21, 2024, for National Crime Victims' Rights Week.

To measure the success of the campaign, the CalVCB will be closely tracking certain metrics such as the number of applications submitted, website hits, and social media impressions. The CalVCB also plans to track the amount of compensation reimbursed over time. However, as this is a reimbursement program, there may not necessarily be as much of an increase in that particular metric. At the end of the campaign, the CalVCB will compare the results of a pre-campaign survey and post-campaign survey, with the hope of seeing an increased awareness among Californians about the CalVCB and the services that it provides.

During the initial planning stages, the CalVCB shared a lot of information with Civilian regarding the processes for how compensation is issued as well as data collected about the CalVCB and prior research regarding the application and crime rates. Late last year, the CalVCB and Civilian launched a pre-campaign public awareness survey which provided initial information about how many Californians are aware of the CalVCB and the services it provides and about what their thoughts were regarding the best tools to market the information.

Ms. Cardenas then referred the Board to a slideshow sharing some of the demographic information from the survey. The information shows that responses were received from a pretty good range of Californians in terms of factors such as age, gender, and background. Information was provided by 600 individuals from the top 15 most populated counties in California. Civilian

DRAFT

was also asked to get information from people in Shasta and Butte counties, so there would be representation from Northern California as well. Out of everyone who responded to the survey, 21% identified as victims of violent crime and 30% were identified as being underserved because they engaged in a social program such as Medi-Cal or CalFresh. The findings of this survey highlight the importance of this marketing campaign as not many Californians had heard of the CalVCB or were aware of the services it provides.

On a positive note, after learning of the CalVCB and its services, respondents to the survey wanted to share that information with others. Survey respondents recommended utilizing digital advertising methods to get the message out. In January of this year, Civilian tested some creative concepts with 101 focus group participants. Ms. Cardenas shared with the Board an example of the marketing poster planned for use in the upcoming campaign, which reflects the findings from Civilian's work. A major highlight is the word, "rebuild", which was seen as very positive by the focus group participants. Additionally, focus group participants expressed that inclusive graphics and language are important to inspire people to learn more about the CalVCB. Ms. Cardenas pointed out that the imagery of hands grasping each other was viewed as a universal sign of support and was recommended by the focus group participants.

Ms. Cardenas moved on to the next slide which showed a draft social media post and is based on Civilian's finding that things which mimic real life scenarios help people to engage more with the content. The draft post, which would show as a video on applications like Facebook or Instagram, shows text messages between two fictitious individuals discussing a situation, receiving CalVCB benefits, and how those benefits helped. The draft post is a good example of how the CalVCB plans to use plain language and more engaging content to get people to learn more about its services.

Lastly, Ms. Cardenas informed the Board of the CalVCB's plan to purchase advertising in key markets. Due to the finite amount of funding, the CalVCB has decided to do digital marketing in 15 counties chosen based on their crime rates and/or populations. The marketing will consist of advertisements through social media and web pages, as well as several well-vetted social media influencers from medical and mental health communities. This is based on feedback from focus group participants who thought they would trust information more if it came from people in those communities.

DRAFT

Additionally, there will be emphasized marketing in three priority counties including Los Angeles and San Diego, which were chosen based on data CalVCB has about the discrepancies between crime rates and application numbers from those counties. In those counties, additional radio advertising will occur to try to increase awareness of CalVCB services.

Due to limited funding and the ambitious goal of the campaign to raise awareness throughout California and in specific underserved populations, the CalVCB will not be able to pursue more expensive advertising methods, such as television advertising; however, the CalVCB is planning to work closely with Civilian and other partners to capitalize on this contract as much as possible.

Ms. Cardenas concluded her presentation and advised that two individuals from Civilian, Hannah and Camelia, were present via Zoom and available to answer questions.

Chairperson Ravel thanked Ms. Cardenas for her presentation and commented that the work is both exciting and very important as one of the CalVCB's major priorities is getting the word out about the services available to Californians. Chairperson Ravel noted that presently, the CalVCB's visibility is not where the Board would like it to be. Chairperson Ravel expressed excitement at seeing if the campaign is successful.

Member Johnson then echoed Chairperson Ravel's excitement about the work and stated that getting the word out about the CalVCB and its services is critical. Member Johnson is glad to see that the campaign is moving ahead and is particularly pleased to see the focus on obtaining a pre-campaign baseline to establish metrics and to understand the impact of the campaign. Once the CalVCB understands what works, then those methods can be replicated in the future. Member Johnson thanked Ms. Cardenas' team and Civilian for their work.

Member Becton echoed the sentiments already expressed and added that she is appreciative of the outreach efforts and the attempts to obtain good feedback about what types of advertising are effective. The most important thing is that people learn about the great services that are available to them and this campaign is a step in the right direction. Member Becton thanked Ms. Cardenas for her work.

Chairperson Ravel invited public comment on this item. Tina Rodriguez appeared via Zoom and asked if the social media graphics and videos would

DRAFT

be available in Spanish? Ms. Cardenas advised that the materials will be translated to Spanish once the content has been finalized.

Dr. Castro appeared via Zoom and asked if the materials would be translated into other languages as well, and whether there would be any information provided about how victims can connect with advocates to assist them in applying for CalVCB benefits? Dr. Castro explained she is the former chief of the San Francisco District Attorney's Office and one of her primary roles was to support survivors in completing CalVCB applications and getting together the necessary documentation, which can be very difficult for people who speak other languages or have a different capacity for reading or writing. Ms. Cardenas responded that she is working closely with Civilian to determine which languages make sense for the different paid marketing campaigns and they are definitely looking at opportunities to translate the materials as needed. Additionally, Civilian is assisting with revamping the CalVCB's fact sheets and other information available on its website and will also be looking at translating those into other languages as well. The fact sheets include some higher level information regarding connecting with victim advocates, which Dr. Castro referred to.

Margaret Petros appeared via Zoom and stated that outreach for victims is important because many do not know about CalVCB. However, Ms. Petros feels that what needs to be fixed is what happens with applications once they are received by the CalVCB and why some claimants are not paid for one reason or another. Ms. Petros reiterated her opinion that this is the real issue that needs to be fixed. Ms. Petros reminded the Board that at its November 16, 2023, meeting she expressed a concern regarding support loss not being paid continuously because there is not a "triggering system" to let staff know to process future support loss. Ms. Petros asked for someone to connect with her, but it has been four months, and she has not received a call or email. Ms. Petros stated that if she were the executive director of the CalVCB, it would have taken her less than 24 hours to look into the issue. Ms. Petros explained that the case she is referring to has been ongoing for seven years, and therefore she is providing three claim numbers to bring them to the highest attention of the Board members, executive staff, and the public. Ms. Petros provided claim numbers A16-5995436 (for a wife), A16-5995527, and A16-5995501 (for two children). Ms. Petros expanded and said that an innocent college professor was shot and killed, and the family is eligible for up to

DRAFT

\$70,000.00, but the initial support loss request was processed as fully reimbursed by life insurance. However, for the past five years, there is a loss that should have been paid. Ms. Petros has asked for the status and brought it to staff's attention, but nothing happens. Ms. Petros expressed her belief that there are thousands of cases, and all staff needs to do is "run a program for this category" and see how many claims have been. Ms. Petros opined that support loss is a continuous process and asked that the CalVCB fix the problems because victims are retraumatized when they come to CalVCB and are denied compensation.

Chairperson Ravel thanked Ms. Petros for her comments.

Item 7. Proposal to Approve Trauma Recovery Center Grant Awards

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

Ms. Cardenas stated that the CalVCB is charged with administering the Trauma Recovery Center (TRC) Grant process. The TRC grants are awarded on a 2-year cycle and there is no limit to the amount of funding that can be requested. There is no guarantee of funding, regardless of whether a TRC was previously funded or not. In this cycle, applicants requested nearly \$36 million in grant funds and there is approximately \$12.5 million available to distribute. 19 organizations applied for TRC funding but two were disqualified because they did not meet the minimum qualifications outlined in statute. Although 17 demonstrated that they could meet the minimum qualifications, eight of those applicants received very few points with scores between 30-47 out of 100.

Funding for the TRC program currently comes from three sources: the Restitution fund, the Safe Neighborhood and Schools Fund, and one time funding from the state's General Fund, which was appropriated in the Budget Act of 2022. The only guaranteed funding for this program is the \$2 million from the Restitution fund. The numbers from the Safe Neighborhood and Schools Fund and the General Fund that are included in the Board member's binders are budget estimates that the CalVCB will confirm after the May revise.

Notably, since the last time the Board approved grant awards for the existing TRCs who reapplied this cycle, which was in 2022-2023, the Safe Neighborhood and Schools Fund has decreased by approximately \$7 million.

DRAFT

This decrease in revenue is a significant reason why the Proposed Grant Awards this year are lower than the last time these existing TRCs applied for grants.

For this grant cycle, the CalVCB introduced the Notice of Funds Available (NOFA) in December and received applications from interested organizations. The process of scoring the applications is consistent with the previously approved Board practice. The CalVCB takes the minimum qualifications as outlined in statute and determines whether the grantees meet the minimum qualifications. Consideration is given to things like geography and how quickly an organization would be able to get up and running as a TRC. These scores are used to inform the recommendation provided to the Board.

Although there are clusters of TRCs across the state, the CalVCB has no control over who applies to this grant program or where they are located. In developing this recommendation for the Board, the CalVCB did consider options to maintain or provide services in as many geographic areas as possible, given the amount of funding available, the amount of funding requested, the number of applications received, and the scores that those applicants received.

The CalVCB's funding recommendation uses a similar methodology as approved by the Board in March 2023. Specifically, the recommendation the Board adopted included capping the maximum funding at \$2.2 million for the 2-year cycle and then applying a percentage based on the score the TRC received. Although the monetary cap and tiered funding methodology are not in statute, they provide the CalVCB with a fair methodology for granting money given the finite amount of funds available. Ms. Cardenas reiterated that the CalVCB estimates \$12.5 million available to distribute and \$36 million in requests.

There are 17 organizations that met the minimum qualifications, and eight of those applicants received low scores between 30-47 points out of 100. Therefore, the CalVCB recommends funding nine TRCs, all of which scored more than 50 out of 100 points during the scoring process. The recommendation includes funding seven existing TRCs, which are all of the existing TRCs that applied, one new TRC, and one former TRC. The CalVCB had to reduce the funding percentages for the Tier 2 and Tier 3 TRCs, which was necessary so that the CalVCB could fund all of the TRCs who scored

DRAFT

within Tier 3. It was also necessary so that all of the existing TRCs could be funded.

The CalVCB did consider other alternatives as outlined in the Board item; however, the CalVCB believes the recommendation is fair, financially feasible, and balances the objective to provide services across the state. Ms. Cardenas requested that the Board approve the TRC Grant Awards as recommended, and further requested the authority for staff to increase or decrease the awards as necessary to reflect the funds available following the Governor's revised budget in May.

Chairperson Ravel opened the item up for discussion among Board members. Member Johnson acknowledged the reduced funding and tough budget situation. Member Johnson asked if, when the scoring is done, is there a metric which measures if the awards are matching the needs across the state better than others? Ms. Cardenas responded that is one of the statutory requirements on which applicants are scored. Each applicant helps the CalVCB to understand what the need is in the community. For example, the existing TRCs will describe what services they are providing and to how many people. New TRCs will provide estimates on who they could serve and, within their applications, discuss crime rates, the provision of other services, and the availability of other services in the community. Therefore, the extent to which an organization is able to establish need will increase their score.

Member Johnson then asked Ms. Cardenas to clarify that no existing TRC which was funded in the last grant cycle will be losing funding in this cycle? Ms. Cardenas confirmed that was correct; every TRC that applied, and which currently receives funding, will receive an award this cycle. Member Johnson thanked Ms. Cardenas for her responses.

Chairperson Ravel also commented on the tough budget situation and acknowledged that the need is great, but based on the information provided the distribution of funds is fair given the number of applications received and the geographic distribution. Chairperson Ravel acknowledged that hard choices have to be made in the current budget climate.

Member Johnson asked if a TRC rejects the funds because the award does not meet their needs, does it go back into the general scoring criteria and get re-evaluated or does it go to the next tier? Ms. Cardenas responded that it would be factored back into the total funds available, and the funding

DRAFT

percentages would be adjusted again so that the distribution is fair among the TRCs based on the tier in which they scored. Member Johnson clarified that it would not go to a new TRC or the next TRC on the list, rather it would get distributed among the initially funded TRCs. Ms. Cardenas confirmed this and stated that they are not recommending that funding be distributed to tier 4 applicants due to their low scores and recommends that funding stay within tiers 1, 2, and 3. Member Johnson thanked Ms. Cardenas for her responses.

Chairperson Ravel asked for a motion to approve Item 7. Member Johnson moved to approve Item 7 and Member Becton seconded the motion.

Ms. Burrell asked for public comment on the item and Dr. Castro Rodriguez, appeared via Zoom to share information. Dr. Castro Rodriguez stated she is the executive director of the National Alliance of Trauma Recovery Centers, which is an alliance of 52 TRCs across the United States, 22 of which are in California. Dr. Castro Rodriguez acknowledged the difficult position the CalVCB is in regarding distributing funds that are declining and reducing. However, the TRC model is a unique situation. The TRC model is evidence-based, as shown through multiple random controlled studies, which show that the model produces significant positive impacts for survivors such as declining PTSD symptoms and trauma reactions, increasing capacity for survivors to heal and recover, to take care of their families, return to work and rejoin their communities. The TRC model requires a structure in which all pieces of the model can be implemented. To have fidelity to the model means having all elements of it including a group of people working in different positions to provide intensive case management, perform extensive outreach, provide mental health services, and to be advocates for crime survivors.

The suggested minimum budget for a TRC to do this work and have those positive verified outcomes is \$1.1 million. When funding is decreased and distributed in this way, although the intent is to be equitable and try to fund more TRCs and/or new TRCs, what it actually does is take away the capacity of existing TRCs to follow the model and do the work. Additionally, it handicaps new TRCs that receive a significantly lower amount of money and will therefore not be able to implement the model. Dr. Castro Rodriguez acknowledged that these decreases in budget come from a larger source; however, they have a very serious impact and will lead to about half the number of survivors being served.

DRAFT

Dr. Castro Rodriguez pointed out that these survivors are victims of crime by no fault of their own who are in the throes of trauma and whose lives have been devastated. Additionally, it will produce gross layoffs of staff members who are trained and skilled in this work and who will not have the opportunity to serve survivors. It will have a big impact on the community and the resources available to help people not just intervene in violence but to prevent violence by helping people to recover from trauma and get back to their lives.

Dr. Castro Rodriguez went on to say that she understood the need to have new sites and that is what her organization does across the states and counties, but it is not effective when the new sites receive \$400,000.00 or \$500,000.00 to start. It is the equivalent of asking for a doctor and being given \$10,000.00. It is not enough money to do the work that needs to be done and it will not allow the community to have the impact that Dr. Castro Rodriguez knows can be had with the proper amount of funding. Additionally, new TRCs have ramp up time. They need to hire staff and provide training. Dr. Castro Rodriguez's organization assists with providing training, technical support, hiring, and creating policies and procedures, but all of that takes time.

Therefore, the new communities need time to ramp up at the same time that existing trauma recovery centers are losing services. Dr. Castro Rodriguez recommended the following as an alternative to the staff recommendation:

1. Fund the existing TRCs to the maximum capacity so that they can try to negotiate and deal with the impact of these budget decreases to the best of their ability and continue the work they are already doing;
2. Stop funding new TRCs until there are new dollars available to give those TRCs the tools and resources they need to be successful and to implement a model that is known to be effective as proven through data; and
3. Request the CalVCB to create an advisory Board of content experts and crime survivors to help guide and inform these processes in the future so that everyone understands the value of the TRCs, the impact they have, the needs that they have, and how we can do better for violence prevention in California.

Dr. Castro Rodriguez thanked the Board for the opportunity to speak,

Stacey Wiggall, the director of the Trauma Recovery Training and Technical Assistance Program with the National Alliance of Trauma Recovery Centers, appeared via Zoom to offer public comment. Ms. Wiggall stated that she was

DRAFT

a part of the founding team who developed this model in 2001 and has been supporting replication of the model since 2013. Her work includes providing technical assistance to TRCs and helping them build capacity for implementing the evidence-based model. The model is comprehensive and provides wraparound and individualized services with the goal of meeting the needs of survivors in marginalized and underserved communities. The model has not only been replicated in California since 2013, but core elements of the model were codified in legislation in 2017.

Ms. Wiggall continued stating when TRCs are underfunded, they are unable to deliver comprehensive wraparound services and meet their grant deliverables. Additionally, when TRCs are underfunded, it does not just mean that they are able to operate as normal but at a slightly limited capacity, it significantly impacts their capacity to deliver services. For example, when TRCs lose staffing it means that survivors may end up on long wait lists for services and ultimately will not be able to connect with the services they need. Staff in underfunded programs are asked to do much more with much less, which contributes to burnout and vicarious trauma for staff. Ms. Wiggall asked that the Board please consider these impacts of funding cuts.

Carla Richmond, a licensed clinical social worker and lead clinician and supervisor of the training program at the San Francisco USCF TRC appeared via Zoom to offer public comment. Ms. Richmond echoed what her colleagues and community members shared regarding their deep concerns about the impact of such significant decreases in funding. Ms. Richmond stated that their case capacity would be reduced and at current staffing levels, there is already a 30-person wait list. Ms. Richmond expressed her concern at what the wait list and case capacity would be like with reduced funding.

She continued, noting the need for these services has only continued to grow. The TRC model reduces barriers to care for the most marginalized and impacted community members and survivors become vulnerable when they are on wait lists for care. Early intervention and reducing barriers to care interrupts the negative impacts of crime that survivors experience. Additionally, a reduced capacity will also impact the ability to do community outreach and training, thus producing a ripple effect and limiting the ability of the TRCs to share their knowledge in the community.

Reduced funding will also impact staff retention and have huge implications for staff burnout, which affects the stability of their careers and families. Ms.

DRAFT

Richmond pointed out that the UCSF TRC is the only clinic providing these specialized trauma informed care services in the area and that people must sometimes be told the TRC is unable to make services available to them. Both the capacity and the quality of services provided will be negatively impacted, which undermines the capacity of survivors to recover.

Ms. Richmond recommended that rather than funding new TRCs, the proposed allocated \$2 million should be given to the existing fully operational TRCs, the funding cycle should be extended to three years, and there should be more flexibility with rollover funds for the three years, which would allow for longer term programmatic and staffing planning. Ms. Richmond stated the goal is to maintain and, if possible, enhance the TRC model which is proven to interrupt cycles of violence and is a benefit to the community.

Ms. Cardenas clarified that the CalVCB is charged, by statute, with administering a grant program that is competitive and which was not set up to have ongoing funding and that organizations may seek additional sources of funding to complement the grants administered by CalVCB.

Amy Turk, the CEO of Downtown Women's Center, appeared via Zoom to comment on the TRC awards. Ms. Turk explained that for the last 10 years, the Downtown Women's Center has partnered with Peace Over Violence to operate a TRC to provide critical services to victims in the Los Angeles community, with a particular expertise in serving women and gender diverse individuals who are experiencing homelessness and gender-based violence. They were the third TRC in California to follow the model created by the UCSF. While they are grateful that existing TRCs will receive funding, the deep budget cuts to all the TRCs are devastating. There needs to be more TRCs across the state, but adding two new TRCs will dilute the existing TRCs and will completely hobble their services beginning in July. Ms. Turk stated they will be fundraising to supplement the budget, but this will result in layoffs and less services available to those who need them most.

Ms. Turk recommended that the Board not fund the two new TRCs and continue to support the infrastructure of the existing TRCs while they find new funds. She noted that simultaneously, victim service providers across the state are facing even deeper budget cuts due to the decreases in Victims of Crime Act (VOCA) funding. Basically, the budget in California is showing that victims of gender-based violence and victims in general will not be served at the same level they have been previously.

DRAFT

Wendy Blanco, the director of clinical services and Peace Over Violence and a private practice owner, appeared via Zoom to offer public comment. Ms. Blanco stated that is tough to maintain a business while expecting reimbursement from the CalVCB, which is meant to help non-insured victims of crime. Ms. Blanco has experienced delays in application approvals, denials due to administrative issues like missing dates or lack of efforts to contact the clients, long wait times when calling the customer service line, and arbitrary rules such as only checking three claims at a time and having to call back to follow up on other claims. This has proven to be a system that is not meant to support continuity of client care because care is consistently disrupted and the protocols in place are not aligned with mental health needs and values.

As a business owner, Ms. Blanco is not able to sustain taking on CalVCB clients because the cost is too high, and it is not ethical to see clients and then have their care disrupted. The TRCs were a game changer because clients could access services without the red tape of reimbursements or having to wait three months for approval in order to continue their mental health care. TRCs are necessary and continue to grow because there is evidence that the model works, and it helps clients when they need it the most. These major budget cuts are detrimental to the work TRCs do and is like taking multiple steps backwards.

There will be cuts in personnel which translates to cuts in services provided and directly impacts clients. Survivors of crime need these services, and it is the least we can do after the harm they have endured. When people do not get the healing they need, they disconnect from their communities and no longer have the resources needed to prevent things like homelessness. They lose access to mental health care, relocation funds, and funds to cover medical and dental care. These funds are a great benefit and evidence shows that the model is effective, but cutting funds affects client trust in these agencies as well as staff morale. Ms. Blanco echoed the previous requests that the Board not fund new TRCs and continue to fund the existing ones.

Myong Kim, chief program director at the Downtown Women's Center, appeared via Zoom to offer public comment. Ms. Kim has overseen their TRC program for eight years and this past year has been the hardest year for hiring clinicians. Clinician interest has dropped, especially after Covid, and it has been difficult to hire and retain new talent. Ms. Kim is concerned about the funding cuts and inevitable layoffs that will happen. It will impact retention of

DRAFT

current staff which they have worked so hard to hire and will also cause a ripple effect in the community. It could also cause the TRCs to have a negative reputation among clinicians seeking employment with them and will cause them to question if they want to commit their career longevity to a TRC since the funding is so unpredictable. Ms. Kim requests that this be taken into consideration by the Board.

Ed Little, with Californians for Safety and Justice, appeared via Zoom to offer public comments. Mr. Little underscored the remarks made by his colleagues. As an organization, they represent tens of thousands of survivors of crime and the work that the TRCs do to help victims heal is invaluable. Mr. Little asked that the Board take a pause to re-evaluate the current funding scheme and take into consideration the things they have heard today from the people who run the TRCs.

Mr. Little echoed the sentiments expressed by others regarding the challenge of hiring clinicians. To invest in the TRC model means making sure that people are able to execute their work to the best of their ability, which requires having the necessary resources to hire the best people to provide these critical services. Mr. Little agreed with the recommendation to reconsider expanding funding to new TRCs when the existing ones are doing really good work and need the resources available, however limited. Mr. Little expressed hope that the Board would reconsider this issue, not vote on it right now, and take it up again later.

Ms. Cardenas clarified that the CalVCB understands the important work the TRCs do, however the statute does not give the CalVCB's grant program the authority to fund only the existing TRCs.

Patty Giggans, the executive director at Peace Over Violence, appeared via Zoom to offer public comment. Ms. Giggans's organization collaborates closely with the Downtown Women's Center and wanted to express the devastating impact the cuts would have on their agencies.

Ms. Giggans acknowledged Demin Day and stated that she founded Denim Day back in 1999, and it is the longest running sexual violence prevention campaign. It is now national and international. Ms. Giggans appreciated that the CalVCB would be participating in Denim Day.

Ms. Giggans stated that she is disturbed by the current situation in which agencies are handcuffed by statutes. Ms. Giggans feels that the response to

DRAFT

this situation is passive, and she is not hearing or seeing any attempts to engage with the legislature to improve and expand the TRC model. Evidence supports that the model is important and is a combination between government and non-profit agencies. Ms. Giggans has been involved for 40 years in working with victims and survivors and remembers a time when everybody was still trying to figure it out on their own. Ms. Giggans is concerned that, by statute, the Board is expanding to two new TRCs while defunding others by 50%.

Ms. Giggans acknowledged that everyone here is a skillful fundraiser and knows that there is competition for funding, but Ms. Giggans thinks that expanding now at the same time cuts are being made, including cuts to VOCA, is going to be devastating. Organizations must hold on to every single dollar they can to get through these tough times. Ms. Giggans wants to lend her voice to those of her colleagues and means no disrespect to the two new TRCs whom she is sure are deserving. Whether or not the statute requires it, it just does not make sense to expand while other agencies are being defunded.

Tina Rodriguez appeared via Zoom to offer public comment. Ms. Rodriguez thanked the Board for acknowledging Denim Day. She stated she understands the limitations of funding streams and that these are tough positions to be in. It is difficult to project funding for other crime victim services. Ms. Rodriguez understands what cannot be done and wanted to emphasize conversations about what can be done.

California is currently facing a housing crisis and the TRC model allows clinicians to meet victims where they are, whether it be in homeless shelters or substance abuse treatment centers. However, there are a lot of agencies in the Central Valley that will not allow that. Ms. Rodriguez's biggest concern is how the rehoused and/or homeless, who have the greatest need, will be impacted. Ms. Rodriguez asked what the CalVCB can do to work with other organizations or expedite claims. Ms. Rodriguez acknowledged the difficult position the CalVCB is in and thanked the agency for its diligence.

Member Johnson stated that the conversation was extremely illuminating and that he appreciates everyone showing up to advocate on behalf of their organizations. It is valuable to hear from everyone, in their own voices, more of the detail about the work they do which is funded by these grants. Member Johnson acknowledged the difficult situation with there being not enough

DRAFT

money, statutory requirements aside. He stated no one is happy about this situation, and we all wish there were enough dollars to go around. He acknowledged that the CalVCB could not fully fund any of the seven TRCs, even removing the two new applicants. The problem is that there simply are not enough funds, and it is a lean budget year. Member Johnson thanked everybody for speaking up on behalf of their organizations.

Member Becton expressed her appreciation for the speakers taking their time to give comments today, who have provided much food for thought. As there is a motion on the floor, there must be a vote; however Member Becton requested clarification on two points: first, the statutory limitations in terms of not being able to fund the existing TRCs before funding new ones, and secondly, could the Board see an analysis for what it would look like if the two new TRCs were not funded, if it were statutorily possible to do, and how that would affect the funding for the existing TRCs. Member Becton stated she would like clarification on how it would be helpful to the existing TRCs for the funding to be allocated in that way and if it would be significant or only slightly helpful.

Chairperson Ravel suggested that Ms. Cardenas or Chief Counsel Kim Gauthier possibly speak on the statutory question. Chair Ravel expressed his understanding that the grant program is competitive and is required to allocate funds in accordance with the strength of the applications. Regarding Member Becton's second question, Chairperson Ravel stated that \$2 million is allocated to the two new TRCs, so if that were instead evenly distributed only to the existing TRCs, it would be roughly \$300,000 each, which is nowhere close to their full request.

Ms. Cardenas explained that the statute requires the CalVCB to distribute the funding using a well-defined grant process, and that process involves scoring the application against the statutory criteria. There are six different statutory criteria, and the NOFA makes it clear that applicants will be scored based on their ability to meet those statutory requirements. The scoring is objective and done by people within the CalVCB who are familiar with TRC services.

Chief Council Gauthier specified that government code section 13963.1 discusses the grants to TRCs and denotes the Board as the entity responsible for administering the grant program. The statute requires that the Board use a well-defined selection process that takes into consideration the rate of crime and geographic distribution to serve the greatest number of victims or

DRAFT

potential victims. Ms. Gauthier stated that as Ms. Cardenas said, the NOFA identifies the scoring criteria by which applicant organizations will be judged and it is the CalVCB's responsibility to have a fair and impartial process in determining who gets the funds.

Member Johnson stated that there does appear to be flexibility in the funding formula that results from the different scoring tiers. Tier 1 is recommended to get 100% funding, tier 2 gets 76%, and tier 3 gets 60%. Those tiers are a choice related to the amount of funds available. If the Board chose to 100% fund everyone down the list, it would still result in one of the new TRCs receiving full funding.

Ms. Cardenas acknowledged that was correct, as the top scoring TRC is one of the new ones. Using the grant scoring from the NOFA, that TRC should be funded as a Tier 1 TRC.

Dr. Castro Rodriguez offered further public comment via Zoom. She stated that the author of the statute is the founder of the National TRC Alliance, Dr. Alicia Boccellari, who could not attend the meeting today due to a family emergency, however she specifically put language in the statute to allow for flexibility in making these kinds of decisions. They have offered in the past to be available to sit down and discuss the statute to find a way to distribute funds in a way that allows the model to be successful. Although it would only be an additional \$2 million made available (if the new TRCs were not funded), it would allow the TRCs to continue providing services with some fidelity as they try to find additional resources.

She continued, stating the idea of expanding services for survivors is being lost because yes, there are new TRCs opening; however, services will be pulled away in existing agencies who already have the relationships and connections and are already serving survivors. There will not be a net gain, but rather a net loss in the number of survivors served. Dr. Castro Rodriguez understands the budget crisis and is not asking the Board to come up with money that is not available, rather she asks that the Board be strategic about the existing services and resources available while continuing to work as a group to increase funding opportunities at the federal level, so that the TRCs have more chances to apply for resources that specifically fund this kind of work. There really are no other funding sources in California that fund this type of work, so they must be very strategic with the dollars available.

DRAFT

Stacey Wiggall appeared again via Zoom to add further public comment. Ms. Wiggall stated that in their work with TRCs in other states, they work with government funders who fund grant programs for TRCs and would be willing to share examples of that work with the CalVCB. Additionally, they would be willing to convene a meeting of grant funders from other states to contribute to the conversation around well-defined grant funding for TRCs. There are examples in other states of giving priority points to existing TRCs, since the impact on communities of pulling away these services from established programs is known. It takes a lot of time to build up new programs. Ms. Wiggall understands the pressure to increase access, but we should also be realistic about the impact of those funding decisions. Ms. Wiggall echoed what has been said around the potential for changing the grant management process by including TRC model content experts and survivors of violent crime in the process of evaluating grant proposals.

Chief Counsel Gauthier again referenced Government Code Section 13963.1 where it states in subsection (d) that the Board may award consecutive grants to a TRC to prevent a lapse in funding. Ms. Gauthier noted, however, that there is no preference provided in the statute and the competitive process is outlined as previously stated.

Chairperson Ravel thanked Chief Counsel Gauthier and Deputy Cardenas, as well as all of the other commenters on this issue. He recognized that it is an extremely important issue, and no one is happy about the inability to fully fund everyone. He noted it is in no way a reflection of the work done, which is vital to communities and to crime victims.

Counsel Gauthier reiterated the motion pending before the Board - to approve the TRC grant awards as recommended and to grant the authority to increase or decrease the awards as necessary to reflect the funds available following the release of the Governor's revised budget in May. By unanimous vote of the Board, the motion passed.

Member Johnson stated it may be useful to revisit this conversation next year or next time the grant cycle comes around so that the community is engaged and so that there is a robust understanding of how to have the best outcome.

Executive Officer Gledhill noted that when the NOFA is issued, it is spread far and wide and the grant process is very defined. The state's fiscal situation, however, is not always widely known and shifts with time. Executive Officer

DRAFT

Gledhill encouraged every TRC, both new and existing, to look at the requirements to write a grant proposal that will allow them to receive a good score so that the Board can fund the best applicants. Ms. Gledhill acknowledged these are very challenging times, with not enough money to go around, but the Board follows a defined process to the best of its ability. The Board will continue to work with its partners in the community.

Patty Giggans again appeared via Zoom to make further public comment. Ms. Giggans expressed her disappointment and stated they are in a very critical crisis period. Ms. Giggans stated that acknowledging that the community is vital is important, but we must also make sure the community is included and sometimes the structure of things does not allow that to happen until after the fact. The cuts from VOCA and the CalVCB have left the situation for victims in California looking very dire and bleak. It is important to use this crisis to restructure things, to look at the statutes and to look at how the Board gets information. There are other Boards who include expert witnesses, practitioners, and survivors. Ms. Giggans knows that the rules must be followed, but as an advocate, thinks that the rules need to be changed. She thanked the Board for its time and for listening to all of the public comments, which she acknowledges is not easy to do.

Edward Buchanan appeared via Zoom to offer public comment. Mr. Buchanan described his affiliation with a brand new TRC, which is in development. They have weekly meetings to discuss the status of program development, and to look at the budget and determine financing, which has been very difficult due to limited funding. The situation is very disheartening as they are developing a new TRC, which is in a traumatized area with a dire need. As an agency, they have relied on UCSF for the support and development of their program, and it is difficult to imagine the impact that these budget cuts will have across the board.

Item 8. Truman Simon (Pen. Code, §§ 4900, et seq.)

The Penal Code section 4900 claim of Truman Simon was presented by Chief Counsel, Kim Gauthier.

On March 23, 2022, Truman Simon filed an application with the California Victim Compensation Board as an erroneously convicted felon. The application is based on his 2018 conviction as an aider and abettor to an assault with a firearm and criminal threats. The claim seeks \$154,560.00 for

DRAFT

1,104 days of alleged imprisonment. The Attorney General objected to the claim, arguing that the evidence fails to prove Mr. Simon's innocence. As explained in the Proposed Decision, the claim is recommended for denial as Mr. Simon has failed to meet his burden of showing, by a preponderance of the evidence, that he is innocent of the challenged convictions as required by Penal Code 4900(a). Throughout the proceedings, Mr. Simon represented himself. The Office of the Attorney General is represented by Deputy Attorney General Dina Petrushenko.

Chairperson Ravel allowed for comment from Mr. Simon, however he did not appear at the meeting.

Chairperson Ravel called for comment from Deputy Attorney General Dina Petrushenko. Ms. Petrushenko appeared via Zoom and requested that the Board adopt the Hearing Officer's Proposed Decision. Ms. Petrushenko noted that Mr. Simon submitted a letter objecting to the Proposed Decision in which he continues to maintain that the reversal of his conviction by the Court of Appeal amounts to a finding of factual innocence, which is not accurate. Based on Mr. Simon's failure to prove his factual innocence, Ms. Petrushenko requested the Board adopt the Proposed Decision.

Chairperson Ravel acknowledged that this is potentially a close case as it comes down to the burden of proof. There is not a lot of affirmative evidence of the crime. It is unknown if Mr. Simon saw the weapon, or whether the weapon was loaded. Additionally, the timing is unusual; it is unknown if he continued to threaten or talk to the victim aggressively after the weapon was pulled. On the other hand, although there was a reversal on appeal, there was not an affirmative finding of factual innocence after the case was dismissed. It is not clear what evidence Mr. Simon has brought forward to show that he did not see the gun or did not escalate the conversation. Chairperson Ravel asked to hear more from Ms. Petrushenko on that point.

Ms. Petrushenko agreed that it comes down to Mr. Simon failing to meet his burden of proof. She conceded that it is a circumstantial case. There are inferences to be made from witness testimony, the timing of events, and what Mr. Simon knew. With those reasonable inferences and Mr. Simon's failure to make his case affirmatively, the only result the Board can reach is that Mr. Simon has failed to prove his innocence.

DRAFT

Member Becton asked for clarification regarding whether the language was consistent between the Court of Appeal, which said the evidence was insufficient, and page 10 line 4 of the Proposed Decision, which states that the Appellate Court found no evidence that Mr. Simon shared the gunman's criminal purpose or intended to aid and abet. Since the matter is a relatively close call and involves circumstantial evidence and inferences, Member Becton stated it is important to clarify if the Court of Appeal found insufficient evidence versus no evidence.

Ms. Petrushenko clarified that the Proposed Decision accurately reflects the Court of Appeal's wording. There is insufficient evidence to prove the aider and abettor theory because, "there is no evidence that Mr. Simon shared the gunman's criminal purpose."

Member Becton stated that words matter, and it is difficult to say that there is insufficient evidence on the one hand, while on the other hand there is no evidence as there is a significant difference between the two. Given that the burden in this proceeding is preponderance of the evidence, it is difficult to find that that burden has not been met if the Court of Appeal, having reviewed the entire record, indicates that there is no evidence.

Ms. Petrushenko explained that the Court, in its' statement of no evidence, was referring to Mr. Simon owning or possessing a firearm at some point prior to or after the crime. However, both the Board and the court can make reasonable inferences from the circumstantial evidence that is available, such as the timing in which the three men obtained the gun and then appeared at the victim's door. The reasonable inference being that Mr. Simon would be aware of the gun's presence because it was not in anyone's possession at the time they were searched by police. Ms. Petrushenko acknowledged that there is no affirmative evidence and reiterated that inferences can be drawn from the circumstantial evidence.

Chairperson Ravel stated this is an important point to clarify. The standard is preponderance of evidence, and the claimant has the burden to produce affirmative evidence and therefore must defeat the inferences to show his innocence.

Ms. Petrushenko stated the claimant has the burden to show his innocence and the evidence the Attorney General has put forward raises inferences of guilt. The claimant has not met his burden.

DRAFT

Member Johnson agreed that this was a tough matter to adjudicate due to the complexity of the matter and the standard for the burden of proof. Member Johnson pondered what kind of evidence could hypothetically be put forward to prove that Mr. Simon did not know about the gun and stated that it comes down to Mr. Simon's testimony.

Member Becton stated she is struggling with the idea of drawing inferences from circumstantial evidence and stated that she believes Mr. Simon is entitled to rely, at least in part, on the appellate court decision. Member Becton finds it slightly contradictory to read that the appellate court found there was no evidence Mr. Simon knew about the firearm or that he intended to aid and abet, while at the same time making inferences about what he knew based on interpretations of the circumstantial evidence.

Chairperson Ravel acknowledged that it is a hard case, but what is most persuasive for him is that the claimant has the burden of showing that he did not commit the crime and the only evidence he put forward is a blanket denial that the crime happened, which is contradicted by the record. Mr. Simon did not say that he did not know about or see the gun.

Ms. Petrushenko stated that was correct. Mr. Simon has solely relied on the appellate decision and did not wish to proceed with the hearing or testify to provide evidence.

Chairperson Ravel stated it would have been a much closer call if Mr. Simon had testified that he did not see the gun, know about the gun, or have an intention to threaten the victim.

Member Johnson stated it was his understanding that the appellate court saying there is no evidence does not change the fact that the burden is on the claimant to provide evidence that he did not commit the crime. If there had been a sworn statement from Mr. Simon, that would carry some weight in this proceeding. Member Johnson noted that both the Attorney General's Office and the claimant chose to waive the hearing and requested clarification on that process and wondered if it would have changed things had the hearing taken place.

Ms. Petrushenko explained that once the parties submit their briefings, the Hearing Officer sends notice to both parties simultaneously asking the parties to confer on whether they wish to have a hearing and provide further briefings. Ms. Petrushenko contacted Mr. Simon to inquire if he wished to have a

DRAFT

hearing or to present evidence. Ms. Petrushenko then informed the Hearing Officer of her conversation with Mr. Simon and no hearing was held.

Chief Counsel Gauthier clarified that it is custom and practice for the Hearing Officer to ask both parties to confer regarding whether or not they want a hearing and to provide the CalVCB with selected dates. If either party requested a hearing, then the Hearing Officer would have held one. Counsel Gauthier further clarified with Ms. Petrushenko that if she responded to the Hearing Officer to inform her that no hearing was requested, she would have included Mr. Simon on that communication.

Ms. Petrushenko confirmed this and stated that Mr. Simon responded and confirmed that Ms. Petrushenko's summary of her conversation with Mr. Simon was accurate and that he declined to have a hearing.

Member Johnson asked for clarification on the Board's potential courses of action.

Counsel Gauthier stated that, pursuant to regulations which govern this proceeding, the Board may take any of the following actions:

- Adopt the Proposed Decision in whole or in part,
- Reject the Proposed Decision in whole or in part,
- Defer a decision and request the Hearing Officer to address specific issues or provide additional information.

If the Board rejects the Proposed Decision in whole or in part, it may take any of the following actions:

- Decide the case itself after reviewing the record, including the transcript of the hearing,
- Decide the case itself based on a statement of facts agreed to by the parties,
- Decide the case itself by conducting a hearing to take additional evidence or argument,
- Order the Hearing Officer to take additional evidence or argument,
- Order the Hearing Officer to address specific issues in the Proposed Decision.

Ms. Petrushenko referred to her correspondence with Mr. Simon and stated that she was notified by Ms. Simpton (the CalVCB Hearing Officer) to confer with Mr. Simon, which she did via phone call, and then summarized in writing

DRAFT

to the Hearing Officer. Ms. Petrushenko copied Mr. Simon on her response to the Hearing Officer, which she read to the Board. In summary, Mr. Simon was informed of his right to a hearing which he declined, stating he had no further evidence to offer. Mr. Simon agreed to allow Ms. Petrushenko to respond to the Hearing Officer on his behalf. Ms. Petrushenko submitted the response to the Hearing Officer, copied Mr. Simon, and Mr. Simon responded and confirmed that Ms. Petrushenko's response was an accurate summary of their conversation.

Chairperson Ravel, seeing no further questions, called for a motion to approve this item. Chairperson Ravel moved to approve the Hearing Officer's Proposed Decision in this matter and called for a second.

Board Liaison Andrea Burrell asked for public comment on the item, to which there was none.

The motion did not receive a second.

Chairperson Ravel explained the Board's options for an alternate motion. Chairperson Ravel then moved that the matter be referred back to the Hearing Officer for additional evaluation. The motion was seconded by Member Johnson.

Chief Counsel Gauthier asked the Board to clarify the specific issues the Hearing Officer is to address, consistent with the regulation.

Chairperson Ravel asked what would be consistent with the statute.

Counsel Gauthier stated the statute does not specify what specific issues can be referred back to the Hearing Officer. In this instance, it would be helpful for the Hearing Officer to know if the Board would like to see more information or evidence regarding the burden of proof, the binding or non-binding effect of the appellate court decision, and to give examples.

Chairperson Ravel requested that Member Becton weigh in on this question.

Member Becton stated she would like the Hearing Officer to clarify the issue regarding the language in the Proposed Decision which she feels is inconsistent with the appellate court. Specifically, the difference between insufficient evidence and no evidence. These mean two very different things and it should be one or the other.

DRAFT

Chairperson Ravel also requested more focus on the burden of proof and precisely what it means in this case in light of the appellate court decision and the record. Chairperson Ravel stated he assumes the record is now closed and it is not possible to supplement it.

Ms. Gauthier clarified that under the regulation the Hearing Officer may reopen the record, if necessary, to take additional evidence.

Ms. Petrushenko stated that the claimant has declined to participate in a hearing or to be present here today. She understands the questions being raised but the legal issue which was raised in the Court of Appeal was the sufficiency of the evidence. It concluded there was no reasonable, credible, or solid evidence which is the definition of sufficiency of the evidence. The evidence was not sufficient to meet a burden high enough to sustain a guilty verdict. Although the phrase used was “no evidence”, it was in light of meeting a legal claim of insufficiency of the evidence, so there can be no factual innocence finding.

Chairperson Ravel moved to remand the Proposed Decision back to the Hearing Officer. The motion was approved by a unanimous vote.

Item 9. Maurice Caldwell (Pen. Code, §§ 4900, et seq.)

The Penal Code section 4900 claim of Maurice Caldwell was presented by Chief Counsel Kim Gauthier.

On March 25, 2013, Maurice Caldwell filed an application with the California Victim Compensation Board as an erroneously convicted felon. The application is based on his 1991 convictions for murder, attempted murder, and discharge of a firearm into an occupied vehicle. The convictions were vacated in 2010 pursuant to a grant of habeas corpus and the charges were dismissed in 2011. This matter includes a long procedural history as detailed in the Proposed Decision. As there was no objection filed by the Office of the Attorney General, compensation is automatic under Penal Code 4900(b). Accordingly, the Proposed Decision recommends compensation in the amount of \$1,049,160.00, which represents \$140.00 per day for each of the 7,494 days Mr. Caldwell was wrongly imprisoned. Throughout these proceedings, Mr. Caldwell has been represented by the law firms of Gross & Belsky and Quadra & Cole. The Office of the Attorney General is represented by Sharon Laughner.

DRAFT

Chairperson Ravel asked to hear from Mr. Caldwell's counsel, Mr. Gross.

Mr. Gross appeared via Zoom to express his support of the proposed decision and requested that the Board approve it. Under Penal Code 4900(b), the Board is mandated to approve the request. Mr. Gross had no further argument.

Chairperson Ravel asked if Mr. Caldwell was present and would like to address the Board, to which Mr. Gross stated that Mr. Caldwell was not present.

Chairperson Ravel asked to hear from Ms. Laughner, who appeared via Zoom and stated she had no comment.

Chairperson Ravel, seeing no further discussion from the Board, called for a motion to approve Item 9.

Member Johnson moved to approve Item 9. Member Becton seconded the motion.

Board Liaison Andrea Burrell called for public comment on this item.

Margaret Petros, Executive Director of Mother's Against Murder, appeared via Zoom to offer public comment. Ms. Petros stated that the Board is doing a great job with 4900 claims and is being thoughtful and giving claimants the chance to ask questions. Justice and due process are being done. However, Ms. Petros stated the Board does not do the same for crime victims on their victim compensation claims. Ms. Petros has repeatedly expressed this concern and asks that the Board again think about giving victims opportunities at these meetings when their claims are being denied. Instead, the Board goes into closed session and makes decisions based on staff recommendations that have not been shared with the victims or their advocates. Ms. Petros's agency is currently going through a Writ of Mandate in court about this issue and has tried hard to resolve the issue with staff and the Board.

Chairperson Ravel stated he cannot discuss what goes on in closed session but assures Ms. Petros that the Board takes the staff recommendations seriously, scrutinizes them, and often has vigorous discussion about them.

DRAFT

The motion to approve the Penal Code 4900 claim of Maurice Caldwell was approved by a unanimous vote of the Board and the Proposed Decision was adopted.

Item 10. Miguel Solorio (Pen. Code, §§ 4900, et seq.)

The Penal Code section 4900 claim of Miguel Solorio was presented by Chief Counsel Kim Gauthier.

On January 9, 2024, Miguel Solorio filed an application with the California Victim Compensation Board as an erroneously convicted felon. The application was supplemented on January 23 and February 22. The application is based on Mr. Solorio's 2000 convictions for first degree murder, attempted first degree murder, six counts of assault with a firearm, and other related charges. Those convictions were vacated in November 2023 pursuant to a grant of habeas corpus. In December 2023, the court granted a motion for a Finding of Factual Innocence pursuant to Penal Code section 1485.55. As mandated by the court order, and pursuant to Penal Code section 1485.55, the Proposed Decision recommends compensation in the amount of \$1,260,420.00, which represents \$140.00 per day for each of the 9,003 days that Mr. Solorio was wrongfully imprisoned. Mr. Solorio is represented in this proceeding by Sarah Pace of the Northern California Innocence Project. The Office of the Attorney General is represented by the Deputy Attorney General Dina Petrushenko.

Chairperson Ravel asked to hear from Counsel for Mr. Solorio.

Sarah Pace appeared via Zoom and was joined by Mr. Solorio and his wife, Sylvia. Ms. Pace stated it was her privilege to assist Mr. Solorio with his exoneration, along with a few others at the Northern California Innocence Project. Ms. Pace noted that the Board's decision is momentous because it is the beginning of the Innocence Network Conference and she, Mr. Solorio, and his wife, are Zooming from New Orleans where hundreds of innocence advocates and exonerees have gathered to learn from their experiences and celebrate their freedom. They are also celebrating the Board's decision to compensate Mr. Solorio for his 25 years of wrongful imprisonment, which is 25 years of time taken from him.

Ms. Pace thanked the Board for its consideration of Mr. Solorio's case and is grateful to see the effects of legislative reforms designed to make the compensation process less arduous for the wrongfully convicted. It has not

DRAFT

always been easy, and Mr. Caldwell was also a Northern California Innocence Project client, so it is also a momentous day for him to finally get the compensation he so deserves. Ms. Pace congratulated Mr. Caldwell and his attorneys. Ms. Pace stated that the compensation Mr. Solorio receives will undoubtedly assist him and his family. His wife, Sylvia, was Mr. Solorio's main alibi witness and stayed by his side year after year for the 25 years he was in prison. They fought together for him to come home and for the system to realize the devastating mistake it had made. Mr. Solorio emigrated to the United States from Mexico with his family when he was young and dreamed of achieving the American Dream. He and his wife were both college students when he was arrested and convicted of murder and his life was taken away from him, for a crime that he had nothing to do with. Mr. Solorio wanted to work in an office, own a house, and have a family; things which many of us take for granted. Although the CalVCB cannot undo the 25 years he spent in prison, it can and will help him and his wife make the most of the years to come.

Mr. Solorio addressed the Board and expressed his gratitude to the Board for consideration and approval of his claim.

Ms. Petrushenko appeared via Zoom and stated she had no objection to the compensation award.

Seeing no discussion from the Board members, Chairperson Ravel called for a motion to approve Item 10. Member Becton moved to adopt the Proposed Decision in the Penal Code section 4900 matter of Miguel Solorio. Member Johnson seconded the motion.

Andrea Burell called for any public comment on the item. None was offered.

The Board voted unanimously to adopt the Proposed Decision in the Penal Code section 4900 matter of Miguel Solorio.

Closed Session

The Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel pursuant to Government Code section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1A through 61 of the Victim Compensation Program.

Open Session

DRAFT

The Board reconvened in Open Session pursuant to Government Code section 11126, subdivision (c)(3) at 11:45 a.m.

Member Becton moved to approve items 1A through 61 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 January Board meeting. Member Johnson seconded the motion. The motion was approved by a unanimous vote of the Board and the meeting was adjourned.

Next Board Meeting

The next Board meeting is scheduled for May 16, 2024.

ITEM 2

PUBLIC COMMENT

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

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

(Gov. Code, § 11125.7.)

ITEM 3

EXECUTIVE OFFICER'S STATEMENT

ITEM 4

CALIFORNIA VICTIM COMPENSATION BOARD
LEGISLATIVE UPDATE
MAY 16, 2024

[AB 2307 \(Davies\) CalVCB: Reimbursement: Self-Defense Courses](#)

This bill would authorize CalVCB to reimburse up to \$1,000 for self-defense courses offered, provided, or operated by a nonprofit organization, university, or law enforcement agency.

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

[AB 2979 \(Mike Fong\) Income Taxation: Exclusion: Victim Compensation.](#)

This bill would exclude victim compensation and Good Samaritan payments received from CalVCB from the definition of gross income under the Revenue and Taxation Code.

Status: Scheduled for the Assembly Revenue and Taxation Committee on April 29

[SB 1430 \(Glazer\) – Factual Innocence](#)

This bill would require the Department of Justice (DOJ) to issue a certificate stating that an individual received either a finding of innocence from a court, or an award of compensation for erroneous conviction from CalVCB. It would also require the DOJ to annotate the individual's criminal record with the same information.

Status: Amended and referred to the Assembly Appropriations Committee

[AB 1186 \(Bonta\) Juveniles: Restitution](#)

This bill would remove provisions that require juvenile offenders to pay restitution, instead requiring them to participate in various restorative justice programs. The courts would determine the amount of restitution owed and transmit it to CalVCB, which would be required to pay the amount to the victim upon appropriation by the Legislature. 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: Placed on the Senate Inactive File in 2023. Because the bill advanced to the floor of its second house, it is eligible to be returned from the inactive file to be heard on the floor as a two-year bill through August 2024.

[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 in 2023. Because the bill advanced to the fiscal committee of its second house, it is eligible to be heard in that committee as a two-year bill through August 2024.

[AB 3055 \(Bonta\) Survivors of Human Trafficking: Identification Cards](#)

This bill would require the Department of Motor Vehicles to develop an assisted and expedited process for survivors of human trafficking to obtain a new or replacement identification card. The bill would also require CalVCB to post information on its internet website about obtaining an identification card using this process, obtaining a replacement social security card or replacement permanent resident card, and the Safe at Home program of the Secretary of State.

Status: Amended and referred to the Assembly Appropriations Committee

[AB 1909 \(Quirk-Silva\) Criminal Fines: Collection](#)

This bill would specify that any portion of a restitution order that remains unsatisfied after a defendant has completed diversion is enforceable by a local collection program.

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

[AB 2432 \(Gabriel\) Corporations: Criminal Enhancements](#)

This bill would authorize a court to impose an additional fine, known as the corporate white collar criminal enhancement, against a corporation that is convicted of a misdemeanor or felony. It would also establish the California Crime Victims Fund and require that any moneys collected from the newly created fine be placed in that fund. The bill does not specify how moneys would be distributed from the fund.

Status: On the Suspense File in the Assembly Appropriations Committee

[SB 1035 \(Ashby\) Criminal Procedure: Fines, Fees, and Restitution](#)

This bill would change the annual interest rate on restitution orders to an adjusted rate not to exceed 10 percent. It would also change the annual interest rate charged by the Franchise Tax Board on certain delinquent payments, including fines, fees, and restitution, to no more than 1 percent.

Status: Referred to the Senate Appropriations Committee

[AB 1803 \(Jim Patterson\) Criminal Procedure: Restitution](#)

This bill would require, to the extent possible, a restitution order for a felony violation of human trafficking to include full reimbursement for noneconomic losses, including, but not limited to, psychological harm.

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

[AB 1956 \(Reyes\) Victim Services](#)

This bill would require the California Governor's Office of Emergency Services (Cal OES) to allocate funds, upon appropriation by the Legislature, to fill the gap in Victims of Crime Act grant funding and to prioritize continuity and stability of crime victim services if the federal grant funding that is awarded to the office is 10 percent or more lower than the amount awarded in the prior year.

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

[AB 2730 \(Lackey\) Sexual Assault: Medical Evidentiary Examinations](#)

Current law requires Cal OES to establish a protocol for the examination and treatment of victims of sexual assault and attempted sexual assault and the collection of evidence. This bill would expand the definition of a qualified health care professional who may conduct an examination for evidence of sexual assault or attempted sexual assault in consultation with a licensed physician and surgeon to include a certified nurse-midwife. It would also remove the requirement that the consulting physician and surgeon conduct examinations or provide treatment.

Status: In the Senate pending committee assignment

[AB 1832 \(Blanca Rubio\) Labor Trafficking Task Force](#)

This bill would establish within the Civil Rights Department the Labor Trafficking Task Force. The bill would authorize the task force to coordinate with other relevant agencies, including CalVCB, to combat labor trafficking, coordinate with specified entities when investigating criminal actions related to labor trafficking, and coordinate with state or local agencies to connect survivors with available services.

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

[AB 2020 \(Bonta\) Survivors of Human Trafficking Support Act](#)

This bill would enact the Survivors of Human Trafficking Support Act. The act would require a county that has an interagency sexual assault response team to establish a survivor review board, for the purpose of soliciting, accepting, and reviewing feedback from survivors regarding their experience with service providers. The act would further require state and local law enforcement agencies to establish and maintain protocols for how to interact with people who are victims of human trafficking that include a best practice to contact and coordinate with a community-based organization.

Status: Referred to the Assembly Appropriations Committee

ITEM 5

CALIFORNIA VICTIM COMPENSATION BOARD
CONTRACT REPORT
MAY 16, 2024

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 systems.

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: Xerox Corporation Contract Number: S24-021 A1	Contract Amount: \$109,255.59 Term: 3/1/2024 – 2/28/2026	This amendment is to update the Contractor name from Inland Business Systems to Xerox Corporation. This Contract is to procure, install, and provide maintenance for printers to facilitate CalVCB’s mission-critical printing operations. This was procured utilizing the Copiers and Managed Print Services (NASPO ValuePoint) Cooperative Agreement 7-19-70-46-09.
Contractor Name: County of Shasta	Contract Amount: \$0.00	The Contractor shall establish a process by which the Contractor

<p>Contract Number: S23-017</p>	<p>Term: 4/19/2024 – 6/30/2026</p>	<p>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.</p> <p>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.</p> <p>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).</p>
--	---	--

ITEM 6

California Victim Compensation Board
Item 6
Proposal for Mental Health Updates
May 16, 2024

Authority

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

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

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

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

Increasing Initial Mental Health Session Limits

Background

In 2003, CalVCB established initial session limits for claimants receiving reimbursement for mental health treatment. These limits were determined by CalVCB's staff clinical psychologist. The purpose of implementing initial session limits was to control costs of mental health treatment and review the appropriateness of service utilization by using assessment-based treatment. A claimant's initial session limit is dependent on the claimant's filing status. Session limits have been reviewed several times since they were implemented (2005, 2009, 2012, and 2015), resulting in increased initial session limits for one or two filing statuses each time. Currently, the initial session limit of 15 exists for claimants with a filing status of adult derivative, new caretaker, or roommate survivor. An initial session limit of 30 currently exists for claimants with a filing status of minor derivative, minor witness, or parent/caretaker. An initial session limit of 40 currently exists for claimants with a filing status of adult survivor, adult victim, minor survivor, or minor victim,

Once a claimant exhausts their initial session limit, an Additional Treatment Plan (ATP) must be submitted by the mental health provider for review and approval by CalVCB's Performance

Standards Unit (PSU). The ATP is reviewed to determine crime-relatedness of treatment and whether Mental Health Guideline requirements are met. If the necessary criteria are met, PSU staff authorizes additional sessions beyond the claimant’s initial session limit while not exceeding their maximum monetary benefit limit. For claimants with a filing status of adult derivative, minor derivative, new caretaker, roommate survivor, and minor witness, this monetary limit is set at \$5,000. All other filing statuses are given up to \$10,000 for mental health expenses. (Government Code section 13957(a)(2))

Analysis

For fiscal year July 1, 2022, through June 30, 2023, CalVCB received a total of 1,163 ATP’s. Of these 787 (68%) were first time ATP submissions, and 376 (32%) were at least the second request on an application.

The data below was compiled from applications that had MH sessions paid from 2016 through 2022. The below table shows the average paid sessions for applications that reach the initial session limits.

Table1: Filing Statuses that Exceed Initial Session Limits.

Average Paid Sessions for Applications that reach the Initial Session Limit				Number of Sessions Available Until Monetary Cap is Reached per Provider				
Filing Status	Initial Session Limit	Average of Total Paid Sessions	Proposed Session Limit	Statutory Cap	\$97 AMFT rate	\$105 LMFT rate	\$129 PSY rate	\$152 MD rate
Adult Derivative	15	19	30	\$5,000	51	47	38	32
New Caretaker	15	25	30	\$5,000	51	47	38	32
Roommate Survivor	15	27	30	\$5,000	51	47	38	32
Minor Derivative	30	54	50	\$5,000	51	47	38	32
Minor Witness	30	52	50	\$5,000	51	47	38	32
Parent/Caretaker	30	40	50	\$10,000	103	95	77	65
Adult Survivor	40	67	60	\$10,000	103	95	77	65
Adult Victim	40	54	60	\$10,000	103	95	77	65
Minor Survivor	40	61	60	\$10,000	103	95	77	65
Minor Victim	40	54	60	\$10,000	103	95	77	65

Note: Orange represents the Filing Status that will exceed monetary cap before the proposed session limit increases if claimant is treated by a PSY or MD license type.

Proposed Change

CalVCB proposes increasing the allowable initial mental health session limits for all filing status types from 15/30/40 to 30/50/60. These proposed increases will allow for continued services to victims without unnecessary delays and reduce administrative requirements for providers by

completing fewer ATPs. CalVCB does not anticipate any increased fiscal impact as the total amount of mental health sessions reimbursed will not increase. If approved, these new session limits would apply to all applications filed and bills submitted on or after June 1, 2024.

VICTIM CLASSIFICATION	<u>MENTAL HEALTH SESSION(S) for applications filed and bills submitted prior to June 1, 2024</u>	<u>MENTAL HEALTH SESSION(S) for applications filed and bills submitted on or after June 1, 2024</u>	CASE MANAGEMENT SESSION(S)
Direct Survivor	Up to 40	<u>Up to 60</u>	Up to 5
Derivative -Adult -Minor -Minor Witness -Primary Caretakers (at time of crime) -Post-Crime Primary Caretakers	Up to 15 Up to 30 Up to 30 Up to 30 Up to 15	<u>Up to 30</u> <u>Up to 50</u> <u>Up to 50</u> <u>Up to 50</u> <u>Up to 30</u>	Up to 5

Adding Certified Child Life Specialist Provider Type and Rate

Background

Pursuant to Assembly Bill 1187 effective January 1, 2024, Certified Child Life Specialists (CCLS) are eligible for reimbursement. Eligible providers include only those who are certified by the Association of Child Life Professionals (childlife.org) and are supervised by a licensed provider.

By way of background, Licensed Clinical Social Workers (LCSW) must have a master’s degree in social work, register as an Associate Clinical Social Worker, obtain 3,000 supervised hours, then pass the LCSW clinical exam. CalVCB reimburses LCSWs \$105 per hour for services provided to CalVCB claimants. In comparison, CCLS providers are required to have a bachelor’s degree in child life studies or a related field, must complete a 600-hour child life specialist internship, and pass the certification exam.

CalVCB surveyed several current CCLS postings and determined an average hourly rate of compensation being offered by employers for this provider type.

Proposed Change

CalVCB proposes adding CCLS providers to the list of approved provider types, who will be subject to the other terms and conditions set forth in the Mental Health Guidelines as other qualified CalVCB mental health providers. CalVCB further proposes setting the reimbursement rate for CCLS providers at \$38/hour. This rate is based on the median hourly wage of twenty-

four Child Life Specialist job postings in California. This method of determining the hourly rate is consistent with how the Board has historically established rates for other types of providers.

To effectuate this change, it is recommended that the Provider Rate Chart (Attachment A) be updated to add CCLS providers.

All proposed changes to the Guidelines are depicted in Attachment B. All additions are noted in underline and all deletions appear in ~~striketrough~~.

Action Requested

CalVCB requests the Board approve the proposed increase to the initial Mental Health Session Limits for all filing statuses, the addition of Certified Child Life Specialist as approved providers at the reimbursement rate set forth in Attachment A, and adopt the changes to the Mental Health Guidelines as set forth in Attachment B. Upon adoption by the Board, these updates will be submitted to the Secretary of State's office as required by Government Code section 13957.2. Making these necessary updates will allow continued services to victims without unnecessary delays and ensure we comply with recently enacted legislation.

Attachment A: Provider Rate Chart

Provider Type	License or Certificate	Services	Rates Effective 6/1/2024
Licensed Psychiatrist (MD)	A, C, or G	Individual/family therapy	\$152/hour
		Medication management	\$152/hour
		Group therapy	\$46.80/hour
Licensed Psychologist	PSY	Individual/family therapy	\$129/hour
		Group therapy	\$39.60/hour
Psychological Associate (must be supervised by a licensed psychologist)	PSB	Individual/family therapy	\$97/hour
		Group therapy	\$30/hour
Licensed Clinical Social Worker	LCSW	Individual/family therapy	\$105/hour
		Group therapy	\$32.40/hour
Associate Clinical Social Worker (must be supervised by a licensed therapist)	ASW	Individual/family therapy	\$97/hour
		Group therapy	\$30/hour
Licensed Marriage Family Therapist	LMFT	Individual/family therapy	\$105/hour
		Group therapy	\$32.40/hour
Associate Marriage and Family Therapist (must be supervised by a licensed therapist)	AMFT	Individual/family therapy	\$97/hour
		Group therapy	\$30/hour
Licensed Professional Clinical Counselor	LPCC	Individual/family therapy	\$105/hour
		Group therapy	\$32.40/hour
Associate Professional Clinical Counselor (must be supervised by a licensed therapist)	APCC	Individual/family therapy	\$97/hour
		Group therapy	\$30/hour
Clinical Nurse Specialist	CNS	Individual/family therapy	\$105/hour
		Group therapy	\$32.40/hour
Psychiatric Mental Health Nurse	PMHN	Individual/family therapy	\$105/hour
		Group therapy	\$32.40/hour
Nurse Practitioner/Physician Assistant	NP, PA	Medication management	Medicare Rate
Licensed Physician	A, C, or G	Medication management	Medicare Rate
Rape Crisis Peer Counselor	Certified by Rape Crisis Center	Individual therapy for no more than 10 weeks, plus one series of group sessions.	\$15/hour
<u>Certified Child Life Specialist</u>	<u>CCLS</u>	<u>Individual/family therapy</u>	<u>\$38/hour</u>

California Victim Compensation Board

Mental Health and Counseling Service Maximum Rates and Service Limitations for Reimbursement (Mental Health Guidelines) Government Code §13957.2(a)

Effective June 1, 2024

Authority

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

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

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

Penal Codes

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

Billing of Mental Health Services

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

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

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

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

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

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

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

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

Session Lengths and Equivalencies

	LENGTH OF TIME	SESSION EQUIVALENT
Individual and Family Mental Health Session (In person or Telehealth)	Less than 45 minutes	.50
	45 to 74 minutes	1.0
	75 to 104 minutes	1.5
	105 to 120 minutes	2.0
One Group Mental Health Session		One half of an individual session of the same length ¹
Case Management Services Sessions²	15 minutes	.25
	30 minutes	.50
	45 minutes	.75
	60 minutes	1.0

Case Management

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

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

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

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

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

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

Telehealth

- Telehealth delivers mental health treatment via communication technologies while the patient is at the originating site and the mental health provider is at a distant site. All statutory and regulatory requirements established by the provider’s licensing board must be met.
- Mental Health session limits apply to all mental health services, regardless of how they are delivered (in person or telehealth).

Section II. Initial Treatment Session Limits

VICTIM CLASSIFICATION	MENTAL HEALTH SESSION(S) for <u>applications filed and bills submitted prior to June 1, 2024</u>	MENTAL HEALTH SESSION(S) for <u>applications filed and bills submitted on or after June 1, 2024</u>	CASE MANAGEMENT SESSION(S)
Direct Survivor ¹	Up to 40	<u>Up to 60</u>	² Up to 5
Derivative ³ -Adult -Minor -Minor Witness -Primary Caretakers (at time of crime) -Post-Crime Primary Caretakers	Up to 15 Up to 30 Up to 30 Up to 30 Up to 15	<u>Up to 30</u> <u>Up to 50</u> <u>Up to 50</u> <u>Up to 50</u> <u>Up to 30</u>	Up to 5

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

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

Section III. Documentation Requirements for Initial Sessions

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

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

¹ Survivors include parent, sibling, child, spouse, fiancé, grandparent, grandchild or registered domestic partner as defined in Family Code §297.

² These are not counted against the mental health session limits.

³ A derivative victim in more than one category may only use the most favorable category.

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

- 1) Upon CalVCB's request
- 2) If the treatment is less than 100% related to the qualifying crime;
- 3) There was a delay in treatment of three years or break in treatment over one year; or
- 4) If the treatment is for a post-crime primary caretaker.
- 5) If the claimant was three years old or younger when treatment began.

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

TP Requirements

- 1) A description of the crime for which mental health sessions are being provided.
- 2) Reason(s) therapeutic intervention is needed if the victimization occurred more than three years ago or there was a break in treatment of more than one year.
- 3) The diagnosis and specifiers as described in the most recently published version of the *Diagnostic and Statistical Manual of Mental Health Disorders* (DSM) and other conditions that may be the focus of clinical attention.
- 4) A description of presenting symptoms, behaviors and beliefs that are the focus of treatment
- 5) The Level 1 Cross-Cutting Symptom Measure results as described in the most recently published version of the DSM, as clinically indicated. The exceptions for completion are:
 - a. Claimant is non-English speaking
 - b. Claimant is less than six years of age
 - c. Claimant is developmentally disabled
 - d. Treatment is terminated
 - e. Explanations provided in the "Other" box will be considered on a case-by-case basis
- 6) A description of the means by which progress will be measured.
- 7) For a Post-Crime Primary Caretaker, a list and description of the therapeutic interventions that are necessary for the treatment of the direct minor victim.
- 8) A declaration signed under penalty of perjury of the percentage of the treatment that is necessary as a direct result of the qualifying crime.

Mental Health Billing Intake Form Requirements

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

- 1) Claimant Name
- 2) Crime Date
- 3) Type of crime with a brief description
- 4) The date the treatment began
- 5) The date the treatment will end, if applicable
- 6) If treatment is necessary as a direct result of the crime (a requirement of Government Code section 13957(a)(2))
- 7) If insurance or Medi-Cal cannot be billed, applicants are asked for the reason. If any of the reasons are selected, the applicant may be provided an exemption
- 8) Provider Organization Name

- 9) Treating Provider Name
 - 10) Supervising Provider Name (if applicable)
 - 11) Email address of Provider
 - 12) Phone number of Provider
 - 13) Provider License Number
 - 14) Supervising Provider License Number (if applicable)
 - 15) Provider Declaration Certification, signed under penalty of perjury
- 16) Claimant Declaration Certification, signed under penalty of perjury

Section IV. Additional Treatment Beyond Initial Session Limits

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

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

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

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

ATP Requirements

- 1) A description of the crime for which mental health sessions is being provided.
- 2) Reason(s) therapeutic intervention is needed if the victimization occurred more than three years ago or there was a break in treatment of more than one year.
- 3) The diagnosis and specifiers as described in the most recently published version of the Diagnostic and Statistical Manual of Mental Health Disorders (DSM) and other conditions that may be the focus of clinical attention.
- 4) For a Post-Crime Caretaker, a list and description of the therapeutic interventions that are necessary for the treatment of the direct minor victim.
- 5) A description of the current symptoms, behaviors and beliefs that are the focus of continued treatment.
- 6) The treating therapist's rating of the therapeutic progress in relation to the diagnosis and treatment goals and other progress measurements identified in the initial TP and ATP.
- 7) The Level 1 Cross-Cutting Symptom Measure results as described in the most recently published version of the DSM, as clinically indicated. Acceptable reasons for results of this measurement to not be reported, include:
 - Claimant is non-English speaking
 - Claimant is less than six years of age
 - Claimant is developmentally disabled
 - Treatment is terminated
 - Explanations provided in the "Other" box will be considered in a case-by-case

basis

- 8) A description of the means by which progress will continue to be measured.
- 9) A description of factors that may adversely affect treatment progress.
- 10) An explanation of the claimant's involvement with the legal system concerning criminal or dependency hearings resulting from the qualifying crime, if applicable.
- 11) An explanation of the claimant learning of the perpetrator's release from custody, if applicable.
- 12) If a direct minor victim, reporting if the perpetrator has made unwelcome and unauthorized contact with the claimant, if applicable.
- 13) A declaration signed under penalty of perjury of the percentage of the treatment that is necessary as a direct result of the qualifying crime.

Additional Treatment Criteria

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

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

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

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

If additional sessions are needed to address treatment goals:

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

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

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

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

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

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

Section V. Additional Sessions

Direct Victims

- 1) At least one of the following factors is present:
 - a) The qualifying crime resulted in permanent and substantial disfigurement; or
 - b) The qualifying crime is a sexual assault offense involving conduct described in Penal Code §11165.1(b)(1), (2) or (3); or
 - c) The qualifying crime constituted a plausible and credible threat of serious harm to bodily integrity; or
 - d) The qualifying crime resulted in serious bodily injury as defined in Penal Code § 243(f)(4); or
 - e) The victim initiated mental health treatment within three months of being scheduled to testify as a witness in any criminal or dependency proceeding related to the qualifying crime; To be reimbursed, the mental health counseling must be initiated within three months of being scheduled to testify; or
 - f) The victim initiated mental health treatment within three months of learning that perpetrator will be, or was, is released from custody. To be reimbursed, the mental health counseling must be initiated within three months of learning that the perpetrator will be, or was, released from custody.
- 2) The treatment must be focused on symptoms, behaviors, or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment.
- 3) The treatment has progressed, as evidenced by:
 - a) Improvement in the Level 1 Cross-Cutting Symptom Measure results, as clinically indicated and
 - b) The treating therapist's rating and explanation of the claimant's therapeutic progress in relation to the diagnosis and treatment goals and other progress measurements identified in the initial Treatment Plan; and
 - c) Symptom progress rating score provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
 - d) The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.

Minor Direct Victim

Additional sessions for a minor victim may be approved if the above "Direct Victim" section criteria are met. Otherwise, a minor victim can be authorized additional sessions if the following criteria are successfully met.

- 1) One of the following circumstances are present:
 - a) The qualifying crime is sexual assault offense involving conduct described in Penal Code §11165.1(a), (b)(4) or (b)(5) and at least one of the following applies:
 - 1) The perpetrator of the qualifying crime was a person in a position of trust or authority with the victim, including, but not limited to a parent, teacher, or religious leader; or
 - 2) The victim was removed from the home as a result of the qualifying crime; or
 - 3) The victim's parent minimizes the significance of the qualifying crime, blames the victim for the qualifying crime, fails to acknowledge that the suspect committed the qualifying crime, or does not believe the qualifying crime occurred; or
 - 4) Another minor in the victim's immediate family was also a victim of the same qualifying crime of sexual abuse committed by the same perpetrator.
 - b) The victim reaches a developmental stage or a stage of cognitive development that results in impairment as a direct result of the qualifying crime; or
 - c) The alleged suspect persists in making uninvited and unwelcome contact with the victim that is not authorized by a court.
- 2) The treatment is focused on symptoms, behaviors, or beliefs that are directly attributable to the qualifying crime and could be remediated by the proposed treatment.
- 3) The treatment has progressed, as evidenced by:
 - a) Symptom progress rating score provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
 - b) Improvement in the Level 1 Cross-Cutting Symptom Measure results, as clinically indicated; and
 - c) The treating therapist's rating of the therapeutic progress in relation to the diagnosis and treatment goals and other progress measurements identified in the initial TP; and
 - d) The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.

Derivative Victims

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

- 1) Reimbursement for additional mental health counseling sessions for a derivative victim beyond the initial session limit may be approved if an Additional Treatment Plan is submitted and the circumstances of the application that demonstrate the need for additional treatment meets the criteria listed below:
 - a. Either:
 - i. The qualifying crime resulted in the death of the victim; or
 - ii. The derivative victim, excluding Post-Crime Caretakers (new caretakers of a minor victim after the qualifying crime), initiated mental health treatment within three months of being scheduled to testify in a criminal dependency proceeding related to the qualifying crime; and -
 - b. The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment; and
 - c. Treatment has progressed, as evidenced by:

- i. Improvement in the Level 1 Cross-Cutting Symptom Measure Scores; and
- ii. The treating therapist's rating and explanation of the claimant's therapeutic progress in relation to the diagnosis and treatment goals, and other progress measurements identified in the initial Treatment Plan; and
- iii. Symptom progress rating score provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
- iv. The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.

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

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

a. One of the following direct victim factors are present:

- i. The qualifying crime resulted in permanent and substantial disfigurement; or
- ii. The qualifying crime resulted in serious bodily injury as defined in Penal Code §243(f)(4); or
- iii. The qualifying crime constituted a plausible and credible threat of serious harm to bodily integrity; or
- iv. The qualifying crime is a sexual assault offense involving conduct described in Penal Code §11165.1(b)(1), (2) or (3); or
- v. The direct victim initiated mental health treatment within three months of being scheduled to testify in a criminal or dependency proceeding related to the qualifying crime.; or
- vi. The direct victim initiated mental health treatment within three months of learning that the perpetrator will be, or was, released from custody.
- vii. Penal Code §11165.1 (a), (b)(4), or (b)(5), Penal Code §243(f)(4); and at least one of the following applies:

- 1. The perpetrator of the qualifying crime was a person in a position of trust or authority with the victim, including, but not limited to a parent, teacher, or religious leader; or
- 2. The minor victim was removed from the home as a result of the qualifying crime and is still out of the home at the time of treatment; or
- 3. The minor victim's parent minimizes the significance of the qualifying crime, blames the victim for the qualifying crime, fails to acknowledge that the suspect committed the qualifying crime, or does not believe the qualifying crime occurred; or
- 4. Another minor in the minor victim's immediate family was also a victim of the same qualifying crime of sexual abuse committed by the same perpetrator.

- b. Treatment for the derivative victim is necessary for the recovery of the direct victim; and
- c. Treatment for the derivative victim is focused on the direct victim's behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment; and

- d. Treatment of the derivative victim has resulted in the direct victim's progress as evidenced by one of the following:
 - i. The Additional Treatment Plan for the direct victim exhibits improvement in the symptoms, behaviors, or beliefs as shown by improvement in the Level 1 Cross-Cutting Symptom Measure and the progress rating by the treating therapist in relation to the claimant's treatment for the diagnosis and goals, and other progress measurements identified in the Treatment Plan; or
 - ii. The Additional Treatment Plan for the derivative victim demonstrates improvement in the direct victim's symptoms, behaviors, or beliefs attributable to the derivative victim's treatment.

3) Reimbursement for additional mental health counseling sessions for a derivative victim, excluding Post-Crime Caretakers (new caretakers of a minor victim after the qualifying crime), beyond the initial session limit may be if an Additional Treatment Plan is submitted and the circumstances of the application that demonstrate the need for additional treatment meets the criteria listed below:

- a. The derivative victim is a Primary Caretaker, such as a parent caretaker or step-parent at the time of the qualifying crime, or sibling of a minor victim of sexual or severe physical abuse specified within either subsection A or B below:
 - i. Penal Code §11165.1 (b)(1), (2), (3), Penal Code §243(f)(4); or
 - ii. Penal Code §11165.1 (a), (b)(4), or (b)(5); and at least one of the following applies:
 - 1. The perpetrator of the qualifying crime was a person in a position of trust or authority with the victim, including, but not limited to a parent, teacher, or religious leader; or
 - 2. The minor victim was removed from the home as a result of the qualifying crime and is still out of the home at the time of treatment; or
 - 3. The minor victim's parent minimizes the significance of the qualifying crime, blames the victim for the qualifying crime, fails to acknowledge that the suspect committed the qualifying crime, or does not believe the qualifying crime occurred; or
 - 4. Another minor in the minor victim's immediate family was also a victim of the same qualifying crime of sexual abuse committed by the same perpetrator.
 - 5. Treatment for the derivative victim is focused on behaviors or beliefs that are directly attributable to the qualifying crime and could reasonably be remediated by the proposed treatment; and
 - 6. The treatment has progressed, as evidenced by:
 - a. Improvement in the Level 1 Cross-Cutting Symptom Measure Scores; and
 - b. The treating therapist's rating and explanation of the claimant's therapeutic progress in relation to the diagnosis and treatment goals, and other progress measurements identified in the initial Treatment Plan; and
 - c. Symptom progress rating scores provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
 - d. The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.

Minor Witness

Reimbursement for additional mental health counseling sessions for a minor witness beyond the initial session may be approved if an Additional Treatment Plan is submitted and the documentation meets all the criteria listed below:

- 1) The treatment is focused on behaviors or beliefs that are directly attributable to the qualifying crime; and
- 2) The treatment has progressed, as evidenced by:
 - a. Improvement in the Level 1 Cross-Cutting Symptom Measure results, as clinically indicated; and
 - b. The treating therapist's rating of the claimant's therapeutic progress in relation to the diagnosis and treatment goals, and other progress measurements identified in the initial Treatment Plan; and
 - c. Symptom progress rating score provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
 - d. The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.
- 3) The minor witness initiated mental health treatment within three months of being is scheduled to testify as a witness in criminal or dependency proceeding related to the qualifying crime.

Section VIII. Additional Sessions for a Good Samaritan

- A) Reimbursement for additional mental health counseling sessions for a Good Samaritan beyond those identified in Section II may be approved if an Additional Treatment Plan is submitted and the circumstances of the application that demonstrate the need for additional treatment meets the criteria listed below:
- 1) The treatment for the Good Samaritan is focused on behaviors or beliefs that are directly attributable to the qualifying event and could reasonably be remediated by the proposed treatment; and
 - 2) The treatment has progressed, as evidenced by:
 - a) Improvement in the Level 1 Cross-Cutting Symptom Measure Scores; and
 - b) The treating therapist's rating and explanation of the claimant's therapeutic progress in relation to the diagnosis and treatment goals, and other progress measurements identified in the initial Treatment Plan; and
 - c) Intervention ratings provided by the treating therapist based on the status of claimant's symptoms/behaviors; and
 - d) The treating therapist's percentage estimation of overall treatment that has been completed to meeting the claimant's treatment goal(s) in relation to the qualifying crime.
 - 3) The Good Samaritan is scheduled to testify as a witness in any criminal or dependency proceeding related to the qualifying event. To be reimbursed, the mental health counseling must be initiated within three months of being scheduled to testify.

- B) If the Board previously approved reimbursement for additional sessions under subsection (a), any subsequent requests are stringently reviewed and may be reimbursed only if the Board determines that the proposed treatment is reasonably likely to successfully overcome the factors that hindered the progress of treatment and treatment has significantly progressed.

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

Dire or Exceptional Circumstances:

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

Effective Date:

These Mental Health Guidelines are effective for all applications filed and bills submitted on or after June 1, 2024, and supersede any previously approved Mental Health Guidelines adopted by the Board and filed with the Secretary of State.

ITEM 7

1
2
3
4
5
6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**

8
9 In the Matter of:

10 **Abel Soto**

11 Claim No. 24-ECO-08

Proposed Decision

(Penal Code §§ 1485.55, 4900 et seq.)

12 **I. Introduction**

13 On January 29, 2024, Abel Soto (Soto) submitted a claim for compensation to the California
14 Victim Compensation Board (CalVCB) as an erroneously convicted person pursuant to Penal Code
15 section 4900, which was supplemented twice before filing on March 25, 2024. The claim is based upon
16 Soto's 17 years' imprisonment for murder and assault with a deadly weapon. Soto's convictions for
17 these crimes were vacated with a finding of factual innocence pursuant to Penal Code section
18 1495.55. Soto is represented by attorney Ellen J. Eggers. As supplemented, the claim requests
19 compensation in the amount of \$909,720 for 6,498 days incarceration.

20 Deputy Attorney General Dina Petrushenko appeared on behalf of the Attorney General. By
21 response submitted April 3, 2024, the Attorney General agreed with Soto's calculation for
22 compensation in accordance with Penal Code section 4904.¹ The matter was assigned to CalVCB
23 Senior Attorney Laura Simpton. As mandated by Penal Code section 1485.55, it is recommended that
24 the CalVCB approve the claim in the amount of \$909,720 if sufficient funds are available, upon
25 appropriation by the Legislature, as indemnification for the injury sustained by Soto's incarceration for
26 6,498 days solely as a result of his erroneous convictions.

27
28 ¹ ~~Pen. Code, § 4904, as amended~~ by Stats.2023, c. 702 (S.B. 78), § 5, eff. Jan. 1, 2024 (authorizing
"documents and evidence from both parties" as needed to calculate compensation).

1 **II. Procedural Background**

2 On April 14, 2006, Soto was arrested and subsequently charged with one count of murder and
3 two counts of assault with a deadly weapon in Los Angeles County Superior Court case number
4 YA064697.² Enhancements for benefiting a criminal street gang and personal use of a firearm were
5 also alleged.³ All three charges stemmed from a drive-by shooting that occurred on May 10, 2003.
6 After the first jury was unable to reach a verdict, a second trial ensued. Soto was convicted of all
7 charges on August 13, 2007.⁴

8 On October 17, 2007, the court sentenced Soto to an indeterminate term of 72 years to life
9 imprisonment.⁵ The court mistakenly credited Soto just 529 days for actual time served, even though
10 Soto had been continuously confined for 546 days solely as a result of the charges in case number
11 YA064697.⁶ Soto appealed on grounds of insufficient evidence and prosecutorial misconduct. On
12 February 27, 2009, the Court of Appeal affirmed the judgment, and the California Supreme Court
13 denied review on May 13, 2009.⁷

14 On January 13, 2023, with the assistance of counsel Eggers, Soto requested the Los Angeles
15 County District Attorney’s Office (LADA) review his case for factual innocence. Following additional
16 investigation, the LADA conceded that Soto was entitled to relief in a joint petition filed in the Los
17 Angeles County Superior Court on January 19, 2024. Specifically, the joint petition requested habeas
18 relief to vacate all three of Soto’s convictions pursuant to Penal Code section 1473 on the basis of new
19

20 ² Pen. Code, §§ 187, 245; Soto Application (App.) at pp. 2-3. The pagination refers to the continuous
21 page numbers for the 13-page PDF file.

22 ³ Pen. Code, §§ 186.22, 12022.5, 12022.53; Joint Petition Requesting Habeas Relief and Factual
23 Innocence Finding (Joint Petition), dated Jan. 19, 2024, at p. 1, submitted with redactions via email
24 attachment by counsel Eggers on Jan. 31, 2024. See also *People v. Abel Soto*, Second District Court
25 of Appeal, case number B203546, unpublished opinion filed Feb. 27, 2009, available on Westlaw at
26 2009 WL 486698. (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

27 ⁴ Soto App. at pp. 2, 5.

28 ⁵ Joint Letter at pp. 1, 4; Soto Abstract of Judgment (AOJ), submitted via email by counsel Eggers on
Jan. 31, 2024; *People v. Soto, supra*, 2009 WL 486698, *1.

⁶ AOJ; Attorney General (AG) Response, submitted via email on Apr. 3, 2024.

⁷ *People v. Soto*, Court of Appeal, Second District, case number B203546, docket accessible online at
<https://appellatecases.courtinfo.ca.gov/>. (Cal. Code Regs., tit. 2, § 617.8 (official notice).)

1 evidence that likely would have changed the outcome of the trial.⁸ The joint petition further requested a
2 finding of factual innocence pursuant to Penal Code section 1485.55 because the new evidence
3 “establishes by a preponderance of the evidence that Abel Soto did not commit the 2003 murder....”⁹

4 In a hearing on January 24, 2024, the court granted the joint petition as to all counts and
5 dismissed the underlying charges in the interest of justice pursuant to Penal Code section 1385.¹⁰ In
6 addition, the court expressly found that “Soto is factually innocent of the murder [] pursuant to Penal
7 Code section 1485.55, subdivision (b).”¹¹ Neither the order nor minute order indicted whether the
8 court’s finding of factual innocence included Soto’s vacated convictions for assault. At the conclusion
9 of the hearing, the court ordered Soto “released forthwith as to this case only.”¹²

10 Three days later on January 27, 2024, Soto was released from custody. By then, he had been
11 confined solely as a result of his vacated convictions in case number YA064697 for a total of 6,498
12 days. As both parties agree, this period includes the date of his arrest on April 14, 2006, through and
13 including the date of his release on January 27, 2024.¹³ Soto did not sustain any other convictions
14 during his incarceration for case number YA064697.

15 On January 29, 2024, Soto submitted a 13-page claim to the CalVCB seeking compensation as
16 an erroneously convicted person under Penal Code section 4900. The claim, as subsequently revised,
17 requested compensation in the amount of \$909,720 for having been incarcerated a total of 6,498 days.
18 By email sent on January 29, 2024, to Soto and the Attorney General’s representatives, the CalVCB
19 acknowledged receipt of Soto’s claim. However, the CalVCB explained that the claim was premature
20 under Penal Code section 4901, as 60 days had not yet passed since Soto’s convictions were
21 reversed on January 24, 2024. Consequently, the CalVCB agreed to stay the proceedings until March
22 25, 2024. Meanwhile, the CalVCB requested additional documents to confirm Soto’s convictions and

23
24 ⁸ Joint Petition at pp. 2, 23-26.

25 ⁹ Joint Petition at p. 26.

26 ¹⁰ Soto App. at pp. 10-11.

27 ¹¹ Soto App. at p. 13.

28 ¹² Soto App. at p. 11.

¹³ Soto App. at p. 7; Counsel Eggers Declaration, submitted via email on Jan. 31, 2024; AG Response.

1 incarceration, as well as the scope of the finding of factual innocence. To that end, the CalVCB
2 requested a copy of the AOJ, the joint petition, and a declaration confirming the dates of confinement.
3 All three items were submitted by Soto on January 31, 2024.

4 After reviewing the supplemental documents, the CalVCB notified the parties on February 20,
5 2024, that the finding of factual innocence seemingly applied solely to the murder charge and,
6 therefore, a finding of factual innocence appeared to be lacking for the assault charges. The CalVCB
7 requested confirmation from Soto whether he was found factually innocent of assault. Following
8 several exchanges, Soto submitted an amended court order on March 18, 2024. The amended order,
9 issued nunc pro tunc by the Los Angeles County Superior Court on March 15, 2024, found that Soto
10 was “factually innocent of all charges by a preponderance of the evidence pursuant to Penal Code
11 Section 1485.55, Subdivision (b).”¹⁴ Accordingly, the finding of factual innocence expressly applied to
12 all three of Soto’s vacated convictions in case number YA064697.

13 By email sent March 18, 2024, the CalVCB confirmed receipt of the court’s factual innocence
14 finding. The CalVCB added that the automatic provisions in Penal Code section 1485.55 would apply
15 once this premature claim was filed after 60 days had elapsed since the underlying convictions were
16 reversed. On March 25, 2024, the CalVCB notified the parties that Soto’s supplemented claim was
17 now timely and deemed it filed in accordance with Penal Code sections 4900 and 4901. Pursuant to
18 Penal Code section 4904, the CalVCB requested a response from the Attorney General by April 8,
19 2024, solely on the issue of injury to confirm the amount of compensation requested. The CalVCB
20 added that, in the event the Attorney General’s calculation differed, Soto would receive a final
21 opportunity to reply.

22 The Attorney General timely responded on April 3, 2024. Significantly, the Attorney General
23 expressly agreed with Soto’s injury calculation for purposes of compensation under Penal Code
24 section 4904. Accordingly, no reply was requested from Soto. The administrative record closed the
25 next day on April 4, 2024.

26
27
28 ¹⁴ Order, dated Mar. 15, 2024, submitted via email by counsel Eggers on Mar. 18, 2024.

1 **III. Factual Background**

2 **A. Trial Evidence**

3 On May 10, 2003, at approximately 9:00 p.m. in the evening, 16-year-old Jose R. (Jose) was
4 fatally shot.¹⁵ The shooting occurred as Jose was walking down the street in front of his house in Los
5 Angeles. Seconds earlier, a white van stopped in the middle of the street. A passenger stepped out of
6 the vehicle and approached Jose. The passenger fired 14 times, striking Jose multiple times in the
7 face and chest. Jose suffered 12 bullet wounds and died of his injuries. The passenger returned to the
8 van, and the van drove away.¹⁶

9 At the time of the shooting, it was dark outside. Jose’s father Rudy R. (Rudy) was at home,
10 sitting on the front porch. Jose’s younger brother Jesse (Jesse) was in the backyard. Jesse ran out
11 front upon hearing the shots, arriving just as the van fled the scene. Meanwhile, Jose’s friends Andres
12 S. (Andres) and 15-year-old Albert S. (Albert) were in front of Jose’s home, and they both observed the
13 shooting from a distance of approximately 216 feet.¹⁷ Immediately thereafter, Albert and Andres
14 rushed to Andres’ car and pursued the fleeing van. However, the van soon stopped, and the
15 passenger stepped out and aimed his gun at Andres’ car. Andres hurriedly backed up and drove away.
16 Albert and Andres escaped without injury.¹⁸

17 Initially, none of the surviving victims or witnesses were able to identify the shooter. Jose’s
18 father Rudy did not see the shooter’s face, but he described the shooter’s physique as tall with a “buff
19 build.” Albert initially described the shooter as a Hispanic male, possibly from the “Mexicans Kicking
20 Ass” gang. Shortly thereafter, Albert described the shooter as a Black male, possibly from the “Dog
21 Pound Gangsters” (DPG) gang. Albert added that the shooter was approximately five-feet eight-inches
22

23 ¹⁵ The victims and witnesses are referred to by first name only in an effort to preserve their privacy.

24 ¹⁶ Soto App. at p. 5; Joint Petition at pp. 1-3; see also *People v. Soto, supra*, 2009 WL 486698, *1-2.
25 The appellate court’s decision is considered solely to the extent that it does not conflict with the
superior court’s binding determination of factual innocence. (Cal. Code Regs., tit. 2, § 641, subd. (f).)

26 ¹⁷ Joint Petition at p. 2 (referring to distance of 216 feet); see also Pen. Code, § 1485.5, subd. (a)
27 (binding the CalVCB to all stipulated factual allegations underlying a granted habeas petition); cf. Soto
App. at p. 5 (referring to distance of 260 feet).

28 ¹⁸ Soto App. at p. 5; Joint Petition at pp. 1-3; *People v. Soto, supra*, at pp. 1-2.

1 tall and 120 pounds. As for the driver, Albert tentatively identified him as another member of the DPG.
2 However, Albert later told police that the driver may have been Jofama Coleman (Coleman),
3 apparently based upon statements made by Jose’s brother.¹⁹

4 Almost one year later in March 2004, Albert changed his description of the shooter, again,
5 when interviewed by police. This time, Albert named Soto as the shooter. Like Albert, Soto was 15
6 years old at the time of the murder, and the two had gone to the same middle school. Albert described
7 Soto as “short and fat” in stature. Albert attributed his delay in identifying Soto to fears for his safety.
8 Albert maintained that the driver looked like Coleman, although he was not “100 percent certain....”²⁰
9 Coleman was 20 years old at the time of the murder.²¹

10 Based upon Albert’s identifications, Coleman was charged with Jose’s murder in October 2004
11 and subsequently convicted by a jury.²² Two years later in April 2006, Soto was also charged with
12 Jose’s murder plus two counts of assault with a deadly weapon for pointing a gun at Albert and
13 Andres. In multiple police interviews, as well as recorded telephone calls to family, Soto insisted he
14 was innocent, even after police falsely alleged that Soto’s DNA was found at the crime scene. In fact,
15 no physical evidence linked Soto to the murder or assaults. Soto was eventually convicted after a
16 second trial in July 2007. When testifying at the trial, Albert admitted that he had hated Soto since
17 middle school.²³

18 B. Exculpatory Evidence

19 In a sworn declaration dated January 19, 2023, Witness 1 averred that, in May 2003, Suspect 1
20 admitted to murdering Jose.²⁴ Specifically, Suspect 1 told Witness 1 that he had shot and killed Jose.

22 ¹⁹ Soto App. at p. 5; Joint Petition at pp. 1-3; *People v. Soto, supra*, at pp. 1-2.

23 ²⁰ Soto App. at p. 5; Joint Petition at pp. 2-3; *People v. Soto, supra*, at p. 2.

24 ²¹ Soto App. at p. 5; Joint Petition at p. 1.

25 ²² *People v. Jofama Coleman*, Second District Court of Appeal, case number B202597, unpublished
26 opinion filed Dec. 30, 2008, modified Jan. 29, 2009, available on Westlaw at 2008 WL 5401645. (Cal.
Code Regs., tit. 2, § 617.8 (official notice).)

27 ²³ Soto App. at p. 5; Joint Petition at pp. 3-4; *People v. Soto, supra*, at pp. 1-3.

28 ²⁴ Soto App. at p. 6; Joint Petition at pp. 13-15. The identifies of the witnesses and suspect were
ordered redacted by the superior court. (Soto App. at p. 6; Joint Petition at p. 7 n.4.)

1 This knowledge “had been weighing on” Witness 1 for many years.²⁵ Witness 1 finally decided to
2 reveal this information when contacted by Soto’s counsel. Significantly, Witness 1 did not know and
3 had never met Soto or Coleman. Witness 1 consistently repeated this account when interviewed by a
4 police detective who had originally investigated Jose’s murder.²⁶

5 In February 2012, Witness 2 told an investigator retained by Coleman that Suspect 1 had
6 confessed to fatally shooting Jose about a week after the murder. Suspect 1 added that the shooting
7 was in retaliation for a previous confrontation with Jose. Witness 2 noted that this conversation
8 occurred in the presence of Witness 3. The investigator signed a declaration detailing this conversation
9 on December 22, 2023.²⁷

10 In January 2023, the original investigating detective conducted a recorded interview with
11 Witness 3. Witness 3 confirmed the conversation as described by Witness 2, wherein Suspect 1
12 admitted to killing Jose. Witness 3 insisted that both Coleman and Soto were innocent and had nothing
13 to do with Jose murder.²⁸

14 Decades earlier in January 2004, a confidential informant (CI) told police that the van used in
15 the murder belonged to an individual (i.e., Individual 1) who “had beef” with Jose. Police subsequently
16 discovered that Suspect 1 lived near Individual 1, and both were in a gang. Jose’s father Rudy
17 confirmed that Suspect 1 did not like his son, adding “That’s why they killed him.” Throughout the
18 investigation, Rudy insisted to police, as well as other witnesses, that Soto was not the shooter.²⁹

19 Additional evidence exonerates Soto. Specifically, Dr. John Wixted, an expert in memory and
20 eyewitness identification, opined in a 40-page declaration that Albert’s identification of Soto as the
21 shooter was unreliable.³⁰ Also, the LADA characterized Soto’s protestations of innocence during his
22 recorded conversations with law enforcement and family members as “visceral and raw” and ultimately

23
24 ²⁵ Joint Petition at p. 13.

25 ²⁶ Joint Petition at pp. 14-15.

26 ²⁷ Joint Petition at p. 18.

27 ²⁸ Joint Petition at pp. 19-20.

28 ²⁹ Joint Petition at pp. 7 -8, 21-22.

³⁰ Joint Petition at pp. 22-23.

1 “compelling.”³¹ Finally, the LADA discovered new evidence implicating two other persons, besides
2 Soto and Coleman, in Jose’s murder. This new evidence of third-party culpability was ordered sealed
3 by the superior court while the LADA’s investigation continues.³²

4 **IV. Determination of Issues**

5 Penal Code section 4900 allows a person, who has been erroneously convicted and
6 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to the
7 CalVCB.³³ To be timely, Penal Code section 4901 requires submission of the claim “within a period of
8 10 years ... after dismissal of charges” but not “until 60 days have passed since the date of reversal of
9 conviction or granting of the writ, or while the case is pending upon an initial refiling, or until a
10 complaint or information has been dismissed a single time.”³⁴ Thus, a claim is premature and cannot
11 be filed before the court order reversing the challenged conviction is final.³⁵

12 Typically, under subdivision (a) of Penal Code section 4900, claimants bear the burden to
13 prove by a preponderance that (1) the crime with which they were convicted either did not occur or
14 was not committed by them and (2) they suffered injury as a result of their erroneous conviction.³⁶
15 Once such a claim is received and filed, Penal Code section 4902 requires the Attorney General to
16 submit a written response.³⁷ Thereafter, under Penal Code section 4903, a hearing before a hearing
17 officer ensues, at which the claimant and Attorney General may present evidence concerning
18 innocence and injury.³⁸ Upon the requisite showing, Penal Code section 4904 requires approval of the
19 claim, at a rate of \$140 per day, if sufficient funds are available.³⁹

20
21 ³¹ Joint Petition at pp. 22-23.

22 ³² Soto App. at p. 2; Joint Petition at pp. 6-7, 14-24 (redactions).

23 ³³ Pen. Code, § 4900, subd. (a).

24 ³⁴ Pen. Code, § 4901, subd. (c).

25 ³⁵ See Cal. Rules of Court, Rule 8.308, subd. (a) (in criminal cases, requiring “notice of appeal ... filed
within 60 days after the rendition of the judgment”).

26 ³⁶ Pen. Code, §§ 4900, subd. (a), 4903, subd. (a).

27 ³⁷ Pen. Code, § 4902, subd. (a).

28 ³⁸ Pen. Code, § 4903, subd. (a).

³⁹ Pen. Code, § 4904.

1 An exception to this process occurs when a claimant obtains a court finding of factual
2 innocence. Under subdivision (b) of Penal Code section 1485.55, after a court has granted a writ of
3 habeas corpus, “the person may move for a finding of factual innocence by a preponderance of the
4 evidence that the crime with which they were charged was either not committed at all or, if committed,
5 was not committed by the petitioner.”⁴⁰ If the court makes such a finding, then under subdivision (c) of
6 section 1485.55, “the [CalVCB] board shall, without a hearing, approve payment to the claimant,
7 pursuant to Section 4904, if sufficient funds are available, upon appropriation by the Legislature.”⁴¹
8 The board’s approval is mandated “within 90 days of the filing of the claim...”⁴²

9 Penal Code section 4904, in turn, provides that, upon a finding “that the claimant has sustained
10 injury through their erroneous conviction and imprisonment,” then the board “shall approve payment for
11 the purpose of indemnifying the claimant for the injury if sufficient funds are available, upon
12 appropriation by the Legislature.”⁴³ Section 4904 specifies that the “amount of the payment shall be a
13 sum equivalent to one hundred forty dollars (\$140) per day of incarceration served, and shall include
14 any time spent in custody, including a county jail, that is considered to be part of the term of
15 incarceration.”⁴⁴ But even with a finding of factual innocence, the CalVCB is statutorily obligated to
16 determine the extent of injury caused by the erroneous conviction and incarceration and may “request
17 from both parties additional documents or arguments as needed to calculate compensation.”⁴⁵ The
18 burden to prove injury rests with the claimant by a preponderance of the evidence.⁴⁶

19 A. Innocence

20 Pursuant to the court’s finding under Penal Code section 1485.55, the CalVCB unequivocally
21 accepts that Soto is factually innocent of all charges in case number YA064697. As determined by the
22

23 ⁴⁰ Pen. Code, § 1485.55, subd. (b).

24 ⁴¹ Pen. Code, § 1485.55, subd. (c).

25 ⁴² Pen. Code, § 4902, subd. (a).

26 ⁴³ Pen. Code, § 4904.

27 ⁴⁴ Pen. Code, § 4904.

28 ⁴⁵ Pen. Code, § 4904, as amended by Stats.2023, c. 702 (S.B. 78), § 5, eff. Jan. 1, 2024.

⁴⁶ Pen. Code, § 4904; Cal. Code of Regs. tit. 2, § 644, subd. (d); see also Evid. Code, § 500.

1 superior court, a preponderance of the evidence exonerates Soto. This exonerating evidence includes
2 sealed evidence of third-party culpability, as well as the absence of any physical evidence connecting
3 Soto to the crimes, impeachment of the sole eyewitness to identify Soto, and Soto's persistent claims
4 of innocence. Accordingly, the administrative record amply demonstrates Soto's innocence for
5 purposes of compensation under Penal Code section 4900 as an erroneously convicted offender.⁴⁷

6 **B. Injury**

7 The record further demonstrates that Soto's injury amounts to 6,498 days of imprisonment. As
8 detailed above, Penal Code section 4904 confirms that the amount of compensation to be approved
9 for the claimant's injury "shall be a sum equivalent to one hundred forty dollars (\$140) per day of
10 incarceration served, and shall include any time spent in custody, including a county jail, that is
11 considered to be part of the term of incarceration."⁴⁸ This compensation is "for the purpose of
12 indemnifying the claimant for the injury" sustained "through their erroneous conviction and
13 imprisonment..."⁴⁹ In this context, injury "may be established by showing that, but for the erroneous
14 conviction, the claimant would not have been in custody."⁵⁰

15 As both parties agree, Soto's demonstrated injury amounts to 6,498 days during which he was
16 incarcerated solely as a result of his erroneous convictions in case number YA064697.⁵¹ This period
17 commenced on the date of Soto's arrest on April 14, 2006, and continued through and including the
18 date of his release on January 27, 2024.⁵² But for these convictions, Soto would not have spent 6,498
19 days "illegally behind bars, away from society, employment, and [his] loved ones."⁵³ Given the
20

21 ⁴⁷ Pen. Code, §§ 1485.55, 4902, subd. (a).

22 ⁴⁸ Pen. Code, § 4904.

23 ⁴⁹ Pen. Code, § 4904.

24 ⁵⁰ Cal. Code of Regs., tit. 2, § 640, subd. (f).

25 ⁵¹ Soto App. at pp. 3, 7; Eggers Declaration, dated Jan. 31, 2024; AG Response. The number of days
26 was also calculated using the online "Days Calculator" located at [https://www.timeanddate.com/date/
duration.html](https://www.timeanddate.com/date/duration.html).

27 ⁵² Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3 Cal.App.4th 882, 886
(construing "days" for custody credit to include partial days).

28 ⁵³ *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400,
1405.

1 statutory rate of \$140 per day, Soto is therefore entitled to indemnification in the amount of \$909,720
2 for his injury if sufficient funds are available upon appropriation by the Legislature.

3 **V. Conclusion**

4 As mandated by Penal Code section 1485.55, the undersigned hearing officer recommends the
5 CalVCB approve payment to Soto in the amount of \$909,720 for his claim as an erroneously convicted
6 offender under Penal Code section 4900, if sufficient funds are available,⁵⁴ upon appropriation by the
7 Legislature, as indemnification for the injury sustained by his 6,498 days of imprisonment solely as a
8 result of his vacated convictions.

9
10 Date: April 15, 2024



11 Laura Simpton
12 Hearing Officer
13 California Victim Compensation Board
14
15
16
17
18
19
20
21
22
23

24 _____
25 ⁵⁴ Of the initial \$7 million appropriated by Senate Bill 101 (i.e., the Budget Act of 2023) for the CalVCB's
26 payment of approved claims under Penal Code section 4900, no funds currently remain. Nonetheless,
27 as Senate Bill 101 recognized, "Upon order of the Department of Finance, [this] amount ... may be
28 increased by an amount not in excess of any total unpaid claim amounts pursuant to Sections 4900 and
4904 of the Penal Code." (S.B. 101, Ch. 12 at p. 853.) Accordingly, any additional appropriations will be
applied to outstanding claims, in the order approved, absent a contrary directive from the Legislature or
Department of Finance.