

**Title 2. California Victim Compensation Board  
Article 5. Claims of Persons Erroneously Convicted of Felonies  
Sections 640, 640.1, 642, 642.1, 644, 645**

**INITIAL STATEMENT OF REASONS**

**PROBLEM STATEMENT**

The California Victim Compensation Board (CalVCB) processes claims from persons seeking compensation as an erroneously convicted felon pursuant to California Penal Code sections 4900 through 4906. The regulations governing these claims specifically include sections 640 through 646 of Article 5, as well as CalVCB's general hearing procedures in sections 615.1 through 619.7 of Article 2.5, to the extent they are not inconsistent or conflict with Article 5.

A successful claim results in approved payment, if sufficient funds are available, for the claimant's sustained injury in the amount of \$140 per day of the claimant's wrongful incarceration. (Pen. Code, § 4904.) To be eligible for consideration, the claimant must allege innocence of a felony conviction under California law, for which a prison sentence was imposed, and the claimant must no longer be imprisoned for that offense. (Pen. Code, §§ 4900, 4901.) In addition, the claimant must timely submit a verified Erroneous Conviction Claim Form, with supporting documentation, within ten years after release from custody, dismissal of charges, judgment of acquittal, or pardon granted, whichever is later. (Pen. Code, § 4901.)

To prevail, the claimant typically must prove, by a preponderance of the evidence, that they did not commit the crime that resulted in their incarceration, and they sustained injury as a result of their erroneous conviction. (Pen. Code, § 4900, subd. (a).) In limited circumstances, the claim must be approved in an expediated process, without a hearing, as specified in Penal Code sections 851.865, 1485.55, and subdivision (b) of section 4900. Specifically, before 2023, approval was mandated in the following two scenarios: (1) pursuant to section 851.865 or 1485.55 if a court found the claimant factually innocent of the challenged conviction, or (2) pursuant to subdivision (b) of section 4900 if the claimant's conviction was vacated by grant of habeas or Penal Code section 1473.6 or 1473.7, subdivision (a)(2), with dismissal or acquittal upon remand, and the Attorney General failed to object with clear and convincing evidence of guilt.

Since the regulations in Article 5 were last updated in 2022, effective January 2023, new statutory changes were enacted. SB 78 (Glazer, Chapter 78, Statutes of 2024), effective January 2024, added subdivision (d) to Penal Code section 1485.55, which added a third scenario under which a claim must be approved in an expediated process without a hearing. Specifically, subdivision (d) of section 1485.55 mandates approval of a claim if a court granted a motion for approval when the claimant's conviction was vacated by grant of habeas relief or Penal Code section 1473.6 or 1473.7, subdivision (a), with dismissal or acquittal upon remand, and the district attorney failed to object with clear and convincing evidence of guilt. SB 78 also amended Penal Code section 4904 to allow CalVCB to request evidence and argument as needed to calculate compensation for all claims, even those for which a

hearing is otherwise prohibited.<sup>1</sup> As a result of these new changes, some regulations are outdated or inconsistent with current law and require modification.

Along with these recent statutory changes, the volume of claims submitted to CalVCB has grown exponentially in recent years. For example, the number of received claims increased by 139 percent from 28 in 2021 to 67 in 2023. This trend continues. As of June 30, 2024, CalVCB received 47 claims, with a total of 94 expected by years end. Meanwhile, the number of denied and rejected claims similarly increased by 144 percent from 18 claims in 2021 to 44 claims in 2023. The number of approved claims also increased, albeit by 57 percent, from 7 claims in 2021 to 11 claims in 2023. As a result of this influx, new and modified regulations are needed to clarify the basis for relief.

In light of SB 78 and the increased volume of claims, CalVCB determined that modifications to the regulations, as well as the claim form, are warranted. The modified regulations will comply with current law and provide clarity, consistency, and transparency for the process to obtain relief.

## BENEFITS

The modifications to the regulations and claim form will address the substantive changes effected by SB 78 to ensure consistency with current law. The modifications will also provide clarity for processing claims and determining eligibility. The modifications will include new tools to resolve novel issues in a fair and efficient manner, such as when a claim may be withdrawn, a continuance granted, or a noncompliant claim rejected. Finally, the modifications will include nonsubstantive changes that reorganize or rephrase existing regulations in an effort to render them easier to understand, especially for claimants representing themselves.

## PURPOSE

The specific purpose for each proposed modification to the regulations and claim form is detailed below.

**Section 640:** The purpose of this revised regulation is to clarify the process for submitting a claim to CalVCB and referring that claim to the Attorney General for a response, as well as providing clarity, consistency, and transparency for the deadline and permissible content for that response. The revisions impact only subdivisions (a), (e), (f), and (g), as detailed below. The specific purpose for each modified subdivision follows.

- **Section 640, subdivision (a):** While retaining the requirement for claimants to submit a completed “Erroneously Convicted Person Claim Form,” the revised subdivision replaces the required form from the outdated 2022 version to the current 2024 version. CalVCB will therefore be able to furnish claimants with an updated form that is consistent with the current law for processing claims under Penal Code

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<sup>1</sup> In 2022, AB 160 (Committee on Budget) conditionally increased compensation effective July 2024 to adjust for inflation annually and to include time spent on supervised release, but only so long as general fund money over the multiyear forecast was available. Given the Governor’s May Revise Budget for 2024-2025, which confirmed no such money was available, this conditional amendment remains inoperable. Accordingly, no regulatory modifications are proposed as a result of AB 160.

section 4900.

- **Sections 640, subdivisions (b) through (d):** No changes are proposed.
- **Section 640, subdivision (e):** This subdivision describes the process by which CalVCB will refer a filed claim to the Attorney General for a response. As revised, it deletes language in current subdivision (e)(1) that limits CalVCB's authority to request a response from the Attorney General only for filed claims that are not subject to Penal Code sections 851.865 and 1485.55. Despite language in sections 851.865 and 1485.55 that prohibits a hearing on the underlying claim, SB 78's amendment of Penal Code section 4904 expressly authorizes CalVCB to request evidence and argument on the issue of injury from the Attorney General or claimant for all claims. Accordingly, this revised subdivision confirms that a response from the Attorney General will be requested for each filed claim, even those subject to sections 851.865 and 1485.55. It further confirms that notice of the request for a response will be sent to both the Attorney General and the claimant. Finally, it retains the requirement for the Attorney General's response to be submitted in both hardcopy and electronic format with a copy to the claimant.
  - **Section 640, subdivision (e)(1):** This new subdivision details the process by which CalVCB requests a response from the Attorney General for a filed claim. The request includes the hearing officer's initial determination whether the claim falls within subdivision (a) or (b) of Penal Code section 4900 and whether Penal Code section 851.865 or 1485.55 applies. This initial determination is significant because each of these statutes impose different deadlines and burdens of proof to approve the claim. For instance, the Attorney General's response is due within 45 days, subject to only one extension of time, for claims under subdivision (b) of section 4900, whereas the Attorney General's response is due within 60 days, with unlimited extensions of time thereafter, under subdivision (a) of section 4900. Relatedly, this subdivision allows either party to object to the initial determination, prompting reconsideration by the hearing officer. The ability for reconsideration ensures due process as both sides may be heard and submit additional evidence on this issue.
  - **Section 640, subdivision (e)(2):** This new subdivision establishes the process for handling a mixed claim, wherein only some, but not all, challenged convictions within a single claim fall within Penal Code section 851.865, 1485.55, or subdivision (b) of section 4900. This situation may occur when, for example, a claimant obtains a finding of factual innocence for only some but not all of the convictions underlying their incarceration. As this new subdivision explains, absent a waiver by the claimant of the expedited timelines for the Attorney General's response and the Board's decision that apply to any portion of the claim under sections 851.865, 1485.55, and subdivision (b) of section 4900, then the claim may be resolved in a piecemeal fashion. In this scenario, different due dates may apply to portions of the Attorney General's response, and the hearing officer may issue multiple proposed decisions that separately address each portion of the claim, with compensation deducted pending a proposed decision on any remaining aspect of the claim. But as this new subdivision confirms, in the event of the claimant's waiver, then a single statutory deadline will apply that allows for the most time for the Attorney General to submit a single response and the hearing officer to issue a single proposed decision.

- **Section 640, subdivision (e)(3):** This new subdivision specifies the permissible content of the Attorney General’s response in accordance with SB 78’s amendment to Penal Code section 4904. For claims that fall exclusively within Penal Code section 851.865 or 1485.55, the Attorney General’s response may only address injury. For all other claims, the Attorney General’s response may also address innocence and guilt.
- **Section 640, subdivision (e)(4):** This revised subdivision, which is renumbered from current subdivision (e)(2), deletes language interpreting the automatic approval provisions in Penal Code sections 851.865 and 1485.55 to exclude any claim that lacks a court finding of factual innocence for each and every conviction underlying the duration of incarceration. This interpretation relied upon the statutory prohibition against a hearing in sections 851.865 and 1485.55, which left CalVCB without any means to determine injury if the claimant was deemed factually innocent of only some, but not all, of the challenged convictions. However, with SB 78’s amendment to Penal Code section 4904 that allows CalVCB to receive evidence and argument on the issue of injury for any claim, as well as SB 78’s expansion of the types of claims for which automatic approval is required, this interpretation is no longer persuasive. Accordingly, this revised subdivision deletes this outdated interpretation in accordance with SB 78. This subdivision nevertheless retains the still valid language that a single finding of factual innocence for any individual conviction is binding upon the Board.
- **Section 640, subdivision (f):** This revised subdivision retains the definition of injury in accordance with Penal Code section 4904, while adding an example of a scenario that falls outside of that definition. Specifically, it explains that injury requires a showing that, but for the erroneous conviction, the claimant would not have been in custody. No injury occurs, for example, when the claimant was concurrently incarcerated for another conviction. By adding this specific example, the revised subdivision will be more readily understood by the parties, especially claimants representing themselves.
  - **Section 640, subdivision (f)(1):** This new subdivision confirms, based upon SB 78’s amendment to Penal Code section 4904, that, for all claims, the hearing officer is authorized to request additional evidence or argument from either the Attorney General or the claimant to calculate compensation for the claimant’s injury.
  - **Section 640, subdivision (f)(2):** This new subdivision confirms that, for all claims, the burden of proof to demonstrate injury remains upon the claimant, which includes claims for which approval is mandated without a hearing by Penal Code section 851.865 or 1485.55. This preponderance standard is mandated by Penal Code section 4904, which expressly requires a finding by the Board “that the claimant has sustained injury” before approving payment as compensation for any claim. As Evidence Code section 115 confirms, unless otherwise specified, “the burden of proof requires proof by a preponderance of the evidence.” Consistent with this approach, section 644 in Article 5 likewise imposes a preponderance standard on the issue of injury for all hearings on a Penal Code section 4900 claim.

**Section 640.1:** The purpose of this new section, which relocates without substantive

change existing language in section 644 of Article 5, is to highlight the applicable law that does and does not apply to Penal Code section 4900 claims. This reorganization is consistent with Articles 2.5 and 5.2 governing CalVCB proceedings, which also include a separate section at the commencement of the article defining the applicable law. As a stand-alone section, this regulation will be easier to identify and understand, especially for claimants representing themselves. The specific purpose for each proposed subdivision follows.

- **Section 640.1, subdivision (a):** This new subdivision, which relocates identical language in current section 644, subdivision (q), confirms that the general hearing procedures in Article 2.5 of Title 2 of the California Code of Regulations may apply to Penal Code section 4900 claims unless those procedures conflict or are inconsistent with any of the specific provisions in Article 5. Thus, it clearly informs the parties that this applicable law applies throughout the duration of the claim's pendency, even if no hearing before a hearing officer takes place.
- **Section 640.1, subdivision (b):** This new subdivision, which relocates identical language in current section 644, subdivision (p), confirms that the formal hearing provisions of the Administrative Procedure Act (APA) do not apply to Penal Code section 4900 claims. Thus, it clearly informs the parties that this portion of the APA does not apply at any time during the claim's pendency, regardless of whether a hearing before a hearing officer takes place.

**Section 642:** This section, as revised, explains and expands upon the process by which claims may be rejected by a hearing officer for failing to comply with the requirements of Penal Code section 4900 and 4901. It further provides additional, illustrative examples of these types of claims. These revisions, in addition to nonsubstantive stylistic changes within this section, are intended to facilitate the parties' understanding of this process, especially for claimants representing themselves. The specific purpose of each modified subdivision follows.

- **Section 642, subdivision (a):** This subdivision explains that a hearing officer may reject a claim, without being considered by the Board, if that claim fails to comply with Penal Code sections 4900 and 4901. As modified, it adds a sentence to confirm that the ensuing examples are merely illustrative and not comprehensive.
  - **Section 642, subdivision (a)(1):** This revised subdivision confirms that a claim, which fails to state facts upon which relief may be granted, is not in compliance with Penal Code section 4900 and 4901. To illustrate this type of deficient claim, the revised subdivision adds the following examples: a claim based upon a charge that did not result in a felony conviction, or a claim based upon a felony conviction for which probation was granted without imposition of any term of imprisonment. Duplicative language is deleted for stylistic purposes without substantive change.
  - **Section 642, subdivision (a)(2):** This subdivision is revised solely to delete duplicative language for stylistic purposes without substantive change.
  - **Section 642, subdivision (a)(3):** This subdivision is revised, without substantive change, in order to update the citation for former Penal Code 1170.95, which was renumbered as 1172.6 in 2022. It also includes nonsubstantive stylistic changes.

- **Section 642, subdivision (a)(4):** This new subdivision adds dismissal of a conviction solely due to satisfactory competition of a sentence pursuant to Penal Code section 1203.4 as an illustrative example of a claim that fails to comply with Penal Code sections 4900 and 4901.
  - **Section 642, subdivision (a)(5):** As another illustrative example of a noncompliant claim, this new subdivision includes any claim for which injury is lacking as a matter of law, such as when an equivalent sentence was concurrently imposed for another unchallenged conviction.
- **Section 642, subdivision (b):** This subdivision, as revised, clarifies and expands the process by which a submitted claim that fails to comply with Penal Code sections 4900 and 4901 may be cured and ultimately filed. It also includes nonsubstantive stylistic changes. Combined, these changes promote a process that ensures an opportunity for both the claimant and the Attorney General to address identified deficiencies before the claim is rejected by the hearing officer.
  - **Section 642, subdivision (b)(1):** No changes are proposed.
  - **Section 642, subdivision (b)(2):** As revised, the subdivision expressly allows for an extension of time for the claimant to submit a response that cures the identified deficiencies. This subdivision specifies that the request for an extension must be submitted in writing with demonstrated good cause.
  - **Section 642, subdivision (b)(3):** This new subdivision authorizes the hearing officer to request a response from the Attorney General to address whether or not the claim complies with Penal Code section 4900 and 4901. This new subdivision allows 30 days for the Attorney General to submit the request, which may be extended upon written request with good cause.
  - **Section 642, subdivision (b)(4):** This new subdivision authorizes the claimant to submit a reply to the Attorney General's response. The due date for the claimant's reply may be extended upon written request for demonstrated good cause.
- **Section 642, subdivision (c):** This revised subdivision clarifies that the filing date for a claim, which initially failed to comply with sections 4900 and 4901, is calculated based upon the date the hearing officer received and considered the claimant's response that cured all of the identified deficiencies. As revised, it confirms that the filing date is not determined by the date the claimant submitted the response. The filing date is significant, as it triggers the Board's 90-day deadline to approve a claim under Penal Code sections 851.865 and 1485.55, as well as the Attorney General's 45-day deadline to oppose a claim under section 4902, subdivision (d).
- **Section 642, subdivision (d):** This subdivision, which authorizes the hearing officer to reject a claim, adds a sentence to confirm that the hearing officer's rejection constitutes a final decision. As such, it is subject to judicial review by petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5.
- **Section 642, subdivision (e):** This new subdivision establishes the legal consequence of a rejected claim in the event of a future claim. It confirms that a claimant may submit a second claim if supported by new evidence or law that overcomes the identified deficiencies for the first, rejected claim. It further confirms that the timeliness of the second claim depends upon the date of its submission and

may not relate back to the first, rejected claim.

- **Section 642, subdivision (e)(1):** This new subdivision specifically authorizes the hearing officer's outright rejection of a second claim, without notice and 30-day opportunity to cure, when the second claim fails to overcome the identified deficiencies in the first rejected claim. As a result, this new subdivision may reduce the number of duplicative claims submitted by claimants who disagree with the rejection of their first claim. It may also encourage these claimants to file a petition for writ of mandate as the correct procedure to challenge the rejection of their first claim.

**Section 642.1:** The purpose of this new regulation is to establish a process for resolving claims that the claimant either has abandoned or wishes to withdraw. It ensures that claims are not pending indefinitely and allows CalVCB, as well as the parties, to conserve resources by terminating the administrative proceeding under specified circumstances. The specific purpose of each modified subdivision follows.

- **Section 642.1, subdivision (a):** This new subdivision allows the claimant to withdraw a claim, upon request, any time before the Attorney General's submission of a response letter.
- **Section 642.1, subdivision (b):** This new subdivision allows the hearing officer to deem a claim withdrawn under two scenarios. First, as detailed in subdivision (b)(1), the hearing officer may deem a claim withdrawn when the claimant failed to provide valid contact information and more than 90 days have passed since the claimant's last communication with CalVCB. Second, as detailed in subdivision (b)(2), the hearing officer may deem a claim withdrawn when the claimant fails to respond to a request by the hearing officer and more than 90 days have passed since the request was made.
- **Section 642.1, subdivision (c):** This new subdivision prohibits withdrawal of a claim in three scenarios. First, as detailed in subdivision (c)(1), withdrawal is prohibited after the Attorney General submits a response letter, unless the parties agree otherwise. Second, as detailed in subdivision (c)(2), withdrawal is prohibited after a hearing has been scheduled, unless the parties agree otherwise. Third, as detailed in subdivision (c)(3), withdrawal is prohibited after the administrative record has closed. If any of these scenarios apply, then the administrative process must continue until a final decision is reached.
- **Section 642.1, subdivision (d):** This new subdivision establishes the procedural prerequisites that must be followed before a claim may be deemed withdrawn. Specifically, the hearing officer must provide notice to the parties and allow 30 days for a response. Notice may be sent to the parties at their last known address, even if that address no longer appears valid. This subdivision supplements the general provision in section 616.2 of Article 2.5, which confirms the parties' ongoing duty to provide a correct address to CalVCB.
- **Section 642.1, subdivision (e):** This new subdivision establishes the legal consequence of a withdrawn claim in the event of a future claim. It confirms that a claimant is not barred from submitting a second claim solely because the first claim was withdrawn. It further confirms that the timeliness of the second claim depends upon the date of its submission and may not relate back to the first, withdrawn claim.

**Section 644:** The purpose of this revised regulation is to clarify the process for participating in a hearing before a hearing officer, as well as to make nonsubstantive changes that render this regulation easier to understand, especially for claimants representing themselves. The nonsubstantive changes include reorganizing existing provisions within section 644 by category and deleting duplicative provisions already contained in Article 2.5. Given the extensive changes proposed, modifications to delete current subdivisions are designated as “former,” and modifications to add new subdivisions are designated as “new.” The specific purpose of each modified subdivision follows.

- **Section 644, subdivision (a):** This subdivision, as revised with multiple new subdivisions and subsections, specifies the mechanics of a hearing before a hearing officer. This subdivision allows the hearing officer to schedule a hearing on a claim whenever permitted by statute. It deletes inconsistent language that authorized a hearing to be scheduled only upon receipt of the Attorney General’s response. This modification comports with SB 78’s amendment to Penal Code section 4904, which allows the Attorney General to submit a response on the issue of injury even for claims that are otherwise barred from a hearing by Penal Code section 851.865 or 1485.55.
  - **(New) Section 644, subdivision (a)(1):** This new subdivision incorporates, without substantive change, the provision in current subdivision (c) of section 644, which requires all hearings take place in Sacramento unless the hearing officer agrees to an alternative. To that end, the lettering of this subdivision is revised to consecutively follow the previous heading, and a typographical error is corrected. In addition, this new subdivision adds two subsections related to the mechanics for holding a hearing. Subsection (a)(1)(A) repeats and expands upon language in current subdivision (h) of section 644 concerning the circumstances under which a hearing may be conducted by electronic means. Those circumstances require both parties to provide their own electronic equipment as needed for their appearance throughout the duration of the hearing. Subsection (a)(1)(B) repeats identical language in current subdivision (i) of section 644, which specifies how the hearing must be recorded. This reorganization and expansion of the regulation by subject matter will facilitate a better understanding of the rules governing the hearing technicalities.
  - **(New) Section 644, subdivision (a)(2):** This new subdivision, which includes multiple subsections (a)(2)(A) through (E), repeats identical language in current subdivision (f), subsections (1) through (5), of section 644 concerning the length of allotted time for a hearing. This reorganization of the regulation, without substantive change, will facilitate a better understanding of the applicable rules.
  - **(New) Section 644, subdivision (a)(3):** This new subdivision, which includes new subsections (a)(3)(A) and (B), establishes each party’s obligation to proceed at the hearing. Specifically, each party must appear and be ready to proceed at the hearing, with all their evidence and witnesses present. Under subsection (a)(3)(A), the party is responsible for securing the attendance of their witnesses and, if necessary, providing an interpreter. In addition, under subsection (a)(3)(B), any testimony by a party or witness must be given under oath and subject to cross-examination by the opposing party and the hearing officer. Overall, this subdivision expands upon the general provisions in section 617.9 of Article 2.5 concerning a party’s failure



to appear or proceed, as well as section 617.7 of Article 2.5 concerning oral evidence.

- **(New) Section 644, subdivision (a)(4):** This new subdivision establishes the consequence of a party's failure to proceed and the process to continue the hearing date. Specifically, this subdivision repeats identical language in current subdivision (g) of section 644, which allows the Board to decide a claim based on previously submitted evidence if a claimant fails to appear or proceed at the hearing. It adds new subsections (a)(4)(A) and (B), which detail the circumstances under which a party may request a continuance of the hearing. Under subsection (a)(4)(A), the request must be in writing, supported by sufficient facts, and presented as soon as the need for the delay is known. Under subsection (a)(4)(B), the request may be granted by the hearing officer upon a showing of good cause, which additionally requires a showing of extraordinary and unforeseen circumstances when the request is made less than 30 days before the scheduled hearing.
- **(Former) Section 644, subdivision (b):** This current subdivision, which mandates an open hearing unless otherwise provided by law, is deleted as duplicative of identical language section 617.1, subdivision (a), for Article 2.5.
- **(New) Section 644, subdivision (b):** This new subdivision (b), as revised, merely replaces the letter from current subdivision (d) to consecutively follow the previous heading.
- **(New) Section 644, subdivision (c):** As revised, this new subdivision (c) merely replaces the letter for current subdivision (e) to consecutively follow the previous subdivision.
- **(Former) Section 644, subdivisions (d) through (i):** These current subdivisions, which specify the mechanics for conducting a hearing, are deleted as duplicative of the new provisions throughout subdivision (a) of section 644.
- **(New) Section 644, subdivisions (d) through (i):** As revised, these new subdivisions (d) through (i) merely place the letter for current sections (j) through (o), respectively, to consecutively follow the previous heading.
- **(Former) Section 644, subdivisions (p) and (q):** These current subdivisions, which specify the applicable law, are deleted as duplicative of the new provisions in section 640.1, subdivisions (a) and (b).
- **(Former) Section 644, subdivisions (r):** This current subdivision is deleted as duplicative of identical language in section 616.1 for Article 2.5, which requires a copy of the hearing procedures to be provided upon request at reasonable cost.

**Section 645:** The purpose of this revised regulation is to clarify the process by which the hearing officer will issue a proposed decision and to specify the appropriate considerations upon which the proposed decision may be based. It deletes duplicative language that already appears in section 619.1 for Article 2.5 concerning decisions by the Board and hearing officers. As with the preceding section, modifications to delete current subdivisions are designated as "former," and modifications to add new subdivisions are designated as "new." The specific purpose of each modified subdivision follows.

- **Section 645, subdivision (a):** This subdivision clarifies, once the administrative record closes, the hearing officer will prepare a proposed decision.
- **(Former) Section 645, subdivisions (b) through (e):** These current subdivisions, which specify required content for a proposed decision and appropriate considerations, are deleted as duplicative of identical language in section 619.1, subdivisions (b) through (e), of Article 2.5.
- **Section 645, subdivisions (f) and (g):** These subdivisions are modified solely to replace the letter from current subdivisions (f) and (g) to subdivisions (b) and (c), respectively, in order to consecutively follow the previous heading.
- **(New) Section 645, subdivision (d):** This new subdivision confirms that, for mixed claims where the claimant has not waived the expedited provisions in Penal Code section 851.865, 1485.55, or 4900, subdivision (b), the hearing officer may issue more than one proposed decision.

**Claim Form:** The purpose for the updated claim form, as incorporated by reference in section 640, subdivision (a), is to provide guidance to claimants concerning the specific type of information and documentation required by current law to submit a Penal Code section 4900 claim. The specific purpose for each section of the form follows.

- **Cover Page:** The updated claim form relocates information about eligibility for compensation from the cover page to, instead, a new section entitled “Informational Sheet,” which is located on the last two pages of the form. This modification allows for a more detailed explanation of the applicable statutes governing Penal Code section 4900 claims and the requirements for relief. It also increases processing efficiency by relocating the claimant’s name and contact information, detailed below in Section A, to the first page of the form.
- **Section A:** This section, entitled “Claimant Information,” is revised to appear on the first page of the form. Otherwise, this section continues to request the claimant’s name, date of birth, CDCR Inmate number, and contact information, including telephone number, mailing address, and email address. The revised version merely replaces the request for the claimant’s “Preferred Pronouns” in the current form with the claimant’s “Gender” instead, as it appears some claimants may not understand this technical terminology.
- **Section B:** No changes are proposed for this section, which is entitled “Attorney / Representative Information (if applicable).”
- **Section C:** This section, entitled “Erroneous Conviction(s) Information,” is revised for formatting but otherwise continues to request information about the claimant’s challenged conviction(s). The requested information includes: the county and criminal court case number, code violation, date of arrest and conviction, sentence imposed, length of sentence served, and amount of compensation requested. The new formatting is intended to highlight each item of necessary information, as claimants often fail to provide all requested data in the current form. The revised section also adds details about the deadline to submit a claim.
- **Section D:** This new section entitled “Post-Conviction Relief,” combines and expands upon the information requested in current Sections D and E, entitled “Factual Innocence Determination” and “Post-Conviction Proceedings (Excluding Direct Appeal)”, respectively. With a new yes-or-no question format, this section continues to inquire

whether the claimant's conviction was reversed on habeas or other enumerated statutory grounds and whether the claimant obtained a court finding of factual innocence. It also inquires whether the conviction was reversed on appeal or solely as a result of a change in the law, the specific statutory basis for dismissal of the charges, and whether the court granted or denied a motion for approval of claim under Penal Code section 1485.55, subdivision (d). Each question expressly requires the claimant to attach a copy of the applicable court decision for every affirmative answer. All of this requested information is necessary to determine whether relief may be available under Penal Code section 4900 and, if so, whether the claim falls within subdivision (a) or (b) or the automatic provisions of Penal Code section 851.865 or 1485.55. The revised section also adds details about the rejection process for incomplete forms and provides two examples of claims that fail to comply with Penal Code sections 4900 and 4901.

- **Section E:** This section, entitled "Statement of Factual Innocence," continues to require a written statement by the claimant to show that the charged offense for the challenged conviction either was not committed by the claimant or did not occur at all. Besides changing the section letter to consecutively following the previous heading, no changes are proposed for this section.
- **Section F:** This section, entitled "Statement of Injury," continues to require a written statement by the claimant to show that they would have been free from custody but for the erroneous conviction. As revised, this section clarifies that the statement may consist of either (1) a list of every conviction and resulting sentence that was imposed during the claimant's incarceration for the erroneous conviction, or (2) confirmation that no other convictions were imposed during that timeframe. This revision will assist claimants, as they often fail to disclose this necessary information and, instead, describe physical or emotional harm caused by their incarceration, which is not relevant to calculating compensation for Penal Code section 4900 claims.
- **Section G:** This section, entitled "Disqualification for Certain Guilty Pleas," continues to request information as to whether the claimant pleaded guilty and, if so, the reason for doing so. Besides changing the section letter to consecutively following the previous heading, no changes are proposed for this section.
- **Section H:** This section, entitled "Declaration Statement," continues to require the claimant's signature, under penalty of perjury, to verify the truth of all representations made by the claimant in the form. Besides changing the section letter to consecutively follow the previous heading, no changes are proposed for this section.
- **Privacy Notice on Collection:** This section is revised to provide greater specificity about the circumstances under which information received for a Penal Code section 4900 claim may be publicly disclosed.
- **Informational Sheet:** This new section, located on the last two pages of the form, provides detailed information about the administrative process governing Penal Code section 4900, as well as the substantive requirements to submit a claim and prevail upon the merits. The location of this section at the end of the form enables claimants to retain these pages for their own reference throughout the administrative process.

## NECESSITY

The Board strongly believes that the proposed modifications to the regulations and claim form are reasonably necessary to ensure consistency with current law, clarify the basis for relief,

adopt new tools to resolve novel issues in a fair and consistent manner, and incorporate nonsubstantive changes that reorganize or rephrase existing regulations to render them easier to understand, especially for claimants representing themselves. The specific need for each modification is detailed below.

**Section 640:** This revised regulation is reasonably necessary to clarify the process for submitting a claim to CalVCB and referring that claim to the Attorney General for a response, as well as providing clarity, consistency, and transparency for the deadline and permissible content for that response. The revisions impact only subdivisions (a), (e), (f), and (g), as detailed below. The specific need for each modified subdivision follows.

- **Section 640, subdivision (a):** This revised subdivision is needed to update the required form for claimants to submit a claim from the outdated 2022 version to the current 2024 version.
- **Sections 640, subdivisions (b) through (d):** No changes are proposed.
- **Section 640, subdivision (e):** This revised subdivision is necessary to delete obsolete language in current subdivision (e)(1) that limits the CalVCB's authority to request a response from the Attorney General only for filed claims that are not subject to Penal Code sections 851.865 and 1485.55. Despite language in sections 851.865 and 1485.55 that prohibits a hearing on the underlying claim, SB 78's amendment of Penal Code section 4904 expressly authorizes the CalVCB to request evidence and argument on the issue of injury from the Attorney General or claimant for all claims. Accordingly, this revised subdivision is needed to confirm that a response from the Attorney General will be requested for each filed claim, even those subject to sections 851.865 and 1485.55. It is also needed to confirm that notice of the request for a response will be sent to both the Attorney General and the claimant.
  - **Section 640, subdivision (e)(1):** This new subdivision is needed to specify the process by which CalVCB requests a response from the Attorney General for a filed claim. The request must include the hearing officer's initial determination whether the claim falls within subdivision (a) or (b) of Penal Code section 4900 and whether Penal Code section 851.865 or 1485.55 applies, which may trigger different deadlines and burdens of proof to approve the claim. Either party may object to the initial determination, prompting reconsideration by the hearing officer.
  - **Section 640, subdivision (e)(2):** This new subdivision is needed to establish the process for handling a mixed claim, wherein only some, but not all, challenged convictions within a single claim fall within Penal Code section 851.865, 1485.55, or subdivision (b) of section 4900. As this new subdivision explains, absent a waiver by the claimant of the expedited timelines for the Attorney General's response and the Board's decision that apply to any portion of the claim under sections 851.865, 1485.55, and subdivision (b) of section 4900, then the claim may be resolved in a piecemeal fashion, with different due dates applicable to portions of the Attorney General's response. But as this new subdivision confirms, in the event of the claimant's waiver, then a single statutory deadline will apply that allows for the most time for the Attorney General to submit a single response and the hearing officer to issue a single proposed decision.

- **Section 640, subdivision (e)(3):** This new subdivision is needed to clarify the permissible content of the Attorney General's response in accordance with SB 78's amendment to Penal Code section 4904. For claims that fall exclusively within Penal Code section 851.865 or 1485.55, the Attorney General's response may only address injury. For all other claims, the Attorney General's response may also address innocence and guilt.
- **Section 640, subdivision (e)(4):** This revised subdivision, which is renumbered from current subdivision (e)(2), is needed to delete obsolete language that limited the scope of the automatic approval provisions in Penal Code sections 851.865 and 1485.55. This interpretation relied upon the statutory prohibition against a hearing in sections 851.865 and 1485.55. However, with SB 78's amendment to Penal Code section 4904 that allows CalVCB to receive evidence and argument on the issue of injury for any claim, as well as SB 78's expansion of the types of claims for which automatic approval is required, this interpretation is no longer persuasive. Accordingly, this revision is needed to comply with SB 78. This subdivision retains the still valid language that a single finding of factual innocence for any individual conviction is binding upon the Board.
- **Section 640, subdivision (f):** This revised subdivision is needed to confirm the definition of injury in accordance with Penal Code section 4904 and add an example of a scenario that falls outside of that definition. Specifically, it explains that injury requires a showing that, but for the erroneous conviction, the claimant would not have been in custody. No injury occurs, for example, when the claimant was concurrently incarcerated for another conviction. The addition of this specific example is necessary for the parties to readily understand this regulation, especially claimants representing themselves.
  - **Section 640, subdivision (f)(1):** This new subdivision is needed to confirm, based upon SB 78's amendment to Penal Code section 4904, that, for all claims, the hearing officer is authorized to request additional evidence or argument from either the Attorney General or the claimant to calculate compensation for the claimant's injury.
  - **Section 640, subdivision (f)(2):** This new subdivision is needed to confirm that, for all claims, the burden of proof to demonstrate injury remains upon the claimant, which includes claims for which approval is mandated without a hearing by Penal Code section 851.865 or 1485.55.

**Section 640.1:** This new section is needed to relocate, without substantive change, existing language in section 644 of Article 5, in order to highlight the applicable law that does and does not apply to Penal Code section 4900 claims. The Board believes this revision as a stand-alone section is reasonably necessary to render this regulation readily noticed and understood by the parties, especially for claimants representing themselves. The specific need for each proposed subdivision follows.

- **Section 640.1, subdivision (a):** This new subdivision, which relocates identical language in current section 644, subdivision (q), is needed to confirm that the general hearing procedures in Article 2.5 of Title 2 of the California Code of Regulations may apply to Penal Code section 4900 claims unless those procedures conflict or are inconsistent with any of the specific provision in Article 5.

- **Section 640.1, subdivision (b):** This new subdivision, which relocates identical language in current section 644, subdivision (p), is needed to confirm that the formal hearing provisions of the Administrative Procedure Act (APA) do not apply to Penal Code section 4900 claims.

**Section 642:** The Board believes this revised section is reasonably necessary to explain the process by which claims may be rejected by a hearing officer for failing to comply with the requirements of Penal Code sections 4900 and 4901 and to provide additional, illustrative examples of these types of noncompliant claims. These revisions, in addition to nonsubstantive stylistic changes, are needed to facilitate the parties' understanding of this process, especially for claimants representing themselves. The specific need for each modified subdivision follows.

- **Section 642, subdivision (a):** This modified subdivision is needed to confirm that the ensuing examples of noncompliant claims that may be rejected by hearing officer without being considered by the Board are merely illustrative and not comprehensive.
  - **Section 642, subdivision (a)(1):** This revised subdivision is needed to confirm that a claim, which fails to state facts upon which relief may be granted, is not in compliance with Penal Code sections 4900 and 4901. It is also needed to provide illustrative examples of this type of noncompliant claim. Finally, nonsubstantive revisions are needed to delete duplicative language for stylistic purposes.
  - **Section 642, subdivision (a)(2):** This revised subdivision is needed to delete duplicative language for stylistic purposes without substance change.
  - **Section 642, subdivision (a)(3):** This revised subdivision is needed to update the citation for former Penal Code 1170.95, which was renumbered as 1172.6 in 2022, as well as implement nonsubstantive stylistic changes for consistency and ease of understanding.
  - **Section 642, subdivision (a)(4):** This new subdivision is needed to add dismissal of a conviction, solely due to satisfactory competition of a sentence pursuant to Penal Code section 1203.4, as an illustrative example of a claim that fails to comply with Penal Code sections 4900 and 4901.
  - **Section 642, subdivision (a)(5):** This new subdivision is needed to add, as another illustrative example of a noncompliant claim, any claim for which injury is lacking as a matter of law, such as when an equivalent sentence was concurrently imposed for another unchallenged conviction.
- **Section 642, subdivision (b):** This subdivision, as revised, is needed to clarify and expand the process by which a submitted claim that fails to comply with Penal Code sections 4900 and 4901 may be cured and ultimately filed. It is also needed to make nonsubstantive stylistic changes for consistency and ease of understanding. Combined, these changes are needed to promote a process that ensures an opportunity for both the claimant and the Attorney General to address identified deficiencies before the claim is rejected by the hearing officer.
  - **Section 642, subdivision (b)(1):** No changes are proposed.
  - **Section 642, subdivision (b)(2):** As revised, the subdivision is needed to expressly allow for an extension of time for the claimant to submit a

response that cures the identified deficiencies. This subdivision specifies that the request for an extension must be submitted in writing with demonstrated good cause.

- **Section 642, subdivision (b)(3):** This new subdivision is needed to authorize the hearing officer to request a response from the Attorney General to address whether or not the claim complies with Penal Code sections 4900 and 4901. This new subdivision is also needed to specify the length of time for the Attorney General to submit the request and to allow an extension upon written request with good cause.
- **Section 642, subdivision (b)(4):** This new subdivision is needed to authorize the claimant to submit a reply to the Attorney General's response and to allow an extension upon written request for demonstrated good cause.
- **Section 642, subdivision (c):** This revised subdivision is needed to clarify that the filing date for a claim, which initially failed to comply with Penal Code sections 4900 and 4901, is calculated based upon the date the hearing officer received and considered the claimant's response that cured all of the identified deficiencies. As revised, it confirms that the filing date is not determined by the date the claimant submitted the response.
- **Section 642, subdivision (d):** This revised subdivision, which authorizes the hearing officer to reject a claim, is needed to confirm that the hearing officer's rejection constitutes a final decision, which is subject to judicial review by petition for writ of mandate pursuant to Code of Civil Procedure section 1094.5.
- **Section 642, subdivision (e):** This new subdivision is needed to establish the legal consequence of a rejected claim in the event of a future claim. Specifically, it confirms that a claimant may submit a second claim if supported by new evidence or law that overcomes the identified deficiencies for the first, rejected claim. It further confirms that the timeliness of the second claim depends upon the date of its submission and may not relate back to the first, rejected claim.
  - **Section 642, subdivision (e)(1):** This new subdivision is needed to authorize the hearing officer's outright rejection of a second claim, without notice and 30-day opportunity to cure, when the second claim fails to overcome the identified deficiencies in the first rejected claim.

**Section 642.1:** The Board believes this new regulation is reasonably necessary to establish a process for resolving claims that the claimant either has abandoned or wishes to withdraw. The specific need for each modified subdivision follows.

- **Section 642.1, subdivision (a):** This new subdivision is needed to allow the claimant to withdraw a claim, upon request, any time before the Attorney General's submission of a response letter.
- **Section 642.1, subdivision (b):** This new subdivision is needed to allow the hearing officer to deem a claim withdrawn under two scenarios (i.e., (1) when the claimant failed to provide valid contact information and more than 90 days have passed since the claimant's last communication with CalVCB, and (2) when the claimant failed to respond to a request by the hearing officer and more than 90 days have passed since the request was made).

- **Section 642.1, subdivision (c):** This new subdivision is needed to prohibit withdrawal in three scenarios. First, as detailed in subdivision (c)(1), withdrawal is prohibited after the Attorney General submits a response letter, unless the parties agree otherwise. Second, as detailed in subdivision (c)(2), withdrawal is prohibited after a hearing has been scheduled, unless the parties agree otherwise. Third, as detailed in subdivision (c)(3), withdrawal is prohibited after the administrative record has closed. If any of these scenarios apply, then the administrative process must continue until a final decision is reached.
- **Section 642.1, subdivision (d):** This new subdivision is needed to establish the procedural prerequisites that must be followed by the hearing officer before a claim may be deemed withdrawn. Specifically, the hearing officer must provide notice to the parties and allow 30 days for a response. Notice may be sent to the parties at their last known address, even if that address no longer appears valid.
- **Section 642.1, subdivision (e):** This new subdivision is needed to establish the legal consequence of a withdrawn claim in the event of a future claim. It confirms that a claimant is not barred from submitting a second claim solely because their first claim was withdrawn. It further confirms that the timeliness of the second claim depends upon the date of its submission and may not relate back to the first, withdrawn claim.

**Section 644:** The Board believes this revised regulation is reasonably necessary to clarify the process for participating in a hearing before a hearing officer, as well as to make nonsubstantive changes that render this regulation easier to understand, especially for claimants representing themselves. The nonsubstantive changes include reorganizing existing provisions with section 644 by category and deleting duplicative provisions of Article 2.5. Given the extensive changes proposed, modifications to delete current subdivisions are designated as “former,” and modifications to add new subdivisions are designated as “new.” The specific need for each modified subdivision follows.

- **Section 644, subdivision (a):** This subdivision, as revised with multiple new subdivisions and subsections, is needed to clarify the mechanics of a hearing before a hearing officer in accordance with SB 78. In particular, it allows the hearing officer to schedule a hearing on a claim whenever permitted by statute. It deletes inconsistent language that authorized a hearing to be scheduled only upon receipt of the Attorney General’s response. This modification is needed to comport with SB 78’s amendment to Penal Code section 4904, which allows the Attorney General to submit a response on the issue of injury even for claims that are otherwise barred from a hearing by Penal Code section 851.865 or 1485.55.
  - **(New) Section 644, subdivision (a)(1):** This new subdivision is needed to incorporate, without substantive change, the provision in current subdivision (c) of section 644, which requires all hearings take place in Sacramento unless the hearing officer agrees to an alternative. To that end, revisions to the lettering of this subdivision are needed to consecutively follow the previous heading and to correct a typographical error. The needed revisions include the addition of subsection (a)(1)(A), which repeats and expands upon language in current subdivision (h) of section 644 concerning the circumstances under which a hearing may be conducted by electronic means, as well as subsection (a)(1)(B), which repeats identical language in current subdivision (i) of section 644 that specifies how the hearing must be



recorded. This reorganization of the regulation by subject matter, without substantive change, is needed to facilitate a better understanding of the rules governing the hearing technicalities.

- **(New) Section 644, subdivision (a)(2):** This new subdivision, which includes multiple subsections (a)(2)(A) through (E), repeats identical language in current subdivision (f), subsections (1) through (5), of section 644 concerning the length of allotted time for a hearing. This reorganization of the regulation, without substantive change, is needed to facilitate a better understanding of the applicable rules.
- **(New) Section 644, subdivision (a)(3):** This new subdivision, which includes new subsections (a)(3)(A) and (B), is needed to clarify and confirm each party's obligation to proceed at the hearing. Specifically, each party must appear and be ready to proceed at the hearing, with all their evidence and witnesses present. Under subsection (a)(3)(A), the party is responsible for securing the attendance of their witnesses and, if necessary, providing an interpreter. In addition, under subsection (a)(3)(B), any testimony by a party or witness must be given under oath and subject to cross-examination by the opposing party and the hearing officer.
- **(New) Section 644, subdivision (a)(4):** This new subdivision is needed to clarify and confirm the consequence of a party's failure to proceed and the process to continue the hearing date. Specifically, this subdivision allows the Board to decide a claim based on previously submitted evidence if a claimant fails to appear or proceed at the hearing. It adds new subsections (a)(4)(A) and (B), which detail the circumstances under which a party may request a continuance of the hearing.
- **(Former) Section 644, subdivision (b):** This current subdivision, which mandates an open hearing unless otherwise provided by law, needs to be deleted as duplicative of identical language section 617.1, subdivision (a), for Article 2.5.
- **(New) Section 644, subdivision (b):** This new subdivision (b), as revised, is needed to replace the letter from current subdivision (d) to consecutively follow the previous heading without substantive change.
- **(New) Section 644, subdivision (c):** As revised, this new subdivision (c) is needed to replace the letter for current subdivision (e) to consecutively follow the previous subdivision without substantive change.
- **(Former) Section 644, subdivisions (d) through (i):** These current subdivisions, which specify the mechanics for conducting a hearing, need to be deleted as duplicative of the new provisions throughout subdivision (a) of section 644.
- **(New) Section 644, subdivisions (d) through (i):** As revised, these new subdivisions (d) through (i) are needed to replace the letter for current sections (j) through (o), respectively, to consecutively follow the previous heading.
- **(Former) Section 644, subdivisions (p) and (q):** These current subdivisions, which specify the applicable law, need to be deleted as duplicative of the new provisions in section 640.1, subdivisions (a) and (b).
- **(Former) Section 644, subdivisions (r):** This current subdivision needs to be deleted as duplicative of identical language in section 616.1 for Article 2.5.

**Section 645:** The Board believes this revised regulation is reasonably necessary to clarify the process by which the hearing officer will issue a proposed decision and to specify the appropriate considerations upon which the proposed decision may be based. Deletions are needed for duplicative language that already appears in section 619.1 for Article 2.5 concerning decisions by the Board and hearing officers. As with the preceding section, modifications to delete current subdivisions are designated as “former,” and modifications to add new subdivisions are designated as “new.” The specific need for each modified subdivision follows.

- **Section 645, subdivision (a):** This subdivision is needed to clarify that, once the administrative record closes, the hearing officer will prepare a proposed decision.
- **(Former) Section 645, subdivisions (b) through (e):** These current subdivisions, which specify required content for a proposed decision and appropriate considerations, need to be deleted as duplicative of identical language in section 619.1, subdivisions (b) through (e), of Article 2.5.
- **Section 645, subdivisions (f) and (g):** These subdivisions need to be modified solely to replace the letter from current subdivisions (f) and (g) to subdivisions (b) and (c), respectively, in order to consecutively follow the previous heading, without substantive change.
- **(New) Section 645, subdivision (d):** This new subdivision is needed to confirm that, for mixed claims where the claimant has not waived the expedited provisions in Penal Code section 851.865, 1485.55, or 4900, subdivision (b), the hearing officer may issue more than one proposed decision.

**Claim Form:** The Board strongly believes that the proposed changes to the claim form, as incorporated by reference in section 640, subdivision (a), are reasonably necessary to provide guidance to claimants concerning the specific type of information and documentation required by current law to submit a Penal Code section 4900 claim. The specific need for each section of the form follows.

- **Cover Page:** This revision relocates information about eligibility for compensation from the cover page to, instead, a new and expanded section entitled “Informational Sheet” that is located on the last two pages of the form. This modification is needed to provide claimants with a more detailed explanation of the applicable statutes governing Penal Code section 4900 claims and the requirements for relief. It is also needed to increase processing efficiency by relocating the claimant’s information, detailed below in Section A, to the first page of the form.
- **Section A:** This revised section, entitled “Claimant Information,” is needed to appear on the first page of the form for improved processing efficiency. The revised version is also needed to replace the request for the claimant’s “Preferred Pronouns” with the claimant’s “Gender” instead, as it appears some claimants may not understand this technical terminology.
- **Section B:** No changes are proposed for this section.
- **Section C:** This revised section, entitled “Erroneous Conviction(s) Information,” is needed solely for formatting but otherwise continues to request information about the claimant’s conviction(s). The new formatting is needed to highlight each item of necessary information, as claimants often fail to provide all requested data in the current form. The revised section also adds needed details about the deadline to submit a claim.

- **Section D:** This new section entitled “Post-Conviction Relief,” is needed to combine and expand upon the information requested in current Sections D and E, entitled “Factual Innocence Determination” and “Post-Conviction Proceedings (Excluding Direct Appeal)”, respectively. The new yes-or-no question format is needed to elicit information about the specific basis for any relief that may have been granted to vacate or reverse the claimant’s conviction and emphasize the requirement to attach documentary support. All of this requested information is necessary to determine whether relief may be available under Penal Code section 4900 and, if so, whether the claim falls within subdivision (a) or (b) or the automatic provisions of Penal Code section 851.865 or 1485.55. Finally, the revised section is needed to provide details about the rejection process for incomplete forms and provide two examples of claims that fail to comply with Penal Code sections 4900 and 4901.
- **Section E:** This section, entitled “Statement of Factual Innocence,” solely needs a nonsubstantive revision to update the section letter to consecutively follow the previous heading.
- **Section F:** This revised section, entitled “Statement of Injury,” is needed to clarify that the statement may consist of either (1) a list of every conviction and resulting sentence that was imposed during the claimant’s incarceration for the erroneous conviction, or (2) confirmation that no other convictions were imposed during that timeframe. This revision is needed to assist claimants understand the specific information necessary for relief under Penal Code section 4900.
- **Section G:** This section, entitled “Disqualification for Certain Guilty Pleas,” needs a nonsubstantive revision to update the section letter to consecutively follow the previous heading.
- **Section H:** This section, entitled “Declaration Statement,” needs a nonsubstantive revision to update the section letter to consecutively follow the previous heading.
- **Privacy Notice on Collection:** This revised section is needed to provide greater specificity about the circumstances under which information received for a Penal Code section 4900 claim may be publicly disclosed.
- **Informational Sheet:** This new section, located on the last two pages of the form, is needed to provide detailed information about the administrative process governing Penal Code section 4900 claims, as well as the substantive requirements to submit a claim and prevail upon the merits.

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

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

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The proposed regulations and modified claim form govern the process by which Penal Code section 4900 claims for erroneously convicted persons are submitted, reviewed, and decided. An approved claim results in payment, if sufficient funds are available, at the rate of \$140 per day of the claimant’s incarceration. Even with the recent trend of increasing claims submitted (i.e., 28 in 2021 to 67 in 2023) and approved (i.e., 7 claims in 2021 to 11 claims in 2023), the proposed modifications nevertheless affect a limited group of individuals. Moreover, the amount

of each approved claim is limited to \$140 per day of the claimant's incarceration, which has averaged approximately \$1 million per claimant. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

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

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

The proposed regulations do not impact jobs because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

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

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

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

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

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

The Board has determined that the proposed regulations do not impact worker safety or the state's environment because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.

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

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

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

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

The Board has no evidence indicating any potential adverse impacts to small business are expected as a result of this proposed action. The Board has determined that the proposed regulations do not affect small businesses because they apply to a limited group of individuals seeking compensation for their wrongful incarceration as a result of an erroneous felony conviction.