

TITLE 2. CALIFORNIA VICTIM COMPENSATION BOARD
ARTICLE 5. CLAIMS OF PERSONS ERRONEOUSLY CONVICTED OF FELONIES

Title 2, §§ 640, 640.1, 642, 642.1, 644, 645

[Notice Published August 9, 2024]

The California Victim Compensation Board (CalVCB) proposes to adopt the regulations and revised claim form as described below for Penal Code section 4900 claims after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

CalVCB has not scheduled a public hearing on this proposed action; however, the Board will hold a hearing if it receives a written request for a public hearing from any interested person or their authorized representative no later than 15 days before the close of the written comment period. At the hearing, if requested, the Board will hear public comment but will take no action nor provide responses at that time. The hearing, if requested, will be scheduled on a date to be determined after the written comment period ends.

WRITTEN COMMENT PERIOD

The written comment period commences on August 9, 2024, and concludes 45-days later on September 23, 2024. During this period, any interested individual or their authorized representative may submit written comments relevant to the proposed regulatory action. To be considered, the written comments must be received by CalVCB by September 23, 2024. Untimely comments will not be considered. Written comments may be mailed to:

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

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

AUTHORITY AND REFERENCE

Penal Code section 4906, along with Government Code section 13920, authorizes CalVCB to adopt these proposed regulations and revised claim form. The proposed regulatory action is intended to implement, interpret, and make specific Penal Code sections 4900 through 4904.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

CalVCB processes claims from persons seeking compensation as an erroneously convicted felon pursuant to California Penal Code sections 4900 through 4906. The regulations governing this process specifically include sections 640 through 646 within Article 5, Title 2, of the California Code of Regulations, as well as the general hearing procedures in Article 2.5, Title 2, sections 615.1 through 619.7, to the extent those general regulations are not inconsistent or conflict with the specific regulations in Article 5.

A successful claim results in approved payment, if sufficient funds are available, by CalVCB for the claimant's sustained injury in the amount of \$140 per day of the claimant's wrongful imprisonment. (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 Erroneously Convicted Person (ECP) Claim Form, VCB-41-0002 (Rev. 07/2024) 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.)

Generally, the claimant must prove, by a preponderance of the evidence, that (1) they did not commit the crime that resulted in their incarceration and (2) they sustained injury as a result of their erroneous conviction. (Pen. Code, § 4900, subd. (a).) In this context, injury means that, but for the erroneous conviction, the claimant would have been free from custody. The claimant is entitled to a hearing to prove both of these elements, at which the Attorney General may appear to oppose the claim. (Pen. Code, § 4903, subd. (a).) The Attorney General, as well as CalVCB, are bound by any express factual findings rendered by a court during a habeas proceeding or motion to vacate, including a finding of factual innocence under any standard in that proceeding. (Pen. Code, §§ 851.865, 1485.5, 1485.55, subds. (a)-(c) & (g), 4903, subd. (c).)

Nonetheless, a different and expediated process applies in the following three circumstances. First, if a court found the claimant to be factually innocent of the challenged conviction based upon proof by a preponderance of evidence that the claimant did not commit the crime, then CalVCB's approval of a properly submitted claim is mandated, without a hearing and within 90 days. (Pen. Code, §§ 851.865, 1485.55, subds. (a) & (c), 4902, subd. (a).) Second, if the conviction was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), and the charges were dismissed or acquitted on remand, and the Attorney General failed to timely object with clear and convicting evidence the claimant's guilt, then CalVCB's approval of a properly submitted claim is mandated within 90 days. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).) Third and finally, if a court granted a motion under subdivision (d) of Penal Code section 1485.55 for approval of a claim based upon a conviction that was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subd. (a)(2), the charges were dismissed or acquitted on remand, and the district attorney failed to timely object with clear and convicting proof of the claimant's guilt, then CalVCB's approval of a properly submitted claim is mandated, without a hearing and within 90 days. (Pen. Code, § 1485.55, subd. (d).) When approving any claim, even without a hearing, CalVCB may nevertheless request additional evidence and argument from the parties as needed to calculate injury. (Pen. Code, § 4904, subd. (a).)

Since the regulations in Article 5 were last updated, 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 authorizes a claimant to file a motion in the superior court to require CalVCB's approval of a properly submitted claim. SB 78 also authorizes CalVCB to request evidence and argument as needed to calculate compensation for every claim. Finally, SB 78 extends CalVCB's deadlines for mandated approval of enumerated claims from 30 to 90 days after filing.¹ 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. For instance, 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.

CalVCB last revised the regulations in Article 5 governing Penal Code section 4900 claims in 2022, which became effective in January 2023. In light of the new statutory changes by SB 78, as well as the increased volume of claims, CalVCB determined that additional revisions are warranted. The modified regulations will comply with current law and provide clarity, consistency, and transparency for the process to obtain relief.

Anticipated Benefits of the Proposed Regulation:

The revisions will address the substantive changes effected by SB 78 to ensure consistency with current law. The revisions will also provide additional clarity for processing claims and determining eligibility. Finally, the revisions will include nonsubstantive changes that merely reorganize or rephrase existing regulations and delete duplicative sections in an effort to render the governing regulations easier to understand, especially for claimants representing themselves.

Evaluation of Inconsistency/Incompatibility with Existing State Regulations:

The Board did a search for any regulations related to this area and found that these are the only regulations that specifically apply to Penal Code section 4900 claims. While some of CalVCB's general hearing regulations in Article 2.5, Title 2, sections 615.1 through 619.7 may also apply, proposed Section 640.1 confirms that, if there is any inconsistency or conflict with these general provisions, then the specific regulations in Article 5, Title 2, sections 640 through 646 shall apply. Therefore, the proposed regulations are not inconsistent or incompatible with existing state regulations.

¹ 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.

Document Incorporated by Reference

Erroneously Convicted Person (ECP) Claim Form, VCB-41-0002 (Rev. 07/2024)

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

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

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

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

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

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

Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to revise, interpret, and implement the current law governing Penal Code section 4900 claims. An approved claim results in payment, if sufficient funds are available, at a set rate of \$140 per day of the claimant's wrongful incarceration for an erroneous conviction. On average, each approved claim amounts to approximately \$1 million. Even with the recent trend of increasing claims and approved payments, compensation is awarded to a limited group of individuals, historically less than 15 per year. Accordingly, the proposed regulations will not directly impact jobs or the wider economy.

The Board has determined that the proposed regulations will not affect:

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

The proposed regulations do not impact jobs as 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.

SMALL BUSINESS DETERMINATION

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.

CONSIDERATION OF ALTERNATIVES

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

The Board invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulation during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

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

The backup contact person concerning the proposed administrative action may be directed to:

Kim Gauthier
California Victim Compensation Board
P.O. Box 48
Sacramento, CA 95812-0048
Telephone: (916) 491-3754

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the

rulemaking is based to Neil Ennes at the above address.

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

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office located at 400 R Street, Suite 500, Sacramento, California 95811. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulation and the Initial Statement of Reasons. Copies may be obtained by contacting Neil Ennes at the P.O. Box or the phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

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

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

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

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the proposed text of the regulations in underline and strikeout can be accessed through our website at www.victims.ca.gov/proposed-regulations/.

* * * * * END * * * * *