

Request for Authorization to Conclude the Rulemaking Process
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

November 21, 2024

Action Requested

On July 18, 2024, the Board authorized staff to commence the rulemaking process to amend the regulations located at sections 640, 640.1, 642, 642.1, 644, and 645 within Article 5 of the California Code of Regulations for processing claims of erroneously convicted felons under Penal Code sections 4900, et seq. The Board also authorized staff to modify the required form to submit a claim. Now that this process is complete, it is requested that the Board adopt the proposed regulations and modified claim form and authorize the Executive Officer to file the final rulemaking record with the Office of Administrative Law (OAL).

Background

The California Victim Compensation Board (CalVCB) processes claims from persons seeking compensation as an erroneously convicted felon pursuant to Penal Code sections 4900 through 4906. The regulations governing these claims specifically include sections 640 through 646 of Article 5, as well as the general hearing procedures located in sections 615.1 through 619.7 of Article 2.5. Although the regulations in Article 5 were last updated in 2022, staff determined that additional changes were warranted due to new statutory changes effective January 2024, as well as an exponential increase in the number of claims received and rejected in recent years. The proposed amendments to sections 640, 640.1, 642, 642.1, 644, and 645, along with the modified claim form entitled, "Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024)," ensure compliance with current law and provide clarity, consistency, and transparency for the process to obtain relief.

At the July 2024 meeting, the Board approved commencement of the rulemaking process to update the regulations and claim form. Previously, when drafting the proposed regulations, staff reached out to various stakeholders, including the Attorney General and Innocence Project, for their informal feedback. Only the Attorney General responded with one suggested edit, which was incorporated in the proposed regulations. The Board's July 2024 approval authorized staff to take action, including submission of the regulation package to OAL, notice of the proposed regulatory action, followed by a public comment period, and, if requested, a hearing. As authorized, the regulation package was submitted to OAL on July 25, 2024, after which the related documents were published by OAL on August 9, 2024. Meanwhile, on August 8, 2024, CalVCB provided notice on its website, as well as via 31 emails and 21 letters to interested persons.

The public comment period concluded 45-days later on September 23, 2024. No comments were received, nor was any hearing requested. After careful consideration, staff determined that no further changes to the proposed regulations or modified claim form were warranted.

Accordingly, staff request the Board adopt the proposed regulations and modified claim form and authorize staff to conclude the rulemaking process.

To support this requested action, the following documents are attached: (1) Final Text of Proposed Regulations; (2) Final Statement of Reasons (FSOR), (3) Updated Informative Digest/Policy Statement Overview, and (4) Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024).

Recommendation

It is recommended that the Board adopt the proposed regulations for Sections 640, 640.1, 642, 642.1, 644, 645, as well as the modified claim form entitled, "Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024)." It is further recommended that the Board authorize the Executive Officer to conclude the rulemaking process by filing the final rulemaking record with OAL for its review and approval.

Certification

I certify that, at its November 21, 2024, Board Meeting, the California Victim Compensation Board adopted the proposed recommendation.

Andrea Burrell
CalVCB Board Liaison

**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**

FINAL 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 claim must be submitted on the required form, accompanied by a verified factual summary, within ten years after release from custody, dismissal of charges, judgment of acquittal, or pardon granted, whichever is later. (Pen. Code, § 4901; Cal. Code Regs., tit. 2, § 640.) An ineligible claim may be rejected by a hearing officer for failure to comply with these requirements under Penal Code sections 4900 and 4901 after notice and an opportunity to cure. (Cal. Code Regs., tit. 2, § 642.) Otherwise, an eligible claim will be filed and proceed before the Board for consideration on the merits. (Cal. Code Regs., tit. 2, §§ 640, 642.)

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, a different and expediated procedure may apply when the challenged conviction was reversed under specified conditions. First, under Penal Code sections 851.865 or 1485.55, if the claimant received a court finding of factual innocence, then CalVCB must approve the claim, without a hearing and within 90 days, for the demonstrated amount of injury. Second, under subdivision (b) of Penal Code section 4900, if the claimant's conviction was vacated by grant of habeas or pursuant to 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, then CalVCB must approve the claim, without a hearing and within 90 days, for the demonstrated amount of injury.

Since the regulations in Article 5 were last updated in 2022, effective January 2023, new statutory changes were enacted by SB 78 (Glazer, Chapter 78, Statutes of 2024), effective January 2024. Significantly, SB 78 added subdivision (d) to Penal Code section 1485.55, which created a third scenario under which a claim must be approved by an expediated

procedure. Specifically, if a court granted a motion for relief under this new subdivision based upon a conviction that was vacated by grant of habeas relief or pursuant to 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, then CalVCB must approve the claim, without a hearing and within 90 days, for the demonstrated amount of injury. 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.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 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 November 1, 2024, CalVCB has received 69 claims for the calendar year. 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 amendments to the regulations, as well as the form to submit a claim, were warranted. The proposed regulations for sections 640, 640.1, 642, 642.1, 644, and 645, as well as the updated claim form entitled “Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024), will comply with current law and provide clarity, consistency, and transparency for the process to obtain relief.

PROCEDURAL HISTORY

On July 18, 2024, the Board approved commencement of the rulemaking process to amend the regulations governing claims for compensation by erroneously convicted felons located at Sections 640, 640.1, 642, 642.1, 644, and 645, as well as the updated claim form entitled “Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024).” Following submission of the rulemaking package to the Office of Administrative Law (OAL) on July 25, 2024, the proposed regulations and related documents were published in the California Regulatory Notice Register on August 9, 2024 (i.e., OAL Notice File #Z2024-0725-01).

On August 8, 2024, CalVCB posted the documents concerning this proposed rulemaking action on its website located at <https://victims.ca.gov/board/proposed-regulations/>. That same day, CalVCB sent, via US Mail and/or email, a copy of these documents to all persons whom CalVCB believes to be interested in the proposed regulatory action, as well as all persons who previously submitted a request for notice of CalVCB’s regulatory actions.

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.

The public comment period concluded 45-days later on September 23, 2024. No comments were received, nor was any hearing requested. After careful consideration, CalVCB determined that no additional modifications to the proposed regulations or revised claim form were warranted. This determination is supported by the following description of the purpose and necessity for each proposed regulation, as well as each section of the revised claim form.

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 an ineligible claim rejected for failing to comply with Penal Code sections 4900 and 4901. 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 claim form, the revised subdivision deletes the title of the outdated 2022 form and replaces it with the name of the current 2024 version (i.e., “Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024)”). 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 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 in whole or in part. 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 in whole or in part. 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 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 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 ineligible claims may be rejected by a hearing officer for failing to comply with the requirements of Penal Code sections 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 exhaustive.
 - **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 sections 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 sections 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 a 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 fails 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 rendered.

- **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 alternate location. 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 new 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 parties are 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 with the hearing 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, subdivision (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, entitled “Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024)” and incorporated by reference in proposed regulation 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 revised 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 follow 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 follow 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 claims, 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. This subdivision 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 expediated 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 claims under 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 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 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 ineligible 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 a hearing officer without being considered by the Board are merely illustrative and not exhaustive.
 - **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 substantive 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 completion 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 demonstrated 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 a 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 fails 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 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 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 alternate location. 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 parties are 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. It 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, subdivision (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, entitled "Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024)" and 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.

LOCAL MANDATE DETERMINATION

The Board has determined that the proposed regulations do not impose any mandate on local agencies or school districts.

SUMMARY OF COMMENTS AND RESPONSES

No comments were submitted to CalVCB regarding the proposed regulations or updated claim form during the 45-day public comment period between August 9, 2024, and September 23, 2024. As a result, CalVCB did not issue any response.

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 wrongful 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 wrongful 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,

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, and

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.

(D) 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.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has determined that there are no other reasonable alternatives to this rulemaking action. The Board has determined that no alternative would be as effective and less burdensome than 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 effect 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.

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

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

UPDATED INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The updated informative digest/policy statement overview is incorporated into this final statement of reasons.

DOCUMENT INCORPORATED BY REFERENCE

The updated claim form, entitled "Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024)," is incorporated by reference. The nature of the form and formatting, as well as the length, would make it cumbersome for publication in the California Code of Regulations. The form is identical to the form submitted to OAL on July 25, 2024, and posted on CalVCB's website on August 8, 2024.

**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**

FINAL TEXT OF PROPOSED REGULATIONS

§ 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 2022/2024)," 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.

(c) 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.~~

~~(q) 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.~~

~~(r) 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 expedited 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.

**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**

UPDATED INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

The California Victim Compensation Board (CaIVCB) processes claims from persons seeking compensation as an erroneously convicted felon pursuant to California Penal Code sections 4900 through 4906. A successful claim results in approved payment, if sufficient funds are available, for the claimant's injury in the amount of \$140 per day of the claimant's wrongful imprisonment. (Pen. Code, § 4904.) The regulations governing this administrative 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. As detailed below, the proposed amendments to sections 640, 640.1, 642, 642.1, 644, and 645 are intended to clarify, revise, and expand upon this process, following recent statutory changes implemented by SB 78 (Glazer, Chapter 78, Statutes of 2024), effective January 1, 2024.

To be eligible for consideration by the Board, 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 in custody for that offense. (Pen. Code, §§ 4900, 4901.) In addition, the claim must be timely submitted, on a verified 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.) Under proposed section 640, the currently required claim form entitled, "Erroneously Convicted Person Claim Form, as revised July 2022," is replaced with an updated claim form entitled, "Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024)," which provides guidance to claimants concerning specific information and documentation required by applicable law to submit an eligible claim.

Once the claim is submitted, a hearing officer reviews it to ensure eligibility in compliance with Penal Code sections 4900 and 4901. If a deficiency is detected, the hearing officer notifies the claimant and allows 30 days for the claimant to present additional evidence or argument to cure the deficiency. (Cal. Code Regs., tit. 2, § 642.) If cured, the hearing officer deems the claim filed; otherwise, the hearing officer may reject the deficient claim without consideration by the Board. (*Ibid.*) Proposed section 642 clarifies and expands upon this process to reject a deficient claim, including confirmation that extensions of time are available, the Attorney General may weigh in, a rejection is subject to judicial review by writ of mandate, and a rejected claim does not bar submission of a new claim that overcomes the basis for the first claim's rejection.

Generally, once a claim is filed, 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).) The claimant is entitled to a hearing to prove both of these elements, at which the Attorney General may appear and oppose the claim. (Pen. Code, § 4903, subd. (a).) Proposed section 644 clarifies and expands upon the mechanics of such a hearing, including the procedure to request and obtain a continuance, each party's obligation to furnish their own electronic equipment when appearing remotely, and each party's responsibility to secure the attendance of their own witnesses and provide an interpreter if necessary.

A different and expedited process applies to properly filed claims in the following three circumstances. First, under Penal Code section 1485.55 or 851.865, 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 must approve the claim for the claimant's demonstrated injury without a hearing and within 90 days. (Pen. Code, §§ 851.865, 1485.55, subds. (a) & (c), 4902, subd. (a).) Second, under subdivision (b) of Penal Code section 4900, 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 declined to object with clear and convicting evidence of guilt, then CalVCB must approve the claim for the claimant's demonstrated injury without a hearing and within 90 days. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).) Third, as added by SB 78, 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 object with clear and convicting proof of the claimant's guilt, then CalVCB's approval is mandated for the claimant's demonstrated injury without a hearing and within 90 days. (Pen. Code, § 1485.55, subd. (d).) All three of these circumstances are addressed in the updated claim form, which further specifies the documentation needed to approve the claim. (Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024), at pp. 3, 8.)

Even when expedited approval of a claim is mandated, CalVCB is statutorily obligated to determine the extent of injury caused by the claimant's erroneous conviction and incarceration. (Pen. Code, § 4904.) Proposed section 640 defines injury and confirms the claimant's burden to prove it by a preponderance of evidence. Under SB 78, CalVCB may now request additional evidence and argument from the parties as needed to calculate injury for each and every approved claim. (Pen. Code, § 4904.) Accordingly, proposed section 640 deletes outdated language that prohibited a response from the Attorney General when the expedited provisions in Penal Code section 861.865 or 1485.55 applied, adds language consistent with SB 78 that recognizes the expedited provisions may partially apply to one or more convictions within a single claim, and specifies the process for resolving such mixed claims. Corresponding language is added to proposed section 645, which confirms that multiple proposed decisions may be issued in the event of a mixed claim if the claimant declines to waive partial application of the expedited provisions.

Existing language about the generally applicable law for processing these claims is prominently relocated to proposed section 640.1. Also, proposed section 642.1 establishes a new procedure for resolving claims that the claimant either abandoned or wishes to

withdraw. Finally, proposed sections 642, 644, and 645 include nonsubstantive changes to rephrase existing provisions or delete duplicative provisions in order to render the regulations more easily understood, especially by claimants representing themselves.

All of the above proposed amendments to sections 640, 640.1, 642.1, 644, and 645, as well as the modified claim form entitled "Erroneously Convicted Person (ECP) Claim Form, VCB-41-00002 (Rev. 07/2024), were included in CalVCB's Notice of Proposed Rulemaking Action, which was published by the Office of Administrative Law on August 9, 2024 (OAL Notice File #Z2024-0725-01). The ensuing 45-day public comment period concluded on September 23, 2024, without any comments received or hearing requested. There were no other changes to the immediately preceding laws or regulations directly related to this proposed rulemaking action or in its effect.

ERRONEOUSLY CONVICTED PERSON (ECP) CLAIM FORM



VCB-41-00002 (Rev. 07/2024)

California Victim Compensation Board
P.O. Box 350, Sacramento, CA 95812-0350
Email: HearingOfficer@victims.ca.gov

For Official Use Only

The California Victim Compensation Board (CalVCB) processes claims from persons seeking compensation as an erroneously convicted felon pursuant to Penal Code sections 4900, et seq. The attached Informational Sheet describes the requirements for relief and provides an overview of the administrative procedure for deciding these claims. To submit a claim, please carefully review and complete this form, attach all supporting documentation, and return it to CalVCB at the above address by either regular mail or email. A CalVCB representative will contact you once your submission has been received and considered.

Section A. Claimant Information

Claimant's Name: _____ Date of Birth: _____
CDCR Inmate Number: _____ Gender: _____
Email Address: _____ Telephone Number: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____

It is your ongoing duty to provide a current address to CalVCB. (Cal. Code Regs., tit. 2, § 616.2.)

Section B. Attorney/Representative Information (if applicable)

Name of Attorney/Representative: _____
Email Address: _____ Telephone Number: _____
Mailing Address: _____
City: _____ State: _____ Zip: _____
Signature: _____ Date: _____

An attorney or representative is not required in this administrative proceeding. If you are represented, your representative has an ongoing duty to provide a current address to CalVCB. (Cal. Code Regs., tit. 2, § 616.2.)

Section C. Erroneous Conviction(s) Information

1. County of Conviction: _____ Case Number: _____

2. List the criminal offense for all erroneous felony conviction(s) and the prison term imposed for each.
(Attach additional pages as needed.)

Felony: _____ Code Section: _____ Sentence: _____

(Example: Murder, Penal 187, 25 years to life)

Relief is available only for felony convictions for which a term of imprisonment was imposed. (Pen. Code, § 4900.) Relief is not available for misdemeanor convictions, felony charges that did not result in a conviction, or felony convictions for which probation was granted without imposition of any term of imprisonment. (Cal. Code Regs., tit. 2, § 642.)

State prison(s) where sentence was served: _____

3. Complete the following information about the length of your incarceration for the erroneous conviction(s).

Date of Arrest: _____ Date of Conviction: _____

Total Sentence Imposed: _____ Days Actually Served: _____

Date of Release from Imprisonment: _____

Date of Discharge from Parole/Supervision (if applicable): _____

Date of Dismissal or Acquittal of Charges on Retrial (if applicable): _____

Date Pardon Granted (if applicable): _____

Amount of Compensation Requested (calculated at \$140 per day of erroneous incarceration):

\$ _____

You must attach supporting documentation to confirm your conviction, imprisonment, and release from custody for the erroneous offense. (Cal. Code Regs., tit. 2, § 640, subd. (a)(2).) Please note that a claim may not be filed unless and until you have been released from custody. To be timely, the claim must be submitted within 10 years after release, dismissal of charges, judgment of acquittal, or pardon granted, whichever is later. (Pen. Code, § 4901.)

CALIFORNIA VICTIM COMPENSATION BOARD

P.O. Box 350 • Sacramento, CA 95812 • Phone: 800-777-9229 • E-mail: HearingOfficer@victims.ca.gov • www.victims.ca.gov

Section D. Post-Conviction Relief

Answer each of the following questions concerning the erroneous conviction(s):

1. Was it reversed on direct appeal?
 No Yes (*if yes, attach court decision*)
2. Was it vacated due to a change in the law under Penal Code section 1172.6 or former Penal Code section 1170.95?
 No Yes (*if yes, attach court decision*)
3. Was it vacated by a writ of habeas corpus?
 No Yes (*if yes, attach court decision*)
4. Was it vacated pursuant to Penal Code section 1473.6?
 No Yes (*if yes, attach court decision*)
5. Was it vacated pursuant to Penal Code section 1473.7, subdivision (a)(2)?
 No Yes (*if yes, attach court decision*)
6. If vacated or reversed, were you then acquitted at retrial?
 No Yes (*if yes, attach court decision*)
7. If vacated or reversed, were the charges then dismissed pursuant to Penal Code section 1385?
 No Yes (*if yes, attach court decision*)
8. If vacated or reversed, were the charges then dismissed pursuant to Penal Code section 1203.4?
 No Yes (*if yes, attach court decision*)
9. Did a court find you factually innocent under Penal Code section 851.865 or 1485.55?
 No Yes (*if yes, attach court decision*)
10. Did a court grant your motion for approval of a claim for compensation under subdivision (d) of Penal Code section 1485.55?
 No Yes (*if yes, attach court decision*)
11. Did a court deny your motion for approval of a claim for compensation under subdivision (d) of Penal Code section 1485.55?
 No Yes (*if yes, attach court decision*)
12. Did the Governor grant you a pardon?
 No Yes (*if yes, attach pardon*)

Your claim may be rejected for failing to provide a complete answer or attach all necessary documents. (Cal. Code Regs., tit. 2, § 640, subd. (a).) Please note a conviction is not erroneous solely due to a change in the law defining the underlying crime (e.g., Pen. Code, § 1172.6) or dismissal after satisfactory completion of the sentence (e.g., Pen. Code, § 1203.4). (Cal. Code Regs., tit. 2, § 642, subd. (a).)

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Privacy Notice on Collection

1. CalVCB collects this information based on California Penal Code sections 4900 et seq., and California Code of Regulations, title 2, sections 615.1 et seq. and 640 et seq.
2. All proceedings under Penal Code section 4900 are open to the public. Your claim may be listed on CalVCB's website, discussed by the Board during a public meeting, and included in CalVCB's annual report to the Legislature. See victims.ca.gov/legal/pc4900/.
3. All information collected for a Penal Code section 4900 claim is subject to public disclosure pursuant to the Public Records Act. See victims.ca.gov/legal/public-records-requests/.
4. CalVCB may disclose your personal information to another requester, only if required to do so by law or in good faith that such action is necessary to:
 - a. Conform to the edicts of the law or comply with legal process served on CalVCB or the site;
 - b. Protect and defend the rights or property of CalVCB; or,
 - c. Act under exigent circumstances to protect the personal safety of users of CalVCB, or the public.
5. The requested information is collected for the purpose of determining eligibility for compensation under Penal Code section 4900. Individuals are to provide only the information requested.
6. The information provided is voluntary.
7. The consequences of not providing the requested information could delay processing the claim or the claim not being filed or approved.
8. For questions regarding the information collected, please write to the following address: P.O. Box 350, Sacramento, CA 95812-0350, email CustodianOfRecords@victims.ca.gov, call (888) 883-3593, or contact the CalVCB Privacy Coordinator at InfoSecurityAndPrivacy@victims.ca.gov.

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INFORMATIONAL SHEET FOR ECP CLAIM FORM

Overview of Penal Code section 4900

Penal Code section 4900 claims are governed by the statutory provisions in Penal Code sections 4900 through 4906 and the regulatory provisions in Title 2 of the California Code of Regulations, sections 640 through 646 (i.e., Article 5), as well as sections 615.1 through 619.7 (i.e., Article 2.5). Relief under section 4900 is limited to claimants who are innocent of – meaning they did not commit – the felony offense, or offenses, they were convicted of and imprisoned for. (Pen. Code, § 4900, subd. (a).) Compensation will be awarded only if the claim is approved by the Board and sufficient funds are available. Compensation is limited to a set rate of \$140 per day of the claimant’s erroneous imprisonment. (Pen. Code, § 4904.)

Time Limitations

To obtain relief under Penal Code section 4900, the claimant must submit a claim within 10 years after a judgment of acquittal, dismissal of the charges, a pardon being granted, or the claimant’s release from custody, whichever is later. However, the claim cannot be filed until 60 days after a conviction is reversed, habeas petition is granted, or, if a case is pending upon an initial refiling, or until a complaint or information has been dismissed a single time. (Pen. Code, § 4901, subds. (a) & (c).)

Eligibility for Compensation

To be eligible for consideration, the claimant must have been convicted of a felony under California law, for which a prison sentence was imposed, and the claimant must no longer be imprisoned or on parole for that offense. Compensation is barred for claimants who pled guilty to an offense to protect another from prosecution. (Pen. Code, § 4903, subd. (e).)

CaVCB’s Role

CaVCB serves as a neutral adjudicator, similar to a judge or court. **CaVCB does not investigate claims or provide legal advice.** It is the claimant’s responsibility to provide CaVCB with all relevant evidence and argument necessary to approve the claim. The Attorney General may appear as an opposing party and provide relevant evidence and argument to oppose the claim. The parties are expected to familiarize themselves with the applicable law and regulations. The claimant may retain, at their own expense, an attorney or representative of their choosing.

Procedure for Approving a Claim

The process begins with the submission of a completed claim form to CalVCB. A Hearing Officer reviews the claim form to determine whether it complies with Penal Code sections 4900 and 4901, which often takes between 30 and 60 days. Thereafter, the claimant will be notified if any additional information or argument is needed. The claim may be rejected by the Hearing Officer if any identified deficiencies are not timely cured. Otherwise, the claim is filed, and both the claimant and Attorney General will be notified of the next steps, which may include an in-person hearing before the Hearing Officer. Once all evidence and arguments are received, the record closes, and the Hearing Officer will draft a proposed decision to approve or deny the claim. CalVCB's three-member Board makes the final decision whether to approve or deny the claim in a public meeting, after notice to the parties with an opportunity to appear.

Burden of Proof

Generally, the claimant must prove by a preponderance of the evidence that 1) they did not commit the crime they were convicted of and 2) that they were injured by the erroneous conviction. The claimant is entitled to a hearing to prove both innocence and injury, at which the Attorney General may appear. (Pen. Code, § 4903, subd. (a).) There are three limited exceptions that apply only when a court has made certain findings:

- 1. Innocence Finding:** A court found the claimant factually innocent of the erroneous conviction pursuant to Penal Code section 851.865 or 1485.55 based on proof by a preponderance of evidence that the claimant did not commit the crime. If this exception applies, then CalVCB must approve the claim, without a hearing on the issue of innocence, for demonstrated injury within 90 days after the claim is filed. Nevertheless, CalVCB may request additional information from the parties as needed to calculate injury. (Pen. Code, §§ 851.865, 1485.55, subds. (a)-(c) & (g), 4902, subd. (a).)
- 2. PC 4900(b):** A court vacated the conviction by granting a writ of habeas corpus or motion pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), and the charges were dismissed on remand or resulted in acquittal. If this exception applies, then CalVCB must approve the claim for demonstrated injury, unless the Attorney General timely objects with clear and convincing evidence of the claimant's guilt. If the Attorney General declines to object, then CalVCB must approve the claim within 90 days thereafter for demonstrated injury. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4903, subd. (b), 4904.)
 - *Please note this exception only applies to vacated convictions under the specified circumstances. It does not apply, for example, to reversals on direct appeal or dismissals pursuant to Penal Code section 1172.6.*
- 3. PC 1485.55(d):** A court granted the claimant's motion for approval of a claim as an erroneously convicted offender pursuant to Penal Code section 1485.55, subdivision (d). If the motion is granted, then CalVCB must, upon application, approve the claim for demonstrated injury within 90 days. (Pen. Code, §§ 1485.55, subd. (d); 4904.)

To submit a claim, complete the Erroneously Convicted Person Claim Form in its entirety, attach all supporting documentation, and return it to CalVCB either by regular mail addressed to P.O. Box 350, Sacramento, CA 95812-0350, or by email addressed to HearingOfficer@victims.ca.gov. A CalVCB representative will contact you once your submission has been received and considered.

CALIFORNIA VICTIM COMPENSATION BOARD

P.O. Box 350 • Sacramento, CA 95812 • Phone: 800-777-9229 • E-mail: HearingOfficer@victims.ca.gov • www.victims.ca.gov