

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS
TITLE 2. ADMINISTRATION
DIVISION 2. FINANCIAL OPERATIONS
CHAPTER 1. CALIFORNIA VICTIM COMPENSATION BOARD
ARTICLE 5. CLAIMS OF PERSONS ERRONEOUSLY CONVICTED OF FELONIES
SECTIONS 640, 640.1, 642, 642.1, 644, 645

As submitted by the California Victim Compensation Board on August 9, 2024

§ 640. Presentation of Claim.

(a) Claims on behalf of persons erroneously convicted of felonies shall be submitted on an "Erroneously Convicted Person (ECP) Claim Form," VCB-41-00002 (Rev. July 202207/2024)," hereby incorporated by reference, and provided by the Board or obtained on the Board's website. Claimants must include the following:

(1) completed claim form with a statement of facts signed under penalty of perjury that shows the crime did not occur or was not committed by the claimant, and;

(2) supporting documentation as specified in the claim form.

(b) The claim and supporting documentation may be submitted in electronic format as a PDF attachment to the Board's designated email address. Claims emailed after 5:00 p.m. during the week or anytime during the weekend or state holidays will be deemed received the next regular business day. Alternatively, the claim and supporting documentation may be sent by mail to the Board's physical address and will be deemed received upon the date of arrival within the Board's Legal Division. If the claim and supporting documentation are submitted in hardcopy only, an original and one copy are required.

(c) The supporting documentation must confirm the claimant was convicted of a felony in a California court, for which they served a term of imprisonment in either a state prison or county jail pursuant to subdivision (h) of Penal Code section 1170, and the claimant is no longer incarcerated for that felony conviction. The supporting documentation must also confirm the claim was timely submitted under Penal Code section 4901.

(d) Once received, a hearing officer will review the claim to determine compliance with Penal Code sections 4900 and 4901 and, upon such a determination, deem the claim filed. A filed claim will be considered by the Board. All claims that fail to comply with sections 4900 and 4901 may be rejected by a hearing officer.

(e) Upon filing, the Board will notify the claimant and the California Attorney General and forward a complete copy of the claim to the California Attorney General in either hardcopy or electronic PDF format with directions to submit a response.

~~(1) Unless the automatic provision in either Penal Code section 851.865 or Penal Code section 1485.55 applies, the Board will request a response from the Attorney General. The response may offer evidence in support of or in opposition to the claim. The Attorney General's response shall be submitted to both the Board and the claimant in hardcopy form with an electronic version in PDF format.~~

(1) Notice of the filing will include an initial determination by the hearing officer whether the claim falls within subdivision (a) or (b) of Penal Code section 4900 and whether Penal Code section 851.865 or 1485.55 apply. If either party objects, the hearing officer will reconsider the determination.

(2) When some but not all convictions in a claim fall within the scope of Penal Code section 851.865, 1485.55, or 4900, subdivision (b), those convictions may be addressed in a separate proposed decision, and a corresponding portion of compensation approved pending a proposed decision on any other challenged convictions, unless the claimant waives application of the expediated timelines provided in Penal Code section 4902. If waived, a single proposed decision disposing of all convictions in the claim will be prepared in accordance with the statutory timeline that allows the most time for the Attorney General to respond and the Board to decide the claim.

(3) For claims that fall exclusively within section 851.865 or 1485.55, the Attorney General's response may address injury only. For all other claims, the Attorney General's response may address innocence, guilt, and injury.

~~(24) The automatic provisions in section 851.865 and section 1485.55 do not apply if the claimant lacks a court finding of factual innocence for each and every conviction underlying their incarceration. A court finding of factual innocence for any individual conviction is binding upon the Board.~~

(f) Injury may be established by showing that, but for the erroneous conviction, the claimant would not have been in custody. Injury is not established for any concurrent period of incarceration attributable to another conviction.

(1) The hearing officer may request additional documents or arguments from the parties as needed to calculate compensation for the claimant's injury.

(2) The claimant bears the burden to demonstrate injury by a preponderance of the evidence.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections 851.865, 1485.55, 4900, 4901, 4902, 4903 and 4904, Penal Code.

§ 640.1. Applicable Law.

(a) If there is any inconsistency or conflict between the provisions of the California Code of Regulations Article 2.5 and this article, the provisions of this article shall apply.

(b) The formal hearing provisions of the Administrative Procedure Act (Government Code §§ 11500-11529) do not apply.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Section 11500 et seq., Government Code; Sections 4900, 4902, 4903 and 4904, Penal Code.

§ 642. Rejection of Claim.

(a) Claims that are untimely or are otherwise not in compliance with Penal Code sections 4900 and 4901 will be rejected by a hearing officer and will not be heard or considered by the Board. Claims not in compliance with sections 4900 and 4901 include, but are not limited to, the following circumstances:

(1) A claim that fails to state facts upon which relief may be granted is not in compliance with Penal Code sections 4900 and 4901. For example, relief may not be granted for 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.

(2) Successive or duplicative claims ~~are not in compliance with Penal Code sections 4900 and 4901.~~ The Board will consider on the merits only a single claim by a claimant challenging the same underlying conviction.

(3) A claim solely based upon a ~~vacated conviction~~ that was vacated due to a change in the legal definition of the crime, for example Penal Code section ~~4170.95~~1172.6, ~~is not in compliance with Penal Code sections 4900 and 4901.~~ To be compliant, the claim must allege that the claimant is innocent of the crime with which they were erroneously convicted because the charged crime was either not committed at all or not committed by the claimant under the law in effect at the time the charged crime allegedly occurred.

(4) A claim solely based upon a conviction that was vacated due to satisfactory completion of the sentence, for example Penal Code section 1203.4.

(5) A claim that lacks injury as a matter of law, such as when only one conviction is challenged as erroneous, and an equivalent sentence was concurrently imposed for another, unchallenged conviction.

(b) Prior to rejecting a claim ~~for failure to comply~~not in compliance with Penal Code sections 4900 and 4901, the claimant shall be:

(1) notified of the reason for rejecting the claim and,

(2) given thirty (30) calendar days to present evidence that will overcome the rejection. The deadline may be extended upon the claimant's written request for demonstrated good cause.

(3) At the hearing officer's discretion, a response from the Attorney General may be requested. The Attorney General shall be given thirty (30) calendar days to submit the response, which may be extended upon the Attorney General's written request for demonstrated good cause.

(4) Upon receipt of the response, the claimant may submit a reply within thirty (30) calendar days, which may be extended upon the claimant's written request for demonstrated good cause.

(c) If the claimant's response provides sufficient evidence to prove that the claim was timely submitted and is otherwise compliant with the requirements of Penal Code sections 4900 and 4901, the claim will be deemed filed as of the date the additional evidence was received and considered.

(d) If the claimant's response does not provide sufficient evidence to prove that the claim was timely submitted and is otherwise compliant with the requirements of Penal Code sections 4900 and 4901, the claim will be rejected without a hearing and will not be considered by the Board. The rejection constitutes a final decision.

(e) A claimant, whose claim was rejected, is not barred as a result of that rejection from presenting a new claim with new evidence or law that overcomes the basis for rejection. The timing of the new claim must satisfy the statutory deadline and shall not relate back to the date of submission of the rejected claim.

(1) A new claim that fails to provide new evidence or law to overcome the basis for a previous rejection will not be considered by the Board or hearing officer.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections ~~4170.95~~1172.6, 1203.4, 4900, 4901, 4902, 4903 and 4904, Penal Code.

§ 642.1 Withdrawal of Claim.

(a) A claimant may withdraw a claim upon request any time prior to the Attorney General's submission of a response letter.

(b) The hearing officer may, in their discretion, deem a claim withdrawn in any of the following circumstances:

(1) The hearing officer lacks valid contact information for the claimant and more than ninety (90) days have passed since the claimant's last communication with the Board.

(2) The claimant abandons the claim by failing to respond to a request by the hearing officer and more than ninety (90) days have passed since that request was made.

(c) A claim shall not be withdrawn if any of the following circumstances apply:

(1) The Attorney General submitted a response letter, unless the parties expressly agree to the withdrawal.

(2) A hearing before a hearing officer has been scheduled, unless the parties expressly agree to the withdrawal.

(3) The administrative record closed.

(d) Prior to deeming a claim withdrawn, the hearing officer shall send notice to the parties at their last known address of the proposed withdrawal and allow thirty (30) days for a response.

(e) A claimant, whose claim was withdrawn, is not barred as a result of that withdrawal from presenting a new claim. The timing of the new claim must satisfy the statutory deadline and shall not relate back to the date of submission of the withdrawn claim.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections 4900, 4901, 4902, 4903 and 4904, Penal Code.

§ 644. Conduct of Hearing Before Hearing Officer.

(a) Upon receipt of a response from the Attorney General, a hearing on the claim will be scheduled when permitted by Penal Code section 4903, taking into consideration the availability of the parties, witnesses, and hearing officer. The hearing officer shall provide at least 15 days' notice to the parties of the date and location of the hearing. The claimant may waive the hearing and elect to proceed on the written record. For claims proceeding under subdivision (b) of Penal Code section 4900, the hearing may be waived only if both the claimant and Attorney General agree to proceed on the written record.

~~(b) Hearings shall be open to public observation, unless otherwise provided by law.~~

(e)1) Hearings will be conducted in Sacramento unless the hearing officer agrees to an alternative location or appearance by electronic means.

(A) A party that requests that all or part of a hearing be conducted by electronic means is responsible for providing, operating, and paying for all necessary equipment required for their appearance throughout the duration of the hearing. The hearing may proceed by electronic means so long as each party is able to participate in the hearing.

(B) The hearing will be recorded by electronic means at the expense of the Board.

(2) The hearing officer may determine the amount of time allotted to present a claim for compensation. The determination made under this subsection shall be based on the following factors:

(A) complexity of legal or factual issues;

(B) necessity to evaluate credibility of witnesses for a proper determination of issues;

(C) parties' representation by legal counsel;

(D) necessity of witnesses being subject to cross examination for the proper determination of issues; and

(E) any other factor likely to affect a just and proper determination of issues.

(3) A party appearing at a hearing shall have their witnesses and evidence present and be ready to proceed when the matter is called.

(A) Each party is responsible for securing the attendance of their witnesses and, if necessary, providing an interpreter.

(B) Oral testimony shall be given under oath or affirmation that is administered by the hearing officer. Any party or witness who testifies is subject to cross examination on any matter relevant to the claim, even if the matter was not covered during the direct examination. The hearing officer may question any party or witness.

(4) If a claimant fails to appear at the hearing or fails to proceed, the Board may base its decision on previously submitted evidence.

(A) A party's request for a continuance of the hearing must be in writing, provide sufficient facts for the basis of the request, and submitted to the hearing officer as soon as the need for the delay is known.

(B) The hearing officer may grant a continuance only if the request demonstrates good cause for the delay. Good cause may be shown where both parties agree to the requested continuance. If the request is made less than thirty (30) days before the scheduled hearing, good cause requires a showing of extraordinary and unforeseen circumstances.

(d~~b~~) Except for claims proceeding under subdivision (b) of Penal Code section 4900, the claimant has the burden of proof on all issues necessary to establish eligibility, including innocence and injury.

(1) The standard of proof is a preponderance of the evidence.

(2) The parties shall present evidence in the following order:

(A) the claimant;

(B) the Attorney General;

(C) the claimant, if they desire to offer any evidence or testimony to rebut the Attorney General's evidence or argument.

(e~~c~~) For claims proceeding under subdivision (b) of Penal Code section 4900, the Attorney General has the burden of proof, by clear and convincing evidence, to prove the claimant committed the acts constituting the offense for which the claimant was convicted. The claimant continues to bear the burden to prove injury by a preponderance of the evidence.

(1) The parties shall present evidence in the following order:

(A) the Attorney General;

(B) the claimant;

(C) the Attorney General, if they desire to offer any evidence or testimony to rebut the claimant's evidence or argument.

(D) the claimant, if they desire to offer any evidence or testimony on the issue of injury.

(2) The claimant's burden to prove injury is satisfied upon a showing that each and every conviction underlying their incarceration was vacated by either a writ of habeas corpus or

motion pursuant to Penal Code section 1473.6 or subdivision (a)(2) of section 1473.7, and all charges were subsequently dismissed or ended in acquittal without any new conviction for a lesser offense. If the claimant sustained a new conviction upon remand for a lesser offense, then the claimant's injury is presumptively calculated as the difference in length between the sentence served for the original conviction and the sentence imposed for the new conviction.

~~(f) The hearing officer may determine the amount of time allotted to present a claim for compensation. The determination made under this subsection shall be based on the following factors:~~

~~(1) complexity of legal or factual issues;~~

~~(2) necessity to evaluate credibility of witnesses for a proper determination of issues;~~

~~(3) parties' representation by legal counsel;~~

~~(4) necessity of witnesses being subject to cross examination for the proper determination of issues; and~~

~~(5) any other factor likely to affect a just and proper determination of issues.~~

~~(g) If a claimant fails to appear at the hearing or fails to proceed, the Board may base its decision on previously submitted evidence.~~

~~(h) A party that requests that all or part of a hearing be conducted by electronic means under California Code of Regulations section 617.4 may be responsible for providing, operating, and paying for all necessary equipment.~~

~~(i) The hearing will be recorded by electronic means at the expense of the Board.~~

~~(j) Any party may request the Board to arrange for the preparation of a hearing transcript. The party requesting the preparation of a hearing transcript shall bear all costs for its preparation and shall provide one copy of the transcript to the Board at no cost to the Board.~~

~~(k) The hearing officer may allow or request the parties to submit post-hearing briefs.~~

~~(1) Post-hearing briefs shall be limited to legal and factual arguments related to relevant issues under section Penal Code sections 4900 et seq. or identified by the hearing officer.~~

~~(2) The hearing officer shall inform the parties of the deadline for the submission of a post-hearing brief.~~

~~(f) In a hearing in which post-hearing briefs were not allowed or permitted, the hearing record shall be closed upon the conclusion of testimony and presentation of any oral argument by the parties, unless the hearing officer orders otherwise.~~

~~(g) In a hearing in which post-hearing briefs were allowed or permitted, the hearing record shall close at the deadline for the submission of post-hearing briefs, unless the hearing officer orders otherwise or grants an extension.~~

~~(h) No argument will be considered by the hearing officer after the close of the hearing record, except as allowed in California Code of Regulations section 619.4, unless the hearing officer orders otherwise.~~

~~(i) The hearing officer retains the discretion to reopen the hearing administrative record for good cause.~~

~~(p) The formal hearing provision of the Administrative Procedure Act (Government Code §§ 11500-11529) do not apply.~~

~~(g) If there is any inconsistency or conflict between the provisions of California Code of Regulations Article 2.5 and this article, the provisions of this article shall apply.~~

~~(f) At the request of the claimant, the Attorney General, or other interested party, the Board will provide information about the hearing rules and procedures.~~

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections 4900, 4902, 4903 and 4904, Penal Code.

§ 645. Proposed Decision by Hearing Officer.

~~(a) The hearing officer shall take the matter under submission once the administrative record is closed and prepare a proposed decision.~~

~~(b) The hearing officer shall prepare a proposed decision that is written and contains a statement of the factual and legal bases for the proposed decision.~~

~~(c) If the factual basis for the proposed decision includes a determination based substantially on the credibility of a witness, the proposed decision shall identify specific evidence that supports the credibility determination, which may include but is not limited to demeanor, manner or attitude.~~

~~(d) The proposed decision shall be based on evidence in the hearing record and on matters subject to official notice under California Code of Regulations section 617.8.~~

~~(e) The hearing officer may use relevant experience, technical competence and specialized knowledge to evaluate the evidence.~~

~~(f) The proposed decision may not deny a claim solely because the claimant failed to obtain a court finding of factual innocence.~~

~~(g) For claims proceeding under subdivision (b) of Penal Code section 4900, the proposed decision may not deny a claim unless the overall weight of evidence, which may include the trial record only in combination with other admissible evidence, satisfies the Attorney General's burden of proof.~~

(d) When some but not all convictions in a claim fall within the scope of Penal Code section 851.865, 1485.55, or 4900, subdivision (b), and the claimant declines to waive the expediated timelines in Penal Code section 4902, more than one proposed decision may be issued and a corresponding portion of compensation approved pending a proposed decision on any other challenged convictions.

NOTE: Authority cited: Section 13920, Government Code; and Section 4906, Penal Code.
Reference: Sections 1485.55, 4900, 4902, 4903 and 4904, Penal Code.