BEFORE THE VICTIM COMPENSATION BOARD

OF THE STATE OF CALIFORNIA

In the Matter of: **Richard Douglas Casity** Claim No. 25-ECO-32	**Proposed Decision** **Penal Code § 4900, subd. (a)**

I. Introduction

On June 30, 2025, Richard Casity submitted a claim to the California Victim Compensation Board (CalVCB) seeking compensation as an erroneously convicted person under Penal Code Section 4900, which was supplemented on August 11, 2025, and October 20, 2025. The claim is based upon Casity's 2022 conviction for stalking in Amador County Superior Court case number 22CR31815, which was reversed on appeal. Casity does not challenge his related, and still valid, convictions for stalking in violation of a court order and criminal threats. Casity was originally sentenced to four years and four months in prison, but after the appellate court's reversal, he was resentenced to three years and eight months. Casity seeks compensation in the amount of $33,600 for having allegedly served 240 additional days of imprisonment for his reversed stalking conviction, plus an additional $33,600 for unspecified "monetary damages."[1] Casity is representing himself in this administrative proceeding.

The Attorney General, represented by Deputy Attorney General Jeffrey Firestone, opposed the claim on February 12, 2026. According to the Attorney General, a preponderance of the evidence fails to demonstrate Casity's innocence of stalking. In the alternative, the Attorney General argues that

[1] Claimant's Clarification, October 17, 2025, p. 3.

Casity cannot demonstrate any injury because he was never solely incarcerated based upon the reversed stalking conviction.

The claim was assigned to CalVCB Senior Attorney Keri Klein. A hearing took place on July 8, 2026, at which both parties appeared, and the record closed. After considering all the evidence in the record, the claim is recommended for denial. Overall, the proffered exculpatory evidence fails to satisfy Casity's burden under subdivision (a) of Penal Code section 4900 to show that he is more likely innocent than guilty of his vacated conviction for stalking.

II. Procedural Background

A. Trial Proceedings

Casity was arrested on November 11, 2021, and charged in Amador County Superior Court case number 22CR31815 with stalking between the dates of November 11, 2021, and May 3, 2022 (count 1), stalking in violation of a court order between the dates of June 4, 2022, and July 10, 2022 (count 2), disobeying a domestic relations court order (count 3) and criminal threats (count 4).[2] In October 2022, a jury found him guilty of all four counts, and further found that the crimes involved great violence, threat of great bodily harm or other acts disclosing a high degree of cruelty, viciousness, or callousness.[3]

In November 2022, Casity was sentenced to an aggregate term of four years and four months in state prison with execution of the sentence suspended. He was placed on probation for four years.[4] By then, Casity had served 134 actual days of presentence custody.[5] However, Casity violated his probation the following month, and the suspended term was executed on December 22, 2022.[6] Casity returned to custody that same day to serve the remainder of his prison sentence.

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[2] Pen. Code, §§ 646.9, subd. (a) (stalking); 646.9, subd. (b) (stalking in violation of a court order); 273.6 (disobeying a domestic violence restraining order); 422 (criminal threats); Attorney General's Response Letter (AGRL), February 12, 2026, p. 2; AGRL Ex. 1, p. 4.

[3] AGRL p. 2.

[4] Casity Application (APP), pp. 3-4; AGRL, p. 2.

[5] AGRL Ex. 1 at p. 5.

[6] AGRL p. 2; Ex 1 at p. 4.

B. Appellate Proceedings

Casity appealed his convictions to the Court of Appeal, Third District. He alleged that one of his two stalking convictions (i.e., counts 1 and 2) must be reversed because the underlying harassment was continuous, and therefore, amounted to a single crime, not two. The prosecution disagreed, insisting that the evidence supported the commission of two distinct crimes.

In an unpublished decision filed July 17, 2024, the Court of Appeal agreed with Casity. As the appellate court explained, the undisputed "facts thus reflect a single, uninterrupted course of conduct spanning from November 2021 through July 2022," all motivated by the same objective and purpose, even if the harassing behavior stopped and restarted during that period of time.[7] Accordingly, the court reversed Casity's conviction on count 1 for stalking between November 2021, and May 2022, while leaving intact his related conviction on count 2 for stalking in violation of a court order between June 2022, and July 2022.

Casity's appeal further claimed that the conduct underlying his conviction in count 3 for disobeying a domestic violence court order was part of the same conduct underlying his conviction in count 2, and therefore, his sentence for count 3 must be stayed to avoid impermissible double punishment.[8] Following the prosecution's concession, the court agreed and remanded the case for a full resentencing on the remaining counts 2 through 4.[9]

C. Re-Sentencing

On August 28, 2024, Casity was resentenced by the Amador County Superior Court. He received a sentence of three years in state prison on count 2 for stalking in violation of a court order

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[7] Ex. 2 at p. 14.

[8] An act or omission that is punishable in different ways by different provisions of law may be punished under either of such provisions, but in no case shall the act or omission be punished under more than one provision. An acquittal or conviction and sentence under any one bars a prosecution for the same act or omission under any other. (Pen. Code, § 654, subd. (a).)

[9] Ex. 2 at pp. 7-15; see also *People v. Casity*, California Court of Appeal, Third District, case number C097719, unpublished decision filed July 17, 2024, available on Westlaw at 2024 WL 3434829 at p. 5; see also Cal. Code Regs., tit. 2, § 617.8 (official notice).

and a consecutive eight months on count 4 for criminal threats, with no sentence imposed for count 3. His aggregate sentence amounted to three years and eight months, totaling 1,335 days.[10]

D. Release from Custody

Prior to his resentencing, Casity had been released on parole on April 15, 2024. At the time of his release, Casity had been confined for a total of 615 days. This calculation includes 134 days in county jail prior to his conviction, plus an additional 481 days from the date his probation was revoked on December 22, 2022, to and including the date of his release from prison on April 15, 2024.[11]

E. CalVCB Proceedings

On June 30, 2025, CalVCB received Casity's claim seeking compensation as an erroneously convicted person under Penal Code Section 4900.[12] The claim was submitted by Casity on his own behalf without representation. The claim seemingly challenged three of Casity's related convictions for stalking (counts 1 and 2), and criminal threats (count 4) in case number 22CR31815. The claim alleged that one stalking conviction (i.e., count 1) had been vacated, and attached the resentencing minute order as support. The claim further alleged, without documentary support, that a court had issued a finding of factual innocence, and that a writ of habeas corpus had been granted. The claim requested compensation in the amount of $39,200 for allegedly serving an additional 240 days in prison for count 1, beyond the sentence imposed upon remand for the remaining counts 2 and 4. Casity signed the claim form under penalty of perjury to affirm the truth of its contents.

By letter sent July 10, 2025, the CalVCB hearing officer notified Casity that the claim appeared to be deficient for several reasons. The identified deficiencies included the absence of a statement of factual innocence for all three of the challenged convictions and the failure to raise a valid basis for relief to the extent his claim was based upon an alleged sentencing error.[13] The letter also enclosed a copy of the appellate court's decision and explained that the reversal of his stalking conviction for count

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[10] AGRL at p. 7; Ex. 4 at pp. 19-20.

[11] AGRL at pp. 4-5; Ex. 5 at p. 22. This calculation was confirmed using the online calculator available at https://www.timeanddate.com/date/duration.html.

[12] APP at pp. 1-12.

[13] Cal. Code Regs., tit. 2, §§ 640, subd. (a)(1); 642, subd. (a).

1 did not amount to a court finding of factual innocence. Casity was given an opportunity to cure the deficiencies.[14]

On August 11, 2026, Casity timely responded to the deficiency notice. His response returned CalVCB's letter with various portions highlighted and underlined and attached the appellate court decision. His response also included a duplicate of the resentencing minute order with additional court records, none of which found Casity to be factually innocent.[15] While Casity's response seemingly adopted the legal reasoning in the appellate court's decision as his statement of factual innocence for his vacated stalking conviction in count 1, he did not provide a statement of factual innocence for his remaining convictions in counts 2 and 4.[16] Thus, Casity did not deny committing any of the conduct underlying his convictions but seemingly alleged, instead, that the conduct did not amount to the crime of stalking as a matter of law.

By letter dated September 19, 2025, the hearing officer requested clarification of the claim. Considering the appellate court's legal reasoning, and the amount of compensation requested, it appeared the claim solely challenged Casity's reversed conviction for stalking (i.e., count 1) on the basis that the charged crime "was … not committed at all…."[17] If so, the hearing officer explained that the previously identified deficiencies would be deemed cured and the claim filed. But if the claim additionally challenged Casity's still valid convictions for stalking in violation of a court order (count 2), and criminal threats (count 4), then the claim remained deficient for failing to provide a statement of factual innocence.[18]

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[14] CalVCB Deficiency Notice, July 10, 2025. The letter was sent by CalVCB Supervising Attorney Laura Simpton, who was initially assigned as the hearing officer for this claim. Following her unavailability, the claim was reassigned to CalVCB Senior Attorney Keri Klein in February 2026. (Cal. Code Reg., tit. 2, § 615.10.)

[15] Casity Deficiency Response, August 11, 2026, at p. 20.

[16] Cal. Regs., tit. 2, § 640, subd. (a)(1) (requiring "a statement of facts signed under penalty of perjury that shows the crime did not occur or was not committed by the claimant….").

[17] CalVCB Clarification Request, September 19, 2025, at pp. 1-2, sent by Hearing Officer Laura Simpton.

[18] CalVCB Clarification Request, at p. 2.

On October 20, 2025, Casity's clarification response was received timely. Again, he returned CalVCB's clarification letter, and he also attached additional documents from the superior and appellate court proceedings, as well as custodial records from the California Department of Corrections and Rehabilitation (CDCR). He also included a handwritten "clarification" letter, which requested $33,600 for "compensation" for having allegedly been incarcerated for "240 days longer" for count 1, plus an additional sum of $33,600 for unspecified "monetary damages," for a combined total amount of $67,200.[19]

On October 29, 2025, the hearing officer notified the parties that the claim was deemed filed pursuant to Penal Code section 4900, subdivision (a). In particular, the claim, as supplemented and clarified, solely challenged Casity's reversed conviction for stalking in count 1. A response from the Attorney General was requested within 60 days.[20]

On December 19, 2025, the Attorney General, through Deputy Attorney General Jeffrey Firestone, requested an extension of time for 60 days,[21] which was granted for demonstrated good cause.[22] On February 12, 2026, the Attorney General timely filed a Response Letter, including five exhibits, spanning 33 pages. The Attorney General maintains Casity has failed to prove his innocence of stalking and therefore, his claim must be denied. In the alternative, the Attorney General asserts that even if Casity has demonstrated his innocence, he did not suffer an injury.

On February 13, 2026, the hearing officer confirmed receipt of the Attorney General's Response and asked the parties to meet and confer to determine whether Casity wished to proceed with a hearing, and if so the preferred timeframe and means of appearance. It was noted that a hearing likely could not be set before July 2026. The hearing officer explained that the parties' optional pre-hearing briefs would be due approximately one month before the hearing and the mandatory pre-hearing statements identifying all witnesses to be presented at the hearing would be due approximately two

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[19] Casity Clarification Response, October 20, 2025, at p. 3.

[20] CalVCB Request for Attorney General Response, Oct. 29, 2025, sent by Hearing Officer Laura Simpton.

[21] Attorney General Request for Extension of Time, Dec. 19, 2025.

[22] CalVCB Order on Extension of Time, Dec. 22, 2025.

weeks before the hearing.[23] On February 19, 2026, Deputy Attorney General Jeffrey Firestone notified CalVCB that Casity did want a hearing. A date limitation was also provided. The parties agreed to appear via Zoom.[24]

On February 26, 2026, CalVCB provided the parties with potential dates and asked for their preference.[25] Mr. Firestone responded with his date preference. Casity did not object, and therefore the hearing was set for July 8, 2026. Prehearing briefs were due June 8, 2026. None were filed. The pre-hearing statement was due June 24, 2026.[26] The Attorney General timely filed their pre-hearing statement on June 24, 2026.[27] Casity did not. CalVCB contacted Casity via email on June 25, 2026, asking if he intended to call any witnesses or present any evidence.[28] Casity responded that he would present no further evidence or witnesses.

The hearing took place on July 8, 2026. Mr. Casity testified. No additional documentary evidence was submitted. The record closed at the end of the hearing.

III. Factual Summary

A. Trial evidence[29]

Casity has two daughters, N and R. R is permanently disabled and has a full-time caregiver. N is in the military and has a minor son. N and M began dating in 2020 and were married in April of 2022. In October of 2021, N, her son, her partner M, her sister R and R's caregiver were all living in N's home.

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[23] CalVCB email to parties from Hearing Officer Laura Simpton, sent Feb. 13, 2026; see also Cal. Code Regs., tit. 2, § 643, subds. (a) & (b).

[24] Email from Jeffrey Firestone to CalVCB and Casity, sent Feb. 19, 2026.

[25] CalVCB email to parties from Hearing Officer Keri Klein, sent Feb. 26, 2026.

[26] CalVCB email to parties, sent Apr. 6, 2026.

[27] Email from Jeffrey Firestone to CalVCB and Casity with Attorney General pre-hearing statement, sent June 24, 2026.

[28] CalVCB email to Casity and the Attorney General, sent June 25, 2026.

[29] The factual summary is largely quoted from the decision by the California Court of Appeal, Third Appellate District. (AGRL Ex. 2 at pp. 8-11.) The victims and witnesses are referred to solely by their initials to maintain their confidentiality.

N was deployed to the Middle East in October of 2021 for four months. Between October of 2021, and February of 2022, M had temporary custody of N's minor son while she was deployed. Casity stayed in N's home for approximately three weeks during October and November of 2021. N's minor son eventually went to live with M's parents.

While N was deployed, Casity seemed "angry" with M. He sent a text to R's caregiver threatening M and repeatedly told N that he did not like M. He sent N hundreds of messages threatening and disparaging M. Casity also made over 20 Facebook posts disparaging M. N was concerned for M's safety, as she interpreted Casity's comments to mean that he intended to harm M. Casity also told N's mother that he planned to commit a murder suicide with R, R's caregiver, and himself.

In November of 2021, Casity sent messages to N's mother complaining about a lack of contact with N's minor son. He said,

> You better talk to your daughter because I am not playing. What I will do will make the paper and that is a promise. Keep him from me. I am blood. When I am done, she is not going to want to come back here. [30]

Casity also said,

> I am pissed. I can't take my grandson anywhere. It is okay. If he was smart, he would get [a] restraining order on me. But he has no idea what I might do. Fucking little disrespectful . . . . I don't give a fuck about his dad or going to jail. You should tell him he better watch his ass because when I make a move, he is going to wish I hadn't for sure.[31]

N's mother feared for everyone's safety. She forwarded the messages to N and to M. On November 15, 2021, M filed for a domestic violence restraining order for himself. The trial court issued a temporary restraining order. It was served on Casity in early December of 2021.

Although M had no contact with Casity in December of 2021, Casity continued to send messages that threatened M. At one point, he messaged N's mother,

> [Y]ou might even want to warn him. . . . [¶] . . . [¶] . . . I say on my life, he will learn a lesson and that is all I got to say. . . . Don't worry, I am not going to kill

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[30] AGRL, Ex. 2, at pp. 8-9.

[31] AGRL, Ex. 2, at p. 9.

> him. But when I am done, you watch, he will never be the same. [¶] . . . I have got tumors in my head. . . . I have got nothing to lose.[32]

Casity also sent N messages through Facebook complaining about the restraining order and telling her he had bought two rifles. N did not believe Casity normally owned firearms. He also told N that he would give his motorcycle to anyone willing to hurt M.

N returned from deployment in February of 2022. Upon her return, N, N's minor son, and M moved back into her home. Later that month, N met with Casity at a bar to try to resolve the problems. During this meeting, Casity called M a homosexual and "possibly a child molester."[33] He also said that he had pointed a rifle with a scope at M while M was in N's home. Casity stormed out of the meeting.

That same day, Casity exchanged text messages with M, wherein he warned M that he was not to be messed with and threatened to frame M for child pornography. He further told M that he had "Hells Angel friends" and he might give them the home address of M's father.

Later that month, Casity sent Facebook messages to N threatening to post flyers saying M was a homosexual and a child molester.

On March 22, 2022, the court issued a permanent restraining order protecting M from Casity for a period of three years.

In April of 2022, Amador County Social Services Adult Protective Services (APS) visited N's home regarding R. On April 28, 2022, Casity told R's caregiver that he blamed N and M for the APS visit and threatened to "ruin a lot of lives" if APS took R. Casity also told R's caregiver that he would "kick [ ] any door and plan on the shooting."[34] The caregiver showed the messages to N and M shortly thereafter. During trial, M could not remember when he received the messages, but thought it might be in May of 2022, soon after Casity sent them to the caregiver.

On May 3, 2022, Casity was served with a permanent restraining order for a three-year period. N was deployed to Europe that same month. Her son and M went with her. The harassment ceased until the following month.

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[32] AGRL, Ex. 2, at p. 9.

[33] AGRL, Ex. 2, at p. 9.

[34] AGRL, Ex. 2, at p. 10.

On June 4, 2022, Casity posted on Facebook that he did not like M. He posted, "you think I'm going to let this go on much more? If you guys were here, I would end this real quick."[35] He posted three additional similar threats that month, saying he would push M off the Grand Canyon, that a piece of paper was not going to keep him away, and he could not wait until M returned from Germany. N blocked Casity on Facebook.

In July of 2022, while N and her family were still in Europe, Casity sent multiple emails to N. He said he was "biding his time" until they got back, he was full of hate and would teach M a lesson. He promised to "make it hell for [M]" and said he would "show up out there."[36] Casity posted photos of a passport application, leading N to believe that he intended to come to Europe to harm her family.

Casity also threatened the APS social worker.

B. CalVCB Evidence

In this administrative proceeding, Casity presented various documents in an effort to demonstrate his innocence by a preponderance of the evidence. He also testified at the hearing for this matter.

1. Casity's Pre-hearing Submissions

Casity submitted various documents to support and clarify his claim that he was incarcerated for 240 days longer than he should have been. Those documents are discussed above and include his application, response to the deficiency letter, and response to the clarification request. In summary, the documents indicate there was an error made at the trial court level that caused him to be convicted of two counts of stalking for one continuing course of conduct. Casity does not deny committing the acts underlying his overturned conviction. Instead, he claims those acts do not amount to stalking as a matter of law.

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[35] AGRL, Ex. 2, at p. 10.

[36] AGRL, Ex. 2, at p. 10.

2. Casity's Testimony at the Hearing

Casity testified at the hearing and was subject to cross examination. He did not deny the underlying conduct for either count of stalking, stating:

> At the time, I drank a lot before I went to prison, and that was the first and only time I've been to prison and, you know, maybe I was a little mouthy, you know, with my daughter. I was standing up for her and in my eyes and it just led to, you know, I should have kept my mouth shut. [37]

He added:

> It was for threats and all this other stuff. Basically, nobody was there except for me and the victim. You know. So we're, you know, *I'm just admitting to the guilt*. I did threaten him because I did say, "Hey don't you hurt my daughter. I'll hurt you back." You know, and then you take that however. You know. He's an able body. I'm in a wheelchair. You know. I'm sticking up for my daughter, but I'm not sure exactly.[38]

Casity stated that, at the time of the offense, he was quite concerned about whether M was treating his daughter appropriately.[39] He did not understand how he was convicted of either count of stalking as he was allegedly disabled and confined to a wheelchair during the time of the conduct in question.[40]

Casity indicated that he was released from custody and then was told by someone at the appellate court that he had received an unauthorized sentence.[41] He was resentenced by the superior court over Zoom and received a sentence that was a year less than his prior sentence.[42] He stated he was told, by someone he did not identify, that he served eight months longer in prison than he should have.[43] He also complained he was paroled to San Bernardino County, hundreds of miles from his home and a place with which he had no ties.[44] He speculated he was paroled there because the victim

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[37] CalVCB Hearing Video in Claim of Richard Casity 25-ECO-32 (Hearing) at 35:07-35:26.

[38] Hearing at 38:37-38:59 (emphasis added).

[39] Hearing at 33:06, 33:49; 38:53.

[40] Hearing at 37:12-37:44.

[41] Hearing at 30:58-31:21.

[42] Hearing at 31:44-32:04.

[43] Hearing at 32:10-32:34.

[44] Hearing at 31:33.

was the son of the Amador County District Attorney.[45] While in San Bernardino, he was required to wear a GPS ankle monitor and live in a "lifer house" the entire term of his parole.[46] Casity was quite upset about the conditions of his time on parole. He also testified the relationship with his daughter and her partner has been repaired.[47] No other witnesses were called to testify at the hearing.

IV. Determination of Issues

Penal Code section 4900 allows a person, who is innocent of a felony for which they were erroneously convicted and imprisoned, to submit a claim for compensation to CalVCB for the injury sustained. Under subdivision (a) of section 4900, claimants bear the burden to prove by a preponderance of the evidence that (1) the crime with which they were convicted either did not occur at all or was not committed by them and (2) they suffered injury as a result of their erroneous conviction.[48] Pursuant to Penal Code section 4901, the claim must be submitted within ten years after release from prison but not until 60 days after the reversal of a conviction.[49]

Once such a claim is timely received and filed, Penal Code section 4902 requires the Attorney General to submit a written response.[50] Thereafter, under Penal Code section 4903, an informal hearing before a hearing officer ensues, at which the claimant and Attorney General may present evidence concerning innocence and injury.[51] In this context, the claimant must demonstrate innocence "in the sense that [they] did not do the *acts* which characterize the crime."[52] Upon the requisite showing, CalVCB shall approve payment pursuant to Penal Code section 4904 for the purpose of

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[45] Hearing at 32:50-33:06; 33:49; 34:46-35; 42-42:41; 43:53-44:23.

[46] Hearing at 42:41-42:45; 43:08-43:21.

[47] Hearing at 34:46.

[48] Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

[49] Pen. Code, § 4901, subds. (a), (c).

[50] Pen. Code, § 4902, subd. (a); Cal Code of Regs., tit. 2, § 640.

[51] Pen. Code, § 4903, subd. (a); Cal Code of Regs., tit. 2, § 644.

[52] *Ebberts v. State Board of Control* (1978) 84 Cal.App.3d 329, 335 (emphasis in original).

indemnifying the claimant for the injury sustained if sufficient funds are available, upon appropriation by the Legislature, at a rate of $140 per day for their erroneous imprisonment.[53]

In limited circumstances, a different and expedited procedure may apply to claims filed by claimants whose convictions were reversed under specified circumstances. First, under Penal Code sections 1485.55 or 851.865, 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 injury.[54] A finding of factual innocence "must be made by at least a preponderance of the evidence and must reflect a determination that the person charged and convicted of an offense did not commit the crime."[55] Moreover, a finding of factual innocence is available under section 1485.55 only in specified post-conviction proceedings, none of which include reversal on direct appeal.[56] Second, under subdivision (b) of Penal Code section 4900, if the claimant's conviction was vacated by a grant of habeas relief or pursuant to Penal Code sections 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 convincing proof of guilt, then CalVCB must approve the claim, without a hearing and within 90 days, for the demonstrated injury.[57] Third, under subdivision (d) of section 1485.55, if a court granted a motion for administrative relief based upon a conviction that was vacated by a grant of habeas relief or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), the charges were dismissed or acquitted on remand, and the district attorney failed to timely object with clear and convincing proof of the claimant's guilt, then CalVCB must approve the claim, without a hearing and within 90 days, for the demonstrated injury.[58] Unless one of these statutory exceptions applies, then the claimant bears the burden to prove

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[53] Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.

[54] Pen. Code, §§ 851.865; 1485.55, subds. (a), (b), and (e), 4902, subd. (a); see also Cal. Code of Regs., tit. 2, § 640, subds. (e)(1)-(2).

[55] *Larsen v. CalVCB* (2021) 64 Cal.App.5th 112, 129 (interpreting Pen. Code, § 1485.55, subd. (a).).

[56] Pen. Code, § 1485.55.

[57] Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

[58] Pen. Code, § 1485.55, subd. (e). While a court order under subdivision (d) of § 1485.55 does not constitute a finding of factual innocence, it nevertheless requires expedited approval of a filed claim.

innocence and injury by a preponderance of the evidence under subdivision (a) of Penal Code section 4900.

When determining whether the claimant has satisfied their burden of proof, the Board may consider the "claimant's denial of the commission of the crime; reversal of the judgment of conviction; acquittal of claimant on retrial; or the decision of the prosecuting authority not to retry claimant of the crime…."[59] The Board may also "consider as substantive evidence the prior testimony of witnesses [that] claimant had an opportunity to cross-examine, and evidence admitted in prior proceedings for which claimant had an opportunity to object."[60] Ultimately, the Board may consider "any other information that it deems relevant to the issue before it," even if inadmissible under the traditional rules of evidence, so long as "it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs."[61]

CalVCB's broad authority to consider all relevant evidence may be limited by various court decisions during the criminal proceedings. By statute, CalVCB is bound by "factual findings" and "credibility determinations" rendered by a court during proceedings on a claimant's petition for habeas corpus, motion to vacate judgment pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), or an application for a certificate of factual innocence.[62] Nonetheless, CalVCB is not bound by a court's "summary of, observations about, and characterizations of the trial record when the [court] is *not* finding *facts* after entertaining new evidence…."[63] Finally, a claim under Penal Code section 4900 may not be denied solely because the claimant failed to obtain a court finding of factual innocence.[64]

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[59] Cal. Code Regs., tit. 2, § 641, subd. (a).

[60] Cal. Code Regs., tit. 2, § 641, subd. (b).

[61] Cal. Code Regs., tit. 2, § 641, subds. (c), (d), and (f).

[62] Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c).

[63] *Gonzales v. CalVCB* (2023) 98 Cal.App.5th 427, 447 (emphasis in original).

[64] Pen. Code, § 1485.55, subd. (d); Cal. Code of Regs., tit. 2, § 645, subd. (f).

A. Penal Code section 4900(a) governs Casity's claim

Casity seeks compensation for his 2022 conviction for stalking in Amador County Superior Court case number 22CR31815. He is not seeking compensation for his related convictions for stalking in violation of a court order and criminal threats. Casity's conviction for stalking was not reversed or vacated by grant of habeas corpus or pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2). As such, the burden shifting provisions of Penal Code sections 4900, subdivision (b), and 4902, subdivision (d), do not apply. Moreover, Casity lacks a finding of factual innocence by any court under Penal Code section 1485.55 or 851.865. Therefore, his claim does not fall within any of the limited statutory exceptions to Penal Code section 4900, subdivision (a), and he bears the burden of demonstrating innocence by a preponderance of the evidence.

B. CalVCB is not statutorily bound by the appellate court decision

CalVCB has broad authority to consider all relevant evidence when deciding a claimant's application for compensation. By statute, CalVCB is bound by "factual findings" made and "credibility determinations" rendered during proceedings on a petition for habeas corpus, motion to vacate a judgment pursuant to Penal Code section 1473.6 or 1473.7, subdivision (a)(2), or an application for a finding of factual innocence.[65] Notably, these statutory provisions omit decisions rendered by an appellate court on direct appeal, or during proceedings under any provision not specifically enumerated.[66] Because Casity's case falls outside the proceedings contemplated in sections 4903, 1485.5 and 1485.55, the appellate court findings are not binding. In other words, CalVCB is not statutorily bound by an appellate court's decision on direct appeal, nor by the appellate court's

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[65] Pen. Code, §§ 1485.5, subd. (c); 4903, subd. (c); see also *Gonzales v. California Victim Compensation Board, supra,* 98 Cal.App.5th at p. 427 (defining "factual findings" in this context to exclude "the habeas court's summary of, observations about, and characterizations of the trial record when the habeas court is not finding facts after entering new evidence").

[66] *Ibid*.; see also *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1211-1212 ("Appellate courts do not make factual findings; we review 'the correctness of a judgment [or order] as of the time of its rendition'"); *People v. Cervantes* (2020) 46 Cal.App.5th 213, 224 ("appellate courts are not equipped to accept new evidence and make factual findings").

characterization of the evidence. Nonetheless, CalVCB may consider the appellate court's decision as relevant evidence in this informal administrative proceeding.[67]

No presumption is made as a result of Casity's failure to obtain a finding of factual innocence.[68]

A. Insufficient Proof of Innocence

After considering all of the evidence and arguments presented by the parties, along with the appellate court's reversal, and the resentencing on remand, Casity has failed to satisfy his burden to demonstrate his innocence of stalking by a preponderance of the evidence. On balance, the weight of the inculpating evidence far exceeds the exculpating evidence. As detailed below, the record fails to show that Casity did not commit the acts constituting the crime of stalking of the victim M between the dates of November 11, 2021, and May 3, 2022. Having failed to prove that the charged crime for which he was imprisoned either did not occur or was not committed by him, Casity's claim for compensation must be denied.

1. Stalking Overview

Penal Code section 646.9, subdivision (a), defines the crime of stalking as "[a]ny person who willfully, maliciously, and repeatedly … harasses another person, and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety or the safety of his or her immediate family….."[69] In this context, "harass" means engaging in a "knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, torments, or terrorizes the person, and that serves no legitimate purpose."[70] A "course of conduct," in turn, means "two or more acts occurring over a period of time, however short, evidencing a continuity of purpose."[71] A reasonable person standard applies to the victim.[72] A "threat," for purposes of stalking, must be unambiguous and

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[67] Cal. Code Regs., tit. 2, § 641.

[68] Pen. Code, § 1485.55. subd. (d).

[69] Pen. Code § 646.9, subd. (a).

[70] Pen. Code, § 646.9, subd. (e).

[71] Pen. Code, § 646.9, subd. (f).

[72] *People v. Ewing* (1999) 76 Cal.App.4th 199, 208.

have such immediacy that they convincingly express an intention of being carried out.[73] There is no requirement that the defendant directly contact the victim to constitute stalking.[74] Thus, a defendant is guilty of stalking if they (1) purposefully harassed another person by engaging in at least two acts that reasonably alarmed the victim, and (2) made a credible threat with the intent to cause the victim to reasonably fear for their safety.[75]

The crime of stalking is punishable either by incarceration in the county jail for less than one year or imprisonment in the state prison for 16 months or two or three years.[76] However, a greater penalty may be imposed if the crime of stalking was committed under certain circumstances. For example, stalking in violation of a court order is punishable by two, three, or five years imprisonment.[77]

Regardless of the applicable penalty, the crime of stalking requires a continuous course of conduct comprised of multiple acts.[78] "A continuing course of conduct has been held to exist where the wrongful acts were successive, compounding, and interrelated."[79] "A continuous course of conduct, by its nature, may stop and start," and a "close temporal connection is not required where the continuous course of conduct exception is implicated."[80] The determination of whether someone's behavior constitutes a continuing course of conduct is a jury decision and jurors need not agree as to what conduct of the defendant constitutes the continuing course of conduct.[81]

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[73] *Orellana v. Barr* (2020) 967 F.3d 927, 938.

[74] E.g., *People v. Norman* (1999) 75 Cal.App.4th 1234, 1241, fn. 4. (victim must become aware of the stalker's conduct but that awareness need not be contemporaneous.)

[75] CALCRIM No. 1301 (Stalking).

[76] Pen. Code, §§ 18, subd. (a); 646.9, subd. (a).

[77] Pen. Code, § 646.9, subd. (b).

[78] *People v. Chilelli* (2014) 225 Cal.App.4th 581, 586.

[79] *People v. Rae* (2002) 102 Cal.App.4th 116, 123 (construing "continuing course of conduct" to determine whether unanimity jury instruction was required).

[80] *Ibid*.

[81] *People v. Ibarra* (2007) 156 Cal.App.4th 1174; *People v. Zavala* (2005) 130 Cal.App.4th 758, 769 (Because stalking requires a knowing and willful course of conduct, occurring over a period of time, no unanimity instruction is required.).

Various statutory and constitutional provisions limit the number of times that a defendant may be charged, convicted, and punished for multiple acts that constitute a single, indivisible course of conduct.[82] Penal Code section 954, which generally permits multiple charges of different crimes based upon the same underlying act, prohibits multiple convictions for the same offense based upon alternate legal theories.[83] Similarly, multiple convictions for greater and lesser-included offenses are also prohibited. The determination of whether multiple convictions are barred by section 954 is a legal question resolved by the court, not a jury.[84] Double Jeopardy further prohibits multiple prosecutions and punishments for the same offense.[85]

Notably, Penal Code section 654 likewise prohibits multiple punishment for crimes that were committed during a single, indivisible course of conduct.[86] The divisibility of a course of conduct depends upon the intent and objective of the defendant when committing the series of acts, as well as the timing of those acts. Acts committed close in time, but in pursuit of multiple criminal objectives, may be separately punished.[87] Acts committed with the same criminal objective, but temporally separated, may also be separately punished.[88] The trial court determines whether or not the defendant's crimes were divisible when imposing sentence.[89]

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[82] *People v. Avina* (1993), 14 Cal.App.4th 1303, 1311 ("When a criminal statute punishes a course of conduct, the prosecution may not divide that course up into multiple counts of the offense; the entire continuous course constitutes only a single violation of the statute").

[83] *People v. Vidana* (2016) 1 Cal.5th 632, 650-651.

[84] *People v. Rodriguez* (2021) 71 Cal.App.5th 921, 935-936 ("We review de novo the issue of whether multiple convictions are proper under section 954").

[85] US Const. amend V.

[86] Pen. Code, § 654.

[87] *People v. Liu* (1996) 46 Cal.App.4th 1119, 1133-1135.

[88] *People v. Latimer* (1993) 5 Cal.4th 1203, 1207; *People v. Kwok* (1998) 63 Cal.App.4th 1236, 1252-1253.

[89] *People v. Coleman* (1989), 48 Cal.3d 112, 162; *People v. Ratcliff* (1990); 223 Cal.App.3d 1401, 1408; *People v. Jones* (2002); 103 Cal.App.4th 1139, 1143.

The foregoing principles were implicated in *People v. Muhammad*,[90] a case involving four convictions for stalking, three of which included additional penalties for aggravating circumstances. Specifically, the defendant was convicted of (1) stalking, (2) stalking in violation of a restraining order, (3) stalking with a prior terrorist threat conviction, and (4) stalking with a prior stalking conviction.[91] All four crimes allegedly occurred over the same, one-year period of time.[92] Relying upon Penal Code section 954, the *Muhammad* court reversed three of the four convictions because the alleged acts of ongoing harassment over that one-year period amounted to a "*single offense* of stalking" for which the defendant could be charged and convicted just once.[93]

In Casity's case, the Court of Appeal cited *Muhammad* when reversing his stalking conviction in count 1, while leaving intact his conviction for stalking in violation of a restraining order in count 2.[94] The reversal was based upon the appellate court's determination that the actions underlying both counts amounted to a single indivisible court of conduct for which only a single conviction was permissible under Penal Code section 954. In other words, Casity may have been charged with and convicted of count 1 or court 2, but not both. More precisely, the appellate court's decision concerned the extent to which the acts underlying counts 1 and 2 may both be punished as separate convictions, rather than whether the acts underlying each count amounted to a crime.

2. Exculpating Evidence

In this administrative proceeding, Casity's proffered exculpating evidence largely consists of the appellate court's reversal of his stalking conviction in count 1, as well as his testimony at the hearing that he was confined to a wheelchair when he engaged in the harassing behavior. Neither is persuasive proof of innocence.

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[90] *People v. Muhammad* (2007) 157 Cal.App.4th 484.

[91] *Muhammad*, supra, 157 Cal.App.4th at p. 489.

[92] *Ibid*.

[93] *Id*. at p. 494 (emphasis in original).

[94] AG Ex. 2 at pp. 12-13.

As explained above, the appellate court's decision merely concluded, as a legal determination, that Casity could not be convicted of two separate counts of stalking under Penal Code section 954. Significantly, this determination did not address, as relevant to a claim under Penal Code section 4900, whether the alleged acts underlying the reversed stalking conviction in count 1 amounted to a crime. This distinction is significant, as relief under section 4900 is intended for the limited "purpose of indemnifying the claimant for the injury" sustained as a result of being imprisoned for a crime that "was either not committed *at all*, or if it was committed, was not committed by the claimant."[95] Plainly, relief is not available for mere trial errors, even if it may have resulted in an unauthorized sentence.

This conclusion is confirmed by the case law. In *Ebberts*, the claimant was found not guilty by reason of insanity, and he argued that that he was entitled to compensation under Penal Code section 4900 because the crime with which he had been charged did not occur.[96] As urged by the claimant, he necessarily lacked the requisite criminal intent when committing the underlying acts, and therefore, no crime occurred. The *Ebberts* court disagreed. As the court explained, the phrase "not committed at all" in section 4900 requires a showing of "innocence "in the sense that [they] did not do the *acts* which characterize the crime."[97] It therefore requires proof that the claimant "did not commit the acts which are elements of the crime," regardless of any legal technicalities surrounding the validity of the conviction.[98] This limitation ensures that relief under section 4900 is appropriately limited to "individuals who prove their innocence and secure their freedom after they have been erroneously convicted by compensating them for 'each day he or she spent illegally behind bars away from society, employment, and their loved ones.'"[99]

Against this legal landscape, the appellate court's reversal of Casity's stalking conviction in count 1 fails to exculpate him. Ample evidence detailed below supports each element of this crime,

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[95] Pen. Code, § 4904, subd. (a) (emphasis added).

[96] *Ebberts, supra,* 84 Cal.App.3d at pp. 333-334.

[97] *Ebberts, supra,* 84 Cal.App.3d at 335 (emphasis in original).

[98] *Ebberts, supra,* 84 Cal.App.3d at p. 336.

[99] *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400, 1405.

which allegedly occurred between November 11, 2021, and May 3, 2022. During that time, Casity engaged in at least two harassing acts and issued a threat. Indeed, the victim became so fearful that he obtained a temporary restraining order in November 2021, and a permanent restraining order in March 2022. Thereafter, Casity engaged in at least two more harassing acts and issued a threat between June 4, 2022, and July 10, 2022, in violation of the protective order, as required to support each of the elements in count 2. Thus, the appellate court's decision merely reflects that Casity may have been charged with and convicted of either count 1 or count 2, but not both. Accordingly, any exculpating weight resulting from the appellate court's decision is minimal.

Casity's testimony regarding his alleged physical disability similarly fails to exculpate him. Casity testified that he was in a wheelchair at the time of the offense. However, no evidence was submitted to corroborate this testimony. Nor was any evidence submitted to support or confirm that Casity was so disabled that he was physically unable to commit the crime of stalking. Further, being confined to a wheelchair does not prevent one from engaging in harassing conduct such as the conduct Casity engaged in.

Last, while the Court of Appeal did reverse Casity's stalking conviction, it was not due to insufficient evidence. Instead, the court indicated that the conduct underlying counts one (stalking) and two (stalking in violation of a restraining order) amounted to a single continuing course of conduct, "evidencing a continuity of purpose."[100] The appellate court found the conduct did occur. As the court observed, a temporary restraining order was put in place in December of 2021, however Casity's conduct continued.[101] For example, on or about December 14, 2021, Casity sent a message that said, "Family filing a f****** restraining order on me f****** paper or for real f*** I done bought two rifles."[102] While the conduct did dissipate briefly when Casity was served with a three-year restraining order, it continued with the same type of language and messages a short five weeks later. At that time Casity said

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[100] *People v. Casity* (2024), 2024 WL 3434829 at p. 4.; AGRL, Ex. 2, p. 13.

[101] *People v. Casity* (2024), 2024 WL 3434829 at p. 4; AGRL, Ex. 2, pp 13-14.

[102] AGRL, Ex. 2, at p. 13.

> "And I hope you never come back because I'll be waiting I know not to say nothing I raise my voice or anything that punk could go get another restraining order take a piece of paper is going to keep me away."[103]

The court found that the five-week break was immaterial, as the nature and objective of Casity's harassing behavior remained the same. Thus, there was a single uninterrupted course of conduct that spanned from November of 2021, through July of 2022.[104]

As previously emphasized, the phrase "not committed at all" in Penal Code section 4900 means that a claimant must show he "was 'innocent' in the sense that he did not do the acts which characterize the crime."[105] The key query is whether Casity committed the underlying conduct, not merely whether he was legally guilty of the charged offense. In his claim before the Board, Casity does not deny having done the acts which constitute stalking. At the hearing he, in fact, admitted them when he stated,

> I'm just admitting to the guilt I did threaten him because I did say hey don't you hurt my daughter I'll hurt you back. You know and then you take that however you know he's an able body I'm in a wheelchair you know I'm sticking up for my daughter but I'm not sure exactly.[106]

He does not claim those acts were non-criminal in nature. Instead, he relies solely on his assertion that he used a wheelchair at the time of the threats and that the Court of Appeal vacated his conviction on one count due to the continuing nature of his crime. Neither of these are exculpatory.

Overall, the exculpating evidence regarding Casity's reversed stalking conviction is minimal. It fails to demonstrate that he did not 1) commit two or more harassing acts that reasonably alarmed M, and 2) make a credible threat with the intent to cause M to fear for his safety between November 11, 2021, and May 3, 2022. Instead, he demonstrated that a legal error occurred during the course of his trial and sentencing. The compensation framework set forth by Penal Code section 4900 is intended to

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[103] AGRL, Ex. 2, at p. 13.

[104] *People v. Casity* (2024), 2024 WL 3434829 at p. 4; AGRL, Ex. 2, p. 14.

[105] *Ebberts, supra,* 84 Cal.App.3d at p. 335.

[106] Hearing at 38:37-38:59.

compensate innocent people.[107] A legal error, such as a charging or sentencing error, is not compensable under section 4900.[108]

3. Inculpating evidence

In contrast, the weight of the inculpating evidence is substantial. As detailed below, the inculpating evidence includes facts adduced at trial; the jury verdict finding Casity guilty of stalking, stalking in violation of a restraining order, violation of a restraining order and criminal threats; the appellate court's opinion on direct appeal; and Casity's testimony at the hearing on this matter.

As set forth in the opinion from the Court of Appeal, substantial facts were adduced at trial demonstrating that Casity stalked M between November 11, 2021, and May 3, 2022. During that period:

a. Casity texted the caregiver of R threatening M.
b. Casity repeatedly told N, his daughter, that he did not like M, her partner.
c. Casity sent N hundreds of messages threatening and disparaging M.
d. Casity made over 20 Facebook posts disparaging M.
e. In November of 2021, he sent messages to N's mother threatening N and M.
f. In December of 2021, he sent additional messages to N's mother threatening M.
g. Casity told N he would give his motorcycle to anyone willing to hurt M.
h. Casity told N he bought rifles. N indicated she did not believe he owned guns prior to then.
i. Casity told N he had pointed a rifle with a scope at M while M was in N's home.
j. Casity threatened to frame M for child pornography.
k. Casity stated that he would give M's father's address to his "Hells Angels friends."
l. Casity threatened to post flyers saying M was a homosexual and a child molester.
m. On April 28, 2022, Casity told the caretaker of R that he blamed M and N for a visit from Adult Protective Services regarding R and threatened to "ruin a lot of lives" if R was removed from the home of M and N.

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[107] By comparison, under Penal Code section 2900.5, Casity's remedy was to petition the superior court for credit to pay any unpaid fines and fees if his presentencing credits exceeded the term of imprisonment. Casity successfully did so and apparently received a credit of $1,780 against outstanding fines and fees.

[108] Pen. Code §§ 4900, subd. (a); 4904.

Based upon this evidence, a jury found Casity guilty after hearing the testimony of all of the witnesses and reviewing any physical evidence, all of which was admitted subject to the stringent, formal rules of evidence. While the verdict was ultimately reversed, the reversal was due solely to a legal error. Under these circumstances, the jury's verdict carries significant weight in this informal administrative proceeding.

Moreover, Casity has not denied engaging in any of the acts that constitute the crime of stalking during the period of time between November 2021, and May of 2022. He did not claim innocence in his application, in response to the deficiency letter, or in response to the clarification letter. Indeed, during the hearing on this matter, Casity admitted he was guilty and that he had threatened his daughter's partner.[109] Thus, he admitted he engaged in the acts that were the elements of the crime of stalking. This admission is inculpatory and carries significant weight.

4. Comparative Analysis

When the evidence is weighed, it fails to prove that Casity is more likely innocent than guilty of his challenged conviction for stalking. The burden rests with Casity to demonstrate that he did not commit the offense or that it never occurred. As set forth above, Casity has failed to meet that burden and the evidence of his guilt is overwhelming.

B. Insufficient Evidence of Injury

Alternatively, even if it were found that Casity had demonstrated that he did not commit the crime of stalking or that it never occurred, he failed to demonstrate any injury. 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.[110]

On December 22, 2022, following a revocation of probation, Casity was sentenced to a term of four years and four months in prison for all four convictions with credit for having served 134 actual

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[109] Hearing at 38:37-38:59.

[110] Cal. Code Regs., tit. 2, § 640, subd. (f)

days in custody.[111] He was re-sentenced on September 6, 2024, to a term of three years and eight months for his remaining convictions.[112] By then, Casity had already been released from prison on parole on April 15, 2024, after having served a total of 615 days imprisonment.[113]

A sentence of three years and eight months is approximately 1,335 days.[114] Assuming Casity received work time credits pursuant to Penal Code section 2933, subdivision (b), he should have been incarcerated for 668 days.[115] However, he served only 615 days. Casity has provided no evidence that he would have served less than 615 days of incarceration absent his reversed stalking conviction, and he provided no evidence that he would have been entitled to receive any other enhanced custody credits from the California Department of Corrections and Rehabilitation. The sentence he did serve was entirely attributable to his remaining convictions for stalking in violation of a restraining order and criminal threats. Therefore, he did not serve any additional time in custody for his reversed stalking conviction, and consequently, there is no injury as a result of the legal error in his case.

V. CONCLUSION

In accordance with subdivision (a) of Penal Code section 4900, the undersigned Hearing Officer recommends that CalVCB deny Casity's claim. He has failed to demonstrate by a preponderance of evidence that he did not commit the crime of stalking between the dates of November 11, 2021, and May 3, 2022. In addition, he has failed to demonstrate any injury as a result of his reversed conviction for this offense. Casity is, therefore, ineligible for compensation as an erroneously convicted person.

Date: September 29, 2026

Keri Klein

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California Victim Compensation Board

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[111] AGRL, Ex. 1 at pp. 4-5.

[112] AGRL, Ex. 4 at pp. 19-20.

[113] AGRL, Ex. 5 at p. 22.

[114] AGRL at p. 7.

[115] Pen. Code § 2933, subd. (b) ("For every six months of continuous incarceration, a prisoner shall be awarded credit reductions from his or her term of confinement of six months…").