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6 **BEFORE THE VICTIM COMPENSATION BOARD**  
7 **OF THE STATE OF CALIFORNIA**

8  
9 In the Matter of:

10 **Glenn Payne**

11 Claim No. 24-ECO-62

**Proposed Decision**

**(Penal Code § 4900, subd. (b))**

12 **I. Introduction**

13 On September 23, 2024,<sup>1</sup> Glenn Payne (Payne) submitted an application to the California  
14 Victim Compensation Board (CalVCB) seeking compensation as an erroneously convicted person  
15 pursuant to Penal Code section 4900.<sup>2</sup> The claim is based upon Payne’s 1990 conviction for lewd and  
16 lascivious conduct upon a child under 14 with enhancements for kidnapping for the purpose of  
17 committing sexual assault and infliction of great bodily injury, all of which were vacated and dismissed

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19 <sup>1</sup> Payne initially submitted his application on September 23, 2024; however, some of the supporting  
20 documents were not attached due to the size of the file. Payne later submitted a complete application  
with all of the required supporting documents on October 2, 2024.

21 <sup>2</sup> Payne Application (App.) at pp. 1-302. The pagination refers to the continuous page numbers for the  
22 entire 302-page PDF file submitted on October 2, 2024, including the Erroneously Convicted Person  
Claim Form (App. at pp. 1-7); Memorandum in Support of Claim for Compensation for Wrongful  
23 Conviction and Statement of Facts Constituting Claim (App. at pp. 8-33); Abstract of Judgment from the  
January 23, 1991, sentencing hearing (App. at pp. 34-35); Criminal History Summary (App. at pp. 36-  
24 42); Order Granting Motion to Vacate Conviction Pursuant to Penal Code Sections 1473.7, 1473 (App.  
at pp. 43-44); Minute Order from the January 26, 2018, hearing (App. at pp. 46-48); reporter’s transcript  
25 from January 26, 2018, hearing (App. at pp. 49-55); District Attorney’s Response (App. at pp. 56-64);  
Declaration of James E. Crawford-Jakubiak, M.D. in Support of Defendant Glenn Payne’s Motion to  
26 Vacate (App. at pp. 65-75); Motion to Vacate Conviction (App. at pp. 76-104); Declaration of Catherine  
Boyle (App. at pp. 141-162); Forensic Report dated November 6, 1990 (App. at pp. 163-170); excerpt  
27 from “Jeopardy in the Courtroom” (App. at pp. 171-174); excerpt from “The Suggestibility of Children’s  
Memory” (App. at pp. 175-198); and Report on the Kern County Child Abuse Investigation, dated  
28 September 1986 (App. at pp. 199-302).

1 on January 26, 2018.<sup>3</sup> Payne requests compensation in the amount of \$765,380 for having been  
2 confined a total of 5,467 days for this conviction. He further requests \$102,340 for 1,462 days on  
3 parole. Payne is represented by Linda Starr and Catherine Boyle of the Northern California Innocence  
4 Project (NCIP).

5 The Attorney General is represented by Deputy Attorney General Caitlin Duprey. By letter  
6 dated December 19, 2024, the Attorney General declined to object to Payne's innocence claim, but  
7 calculated Payne's incarceration as 5,463 days, as opposed to 5,467 days, and refuted his request for  
8 compensation for his time spent on parole, arguing that the law presently does not authorize payment  
9 for time spent on supervised release or parole. However, a few days later, on December 23, 2024, the  
10 Attorney General submitted a revised response, indicating that they agree with Payne's calculation for  
11 days of imprisonment (e.g., 5,467), but continued to maintain that Payne is not entitled to  
12 compensation for his time spent on parole. The administrative record closed on December 30, 2024,  
13 and the matter was assigned to CalVCB Senior Attorney Kristen Sellers. As required by subdivision (b)  
14 of Penal Code section 4900, the CalVCB is mandated to approve payment to Payne in the amount of  
15 \$765,380 if sufficient funds are available, upon appropriation by the Legislature, as indemnification for  
16 the demonstrated injury sustained by his 5,467 days imprisonment solely as a result of his vacated  
17 conviction.

## 18 **II. Procedural History**

### 19 **A. Payne's Original Convictions**

20 On April 27, 1990, Payne was arrested for and subsequently convicted of lewd and lascivious  
21 conduct upon a child under 14 with enhancements for kidnapping for the purpose of committing sexual  
22 assault and inflicting great bodily injury in Santa Clara County Superior Court case number 139129.<sup>4</sup>  
23 On January 23, 1991, the superior court sentenced Payne to an aggregate term of 27 years in state  
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27 <sup>3</sup> Pen. Code, §§ 288, subd. (b), 667.8, subd. (b), and 12022.8.

28 <sup>4</sup> App. at p. 35.

1 prison.<sup>5</sup> He was ultimately released from custody on April 14, 2005, after serving 14 years and 11  
2 months (e.g., 5,467 days) in prison. He remained on parole until April 14, 2009.<sup>6</sup>

3 **B. Payne’s Initial Attempts at Post-Conviction Relief were Unsuccessful**

4 On June 8, 1992, the California Court of Appeal, Sixth Appellate District, affirmed Payne’s  
5 conviction.<sup>7</sup> On August 19, 1992, the California Supreme Court denied his petition for review.<sup>8</sup>

6 On October 19, 1992, Payne filed a Petition for Writ of Habeas Corpus in the United States  
7 District Court for the Northern District of California pursuant to 28 U.S.C. § 2254, alleging that his Sixth  
8 and Fourteenth Amendment rights under the United States Constitution were violated when the trial  
9 court did not grant a mistrial after the victim’s testimony was stricken and because the conviction was  
10 based on improperly admitted hearsay statements.<sup>9</sup> On October 3, 1994, the District Court denied the  
11 petition.<sup>10</sup>

12 Payne subsequently appealed to the United States Court of Appeals for the Ninth Circuit,  
13 asserting in part that his conviction was in violation of the Due Process and Confrontation Clauses of  
14 the United States Constitution.<sup>11</sup> On September 11, 1995, the United States Court of Appeals rejected  
15 these contentions and affirmed the conviction.<sup>12</sup>

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19 <sup>5</sup> App. at p. 35.

20 <sup>6</sup> App. at p. 40.

21 <sup>7</sup> *People v. Payne* (June 8, 1992, H008058) [nonpub.opn.]; see also Cal. Code Regs., tit. 2, § 617.8,  
22 subd. (b) [CalVCB has authority to take official notice of documents listed in Evidence Code section  
452]; Evid. Code § 452, subd. (d) [authorizing judicial notice of court records].)

23 <sup>8</sup> Cal. Supreme Court Case No. S027666; see also Cal. Code Regs., tit. 2, § 617.8, subd. (b) [CalVCB  
24 has authority to take official notice of documents listed in Evidence Code section 452]; Evid. Code §  
452, subd. (d) [authorizing judicial notice of court records].)

25 <sup>9</sup> App. at p. 86.

26 <sup>10</sup> *Payne v. Borg* (October 3, 1994, C92-20669 JW) [nonpub.opn.]; see also Cal. Code Regs., tit. 2, §  
27 617.8, subd. (b) [CalVCB has authority to take official notice of documents listed in Evidence Code  
section 452]; Evid. Code § 452, subd. (d) [authorizing judicial notice of court records].)

28 <sup>11</sup> App. at p. 86.

<sup>12</sup> *Id.*

1                   **C. Payne’s Motion to Vacate Conviction was Granted**

2                   On August 24, 2017, with the assistance of the NCIP, Payne moved to vacate his conviction in  
3 case number 139129 based upon newly discovered evidence of actual innocence pursuant to Penal  
4 Code section 1473.7, subdivision (a)(2). The proffered new evidence included: (1) a declaration signed  
5 by Criminalist Mark Moriyama and Crime Laboratory Director Ian Fitch; (2) an FBI article entitled,  
6 “Forensic Hair Comparison: Background Information for Interpretation, dated April 2009; (3) an FBI  
7 article entitled, “FBI Testimony on Microscopic Hair Analysis Contained Errors in at Least 90 Percent  
8 of Cases in Ongoing Review,” dated April 20, 2015; and (4) a declaration signed by NCIP Executive  
9 Director, and Payne’s counsel, Linda Starr.<sup>13</sup>

10                   The prosecution conceded the motion should be granted after reviewing Payne’s motion to  
11 vacate and accompanying exhibits, the District Attorney’s case file, the relevant statutory and case  
12 law, and the facts of the case.<sup>14</sup> The District Attorney emphasized that the original forensic testimony is  
13 now repudiated, and “subsequent changes to the scientific understanding of microscopic hair analysis  
14 are credible, material, presented without substantial delay, and of such decisive force and value that  
15 they would have more likely than not changed the outcome at trial.”<sup>15</sup>

16                   On January 26, 2018, the superior court granted the motion to vacate all of Payne’s convictions  
17 in Santa Clara County Superior Court case number 139129. The court further ordered that Payne was  
18 no longer required to register as a sex offender and his name be removed from the database for  
19 registered sex offenders.<sup>16</sup> Immediately thereafter, all charges were dismissed on the prosecution’s  
20 motion.<sup>17</sup>

21                   **D. Payne’s Erroneously Convicted Person Claim**

22                   On September 23, 2024, Payne submitted an Erroneously Convicted Person Claim Form  
23 requesting compensation in the amount of \$867,720, which included \$140 per day for each of the  
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25 <sup>13</sup> App. at pp. 77-140.

26 <sup>14</sup> App. at p. 16.

27 <sup>15</sup> App. at p. 58.

28 <sup>16</sup> App. at pp. 44-45.

<sup>17</sup> App. at p. 54.

1 5,467 days Payne alleged he was imprisoned (e.g., from April 27, 1990, the date of his arrest, through  
2 and including the date of his release, April 14, 2005) for his erroneous conviction (e.g., \$765,380) and  
3 \$70 per day for 1,462 days served on parole (e.g., \$102,340) following his release.<sup>18</sup>

4 On October 2, 2024, Payne's claim was deemed filed, and the CalVCB requested the Attorney  
5 General's Office provide a response within 45 days pursuant to subdivision (d) of Penal Code section  
6 4902. On December 19, 2024, the Attorney General provided a response declining to object to  
7 Payne's innocence, but calculating compensation for his time spent incarcerated as \$764,820 for  
8 5,463 days imprisonment. The Attorney General also challenged Payne's request for \$102,340 in  
9 compensation for time spent on parole, arguing that the law does not presently authorize  
10 compensation for days served on parole. On December 23, 2024, the Attorney General submitted a  
11 revised response, stipulating that Payne was incarcerated for 5,467 days, which includes the date of  
12 his arrest through and including the date of his release (e.g., April 27, 1990, through and including April  
13 14, 2005) for a total of \$765,380 in compensation as indemnification sustained through his erroneous  
14 incarceration.

15 The administrative record closed on December 30, 2024.

### 16 **III. Statement of Facts**

#### 17 **A. The Crime**

18 On April 26, 1990, two-year old Sabrina fell asleep on the couch in the living room. Her mother  
19 wrapped her in a pink tablecloth and went to bed. The next morning, Sabrina was discovered missing,  
20 and a clothing hamper was found outside a bedroom window with a hole in the top, as if someone  
21 stood on it.<sup>19</sup> Sabrina's mother called the police, and a search ensued.

22 Meanwhile, at about the same time Sabina was discovered missing, a neighbor who lived a  
23 block away, found Sabrina lying on the sidewalk.<sup>20</sup> She was cold, dirty, and not moving.<sup>21</sup> Sabrina's  
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25 <sup>18</sup> App. at p. 3.

26 <sup>19</sup> App. at pp. 58-59.

27 <sup>20</sup> *Payne v. Borg* (October 3, 1994, C92-20669 JW) [nonpub.opn.].

28 <sup>21</sup> *Id.*

1 clothing was ripped, torn in the leg/crotch area and had a dark brown spot on it.<sup>22</sup> She was covered in  
2 grass, leaves, and feces.<sup>23</sup> Upon arrival, the responding officer asked Sabrina what happened, and  
3 she responded that a Black man with long curly hair, wearing a black long-sleeved shirt and black  
4 pants hurt her.<sup>24</sup> A short time later, the responding officer brought Sabrina home. While there, Sabrina  
5 again told the officer that a Black man in black clothing hurt her. Sabrina appeared to be in shock and  
6 was nodding “yes” to most of the questions.<sup>25</sup> Sabrina also stated that there was a black car with  
7 “white insides,” or a black and white car involved in her abduction.<sup>26</sup> Payne did not own a car.

8 At approximately 10:00 a.m. Sabrina’s mother took her to the hospital. While there, Sabrina  
9 told the officer, her mother, and the doctor that she had been hurt by a Black man who lived next door  
10 and that he wore a hat. She further stated that the man was “Tunisha’s uncle.” As she said these  
11 things, Sabrina appeared to be tired, withdrawn and distraught. Sabrina’s mother confirmed that  
12 “Tunisha’s uncle” lived at a neighbor’s house and had been to their home before.<sup>27</sup>

13 Based on Sabrina’s statements, the officer went to Payne’s house and arrested him. He was  
14 asked to undress over a large sheet of clean paper designed to catch any hair or other biological  
15 evidence that might fall from his person.<sup>28</sup> A long brown hair was recovered from the paper and a  
16 criminalist ultimately concluded that this hair could have come from Sabrina.<sup>29</sup>

17 The next day, Sabrina’s grandparents searched the area where she had been found. On a hill  
18 in a vacant field located opposite the neighbor’s house where Sabrina was discovered, they found  
19 Sabrina’s missing underwear and the pink tablecloth her mother had wrapped her in on the night of  
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22 <sup>22</sup> App. at p. 59.

23 <sup>23</sup> *Id.*

24 <sup>24</sup> *Payne v. Borg* (October 3, 1994, C92-20669 JW) [nonpub.opn.].

25 <sup>25</sup> *Id.*

26 <sup>26</sup> *Id.*

27 <sup>27</sup> App. at p. 59.

28 <sup>28</sup> *Id.*

29 <sup>29</sup> App. at p. 60.

1 the crime.<sup>30</sup> An examination of the pink tablecloth by the same criminalist found another hair that he  
2 determined could have come from Payne.<sup>31</sup>

### 3 **B. Evidence Presented at Trial Resulting in Payne’s Conviction**

#### 4 1. Sabrina’s Testimony

5 At trial, Sabrina, now three years old, testified four times over a two-day period. The testimony  
6 she gave in court was substantially similar to her out-of-court statements which had been admitted as  
7 spontaneous statements.<sup>32</sup> Sabrina identified her attacker as a Black man who lived across the  
8 street.<sup>33</sup> However, she was unable to remember at trial what the perpetrator had been wearing at the  
9 time of her abduction.<sup>34</sup> She also pointed out Payne three times in court as the man who had hurt  
10 her.<sup>35</sup> She identified him on one occasion as “the baddie man,” and later testified that “the baddie  
11 man” took her outside, ripped her clothes, and hurt her.<sup>36</sup> At the end of her direct testimony, however,  
12 she refused to be cross-examined.<sup>37</sup>

13 Rather than declare a mistrial, the trial court instructed the jury to simply disregard Sabrina’s  
14 testimony.<sup>38</sup>

#### 15 2. Hair Analysis Expert Testimony

16 The prosecution presented evidence at trial through an expert, Criminalist Mark Moriyama,  
17 that the hair found on Payne’s body on the night of the crime had a 1 in 2,700 chance of coming from  
18 someone other than Sabrina.<sup>39</sup> He also testified that the hair found on the pink tablecloth had come  
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21 <sup>30</sup> App. at p. 60.

22 <sup>31</sup> *Id.*

23 <sup>32</sup> *Payne v. Borg* (October 3, 1994, C92-20669 JW) [nonpub.opn.].

24 <sup>33</sup> *Id.*

25 <sup>34</sup> *Id.*

26 <sup>35</sup> *Id.*

27 <sup>36</sup> *Id.*

28 <sup>37</sup> *Id.*

<sup>38</sup> App. at p. 60.

<sup>39</sup> App. at p. 88.

1 from a Black person and that it had a 1 in 48 chance of coming from someone other than Payne.<sup>40</sup> He  
2 testified that the chances of the two hairs being present as a purely random occurrence would be  
3 calculated by multiplying 1 in 2,700 by 1 in 48.<sup>41</sup> In other words, his forensic testimony made it appear  
4 that it was virtually impossible for the two hairs to have come from anyone but Payne and Sabrina.<sup>42</sup>

5 He found no other physical evidence linking Payne to the crime.<sup>43</sup> There were no seminal  
6 fluids on the vaginal or rectal swabs taken from Sabrina, there were no foreign hairs on Sabrina's  
7 exam sheet, no blood or hair on Payne's clothes, and no blood or tissue from Sabrina's fingernail  
8 scrapings.<sup>44</sup>

### 9 **C. Evidence Related to the Order Vacating Payne's Conviction**

10 In 2002, while in custody, Payne reached out to NCIP seeking assistance with obtaining post-  
11 conviction DNA testing to challenge his conviction.<sup>45</sup> NCIP conducted a thorough search for the  
12 evidence in Payne's case to conduct a DNA test; however, in 2004, NCIP learned that a court order  
13 had been issued to have the evidence destroyed.<sup>46</sup> In 2006, NCIP enlisted the help of Deputy District  
14 Attorney David Angel, who confirmed the evidence had in fact been destroyed.<sup>47</sup>

15 Payne was released from prison on April 14, 2005, and no longer had standing to challenge the  
16 conviction under Penal Code section 1473.<sup>48</sup> As a result, in 2008, NCIP closed Payne's case.<sup>49</sup>

17 In 2013, the Federal Bureau of Investigation (FBI), the Department of Justice, the National  
18 Association of Criminal Defense Lawyers, and the Innocence Project launched an investigation into  
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21 <sup>40</sup> App. at p. 88.

22 <sup>41</sup> *Id.*

23 <sup>42</sup> App. at p. 61.

24 <sup>43</sup> App. at p. 88.

25 <sup>44</sup> App. at pp. 88-89.

26 <sup>45</sup> App. at p. 137.

27 <sup>46</sup> *Id.*

28 <sup>47</sup> *Id.*

<sup>48</sup> App. at p. 138.

<sup>49</sup> *Id.*



1 past cases in which FBI examiners offered microscopic hair comparison testimony.<sup>50</sup> In April 2015, the  
2 investigation revealed that examiners provided erroneous testimony in at least 90 percent of cases.<sup>51</sup>  
3 In 2016, the FBI contacted state governors to inform them of the FBI investigation and request their  
4 assistance in obtaining more information from state and local prosecutors.<sup>52</sup> The FBI also asked that  
5 the governors review state lab protocols for criminalists testifying in court about hair comparisons and  
6 any cases in which the analyst attended an FBI hair comparison training.<sup>53</sup> The FBI further requested  
7 that the governors ask those prosecutors who had not yet replied to the FBI request to submit the  
8 requested documentation, if available.<sup>54</sup>

9 In 2016, NCIP, as part of a coalition with the California Innocence Project, the Loyola Project  
10 for the Innocent, and the private firm of Morrison & Foerster, began its own review of the California  
11 cases in which microscopic hair comparison contributed to convictions.<sup>55</sup> The coalition identified  
12 Payne's case as including microscopic hair comparison evidence.<sup>56</sup> In the course of NCIP's  
13 investigation, they reviewed the trial transcripts and determined that Criminalist Mark Moriyama's  
14 testimony at trial concerning microscopic hair comparison contained the type of errors that the FBI  
15 review had targeted and was contrary to the current understanding of the scientific field.<sup>57</sup>

16 Payne filed his Motion to Vacate Conviction on January 19, 2018. In support of his motion,  
17 Payne submitted a declaration signed by Criminalist Mark Moriyama and Crime Laboratory Director  
18 Ian Fitch, explaining that the use of statistics to give weight to an expert witness' opinion is  
19 inappropriate.<sup>58</sup> More importantly, Criminalist Mark Moriyama repudiated the portion of his trial  
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21 <sup>50</sup> App. at p. 138.

22 <sup>51</sup> App. at pp. 129-134, 138.

23 <sup>52</sup> App. at p. 138.

24 <sup>53</sup> *Id.*

25 <sup>54</sup> *Id.*

26 <sup>55</sup> *Id.*

27 <sup>56</sup> *Id.*

28 <sup>57</sup> App. at p. 139.

<sup>58</sup> App. at p. 108.

1 testimony related to the statistical weight of the comparisons, indicating that he no longer believes that  
2 the uses of statistical weight are scientifically valid.<sup>59</sup> Rather, the scientific expert testimony he would  
3 render now “would be different and limited to stating that the hair sample found on [Payne] could have  
4 come from [Sabrina], and the hair sample found on the table cloth used to cover [Sabrina] could have  
5 come from [Payne].”<sup>60</sup> In other words, he would not have used statistics to give weight to his  
6 conclusion.<sup>61</sup>

7 The District Attorney filed a response to Payne’s motion stipulating that Payne is entitled to the  
8 relief sought in his motion. At the January 26, 2018, hearing, the District Attorney conceded that aside  
9 from hearsay statements, the “faulty forensic evidence used at trial,” was the only evidence identifying  
10 Payne as the perpetrator.<sup>62</sup> The District Attorney went on to acknowledge that, “[t]he forensic  
11 evidence shows that the hair found on [Payne] could have come from [Sabrina], and the hair on the  
12 pink table cloth could have come from [Payne],” but then admitted “there are simply no statistics or  
13 probabilities that could attach to this observation.”<sup>63</sup>

#### 14 **IV. Determination of Issues**

15 Penal Code section 4900 allows a person, who has been erroneously convicted and  
16 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to the  
17 CalVCB.<sup>64</sup> Typically, claimants bear the burden to prove by a preponderance that (1) the crime with  
18 which they were convicted either did not occur or was not committed by them and (2) they suffered  
19 injury as a result of their erroneous conviction.<sup>65</sup> If the claimant satisfies their burden for both  
20 elements, then the CalVCB shall approve payment for the purpose of indemnifying the claimant for  
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23 <sup>59</sup> App. at p. 109.

24 <sup>60</sup> *Id.*

25 <sup>61</sup> App. at p. 108.

26 <sup>62</sup> App. at p. 62.

27 <sup>63</sup> *Id.*

28 <sup>64</sup> Pen. Code, § 4900, subd. (a).

<sup>65</sup> Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

1 the injury if sufficient funds are available, upon appropriation by the Legislature.<sup>66</sup> Payment is  
2 calculated at the rate of \$140 per day of imprisonment that resulted solely from the erroneous  
3 conviction.<sup>67</sup>

4 Under subdivision (b) of Penal Code section 4900, the CalVCB is statutorily required to  
5 approve compensation for certain claimants, even if the claimant does not prove, by a preponderance  
6 of evidence, that they did not commit the crime for which they were convicted.<sup>68</sup> Specifically,  
7 subdivision (b) compels approval of the claim for compensation, without a hearing and within 90 days,  
8 when the following three elements are met. First, the claimant's conviction must have been vacated  
9 either by a writ of habeas corpus or pursuant to Penal Code section 1473.6 or 1473.7, subdivision  
10 (a)(2). Second, the charges underlying the vacated conviction must have been dismissed on remand,  
11 or the claimant must have been acquitted upon retrial. Third, the Attorney General must decline to  
12 object to the application in this administrative proceeding.<sup>69</sup> If all three of these elements are satisfied,  
13 and the CalVCB finds that the claimant sustained injury through their erroneous conviction, then the  
14 CalVCB shall approve payment for the purpose of indemnifying the claimant for the injury if sufficient  
15 funds are available, upon appropriation by the Legislature.<sup>70</sup> The CalVCB's approval of the claim is  
16 statutorily required, regardless of whether or not the record proves the claimant is more likely innocent  
17 than guilty.

18 If the Attorney General objects, they must do so in writing within 45 days from when the  
19 claimant files the claim, and with clear and convincing evidence that the claimant is not entitled to  
20 compensation. Only a single extension of time for 45 days is allowed for good cause. The Attorney  
21 General bears the burden to prove, by clear and convincing evidence, that the claimant committed the  
22 acts constituting the offense.<sup>71</sup> To meet that burden, the Attorney General may not rely solely on the

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24 <sup>66</sup> Pen. Code, § 4904.

25 <sup>67</sup> Pen. Code, § 4904.

26 <sup>68</sup> Pen. Code, § 4900, subd. (b).

27 <sup>69</sup> Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

27 <sup>70</sup> Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

28 <sup>71</sup> Pen. Code, § 4902, subd. (d).

1 trial record for the vacated conviction to establish that the claimant is not entitled to compensation.<sup>72</sup> If  
2 the Attorney General fails to meet this burden following a hearing on the claim, then the CalVCB shall  
3 approve payment to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient  
4 funds are available upon appropriation by the Legislature.<sup>73</sup>

5 **A. Innocence**

6 Here, Payne’s claim falls within the mandatory approval provision of subdivision (b) of Penal  
7 Code section 4900, as all three of the required elements are met. First, Payne’s 1990 conviction for  
8 lewd and lascivious conduct upon a child under 14, with enhancements, in Santa Clara County  
9 Superior Court case number 139129 was vacated pursuant to Penal Code section 1473.7, subdivision  
10 (a)(2), which authorizes the court to vacate a conviction based on “newly discovered evidence of  
11 actual innocence.”<sup>74</sup> Second, all charges against Payne in that case were dismissed. Third, the  
12 Attorney General declined to object in this administrative proceeding. Consequently, the CalVCB is  
13 required to approve compensation for the injury sustained by Payne if sufficient funds are available,  
14 upon appropriation by the Legislature.<sup>75</sup> No finding is made as to the weight of evidence offered in  
15 support of Payne’s claim regarding innocence.

16 **B. Injury**

17 Penal Code sections 4900, et seq. authorize compensation “for the purpose of indemnifying the  
18 claimant for the injury” sustained “through their erroneous conviction and imprisonment....”<sup>76</sup> The term  
19 “injury” refers to “whatever harm is suffered by a person who is wrongly imprisoned....”<sup>77</sup> Injury “may  
20 be established by showing that, but for the erroneous conviction, the claimant would not have been in  
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24 <sup>72</sup> Pen. Code, § 4903, subd. (d).

25 <sup>73</sup> Pen. Code, §§ 4903, subd. (d), 4904.

26 <sup>74</sup> Payne also alleges his conviction was vacated based on “false evidence” under Penal Code section  
27 1473, subdivision (e).

28 <sup>75</sup> Pen. Code, §§ 4900, subd. (b), 4904.

<sup>76</sup> Pen. Code, § 4904.

<sup>77</sup> Senate Floor Analysis of Sen. Bill No. 635 (2015-2016), as amended Sept. 3, 2015, at pp. 4-5.

1 custody.<sup>78</sup> Upon such a showing, Penal Code section 4904 authorizes compensation in the amount of  
2 “one hundred forty dollars (\$140) per day of incarceration served and shall include any time spent in  
3 custody, including a county jail, that is considered to be part of the term of incarceration.”<sup>79</sup>

4 In 2022, Penal Code section 4904 was conditionally amended to also allow for compensation in  
5 the amount of \$70 for each day spent on supervised release, effective July 1, 2024, if certain  
6 budgetary conditions were met.<sup>80</sup> However, as was recently confirmed in the May Revise Budget for  
7 2024-2025, the conditions required for enactment of this amendment have not been met, and the law,  
8 therefore, does not presently authorize payment for time served on supervised release or parole.<sup>81</sup>  
9 Consequently, Payne’s request for compensation in the amount of \$102,340, e.g., \$70 for each of the  
10 1,462 days he served on parole, must be denied.

11 On December 23, 2024, counsel for Payne and the Attorney General stipulated that Payne was  
12 imprisoned for his erroneous conviction in Santa Clara County Superior Court case number 139129 for  
13 5,467 days. This includes the day of Payne’s arrest, April 27, 1990, through and including the day of  
14 his release from prison on April 14, 2005. Given the statutory rate of \$140 per day, the CalVCB agrees  
15 with the parties that Payne is entitled to indemnification for his erroneous conviction in the amount of  
16 \$765,380, e.g., \$140 per day for 5,467 days of imprisonment, if sufficient funds are available upon  
17 appropriation by the Legislature.<sup>82</sup>

## 18 V. Conclusion

19 As mandated by subdivision (b) of Penal Code section 4900, the undersigned hearing officer  
20 recommends that the CalVCB grant Payne’s claim and approve payment to Payne in the amount of

21 \_\_\_\_\_  
22 <sup>78</sup> Cal. Code of Regs., tit. 2, § 640, subd. (f).

23 <sup>79</sup> Pen. Code, § 4904.

24 <sup>80</sup> Pen. Code, § 4904, subd. (b)(1), as amended by Stats.2022, c. 771 (A.B. 160), § 21, subject to  
25 appropriation; see also proposed Pen. Code, § 4904, subd. (d), operative July 1, 2024, subject to  
26 appropriation, as added by Stats.2022, c. 771 (A.B. 160), § 21.

27 <sup>81</sup> Governor’s May Revision (2024-25), Introduction at pp. 9-10 (expressly excludes triggered  
28 expenditures from 2022 for the Victim Compensation Program from 2024-2025 budget due to “the  
negative multiyear projections” of the General Fund), available online at [https://ebudget.ca.gov/2024-  
25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf](https://ebudget.ca.gov/2024-25/pdf/Revised/BudgetSummary/FullBudgetSummary.pdf).

<sup>82</sup> Pen. Code, § 4904, subd. (a).

1 \$765,380 if sufficient funds are available, upon appropriation by the Legislature, as indemnification for  
2 the injury sustained by his 5,467 days of imprisonment solely as a result of his vacated conviction.

3  
4 Date: February 10, 2025

*Kristen Sellers*

\_\_\_\_\_  
Kristen Sellers  
Hearing Officer  
California Victim Compensation Board