

CALIFORNIA VICTIM COMPENSATION BOARD MEETING AGENDA

January 31, 2024
10:00 a.m.
400 R Street, Room 330
Sacramento, CA 95811

Additional Location:
Contra Costa District Attorney's Office
900 Ward Street
Martinez, CA 94553

BOARD MEETING MATERIALS

Item 1.	Approval of Minutes Minutes of the November 16, 2023, Board Meeting DRAFT Minutes attached	Action Item
Item 2.	Approval of Minutes Minutes of the December 20, 2023, Board Meeting DRAFT Minutes attached	Action Item
Item 3.	Public Comment on Items Not on the Agenda - The Board will receive comments from the public on matters that are not on the agenda. The Board may not discuss or take any action on any item raised during public comment except to decide whether to place the matter on a subsequent agenda. (Gov. Code, § 11125.7.) No materials for this item	
Item 4.	Executive Officer Statement No materials for this item	Information Item
Item 5.	Legislative Update Copy of Legislative Update attached	Information Item
Item 6.	Contract Update Copy of Contract Report attached	Information Item

Item 7.	Request for Authority to Conclude the Rulemaking Process for Amendments to the California Code of Regulations (Title 2, §§ 649.4, 649.7, 649.15, 649.16, 649.19, 649.24, 649.28, and 649.50) Copy attached	Action Item
Item 8.	Cartier Hunter (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 9.	Giovante Douglas (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item
Item 10.	Giovanni Hernandez (Pen. Code, §§ 4900, et seq.) Copy attached	Action Item

ITEM 1

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CALIFORNIA VICTIM COMPENSATION BOARD OPEN MEETING MINUTES NOVEMBER 16, 2023, BOARD MEETING

The California Victim Compensation Board (Board) convened its meeting in open session upon the call of the Chair, Gabriel Ravel, General Counsel of the Government Operations Agency, acting for, and in the absence of Amy Tong, Secretary of the Government Operations Agency, at 400 R Street, Room 330, Sacramento, California, on Thursday, November 16, 2023, at 10:00 a.m. Also, present was Member Evan Johnson, acting for, and in the absence of, Malia Cohen, Controller. Appearing via Zoom was Member Diana Becton, District Attorney.

Executive Officer Lynda Gledhill, and Chief Counsel Kim Gauthier attended in person at 400 R Street, Sacramento, California. Board Liaison, Andrea Burrell, was also present and recorded the meeting.

Item 1. Approval of the Minutes of the September 16, 2023, Board Meeting

Member Becton moved approval of the Minutes for the September 16, 2023, Board Meeting. The motion was seconded by Member Johnson. By a unanimous vote of the Board, the motion passed.

Item 2. Public Comment

The Board opened the meeting for public comment and Ms. Burrell reminded everyone that, consistent with the Bagley-Keene Open Meeting Act, items not on the agenda may not be discussed at this time but may be put on a future agenda. (Gov. Code, § 11125.7.)

Margaret Petros appeared via zoom and requested for a “system upgrade” to trigger staff when to process support loss. She explained that support loss mostly impacts families of murdered victims, children, and spouses who have lost income. Recently, she requested documents under the Public Records Act that show, “How do staff know what is the policy to process a future support loss?” She stated she has cases where the first time support loss is requested it is processed, and then nothing happens. The response she received from CalVCB to her request for documents under the Public Records Act was, “There is no such policy, no record, no public record indicates how do staff know (sic).”

Ms. Petros went on to describe a case where it has been seven years since a professor was killed and his wife and children were left without support. Initially, there was life insurance, so the file was processed as fully reimbursed. She speculated there are hundreds, if not thousands, of families that are not getting support loss. She further stated her opinion that no victim should have to alert the Board, as so many do not even know they are eligible for support loss, they just wait and do not hear back from CalVCB.

Ms. Petros concluded by asking CalVCB to look into this matter and requested a response at a later date.

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Chair Ravel thanked Ms. Petros for her comment.

Item 3. Executive Officer Statement

Executive Officer Gledhill updated the Board on a few items:

To start, Ms. Gledhill informed the Board that a month ago she traveled to Monterey Park with Government Operations Secretary Amy Tong to meet with local community leaders and visit the resiliency center that has been set up in the wake of the mass violence event that occurred last January during the Lunar New Year celebrations. This is a place where everyone knows someone who was impacted by that event, and it was heartening to see the work the community is doing to support each other as they heal together.

At CalVCB, we have received 64 applications from that event to date. We know there are more eligible victims. This week the L.A. Times wrote a story about some of the victims who are struggling to receive assistance. CalVCB will continue to reach out to advocates and community leaders to make sure there is awareness about the services CalVCB provides.

Ms. Gledhill continued noting that last month CalVCB held its first regional conference since the pandemic in partnership with the McGeorge School of Law Victim Resource Center. The event brought together more than 80 advocates and community partners from Northern California for a full day of information about victim services. Panels discussed reaching underserved victims, human trafficking, federal funding, and how state agencies work together to serve victims. In recognition of October being Domestic Violence Awareness month, the keynote speaker, Dr. Moore Orbih, from the California Partnership to End Domestic Violence, highlighted the importance of collaboration and self-care for individuals in our line of work.

Ms. Gledhill also reported that she traveled to Napa for the opening of the Northern California Regional Trauma Recovery Center (TRC) being run by SANE-SART, which stands for Sexual Assault Nurse Examiner-Sexual Assault Response Team. This facility was made possible by the \$2.5 million pilot program grant approved by the Legislature and this Board. At the grand opening, Ms. Gledhill was able to tour the facility to see how they have established different spaces for children, teens, and adults to feel comfortable. Ms. Gledhill was also able to meet the staff.

Ms. Gledhill updated the Board on the upcoming TRC grant cycle. CalVCB will be posting a new Notice of Funds Available (NOFA) for the next cycle of awards in December. The NOFA includes information about the timeline for applying, the application requirements, the application submission and review procedures, budget requirements and more. CalVCB cannot predict how many organizations will apply for funding, there is no statutory or other limit as to the amount of funding that may be requested, there is no baseline funding, and no TRC is guaranteed funding. Existing TRCs who are interested in continuing their programs must

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reapply. Because funding is not guaranteed, CalVCB encourages TRCs to seek alternative funding when possible.

The NOFA requires applicants to respond to six narrative questions that mirror the requirements for TRCs set out in state law. One example is CalVCB will ask an applicant to provide examples of their organization's ability to provide outreach to crime victims who typically are unable to access traditional services. The answers to the six questions will allow the CalVCB panel of managers to understand the applicant's ability to meet the statutory requirements. CalVCB also considers crime rates and the geographic distribution of TRCs to ensure services are available in underserved areas of the state.

The NOFA provides applicants with detailed information to understand how their application will be reviewed and scored to make the process as transparent as possible. In response to feedback from previous years, CalVCB plans to add additional clarifying language this year. Potential applicants also have the opportunity to submit questions to CalVCB. CalVCB will respond to the questions publicly so all applicants will have access to the same information.

Applications will be due in January, and tentative award information will be brought to the Board at the March meeting.

Ms. Gledhill updated the Board on the proposed amendments to the regulations. The public comment period for those regulations ended on Monday, November 13. To solicit public comments, CalVCB shared the proposed regulation information with more than 11,000 partners, stakeholders, and providers. CalVCB also posted information about the regulations on its website. Several public comments were received during the comment period and staff are in the process of reviewing to determine if any modifications to the proposed regulations are necessary in response to the comments. Additionally, in response to a request from a member of the public, CalVCB is planning a public hearing on the draft regulations in early December. Also, CalVCB is planning to bring the regulatory package back before the Board in early 2024.

Ms. Gledhill concluded her report by reminding the Board that the Forced or Involuntary Sterilization Compensation Program ends on December 31. Because December 31 is a Sunday and January 1 is a holiday, CalVCB will accept applications postmarked on or before January 2. Since accepting applications beginning in January 2022, CalVCB has approved over 100 individuals for compensation. Additionally, CalVCB started the process of sending the second and final check of \$20,000 to approved survivors.

Chairperson Ravel thanked Ms. Gledhill for the updates.

Item 4. Legislative Update

The Legislative Update was presented by Deputy Executive Officer Katie Cardenas.

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Ms. Cardenas noted that the Legislature is currently on recess and will reconvene on January 3. At the September meeting it was reported that four key bills were headed to the Governor's desk. Those bills were all signed by the Governor.

- AB 56 by Assembly Member Lackey expands eligibility for compensation by CalVCB to include solely emotional injuries from certain felony violations.
- AB 1187 by Assembly Member Quirk-Silva authorizes CalVCB to reimburse services provided by Child Life Specialists.
- SB 78 by Senator Glazer specifies when a court shall issue a finding that a claimant is entitled to approval of a claim for compensation under Penal Code section 4900.
- SB 544 by Senator Laird amends the Bagley-Keene Open Meeting Act to remove certain teleconference requirements and require a majority of members to be physically present at every Board meeting.

These bills all take effect on January 1, 2024.

Chairperson Ravel thanked Ms. Cardenas for the updates.

Item 5. Contract Update

The Contract Update was presented by Deputy Executive Officer Shawn Ramirez.

Ms. Ramirez stated that the Contract Report was informational only and offered to answer any questions the Board had regarding the items listed in the report.

Chairperson Ravel thanked Ms. Ramirez for the update.

Item 6. Proposed Board Meeting Dates for Calendar Year 2024

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motion was seconded by Member Johnson. By a unanimous vote of the Board, the motion passed.

Item 7. Shawn Martin (Pen. Code, §§ 4900, et seq.)

The Penal Code section 4900 claim of Shawn Martin was presented by Chief Counsel, Kim Gauthier.

On September 14, 2021, Shawn Martin submitted an application as an erroneously convicted person to the California Victim Compensation Board. The application is based on his 2017 convictions for murder and shooting at an occupied vehicle, which were reversed on direct appeal for instructional error. The claim seeks \$358,820 for 2,563 days of imprisonment.

The Attorney General objected to this claim, arguing the evidence fails to prove Mr. Martin's innocence by a preponderance. As explained in detail in the proposed decision, the claim is recommended for denial as Mr. Martin has failed to meet his burden of proof showing by a preponderance of the evidence that he is innocent of the challenged convictions as required by Penal Code section 4900(a).

Mr. Martin represented himself and today is also represented by Tina Flores. The Office of the Attorney General is represented by Deputy Attorney General Kathryn Althizer.

Chair Ravel requested to hear first from Mr. Martin's representative, Ms. Flores.

Ms. Flores started by discussing Mr. Martin's unrelated claim for \$20,000, which was removed from his account when he was in Santa Rita and Mr. Martin called numerous times to ask what happened to the \$20,000 and got no response. Since Mr. Martin's career path as a sprinkler fitter has been reduced to nothing, he has been unable to return to his union job. At the time of his incarceration the amount he was earning was \$52.59 per hour and now it is \$70.55. Ms. Flores also stated there is a probate cause regarding a family member that received \$11,631.43 payable to CalVCB against Mr. Martin. Mr. Martin was found not guilty; Ms. Flores feels he is entitled to all of his reimbursements.

Finally, Ms. Flores stated the Attorney General says Mr. Martin was guilty and not qualifying for compensation; however, the jury found him not guilty.

Mr. Martin provided the following pre-recorded statement to the Board:

William Petosky, Virginia Martinez and Joanna Casillas clearly states that they themselves threatened me personally or Melissa Martinez herself threatened me. Nowhere in the transcript, previous arrest records or conviction paperwork that states, "I have before or at any time up to this point have a propensity for violence." So those comments or suggestions or statements spell out the line and type of

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deception the DA Ford and the court judge Horner tried to push over to the jury, constant confusion and flat out lies or switching legal standpoints, meaning once we presented evidence of Melissa Martinez's propensity for violence the DA took that over and used my self-defense, my specific claim of self defense directly against me. Joanna Casillas and Melissa Martinez fought a lot with Melissa initiating most if not all of their hands-on fighting. The propensity for violence was clearly evident with Melissa Martinez. But the AG claims that I was this person who had or have a propensity for violence and making unfounded claims of self-defense. So, the AG read all transcripts, I'm guessing, and still happened to inject their own narrative of this situation, just as the DA has done.

Having clear exculpatory evidence DA Ford decided to switch the more crucial bits of my case by making my defense an issue of Melissa Martinez's not mine. As in section 5.50.1., DA Ford turned it on its head and reversed the defendant-victim position, setting the grounds for an easy overturn in the Appellate Court. The propensity for violence was clear and only referring to Melissa Martinez life issues, period, not mine. I've never made any claims of self-defense. There is no evidence of me engaging in violence that could be offered prior to this case. Founded or unfounded. Erroneously is how I lost my first trial, at re-trial nothing was brought up concerning the first trial, they started from scratch, with my new DA and court judge being on watch, they had to play fair. Due to unfair and unlawful legal practices by the Oakland DA's office, my public defender, Foxall tried to recuse the Alameda DA's office from my case because of the malfeasance running rampant through that office. Yet, lies were still told at retrial regularly, circumstantial evidence of all kinds and all makings, the same if not more evidence that didn't come out at the first trial. Also, at the first trial, the jury asked questions of law and were misguided, misled, and misinformed by the court judge and DA Ford. DA Ford lied intentionally about who had a right to self-defense, me or Martinez. Intentionally putting us in opposing positions and confusing the jury with his erroneous ideas of self-defense and with no help from the court judge Jeffrey Horner setting the jury straight on an issue of law concerning facts on who was in what position and prior threats made by the victim not the defendant. The unlawful act of possession of a firearm is a secondary offense, not an outward, initial or active crime. If I had a concealed weapon and no one threatens me with bodily harm or injury then the crime of possession never occurs, because no one becomes aware, and nobody gets hurt. Self-defense is the ruling, if not by description, then by statute. Not guilty means justifiable homicide, not liable. The jury found me guilty only after being lied to by DA Ford, because he had no other way to win with his lack of solid evidence-so he lied. Judge Jeffrey Horner failed his duty to give additional instructions to a very confused jury, leading to my erroneous conviction. Prior to my first trial, I was poisoned in Santa Rita jail two to

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three times, once with something called H-Pylori, an infection of the gut due to ingesting fecal matter, it was not intentional. The other two times were a recurrence or something they could not identify.

I had a pregnant woman, a girlfriend, by my fifth week in jail, she decided to abort, because of these lies told to her. "He's never coming home, he's in over his head." Foxall, my public defender, even told these things to my family, well my sister because everybody is getting up in age, has died during my incarceration or lives out of state, so I had no one to call on.

The State of California spent more than \$70,000 a year to cage me against my will, against nature, and against the law for seven years and seven days. I am factually innocent of first- and second-degree murder. I am factually innocent of all forms and degrees of manslaughter by way of jury trial, right? That's why I'm here on the outside able to fight for my future. A jury of my peers, most if not all were not in my peer group, in fact my peer group was not represented in either the first or second trial. Yet, the first trial jury asked questions highly in my favor, but when those questions went unanswered by the court judge it left the jury to think on its own, about how to make the law and apply it as they see fit. Which is why my second trial went smoothly. Even with the new Alameda DA telling new lies, still the jury sided in my favor. With all the evidence placed in front of them in a meticulously slow, one at a time jury members would take the stand and be questioned individually while all others watched via television screen, so the 12+3 alternate jurors had a chance to hear each question asked at least 40 times or more. The jury had more than enough time to make a sound decision and they did. Please don't put me in double jeopardy situation. Not guilty is the ruling, please be fair and make this right.

Mr. Martin thanked the Board.

Chair Ravel thanked Ms. Flores and gave her another opportunity to speak.

Ms. Flores concluded by saying she would ask that the Board take notice of the facts that Mr. Martin stressed and that a jury of his peers evaluated a lot of evidence and found him not guilty and doesn't that mean something in the name of justice. She asked that justice prevail.

Chair Ravel then requested to hear from Ms. Althizer from the Attorney General's Office.

Ms. Althizer stated that the Office of the Attorney General agrees with the proposed decision and requested that the Board adopt the proposed decision.

Chair Ravel thanked Ms. Althizer for appearing before the Board.

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Member Becton wanted clarification about whether the jury's acquittal played into the burden of proof. She stated she understood that the burden is more likely innocent than guilty and there is a list of things that were considered that would lead to the guilt and then there's a mention of the things that might lead to Mr. Martin meeting his burden, one of them being his claim of self-defense, although there are statements that it was inconsistent and evasive; the other one being the jury's verdict of acquittal.

Member Becton continued stating she has difficulty because there is not much else said about that acquittal and what we should be doing with it in this setting. With the burden really being more likely innocent than guilty and we have this system where 12 people from his community heard all of the evidence in the case, deliberated, and returned a verdict of an acquittal. Member Becton questioned how that acquittal with 12 people from the community making that decision factors into the Board's decision today in terms of Mr. Martin meeting his burden? She opined that the proposed decision did not say very much about that at all.

Ms. Althizer reminded the Board that there are different burdens of proof at a jury trial and before this Board. A jury trial is a higher burden of proof and it is incumbent upon the prosecutor to meet that burden of proof, whereas here the standard is a preponderance of the evidence and it is claimant's burden. Ms. Althizer directed the Board's attention to page 17 of the proposed decision, where the Hearing Officer laid out the relevant considerations for this Board. The proposed decision notes that the reversal of the judgment of conviction is one of those considerations, but there are others and, notably, this Board is not constricted to the record of conviction; the Board may also consider any other information that it deems relevant to the issue even if inadmissible under the traditional rules of evidence so long as it is the sort of evidence which reasonable persons are accustomed to rely in the conduct of serious affairs. The acquittal is just one piece of the puzzle, and the proposed decision fairly balances and takes into consideration all of these factors.

Chair Ravel thanked Ms. Althizer for the additional information.

Member Johnson moved to adopt the Hearing Officer's proposed decision in the Penal Code section 4900 matter of Shawn Martin. The motion was seconded by Chair Ravel. The motion was approved by Member Johnson and Chair Ravel of the Board and the proposed decision was adopted.

Item 8. Dupree Glass (Pen. Code, §§ 4900, et seq.)

The Penal Code section 4900 claim of Dupree Glass was presented by Chief Counsel, Kim Gauthier.

On December 1, 2020, Dupree Glass submitted an application as an erroneously convicted person to the California Victim Compensation Board, which was initially stayed and then

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supplemented on April 24, 2023. The application is based on his 2004 convictions for 11 counts of attempted murder and one count of shooting at an inhabited dwelling. The attempted murder convictions were vacated by writ of habeas corpus and dismissed upon remand in 2020, and the conviction for shooting at an inhabited dwelling was vacated pursuant to Penal Code section 1473.7 in 2023.

As there was no objection to the claim filed by the Office of the Attorney General, compensation is automatic under Penal Code section 4900(b). The proposed decision recommends compensation in the amount of \$859,040, which represents \$140 per day for each of the 6,136 days Mr. Glass was wrongfully imprisoned.

Mr. Glass has been represented by attorney Annee Della Donna and the Office of the Attorney General is represented by Deputy Attorney General Seth McCutcheon and Jonathan Krauss.

Chair Ravel requested we hear first from the attorney for Mr. Glass.

Ms. Della Donna thanked the Board for its consideration of this matter. She noted Mr. Glass was convicted and imprisoned for over 17 years for a crime he did not commit. She further noted he was found innocent of the shooting in April 2020, and asked that the Board approve compensation.

Chair Ravel asked if Mr. Glass would like to address the Board.

Mr. Glass appeared via zoom (no picture) and thanked the Board for hearing his case.

Chair Ravel requested to hear next from Mr. McCutcheon.

Mr. McCutcheon submitted on the proposed decision.

Chair Ravel thanked everyone for appearing at the meeting.

Member Becton moved to adopt the Hearing Officer's proposed decision in the Penal Code section 4900 matter of Dupree Glass. The motion was seconded by Member Johnson. The motion was approved by a unanimous vote of the Board and the proposed decision was adopted.

Item 9. Juan Rayford (Pen. Code, §§ 4900, et seq.)

The Penal Code section 4900 claim of Juan Rayford was presented by Chief Counsel, Kim Gauthier.

On December 1, 2020, Juan Rayford submitted an application as an erroneously convicted person to the California Victim Compensation Board, which was initially stayed and then supplemented on April 24, 2023. The application is based on his 2004 convictions for 11

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counts of attempted murder and one count of shooting at an inhabited dwelling. The attempted murder convictions were vacated by writ of habeas corpus and dismissed upon remand in 2020 and the conviction for shooting at an inhabited dwelling was vacated pursuant to Penal Code section 1473.7 in 2023.

As there was no objection to the claims filed by the Office of the Attorney General, compensation is automatic under Penal Code section 4900(b). The proposed decision recommends compensation in the amount of \$859,040, which represents \$140 per day for each of the 6,136 days Mr. Rayford was wrongfully imprisoned.

Mr. Rayford has been represented by attorney Annee Della Donna and the Office of the Attorney General is represented by Deputy Attorney General Seth McCutcheon and Jonathan Krauss.

Chair Ravel requested we hear first from the attorney for Mr. Rayford.

Ms. Della Donna thanked the Board for its consideration of this matter. She noted Mr. Rayford was convicted and imprisoned for over 17 years for a crime he did not commit. She further noted he was found innocent of the shooting in April 2020, and asked that the Board approve compensation.

Chair Ravel asked if Mr. Rayford would like to address the Board.

Mr. Rayford appeared via zoom. He thanked the Board for hearing his case.

Chair Ravel requested to hear next from Mr. McCutcheon.

Mr. McCutcheon submitted on the proposed decision.

Chair Ravel thanked everyone for appearing at the meeting.

Member Becton moved to adopt the Hearing Officer's proposed decision in the Penal Code section 4900 matter of Juan Rayford. The motion was seconded by Member Johnson. The motion was approved by a unanimous vote of the Board and the proposed decision was adopted.

Closed Session

The Board adjourned into Closed Session with the Chief Executive Officer and Chief Counsel at 10:46 a.m. pursuant to Government Code section 11126, subdivision (e) to discuss pending litigation and pursuant to Government Code Section 11126, subdivision (c)(3) to deliberate on proposed decision numbers 1 through 85 of the Victim Compensation Program.

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Open Session

The Board reconvened in Open Session pursuant to Government Code section 11126, subdivision (c)(3) at 11:07 a.m.

Member Becton moved to approve items 1 through 85 of the Victim Compensation Program. Member Johnson seconded the motion. The motion was approved by a unanimous vote of the Board and the proposed decisions were adopted.

Adjournment

Member Johnson moved the adjournment of the November Board meeting. Member Becton seconded the motion. The motion was approved by a unanimous vote of the Board and the meeting was adjourned at 11:08 a.m.

Next Board Meeting

The next Board meeting is scheduled for Wednesday, January 31, 2024.

ITEM 2

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CALIFORNIA VICTIM COMPENSATION BOARD OPEN MEETING MINUTES DECEMBER 20, 2023, BOARD MEETING

The California Victim Compensation Board (Board) convened its meeting in open session upon the call of the Chair, Gabriel Ravel, General Counsel of the Government Operations Agency, acting for, and in the absence of Amy Tong, Secretary of the Government Operations Agency, at 400 R Street, Room 330, Sacramento, California, on Wednesday, December 20, 2023, at 10:07 a.m. Also present was Member Evan Johnson, acting for, and in the absence of, Malia Cohen, Controller. Appearing via Zoom was Member Diana Becton, District Attorney.

Executive Officer Lynda Gledhill, and Chief Counsel Kim Gauthier, attended in person at 400 R Street, Sacramento, California. Board Liaison, Andrea Burrell, was also present and recorded the meeting.

Item 1. PC 4900 Claim No. 21-ECO-20, Brandon Washington

This presentation was given by Chief Counsel, Kim Gauthier. Ms. Gauthier gave a brief summary of the Penal Code section 4900 claim filed by Brandon Washington.

On July 21, 2021, Brandon Washington filed an application as an erroneously convicted person with the California Victim Compensation Board. On November 9, 2023, that application was supplemented. The application is based on his 2013 convictions for assault with a firearm as an aider and abettor, which convictions were vacated in 2020 on direct appeal. In September of 2023, the court granted a motion for a finding of factual innocence pursuant to subdivision (b) of Penal Code section 1485.55.

As mandated by Penal Code section 1485.55, the proposed decision recommends compensation in the amount of \$231,000, which represents \$140 per day for each of the 1,650 days Mr. Washington was wrongfully imprisoned.

Mr. Washington has been represented throughout these proceedings by William Wright and the Office of the Attorney General is represented by Deputy Attorney General Dina Petrushenko.

Chairperson Ravel asked that counsel for Mr. Washington address the Board first.

Daniel Repp appeared on behalf of Mr. Washington. Mr. Repp wanted to thank the Board for considering this matter. He stated that they agree with the decision and asked the Board to adopt the decision as presented.

Chair Ravel thanked Mr. Repp for appearing before the Board and for his comments and asked if Mr. Washington wanted to address the Board.

Mr. Washington did not address the Board.

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Chair Ravel asked if Ms. Petrushenko from the Attorney General's Office wished to address the Board.

Ms. Petrushenko, who appeared via Zoom, stated she submits on the comments that she previously submitted regarding the amount of compensation due.

Chairperson Ravel thanked Ms. Petrushenko for appearing before the Board.

Member Johnson moved to adopt the Hearing Officer's Proposed Decision in the Penal Code section 4900 matter of Brandon Washington. The motion was seconded by Member Becton. The motion was approved by a unanimous vote of the Board and the Proposed Decision was adopted.

Item 2. PC 4900 Claim No. 23-ECO-51, Charles Heard

This presentation was given by Chief Counsel, Kim Gauthier. Ms. Gauthier gave a brief summary of the Penal Code section 4900 claim filed by Charles Heard.

On October 31, 2023, Charles Heard filed an application as an erroneously convicted person with the California Victim Compensation Board. On November 20, 2023, that application was supplemented. The application is based on his 2010 convictions for first degree murder and attempted robbery, which were vacated in 2020 pursuant to a Writ of Habeas Corpus. In March of 2023, the court granted a motion for a finding of factual innocence pursuant to subdivision (b) of Penal Code section 1485.55.

As mandated by the court order and pursuant to Penal Code section 1485.55, the proposed decision recommends compensation in the amount of \$229,880, which represents \$140 per day for each of the 1,642 days Mr. Heard was wrongfully imprisoned.

Mr. Heard has been represented throughout these proceedings by Mark Vermeulen and the Office of the Attorney General is represented by Deputy Attorney General Dina Petrushenko.

Ms. Gauthier also noted that in the packet of materials sent to the Board members and also posted on the website is the Amended Proposed Decision. The Proposed Decision was amended following commentary and a response received from Mr. Heard's counsel and includes clerical errors that were corrected, and other changes requested by Mr. Heard that were made to the extent that the Hearing Officer agreed with them.

Chairperson Ravel asked that counsel for Mr. Heard address the Board first.

Mark Vermeulen stated he submitted the matter to the Board consistent with his earlier submissions.

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Chair Ravel thanked Mr. Vermeulen for appearing before the Board and for his comments and confirmed that Mr. Heard is still in prison.

Mr. Vermeulen confirmed.

Chair Ravel asked if Ms. Petrushenko from the Attorney General's Office wished to address the Board.

Ms. Petrushenko, who appeared via Zoom, acknowledged that she has reviewed the Proposed Decision, and stated she agrees with the decision regarding the amount of compensation due.

Chairperson Ravel thanked Ms. Petrushenko for appearing before the Board.

Member Johnson had a question regarding what happens to the funds since Mr. Heard is in federal prison?

Ms. Gauthier stated, pursuant to our standard processing procedure, Mr. Heard's claim would be submitted to the State Controller's Office for payment and issued to Mr. Vermeulen. Mr. Vermeulen would then disperse the funds consistent with his and Mr. Heard's agreement.

Mr. Vermeulen stated he will deposit the funds into his client's trust account.

Chair Ravel stated that when you have a claimant that is serving four life sentences, including conspiracy that the original charge that he was found factually innocent on was in furtherance of his other criminal enterprises is troubling to him, but noted that we are required to compensate.

Mr. Vermeulen stated that the conviction in Superior Court was separate and apart from the RICO conviction in the federal case. Mr. Heard was convicted of a murder that was charged as a single murder and he was wrongfully convicted of that. The federal RICO case that followed was different.

Chair Ravel stated he understood the conspiracy charge and that the murder of which he was convicted was found to have been an overt act in furtherance of the conspiracy that he was later convicted of.

Mr. Vermeulen disagreed and noted that in federal court the jury does not decide the truth or the falsity of overt acts.

Member Becton moved to adopt the Hearing Officer's Proposed Decision in the Penal Code section 4900 matter of Charles Heard. The motion was seconded by Member Johnson. The motion was approved by a unanimous vote of the Board and the Proposed Decision was adopted.

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Item 3. PC 4900 Claim No. 23-ECO-56, Gerardo Cabanillas

This presentation was given by Chief Counsel, Kim Gauthier. Ms. Gauthier gave a brief summary of the Penal Code section 4900 claim filed by Gerardo Cabanillas.

On November 13, 2023, Gerardo Cabanillas filed an application as an erroneously convicted person with the California Victim Compensation Board. On November 17 and 21, 2023, the application was supplemented. That application is based on his 1995 and 1996 convictions for robbery, carjacking, kidnapping, and multiple forcible sexual offenses, which were vacated in 2023 pursuant to a Writ of Habeas Corpus. In September of 2023, the court granted a motion for a finding of factual innocence pursuant to subdivision (b) of Penal Code section 1485.55.

As mandated by the court order and pursuant to Penal Code section 1485.55, the proposed decision recommends compensation in the amount of \$1,447,740, which represents \$140 per day for each of the 10,341 days Mr. Cabanillas was wrongfully imprisoned.

Mr. Cabanillas has been represented throughout these proceedings by Jasmin Harris of the Innocence Center and the Office of the Attorney General is represented by Deputy Attorney General Dina Petrushenko.

Chairperson Ravel asked that the representative for Mr. Cabanillas address the Board first.

Jasmin Harris stated Mr. Cabanillas spent over 28 years in prison for crimes he did not commit. No amount of compensation will give Mr. Cabanillas back the decades that he's lost, but it's a start to helping him become whole again. She asked that the Board approve the proposed order.

Chair Ravel thanked Ms. Harris for appearing before the Board and for her comments and asked if Mr. Cabanillas wanted to address the Board.

Mr. Cabanillas did not address the Board.

Chair Ravel asked if Ms. Petrushenko from the Attorney General's Office wished to address the Board.

Ms. Petrushenko, who appeared via Zoom, acknowledged that there was some discussion after the administrative record closed and before today's meeting between the parties and the Board about the amount of compensation. She noted that if the amount of compensation is not an issue that is being contested by Ms. Harris, the Board should approve the Proposed Decision.

Chairperson Ravel thanked Ms. Petrushenko for appearing before the Board.

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Chair Ravel noted that the four days between the arrest and the arraignment Mr. Cabanillas was confined based on a pretext. There was an outstanding traffic warrant, but really, he was arrested because the officer suspected him of having committed the crimes that he was ultimately found not to have committed. Under those circumstances and under the prevailing statutes and regulations, if not for that pretext, he would not have been incarcerated, and questioned whether he should be compensated for the additional four days.

Ms. Harris stated they believed Mr. Cabanillas should be compensated for those four days. She explained there is no other place that the traffic warrant is alleged in the various reports that they have. She submitted the actual arrest record to the Hearing Officer and the paperwork that Mr. Cabanillas signed regarding his Miranda Rights both dated January 20. Ms. Harris continued stating Detective Valdez testified that he arrested Mr. Cabanillas on the traffic warrant, but there is no proof of that. Ms. Harris also noted that Mr. Cabanillas did not have a driver's license at that time. Finally, she stated Mr. Cabanillas will always remember that he was arrested Friday, January 20, 1995.

Ms. Petrushenko argued that because of Mr. Cabanillas' age at the time of his arrest, he was unlikely to have understand the particular nuances of which case, which arrest warrant, and which charges he was being detained for. It was a significant event for him. Also, she pointed out that it is Mr. Cabanilla's burden under the regulations of the Board and the statute to prove up the amount of his injury. Finally, she concluded by reiterating that the Hearing Officer's decision should be adopted.

Chair Ravel further questioned whether it was because he might not have actually been arrested until the later date or because he was arrested on the earlier date, but it was for a valid charge.

Ms. Petrushenko stated it was for the latter.

Chair Ravel thanked Ms. Petrushenko and Ms. Harris.

Member Becton moved to adopt the Hearing Officer's Proposed Decision in the Penal Code section 4900 matter of Gerardo Cabanillas. The motion was seconded by Member Johnson. The motion was approved by a unanimous vote of the Board and the Proposed Decision was adopted.

Adjournment

Member Becton moved for the adjournment of the December Board meeting. Member Johnson seconded the motion. The motion was adopted by a unanimous vote of the Board and the meeting was adjourned at 10:27 a.m.

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Next Board Meeting

The next Board meeting is scheduled for Wednesday, January 31, 2024.

ITEM 3

PUBLIC COMMENT

The Board will receive comments from the public on matters that are not on the agenda.

The Board may not discuss or take any action on any item raised during public comment expect to decide whether to place the matter on a subsequent agenda.

(Gov. Code, § 11125.7.)

ITEM 4

EXECUTIVE OFFICER'S STATEMENT

ITEM 5

CALIFORNIA VICTIM COMPENSATION BOARD
LEGISLATIVE UPDATE
JANUARY 31, 2024

AB 1186 (Bonta) Juveniles: Restitution

This bill would remove provisions that require juvenile offenders to pay restitution, instead requiring them to participate in various restorative justice programs. The courts would determine the amount of restitution owed and transmit it to CalVCB, which would be required to pay the amount to the victim upon appropriation by the Legislature. It would specify that CalVCB shall not pursue reimbursement or recover in a separate action against a person who was adjudicated, or against the person's parent or guardian, for an offense committed while the person was a minor.

Status: Placed on the Senate Inactive File in 2023. Because the bill advanced to the floor of its second house, it is eligible to be returned from the inactive file to be heard on the floor as a two-year bill through August 2024.

AB 997 (Gipson) Exoneration: Mental Health Services

This bill would require CalVCB to compensate mental health services for individuals with successful erroneous conviction claims.

Status: Held on the Suspense File in the Senate Appropriations Committee in 2023. Because the bill advanced to the fiscal committee of its second house, it is eligible to be heard in that committee as a two-year bill through August 2024.

ITEM 6

CALIFORNIA VICTIM COMPENSATION BOARD
CONTRACT REPORT
JANUARY 31, 2024

The Board has delegated to the Executive Officer the authority to execute contracts with county victim centers for the verification of victim compensation program applications; contracts with counties for assistance in the effective collection of restitution from offenders; contracts for the review and adjustment of medical bills received by the California Victim Compensation Program; and contracts for the maintenance of the Board's information technology system.

Further, the Board has delegated to the Executive Officer the authority to execute all other contracts in an amount not to exceed \$200,000. All contracts in excess of \$200,000 require Board approval prior to execution.

For all contracts for which the Executive Officer has delegated authority, the Executive Officer reports to the Board the substance and amount of the contract at the meeting following execution of the contract.

Contractor Name and PO/Contract Number	Contract Amount and Contract Term	Good or Service Provided
Approval		
No approvals requested.		
Informational		
Contractor Name: City of Los Angeles Contract Number: S23-004	Contract Amount: \$0.00 Term: 12/14/2023 – 6/30/2026	The Contractor shall establish a process by which the Contractor may pay expenses, through the Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made. Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor's Scope of Work. This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol

		1 section 3.06 (A)(3) (contract with a local government entity).
Contractor Name: County of Orange Contract Number: S23-005	Contract Amount: \$0.00 Term: 9/12/2023 – 6/30/2026	<p>The Contractor shall establish a process by which the Contractor may pay expenses, through the Joint Powers Revolving Fund, on an emergency basis when a claimant would suffer substantial hardship if the payment was not made.</p> <p>Government Code section 6504 authorizes CalVCB to advance funds to establish a revolving fund account to pay qualifying claims as identified on the contractor's Scope of Work.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).</p>
Contractor Name: County of Shasta Contract Number: S23-035	Contract Amount: \$208,839.00 Term: 10/25/2023 – 6/30/2026	<p>The Contractor shall work to impose restitution on behalf of CalVCB for benefits paid on behalf of victims. This will help maintain the health of the Restitution Fund for future victims.</p> <p>This procurement is exempt from competitive bidding pursuant to State Contracting Manual (SCM) Vol 1 section 3.06 (A)(3) (contract with a local government entity).</p>
Contractor Name: Zones LLC PO Number: 3096	Contract Amount: \$124,377.00 Term: 12/21/2023 – 12/20/2024	<p>This procurement is to renew a contract for Microsoft Unified Support – Product Support for all Microsoft products. This procurement enables CalVCB to purchase Microsoft Premier Support Services for Microsoft products.</p>

		This was procured utilizing Software Licensing Program #23-70-0199U.
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ITEM 7

California Victim Compensation Board
Request for Authority to Conclude the Rulemaking Process for Amendments to
California Code of Regulations, Title 2, §§ 649.4, 649.7, 649.15, 649.16, 649.18,
649.19, 649.24, 649.28, 649.50

January 31, 2024

Action Requested

On September 14, 2023, the California Victim Compensation Board (Board) authorized staff to commence the rulemaking process to amend the regulations related to processing victim applications under Government Code sections 13950, et seq., located in the California Code of Regulations, title 2, sections 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50. Now that this process is complete, it is requested that the Board adopt the proposed regulations, excluding proposed amended section 649.4, and authorize the Executive Officer to file the final rulemaking record with the Office of Administrative Law (OAL) to conclude the rulemaking process for these amendments.

Background

CalVCB processes claims from victims of crime seeking compensation. The regulations governing victim compensation (Cal. Code Regs., tit. 2, §§ 601, et seq.) have not been significantly revised since 2012. As a result, several modifications are needed to provide clarity, transparency, and consistency.

At its September 2023 meeting, the Board approved commencement of the rulemaking process to update these regulations. The Board specifically authorized staff to take action, including preparation of a regulation package with proposed amendments for sections 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50.

The regulation package was submitted to the California Office of Administrative Law (OAL) for publication on September 19, 2023, with notice sent by mail or email to all interested parties, and all materials were posted on CalVCB's website for public comment on September 29, 2023. The public comment period commenced on September 29, 2023, and closed 45-days later on November 13, 2023. Multiple comments were received.

Further, CalVCB received a request for a public hearing. On November 28, 2023, CalVCB posted notice of the public hearing on CalVCB's website and sent notice by mail or email to all interested parties. CalVCB held a public hearing on December 12, 2023, and received multiple public comments. On December 18, 2023, CalVCB posted notice of a second public hearing on CalVCB's website and sent notice by mail or email to all interested parties. CalVCB held the second public hearing on December 28, 2023, and received one public comment.

After careful consideration of all comments, CalVCB is recommending to remove proposed amended section 649.4 from the regulation package. The original language of section 649.4 will remain in effect. No additional modifications are proposed.

Attached are the following documents in support of the requested action: (1) Final Statement of Reasons, (2) Final Regulation Text, (3) Summary of Comments and Responses to Proposed Regulations, and (4) Updated Informative Digest / Policy Statement Overview.

Recommendation

It is recommended that the Board adopt the proposed amended regulations (649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50), and authorize the Executive Officer to conclude the rulemaking process by filing the rulemaking record with the OAL for its review and approval.

Certification

I certify that at its January 31, 2024, Board Meeting, the California Victim Compensation Board adopted the proposed regulations as modified and authorized the Executive Officer to file the rulemaking record with the Office of Administrative Law for its review and approval.

Andrea Burrell
Board Liaison

Final Statement of Reasons

Title 2. California Victim Compensation Board
Article 5. Indemnification of Victims of Crime
Title 2, §§ 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50

FINAL STATEMENT OF REASONS

PROBLEM STATEMENT

CalVCB was the first established and remains one of the largest victim compensation programs in the nation. A person is eligible for victim compensation if, as a direct result of a qualifying crime, they suffered a pecuniary loss. (Gov. Code, §§ 13955, 13957.) “Crime” is defined as a crime or public offense that would constitute a misdemeanor or felony offense. (Gov. Code, § 13951, subd. (b).) A crime is a “qualifying crime” for purposes of the California Victim Compensation Board (CalVCB), if the victim sustained a physical injury or an emotional injury and a threat of physical injury. (Gov. Code, § 13955, subds. (f)(1) & (2).) Victims of sexual assault, human trafficking, child molestation, or child abuse are only required to show they sustained an emotional injury. (Gov. Code, § 13955, subd. (f)(3).) An application for compensation must be filed within seven years of the qualifying crime, seven years after the victim attains 21 years of age, or seven years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained, whichever is later. (Gov. Code, § 13953, subd. (a).) The Board may for good cause grant an extension of the time period to file an application. (Gov. Code, § 13953, subd. (b).) An applicant may be found to be ineligible for compensation if they failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of the person who committed the qualifying crime or were involved in the events leading to the qualifying crime. (Gov. Code, § 13956.)

If CalVCB determines a qualifying crime occurred, CalVCB can help pay certain bills and expenses, as authorized by the Legislature, that are a direct result of the crime the application was based on. (Gov. Code, §13957.) Eligible services include medical and dental care, mental health services, income loss, funeral and burial expenses, relocation, and residential security, among others enumerated in statute. (Gov. Code, § 13957.) However, CalVCB is a payor of last resort, meaning that, if a person is eligible for compensation, CalVCB provides compensation for costs that are not covered by other sources. (Gov. Code, §§ 13951 and 13954.)

The regulations governing victim compensation (Cal. Code Regs., tit. 2, §§ 601 et seq.) have not been significantly revised since 2012. As a result, several modifications are needed to provide clarity, transparency, and consistency. The revision of Section 649.7 clarifies the requirements for a complete application. The revision of Section 649.15 provides additional factors that may be considered as good cause for filing applications beyond the statutory deadline. The revision of Section 649.16 clarifies who qualifies as a derivative victim. The revision of Section 649.18 identifies ineligible funeral and burial expenses and clarifies the order of payment when there are multiple applications related to a single decedent. The revision of Section 649.19 clarifies the evidence that will be considered and payments that may be made to improve or restore residential security. The revision of Section 649.24 clarifies and expands on the circumstances that may render service providers ineligible for reimbursement. The revision of Section 649.28 clarifies and expands on CalVCB’s ability to oversee medical, medical-related, and mental health providers who seek reimbursement from CalVCB for services provided. The revision of Section 649.50 clarifies when a person is eligible or ineligible for compensation due to their involvement in a vehicle-related qualifying crime.

PROCEDURAL HISTORY

On September 14, 2023, the Board approved commencement of the rulemaking process to update the regulations governing victim compensation claims under Government Code sections 13950, et seq. The Board specifically authorized staff to take action, including preparation of a regulation package with proposed amendments for sections 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, and 649.50 of the California Code of Regulations. On September 19, 2023, CalVCB staff submitted the regulation package to the California Office of Administrative Law (OAL) for publication. On September 29, 2023, CalVCB staff posted the regulation package on CalVCB's website for public comment with notice sent by mail or email to all interested parties.

The public comment period commenced on September 29, 2023, and closed 45 days later on November 13, 2023. A public hearing was requested. On November 28, 2023, CalVCB posted notice of the public hearing on CalVCB's website and sent notice by mail or email to all interested parties. CalVCB held a public hearing on December 12, 2023, and received multiple public comments. On December 18, 2023, CalVCB posted notice of a second public hearing on CalVCB's website and sent notice by mail or email to all interested parties. CalVCB held the second public hearing on December 28, 2023, and received one public comment.

Multiple comments were received for the following sections: 649.4, 649.7, 649.15, 649.24, 649.28, and 649.50. A summary of each comment and CalVCB's response is detailed in the attached Summary of Comments and Responses to Proposed Regulations ("Comments and Responses Summary").

After careful consideration, section 649.4, in its entirety, was removed from the regulations package. No additional modifications were proposed by CalVCB. CalVCB determined that no other suggested or considered alternative would be as effective and less burdensome than the proposed regulations. This determination is supported by the description for the purpose and necessity for each proposed regulation set forth below, as well as the attached Comments and Responses Summary.

BENEFITS

The proposed regulations comply with the current law governing victim compensation, clarify existing policies and practices, and provide the public with the specificity needed for applicants to successfully obtain compensation. The regulations also interpret and implement general aspects of the law, to ensure their consistent application in specific circumstances. By doing so, they will provide clear guidance to the public and enable the Board to decide these claims in a more uniform and efficient manner.

PURPOSE

Section 649.7: The purpose of this revised regulation is to clarify and explain what information must be included for an application filed with the Board to be deemed complete and to adopt digital signature standards consistent with current statutes and case law. This revision also adds standards for determining when a summary may be provided in lieu of a crime report. The purpose of the deletion of Section 13974 and

inclusion of 13920 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose of each subdivision follows.

- **Section 649.7, subdivision (a):** The revised subdivision clarifies the information that must be provided in an application for the application to be deemed complete.
 - **Section 649.7, subdivision (a)(1):** The revised subdivision clarifies the applicant's name, contact information, and birthdate must be provided.
 - **Section 649.7, subdivision (a)(2):** The revised subdivision expands on the designations an applicant may use to identify their relationship to the victim or derivative victim. The changes do not materially alter any provision of this Section.
 - **Section 649.7, subdivision (a)(3):** The revised subdivision explains that supporting documentation is required as to the person's legal authority to apply for benefits on behalf of a victim.
 - **Section 649.7, subdivision (a)(4):** No revisions to this subdivision are proposed.
 - **Section 649.7, subdivision (a)(5):** The revised subdivision clarifies the documentation required to establish pecuniary loss, consistent with existing statutes, and eliminates examples and other language to prevent confusion.
 - **Section 649.7, subdivision (a)(6):** The added subdivision requires applications be signed under penalty of perjury and clarifies that victims and derivative victims must attest the information is true and correct to the best of their knowledge, while representatives need only attest to their information and belief.
 - **Section 649.7, subdivision (a)(7):** The revised subdivision is renumbered to accommodate addition of another subdivision and changes "VCP" to "Board" for consistency.
 - **Section 649.7, subdivision (a)(8):** The added subdivision allows the Board to accept electronic signatures if they meet certain criteria, consistent with existing statutes and case law.
 - **Section 649.7, subdivision (a)(8)(A):** The added subdivision specifies an electronic signature must be unique.
 - **Section 649.7, subdivision (a)(8)(B):** The added subdivision specifies an electronic signature must be verifiable.
 - **Section 649.7, subdivision (a)(8)(C):** The added subdivision specifies an electronic signature must be made by the person who is purporting to sign the application.

- **Section 649.7, subdivision (a)(9):** The revised subdivision is renumbered to accommodate a new subdivision and clarifies that, if the applicant is represented by counsel, their attorney's information, including their bar number, must be included in the application.
- **Section 649.7 subdivision (a)(10):** The revised subdivision is renumbered to accommodate a new subdivision and changes "VCP" to "Board" for consistency throughout the regulatory scheme. The revision also includes a requirement that the applicant provide the name of their attorney, if they are pursuing damages in civil proceedings.
- **Section 649.7, subdivision (a)(11):** The revised subdivision is renumbered to accommodate a new subdivision and changes "VCP" to "Board" for consistency throughout the regulatory scheme.
- **Section 649.7, subdivision (a)(12):** The revised subdivision is renumbered to accommodate a new subdivision and adds a requirement that the application include a statement detailing any collateral benefits that are or may be available to the victim and provides examples of such benefits for clarity.

Section 649.7, subdivision (b): The revised subdivision includes the phrase Government Code to clarify the provision cited in this subdivision.

- **Section 649.7, subdivision (b)(1):** The revised subdivision explains the applicant must provide information about service providers if they are requesting compensation for professional services.
- **Section 649.7, subdivision (b)(2):** The revised subdivision cross references Section 649.32 to clarify the documentation required for an applicant seeking compensation for loss of income.
- **Section 649.7, subdivision (b)(3):** The revised subdivision explains funeral and burial expenses must be a direct result of the qualifying crime and an itemized statement must be provided.
- **Section 649.7, subdivision (b)(4):** The revised subdivision cites to the correct provision, as the formerly cited provision no longer exists.
- **Section 649.7, subdivision (c):** The revised subdivision requires a crime report be provided in order for an application to be deemed complete and, in the event the applicant or their representative is unable to obtain a crime report, authorizes the Board to obtain the report for them.
- **Section 649.7, subdivision (d):** The revised subdivision allows applicants to provide or the Board to obtain a summary report in lieu of a crime report, if it adheres to the following enumerated standards. The former subsection is deleted as its requirements are moved to (a)(6).
 - **Section 649.7, subdivision (d)(1):** The added subdivision specifies that, to be accepted in lieu of a crime report, the summary report must be

signed by a law enforcement officer who has personal knowledge of the investigation.

- **Section 649.7, subdivision (d)(2):** The added subdivision specifies that, to be accepted in lieu of a crime report, the summary report must provide facts sufficient to support its conclusions.
- **Section 649.7, subdivision (d)(3):** The added subdivision specifies that, to be accepted in lieu of a crime report, the summary report must include information identifying the officers' and law enforcement agency's identifying information.

Section 649.15: The purpose of this revised subdivision is to expand the circumstances in which an applicant may submit a request for relief from the period of limitations for filing an application and clarify the considerations used to assess good cause. The purpose of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose for each subdivision follows.

- **Section 649.15, subdivision (a):** The revised subdivision details the procedure that must be used to submit a request for relief from the period of limitations for filing an application. The revision also replaces the term "petition" with "request" for accuracy. The revision replaces the term "his or her" with "their" for inclusivity. The revision replaces "30 days" with "30 calendar days" for clarity and consistency. Finally, the revision replaced "in subsection (b)" with specific language.
- **Section 649.15, subdivision (b):** The added subdivision requires an applicant submit, along with their request for relief and accompanying statement, documentation necessary for the Board to verify the applicant's justification for the late filing, if any are available.
- **Section 649.15, subdivision (c):** The revised subdivision removes language duplicated in Government Code section 13953, subdivisions (b)(1) and (2) and identifies other factors the Board has discretion to consider when determining when good cause exists.
 - **Section 649.15, subdivision (c)(1):** The revised subdivision allows the Board to consider the physical, emotional, psychological, or developmental condition of the victim when determining whether good cause was shown.
 - **Section 649.15, subdivision (c)(2):** The revised subdivision allows the Board to consider whether the victim sought treatment for interpersonal crimes upon which the application is based within one year of the filing date when determining whether good cause was shown.
 - **Section 649.15, subdivision (c)(3):** The added subdivision allows the Board to consider whether a victim incurred a new pecuniary loss within one year of the filing date when determining whether good cause was shown.

- **Section 649.15, subdivision (e):** The revised subdivision replaces “VCP” with “Board” for consistency.
- **Section 649.15, subdivision (f):** The revised subdivision replaces the word “petition” with “request” for accuracy and consistency. It also replaces “his or her” with “their” for inclusivity.

Section 649.16: The purpose of this revised regulation is to clarify the relationship between a victim and derivative victim’s applications, and the limitations on a derivative victim’s application for compensation. The purpose of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- **Section 649.16, subdivision (a):** The revised subdivision clarifies the period of limitation for filing an application for derivative victims’ applications.
- **Section 649.16, subdivision (b):** No revisions to this subdivision were proposed.
- **Section 649.16, subdivision (c):** The added subdivision clarifies that a derivative victim’s application will be denied if the direct victim’s application is denied for lack of a qualifying crime.
- **Section 649.16, subdivision (d):** The added subdivision explains that a derivative victim is eligible for compensation regardless of whether the direct victim has applied for compensation.
- **Section 649.16, subdivision (e):** The added subdivision clarifies that an applicant cannot be both a direct victim and a derivative victim.

Section 649.18: The purpose of this revised regulation is to clarify what funeral and burial expenses can be reimbursed. The specific purpose for each subdivision follows.

- **Section 649.18, subdivision (a):** The revised subdivision explains the types of funeral and burial expenses that may be reimbursed. This subdivision removed “As funeral practices vary across cultures” and “traditional” for inclusivity.
 - **Section 649.18, subdivision (a)(1):** The revised subdivision is clearer and more concise, as it no longer includes the unnecessary phrase “expenses for” and adds a previously omitted hyphen.
 - **Section 649.18, subdivision (a)(2):** The revised subdivision is clearer and more concise, as it no longer includes an unnecessary comma or the superfluous phrase “expenses for.”
 - **Section 649.18, subdivision (a)(3):** No revisions to this subdivision were proposed.

- **Section 649.18, subdivision (a)(4):** No revisions to this subdivision were proposed.
- **Section 649.18, subdivision (b):** The revised subdivision adds “alcoholic beverages” to the list of expenses that are not reimbursable by the Board for processing transparency. The word “CalVCB” is also replaced with “Board” for consistency.
- **Section 649.18, subdivision (c):** The revised subdivision clarifies that the Board is not authorized to exceed the statutory maximum for funeral and burial expenses when there is more than one application for the same deceased victim. It also clarifies and explains the order in which bills will be paid when there are multiple bills and applicants. It specifies that eligible bills will be paid in the order in which they are received.

Section 649.19: The purpose of this revised regulation is to clarify the evidence needed to approve residential security expenses. The purpose of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose for each subdivision follows.

- **Section 649.19, subdivision (a):** The revised subdivision expands on the examples of covered residential security costs. The revision also clarifies expenses must be directly related to the crime to conform with statute.
 - **Section 649.19, subdivisions (a)(1)-(5):** No changes were proposed to this subdivision.
 - **Section 649.19, subdivision (a)(6):** The added subdivision expands the list of covered expenses to include the replacement of doors and windows that are damaged during the crime and necessary to secure the premises.
- **Section 649.19, subdivision (b):** No changes were proposed to this subdivision.
- **Section 649.19, subdivision (c):** The addition of this subdivision clarifies what evidence is required to be eligible for reimbursement of residential security.
 - **Section 649.19, subdivision (c)(1):** The added subdivision explains that victims may be eligible for residential security if the crime occurred in their home.
 - **Section 649.19, subdivision (c)(2):** The added subdivision explains that victims may be eligible for residential security if they obtained an Emergency Protective Order, Temporary Restraining Order, or Restraining Order After Hearing against the suspect.
 - **Section 649.19, subdivision (c)(3):** The added subdivision explains that victims may be eligible for residential security if a mental health provider or law enforcement official determined the expense is necessary as a direct result of the crime.

Section 649.24: The purpose of this revised regulation is to clarify and expand the circumstances under which a provider may be found ineligible for reimbursement, explain the consequences of such a finding, and designate the process for challenging a finding of ineligibility. The purpose of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose for each subdivision follows.

- **Section 649.24, subdivision (a):** The revised subdivision explains what acts or omissions may result in finding a provider is ineligible for reimbursement.
 - **Section 649.24, subdivision (a)(1):** The added subdivision authorizes the Board to find a provider ineligible for reimbursement when the provider does not provide documentation necessary for the Board to ensure payment is authorized by existing laws and regulations. This provision is largely the same as the provision formerly numbered Section 649.24, subdivision (a).
 - **Section 649.24, subdivision (a)(2):** The added subdivision authorizes the Board to find a provider ineligible for reimbursement when the provider does not provide documentation necessary for the Board to confirm the victim or derivative victim actually received the services for which the provider is seeking reimbursement.
 - **Section 649.24, subdivision (a)(3):** The added subdivision authorizes the Board to find a provider ineligible for reimbursement when the provider provides, or causes someone else to provide, false information to the Board.
 - **Section 649.24, subdivision (a)(4):** The added subdivision authorizes the Board to find a provider ineligible for reimbursement when the provider misrepresents the victim's or derivative victim's disability, injury, or other need for treatment or services.
 - **Section 649.24, subdivision (a)(5):** The added subdivision, formerly numbered Section 649.24, subdivision (b), authorizes the Board to find a provider ineligible for reimbursement when the provider fails to comply with the rules and practices required by their licensing, oversight, or governing bodies.
 - **Section 649.24, subdivision (a)(6):** The added subdivision authorizes the Board to find a provider ineligible for reimbursement when the provider's conduct does not comply with other statutes or regulations governing their conduct in connection with a claim pending before the Board.
 - **Section 649.24, subdivision (a)(7):** The added subdivision authorizes the Board to find a provider ineligible for reimbursement if the provider has failed to comply with a corrective action plan and clarifies that a provider may be found ineligible for reimbursement based upon the other,

enumerated circumstances, even if no corrective action plan was imposed.

- **Section 649.24, subdivision (b):** The revised subdivision defines the scope of a finding a provider is ineligible for reimbursement, authorizes the Board to rely on a prior finding a provider is ineligible for reimbursement when considering other pending or future claims submitted by that provider, and clarifies that a provider's ineligibility for reimbursement does not necessarily bar reimbursement of a victim or derivate victim.
- **Section 649.24, subdivision (c):** The added subdivision specifies the information that must be included in the Board's notice to the provider of a finding of ineligibility and the time limitations for challenging a finding of ineligibility. It explains that, if no challenge is lodged within the prescribed time, the finding is final.
- **Section 649.24, subdivision (d):** The added subdivision explains the procedures for challenging a finding of ineligibility by way of an informal hearing before the Board. This includes the process for scheduling the informal hearing, which may be on the written record, after which the hearing officer will draft a proposed decision for the Board's consideration. This subdivision also confirms the Board's decision is final upon its vote to adopt or reject the proposed decision on the issue of ineligibility.
- **Section 649.24, subdivision (e):** The added subdivision explains that the Board's final decision of ineligibility for reimbursement is subject to review only by a writ of mandate, which must be initiated by the provider by filing a petition for writ of mandate.

Section 649.28: The purpose of this revised regulation is to expand the Board's current authority to audit outpatient mental health counseling providers to include all medical, medical-related, and mental health providers. This Section further authorizes the Board to impose a corrective action plan for providers under specified circumstances, the scope of the corrective action plan, and the consequences of failing to comply with the corrective action plan. Finally, this provision explains the procedures for challenging imposition of a corrective plan and clarifies that, while all providers *may* be audited, not all providers necessarily will be audited. The specific purpose for each subdivision follows.

- **Section 649.28, subdivision (a):** The revised subdivision broadens the scope of this provision to allow the Board to perform clinical or fiscal audits of a broader array of service providers, in the event additional oversight is needed for medical, medical-related, or mental health providers, as opposed to just mental health counseling providers. This revision also replaces the mandatory language that all providers "shall" be subject to audit with permissible language that all providers "may" be audited.
- **Section 649.28, subdivision (b):** The revised subdivision replaces the term "staff" with "Board" for consistency throughout these regulations.

- **Section 649.28, subdivision (c):** The added subdivision specifies the seven circumstances under which a corrective action plan may be imposed, which provides notice to providers of the acts or omissions that will warrant imposition of a corrective action plan and ensures uniform imposition of corrective action plans among providers.
 - **Section 649.28, subdivision (c)(1):** The added subdivision authorizes imposition of a corrective action plan when a provider fails to comply with a clinical or fiscal audit.
 - **Section 649.28, subdivision (c)(2):** The added subdivision authorizes imposition of a corrective action plan when a provider fails to submit requested documentation to verify the victim's loss or injury.
 - **Section 649.28, subdivision (c)(3):** The added subdivision authorizes imposition of a corrective action plan when a provider fails to submit requested documentation to verify services rendered.
 - **Section 649.28, subdivision (c)(4):** The added subdivision authorizes imposition of a corrective action plan when a provider submits false information to the Board.
 - **Section 649.28, subdivision (c)(5):** The added subdivision authorizes imposition of a corrective action plan when a provider misrepresents the victim's injury, disability, or other need for services.
 - **Section 649.28, subdivision (c)(6):** The added subdivision authorizes imposition of a corrective action plan when a provider fails to comply with the statutes and regulations established by their licensing, oversight, or governing bodies.
 - **Section 649.28, subdivision (c)(7):** The added subdivision authorizes imposition of a corrective action plan when a provider fails to comply with any statutes or regulations governing claims before the Board.
- **Section 649.28, subdivision (d):** The added subdivision explains a corrective action plan must specify the conduct or circumstances that warranted imposition of a corrective action plan, the method by which the provider must correct the noncompliance, and the deadline for doing so.
- **Section 649.28, subdivision (e):** The added subdivision ensures providers are afforded notice of the corrective action plan and the time limits for challenging imposition of a corrective plan, as well as the fact that imposition of the corrective action plan is automatic if unchallenged.
 - **Section 649.28, subdivision (e)(1):** The added subdivision explains the procedures for challenging the imposition of a corrective action plan by way of an informal hearing before the Board. This includes the process for scheduling the informal hearing, which may be on the written record, after which the hearing officer will draft a proposed decision for the Board's consideration. This subdivision confirms that the Board's decision

on whether to adopt or deny the proposed decision concerning the imposition of a corrective action plan is not subject to further administrative review, such as reconsideration or appeal.

- **Section 649.28, subdivision (e)(2):** The added subdivision notifies providers that the Board's decision to impose a corrective action plan does not amount to a final decision subject to review by writ of mandate. As such, the provider must satisfy administrative remedies either by complying with the corrective action plan, in which case the corrective action plan will expire, or by failing to comply with the corrective action plan, in which case the provider may be found ineligible for reimbursement, which is a final decision subject to review by writ of mandate.
- **Section 649.28, subdivision (f):** The added subdivision notifies providers that failure to comply with a corrective action plan may result in a finding they are ineligible for reimbursement, as is further discussed in Section 649.24, *supra*.

Section 649.50: The purpose of this revised regulation is to clarify the language and eliminate unnecessary words. The purpose of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific purpose of each subdivision follows.

- **Section 649.50, subdivision (a):** The revised subdivision removes unnecessary language to promote clarity. The simplified language makes the purpose of the subdivision clearer and more accessible to the public. The changes do not materially alter any provision of this Section.
 - **Section 649.50, subdivisions (a)(1)-(4):** No revisions to this subdivision were proposed.
- **Section 649.50, subdivision (b):** The revised subdivision removes unnecessary language to promote clarity. The simplified language makes the purpose of the subdivision clearer and more accessible to the public. The changes do not materially alter any provision of this Section.
 - **Section 649.50, subdivisions (b)(1)-(2):** No revisions to this subdivision were proposed.
- **Section 649.50, subdivision (c):** The revised subdivision clarifies this Section only applies to passengers in a vehicle.
 - **Section 649.50, subdivision (c)(1):** The revised subdivision removes the 14-year-old age limitation to ensure all similarly situated minors are treated equitably.
 - **Section 649.50, subdivision (c)(2):** The revised subdivision clarifies that an applicant who is eligible for benefits under this subdivision may only receive funeral and/or burial expenses.

- **Section 649.50, subdivision (d):** The revised subdivision adds “California” in front of the Vehicle Code reference for consistency and removes superfluous language.
 - **Section 649.50, subdivision (d)(1):** The revised subdivision changes “and” to “or” for clarity.
 - **Section 649.50, subdivision (d)(2):** The revised subdivision clarifies that an individual can be involved if they are also a primary cause of the qualifying crime.
- **Section 649.50, subdivision (e):** The revised subdivision adds subdivision (d) to the involvement factors listed in subdivisions (a) and (b). The changes do not materially alter any provision of this Section.

NECESSITY

As detailed below, the proposed regulations and revisions are needed to clarify, specify, and provide transparency of current policies and procedures. The regulations are also needed to interpret and implement general aspects of the law, which will provide clear guidance to the parties and ensure consistent decisions by the Board.

Section 649.7: The revision to this regulation is necessary to clarify and explain what information must be included for an application to be deemed complete and to adopt digital signature standards consistent with current statutory and case law. This revision also adds standards for determining when a summary may be provided in lieu of a crime report. The necessity of the deletion of Section 13974 and inclusion of 13920 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- **Section 649.7(a):** The proposed change to this subdivision is necessary for clarity. The provision that applications shall be certified under penalty of perjury was moved to Section 649.7, subdivision (a)(6).
 - **Section 649.7, subdivision (a)(1):** The revised subdivision is necessary for clarity. The changes do not materially alter any provision of this Section, which states that an applicant must provide their name and contact information.
 - **Section 649.7, subdivision (a)(2):** The revised subdivision is necessary for clarity. The changes do not materially alter any provision of this Section which states the applicant must designate whether they are a victim, derivative victim, or a person who legally assumed the obligation to pay for a deceased victim’s medical or funeral and burial expenses.
 - **Section 649.7, subdivision (a)(3):** The revised subdivision is necessary to explain that supporting documentation is required as to the person’s legal authority to apply for benefits on behalf of a victim.
 - **Section 649.7, subdivision (a)(4):** No changes were made to this subdivision.

- **Section 649.7, subdivision (a)(5):** This revised subdivision is necessary because it removes the examples of pecuniary losses because the list was not exhaustive and could unnecessarily confuse the public. Additionally, the revision is necessary to be consistent with statute by requiring the provider to affirm that professional services were received and that they were necessary as a direct result of the qualifying crime. Other changes to this subdivision were made for clarification purposes only.
- **Section 649.7, subdivision (a)(6):** This revision is necessary because it clarifies which applicants must sign their applications under penalty of perjury to the best of their knowledge and allows authorized representatives to attest only under “information and belief,” as authorized representatives are unable to attest to the “truth” or “correctness” of the statements themselves.
- **Section 649.7, subdivision (a)(7):** The revision is necessary because the change from “VCP” to “Board” provides clarity and consistency throughout the regulatory scheme. The revision also updates the numbering of this subdivision to consecutively follow the previous subdivision.
- **Section 649.7, subdivision (a)(8):** The addition is necessary to allow the Board to accept digital signatures if they meet certain criteria, consistent with existing statutory and case law.
 - **Section 649.7, subdivision (a)(8)(A):** The added subdivision is necessary as it specifies an electronic signature must be unique.
 - **Section 649.7, subdivision (a)(8)(B):** The added subdivision is necessary as it specifies an electronic signature must be verifiable.
 - **Section 649.7, subdivision (a)(8)(C):** The added subdivision is necessary as it specifies an electronic signature must be made by the person who is purporting to sign the application.
- **Section 649.7, subdivision (a)(9):** The revised subdivision is necessary solely for clarity. The changes do not materially alter any provision of this Section, which requires the applicant to include the name, address, telephone number and California State Bar license number of any attorney representing the applicant. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.
- **Section 649.7 subdivision (a)(10):** The revised subdivision is necessary solely for clarity. The changes do not materially alter any provision of this Section, which requires the applicant to identify any civil action initiated to recover monetary damages from the perpetrators of the qualifying crime.

The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.

- **Section 649.7, subdivision (a)(11):** The revised subdivision is necessary because to change “VCP” to “Board” for consistency throughout the regulatory scheme.
- **Section 649.7, subdivision (a)(12):** The revised subdivision is necessary solely for clarity. The proposed changes do not materially alter any provision of this Section, which clarifies that the applicant must disclose all collateral benefits the victim, the victim’s survivors, or derivative victim have applied for or may be eligible for in their application. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.
- **Section 649.7, subdivision (b):** The revised subdivision is necessary to clarify the specific code referenced in the subdivision. The changes do not materially alter any provision in this subdivision.
 - **Section 649.7, subdivision (b)(1):** The revised subdivision is necessary to explain the applicant must provide information about service providers if they are requesting compensation for professional services.
 - **Section 649.7, subdivision (b)(2):** The revised subdivision is necessary because it lists the required evidence an applicant must provide if they are claiming loss of income as a result of a qualifying crime. The change is also necessary because it references the California Code of Regulations, title 2, Section 649.32, for clarity. That previously promulgated Section sets verification requirements regarding loss of income reimbursement, among other provisions.
 - **Section 649.7, subdivision (b)(3):** The revised subdivision is necessary solely for clarity. The changes do not materially alter any provision of this Section, which requires an applicant to provide an itemized statement for all funeral or burial expenses incurred as a direct result of a qualifying crime.
 - **Section 649.7, subdivision (b)(4):** The revised subdivision is necessary because it identifies the requirements an applicant must meet to obtain rehabilitative services. The revised subdivision is also necessary because it will correct a citation error. The subdivision previously cited, California Code of Regulations, title 2, Section 649.24, subdivision (c), which does not exist. The correct regulatory Section to be referenced is Section 649.25.
- **Section 649.7, subdivision (c):** The revised subdivision is necessary solely for clarity. The changes do not materially alter any provision in this Section. Removing the acronyms “VOC” and “VCB” and replacing them with references to the “Board” is necessary for uniformity throughout the applicable regulatory scheme.

- **Section 649.7, subdivision (d):** This revised subdivision is necessary because it clarifies that the Board may accept a summary report from law enforcement if certain criteria are met. The former subsection is deleted as its requirements are moved to (a)(6). The specific need for each subdivision follows.
 - **Section 649.7, subdivision (d)(1):** This revised subdivision is necessary to clarify that the summary crime report must be signed and dated by a law enforcement officer with personal knowledge of the investigation.
 - **Section 649.7, subdivision (d)(2):** The revised subdivision is necessary to clarify that the summary crime report must provide sufficient, specific facts to support any findings or conclusions reached.
 - **Section 649.7, subdivision (d)(3):** The revised subdivision is necessary to clarify that the summary crime report must include the officer's title and badge number, the law enforcement agency name, phone number and address.

Section 649.15: The revision to this regulation is necessary to clarify the procedure for requesting relief from the time limitations for filing an application and to expand upon the list of factors that may be considered when determining whether the applicant showed good cause for filing an application beyond the statutory deadline. This revision was also necessary to remove provisions duplicating the Government Code. The specific need for each subdivision follows.

- **Section 649.15, subdivision (a):** The revision is necessary to explain the process by which an applicant may submit a request for relief from the period of limitations on grounds of good cause. This subdivision replaced the term "petition" with "request" for accuracy. This subdivision also replaced the term "his or her" with "their" for inclusivity. This subdivision replaced "30 days" with "30 calendar days" for clarity and consistency. Finally, the revision replaced "in subsection (b)" with specific language.
- **Section 649.15, subdivision (b):** The additions of this subdivision are necessary to ensure that the Board has all necessary documentation to verify the applicant's justification for the late filing in order to make an informed and well-reasoned decision.
- **Section 649.15, subdivision (c):** The changes to this subdivision are necessary to afford the Board greater discretion and to authorize the Board's consideration of other factors, in addition to those mandated by Government Code section 13953, subdivisions (b)(1) and (2), when determining whether good cause exists. This is necessary to expand the grounds upon which the Board may grant an applicant's request for relief consistent with statutory language. This is necessary to ensure applicants are aware of factors that will be considered in evaluating late filed applications and that those factors are consistently applied. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.

- **Section 649.15, subdivision (c)(1):** The addition is necessary to allow the Board to consider the physical, emotional, psychological, or developmental condition of the victim when determining whether there is good cause for their late filing.
- **Section 649.15, subdivision (c)(2):** The addition is necessary to allow the Board to consider whether the victim sought treatment for interpersonal crimes upon which the application is based within one year of the filing date.
- **Section 649.15, subdivision (c)(3):** The addition is necessary to allow the Board to consider whether a victim incurred a new pecuniary loss within one year of the filing date.
- **Section 649.15, subdivision (d):** The revision is necessary to replace “VCP” with “Board” for consistency throughout the regulatory scheme. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.
- **Section 649.15, subdivision (e):** The revision is necessary to replace “petition” with “request” for accuracy and consistency with other subdivisions. It also replaces “his or her” with “their” for inclusivity. The revision is also necessary because it updates the numbering of this subdivision to consecutively follow the previous subdivision.

Section 649.16: The proposed changes to this subdivision are necessary to provide clarity, transparency to the public, and ensure applications are processed consistently. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- **Section 649.16, subdivision (a):** The revision to this subdivision is necessary for clarity. The changes do not materially alter any provision of this Section which states that when the Board accepts and files an application that was submitted by, or on behalf of, a victim for a qualifying crime, the period of limitations for filing an application is tolled for derivative victims for the same qualifying crime.
- **Section 649.16, subdivision (b):** No changes were made to this subdivision.
- **Section 649.16, subdivision (c):** The addition of this subdivision is necessary to clarify that the Board shall deny a derivative victim’s application if the Board denies a direct victim’s application for lack of a qualifying crime. This is necessary to provide transparency to the public about application eligibility determinations.
- **Section 649.16, subdivision (d):** The addition of this subdivision is necessary to clarify that the Board shall determine the eligibility of a derivative victim’s application regardless of whether a direct victim has filed an application with the Board. This is necessary to ensure all applications are processed consistently.

- **Section 649.16, subdivision (e):** The addition of this subdivision is necessary because it prevents an applicant from filing two applications for the same qualifying crime by clarifying that an applicant cannot be eligible as both a direct victim and a derivative victim for the same qualifying crime. This is necessary to ensure victims do not exceed the statutory benefit limitations. Additionally, it is necessary so that all applications are processed consistently.

Section 649.18: The revision to this Section is necessary to clarify what funeral and burial expenses can be reimbursed, which expenses cannot be reimbursed, and how payment will be made when multiple applications are filed on behalf of the same deceased victim. The specific need for each subdivision follows.

- **Section 649.18, subdivision (a):** This subdivision is needed to explain the types of funeral and burial expenses that may be reimbursed. This subdivision removed “As funeral practices vary across cultures” and “traditional” for inclusivity. This revision was necessary because, although the subdivision acknowledged cultural differences in funeral practices, explicitly identifying “traditional” funeral and burial expenses as the type of expenses reimbursed by the Board may be confusing and/or alienating to victims.
 - **Section 649.18, subdivisions (a)(1)-(4):** No substantive changes are proposed to these subdivisions.
- **Section 649.18, subdivision (b):** This subdivision is necessary to add “alcoholic beverages” to be consistent with the list of expenses that are not reimbursable by the Board. This subdivision also replaced “CalVCB” with “Board” for consistency throughout the regulatory scheme.
- **Section 649.18, subdivision (c):** This subdivision is necessary to clarify that the Board is not authorized to exceed the statutory maximum for funeral and burial expenses for a deceased victim, even when there is more than one application for the same deceased victim, and to explain how funeral and burial expenses will be paid when more than one application is filed on behalf of the same deceased victim.

Section 649.19: The revisions to this Section are needed to clarify what evidence is necessary to approve residential security expenses. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- **Section 649.19, subdivision (a):** The revisions are necessary to expand on the examples of covered residential security costs. The revision is necessary to clarify expenses must be directly related to the crime to conform with statute.
 - **Section 649.19, subdivisions (a)(1)-(5):** No changes were proposed to this subdivision.
 - **Section 649.19, subdivision (a)(6):** The addition to the subdivision is necessary to expand the list of covered expenses to include the

replacement of doors and windows that are damaged during the crime and necessary to secure the premises.

- **Section 649.19, subdivision (b):** No changes were proposed to this subdivision.
- **Section 649.19, subdivision (c):** The addition of this subdivision is necessary to clarify what evidence is required to be eligible for reimbursement of residential security. This subdivision also replaces “VCP” with “Board” for consistency throughout the regulatory scheme.
 - **Section 649.19, subdivision (c)(1):** The addition to the subdivision is necessary to explain and provide transparency that victims may be eligible for residential security if the crime occurred in their home.
 - **Section 649.19, subdivision (c)(2):** The addition to the subdivision is necessary to explain and provide transparency that victims may be eligible for residential security if they obtained an Emergency Protective Order, Temporary Restraining Order, or Restraining Order After Hearing against the suspect.
 - **Section 649.19, subdivision (c)(3):** The addition to the subdivision is necessary to explain and provide transparency that victims may be eligible for residential security if a mental health provider or law enforcement official determined the expense is necessary as a direct result of the crime.

Section 649.24: The revision to this regulation is necessary to ensure providers have notice of what acts or omissions can lead to a finding they are ineligible for reimbursement from the Board, the impact such a finding of ineligibility may have on other pending or future claims, and the process to challenge a finding of ineligibility. This revision is also necessary for the Board to safeguard the Restitution Fund by deterring and ultimately excluding noncompliant and/or incompetent providers from the victim compensation program. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need for each subdivision follows.

- **Section 649.24, subdivision (a):** The revision to this subdivision is necessary to alert providers what acts or omissions may render them ineligible for reimbursement and to ensure the Board has authority to render such a finding of ineligibility under enumerated circumstances.
 - **Section 649.24, subdivision (a)(1):** The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they fail to comply with a request for documentation verifying the alleged losses or injuries. This subdivision is also necessary to ensure the Board only reimburses service providers for treatments and services authorized by law.
 - **Section 649.24, subdivision (a)(2):** The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they fail to comply with a request for documentation verifying the services

provided. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when the claimed services cannot be verified.

- **Section 649.24, subdivision (a)(3):** The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they provide, or cause someone else to provide, false information to the Board. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when they make false representations to the Board.
- **Section 649.24, subdivision (a)(4):** The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they misrepresent the nature of a victim's or derivative victim's disability, injury, or other need for treatment or services. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when the provider makes misrepresentations to the Board.
- **Section 649.24, subdivision (a)(5):** The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they fail to comply with statutes and regulations established by their licensing, oversight, or governing bodies. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when the provider fails to satisfy the competency requirements of their licensing, oversight, or governing body.
- **Section 649.24, subdivision (a)(6):** The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they fail to comply with statutes and regulations governing claims before the Board. This subdivision is also necessary to ensure the Board has authority to find a provider ineligible for reimbursement when the provider fails to comply with the Board's own requirements for processing a claim.
- **Section 649.24, subdivision (a)(7):** The added subdivision is necessary to notify providers they may be found ineligible for reimbursement if they fail to comply with a corrective action plan. The specific circumstances under which a corrective action plan may be imposed and challenged are set forth in Section 649.28. This subdivision is also necessary to clarify that a provider may be found ineligible for reimbursement based upon the other enumerated circumstances, even if no corrective action plan was imposed. This subdivision ensures the Board has the authority to find a provider ineligible for reimbursement when the provider fails to comply with a corrective action plan.
- **Section 649.24, subdivision (b):** The revision to this subdivision is necessary to notify providers of the consequences of a finding they are ineligible for reimbursement, which may extend to current and future claims. Providing the Board with a range of authorized consequences is necessary to deter and exclude noncompliant and/or incompetent providers from receiving reimbursement from the victim compensation program. This revision is also

needed to confirm that finding a provider that is ineligible for reimbursement will not necessarily bar direct reimbursement to victims or derivative victims for pecuniary loss incurred as a direct result of the crime.

- **Section 649.24, subdivision (c):** The added subdivision is necessary to ensure providers are afforded adequate notice of a finding of ineligibility, as well as the extent and duration of their ineligibility, and the 45-day deadline for challenging the finding. This subdivision is also necessary to ensure providers are afforded notice that, if it is not challenged, a finding of ineligibility will become final.
- **Section 649.24, subdivision (d):** The added subdivision is necessary to establish the procedure for challenging a finding of ineligibility by way of an informal hearing. Specifically, it provides an informal hearing may be scheduled, the matter may be decided on the written record, a hearing officer will draft a proposed decision, and the Board will vote to adopt or reject the proposed decision. This provision is also necessary to provide notice that the Board's vote is a final decision.
- **Section 649.24, subdivision (e):** The added subdivision is necessary to confirm the availability of judicial review after the Board's final decision on the issue of ineligibility and to clarify that this review must be initiated by the provider by filing a petition for writ of mandate.

Section 649.28: The revision in this Section is necessary to expand the Board's current authority to audit outpatient mental health counseling providers to also include medical, medical-related, and mental health providers. The revisions provide necessary confirmation of the Board's authority to not only audit any of these providers, but to also impose a corrective action plan in specified circumstances. The revisions provide needed guidance as to the content of the corrective action plan, the procedure for challenging its imposition, and the consequences of failing to comply. The specific need for each revised subdivision follows.

- **Section 649.28, subdivision (a):** This subdivision, as revised, is needed to broaden the Board's authority to perform clinical or fiscal audits, at its discretion, of all mental health providers as well as all providers of medical and medical-related services. This expanded authority is necessary for the Board to ensure its reimbursements to the many types of providers it pays were authorized by law, and to take corrective action when indicated.
- **Section 649.28, subdivision (b):** This subdivision replaced the term "staff" with "the Board" to ensure uniformity throughout the regulatory scheme.
- **Section 649.28, subdivision (c):** This subdivision is needed to establish the seven circumstances under which a corrective action may be imposed. It is also necessary to ensure providers are afforded adequate notice of the types of acts or omissions that may warrant imposition of a corrective action plan. Finally, these revisions are needed to ensure uniform imposition of corrective action plans among providers.

- **Section 649.28, subdivision (c)(1):** The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider fails to comply with a clinical or fiscal audit.
- **Section 649.28, subdivision (c)(2):** The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider fails to submit requested documentation to verify the victim's loss or injury.
- **Section 649.28, subdivision (c)(3):** The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider fails to submit requested documentation to verify services rendered.
- **Section 649.28, subdivision (c)(4):** The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider submits false information to the Board.
- **Section 649.28, subdivision (c)(5):** The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider misrepresents the victim's injury, disability, or other need for services.
- **Section 649.28, subdivision (c)(6):** The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider fails to comply with the statutes and regulations established by their licensing, oversight, or governing bodies.
- **Section 649.28, subdivision (c)(7):** The added subdivision is necessary to confirm that a corrective action plan may be imposed if the provider fails to comply with any statutes or regulations governing claims before the Board.
- **Section 649.28, subdivision (d):** The added subdivision is necessary to confirm the required contents of a corrective action plan and deadline for challenging its imposition. These required contents, in turn, are needed to provide adequate notice to the providers.
- **Section 649.28, subdivision (e):** The added subdivision is necessary to ensure providers are afforded notice of the corrective action plan and the deadline for challenging its imposition. It also explains that the corrective action plan is automatically imposed if unchallenged.
 - **Section 649.28, subdivision (e)(1):** The added subdivision is needed to explain the procedure for challenging the imposition of a corrective action plan by way of an informal hearing before the Board, including the process for scheduling the informal hearing, which may be on the written record, after which the hearing officer will draft a proposed decision for the Board's consideration. This subdivision confirms that the Board's decision on whether to adopt or deny the proposed decision concerning the imposition of a corrective action plan is not subject to further administrative review, such as reconsideration or appeal.

- **Section 649.28, subdivision (e)(2):** The added subdivision is necessary to notify providers that the Board's decision to impose a corrective action plan does not amount to a final decision subject to review by writ of mandate. As such, the provider must satisfy administrative remedies either by complying with the corrective action plan, in which case the corrective action plan will expire, or by failing to comply with the corrective action plan, in which case the provider may be found ineligible for reimbursement, which is a final decision subject to review by writ of mandate.
- **Section 649.28, subdivision (f):** The added subdivision is necessary to notify providers that failure to comply with a corrective action plan may result in a finding they are ineligible for reimbursement pursuant to Section 649.24.

Section 649.50: The revision is necessary to clarify the language of the existing and eliminate unnecessary words. The necessity of the deletion of Section 13974 of the Government Code is for specificity as to the authority for promulgation of the regulations. The specific need of each subdivision follows.

- **Section 649.50, subdivision (a):** The revision is necessary to simplify language to promote clarity. The simplified language makes the purpose of the subdivision clearer and more accessible to the public. The changes do not materially alter any provision of this Section.
 - **Section 649.50, subdivisions (a)(1)-(4):** No revisions to this subdivision were proposed.
- **Section 649.50, subdivision (b):** The revision is necessary to simplify the language to promote clarity. The simplified language makes the purpose of the subdivision clearer and more accessible to the public. The changes do not materially alter any provision of this Section.
 - **Section 649.50, subdivisions (b)(1)-(2):** No revisions to this subdivision were proposed.
- **Section 649.50, subdivision (c):** The revision is necessary to clarify this Section only applies to passengers in a vehicle consistent with the preceding subsection, which is referenced.
 - **Section 649.50, subdivision (c)(1):** The revision is necessary to remove the 14-year-old age limitation to ensure all similarly situated minors are treated equitably.
 - **Section 649.50, subdivision (c)(2):** The revision is necessary to clarify that an applicant who is eligible for benefits under this subdivision may only receive funeral and/or burial expenses.
- **Section 649.50, subdivision (d):** The revision is necessary for consistency and removes superfluous language.

- **Section 649.50, subdivision (d)(1):** The revision is necessary to change “and” to “or” for clarity.
- **Section 649.50, subdivision (d)(2):** The revision is necessary to clarify that an individual can be involved if they are also a primary cause of the qualifying crime.
- **Section 649.50, subdivision (e):** The revision is necessary to add subdivision (d) to the involvement factors listed in subdivisions (a) and (b). The changes do not materially alter any provision of this Section.

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.

ECONOMIC IMPACT ANALYSIS/ASSESSMENT

The purpose of the proposed regulations is to revise, interpret, and implement the current law governing victim compensation. When an application for compensation is approved, victims can submit bills for reimbursement of losses. Compensation is awarded after a bill is verified. In fiscal year 2021-2022, CalVCB received 39,015 applications and provided \$40.35 million in compensation to victims; in fiscal year 2020-2021, CalVCB received 40,640 applications and provided \$52.74 million in compensation to victims; in fiscal year 2019-2020, CalVCB received 50,699 applications and provided \$58.69 million in compensation to victims; in fiscal year 2018-2019, CalVCB received 52,973 applications and provided \$61.88 million in compensation to victims. The amount paid in compensation has remained relatively stable over the past four years and CalVCB does not anticipate a significant change in future payouts. 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 as a result of being victimized during a crime.

(B) The creation of new businesses or the elimination of existing businesses within the State of California, and

The proposed regulations do not impact the creation of new businesses or elimination of existing businesses in California because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

(C) The expansion of businesses currently doing business within the State of California.

The proposed regulations do not impact the expansion of businesses currently doing business within the State of California because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

The benefits of the regulation to the health and welfare of California residents, worker safety, and the state's environment:

CalVCB 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 as a result of being victimized during a crime.

LOCAL MANDATE DETERMINATION

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

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 as a result of being victimized during a crime.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has determined that there are no other reasonable alternatives to 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 affect small businesses because they apply to a limited group of individuals seeking compensation as a result of being victimized during a crime.

SUMMARY OF COMMENTS AND RESPONSES

The Comments and Responses Summary, which lists the comments and responses from the 45-day comment period for the proposed regulations, as well as the public hearings, is incorporated into the final statement of reasons.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

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

Final Regulation Text

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS,
TITLE 2. CALIFORNIA VICTIM COMPENSATION BOARD
ARTICLE 5. INDEMNIFICATION OF VICTIMS OF CRIME
TITLE 2, §§ 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50

§ 649.7 Complete Application.

~~Applications for assistance as specified in Section Pursuant to Government Code section 13952, applications for assistance of the code will be deemed to be complete within the meaning of Section 13952, subdivision (c) of the code only if:~~

(a) ~~The applicant provides all the information requested on the application and as directed in the instructions for completing the application, to, and as elicited on, the application which the Board shall require to be certified under penalty of perjury or upon information and belief. As part of the application the applicant must provide~~ Board shall require the following information:

(1) ~~The applicant seeking compensation must provide their name, residence residential address, and if different, mailing address, date of birth and telephone number. If the applicant uses an address that is different from their residential address to receive mail, then the mailing address must also be provided. of the applicant seeking restitution from the Fund.~~

(2) ~~A designation as prescribed on the application as to whether the applicant is a victim, or a derivative victim, or a person who legally assumed the obligation to pay for a deceased victim's medical or funeral and burial expenses, or in the event of a death caused by a crime, a person who legally assumed the obligation, or who voluntarily paid the medical or burial expenses incurred as a direct result of the qualifying crime (Section 13957(a)(9)(A) and (C) of the code).~~

(3) ~~If the person who signs signing the application as the applicant is someone a person other than the actual direct victim or derivative victim seeking assistance, the application must include some designation and supporting documentation as to the person's legal authority of such person to apply for benefits on behalf of the victim or derivative victim (for example, a minor's parent or legal guardian, for a child; or a court appointed conservator for an adults adjudicated who has been determined to be incompetent.)~~

(4) ~~A description of the date, nature, location, and circumstances of the qualifying crime.~~

(5) ~~Except in the case where the applicant has no pecuniary loss, a complete statement of the losses incurred and reimbursements received that are directly related to the qualifying crime, including but not limited to the cost of medical care or burial expense, the loss of wages the victim has incurred to date, or the loss of support the derivative victim has incurred to date, for which they claim assistance. This statement must include the date or dates that medical, mental health or other professional services were provided to the victim or derivative victim, and a description of the services provided, affirmation along with a statement that the services were in fact received, and affirmation that such services were required as a direct result of the qualifying crime and for no other reason. If mental health counseling or psychotherapy services were provided, the statement must indicate whether they occurred include a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting.~~

(6) ~~The application must be signed under penalty of perjury by the victim, derivative victim, or other eligible applicant, attesting that the information provided in the application is true and correct to the best of their knowledge. Applications signed by an authorized representative must be signed under information and belief.~~

~~(7) (6)~~ A signed authorization permitting the VCP Board staff or a joint powers victim witness center employee, or both, to verify the contents of the application.

(8) The Board may accept electronically signed applications and communications if the signature meets the following criteria:

(A) It is unique to the person using it;

(B) It is capable of verification; and

(C) It is under the sole control of the person using it.

~~(9) (7)~~ If the applicant is represented by an attorney or other authorized person, the application must include the name, address and telephone number of the such representative. If the representative is an attorney, the application must include the attorney's California State Bar license number and the taxpayer identification number.

~~(10) (8)~~ A statement indicating whether the victim, the victim's survivors, or the derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime. If the applicant indicates that they have commenced or intend to commence a civil action for damages, they must include, if represented, their attorney's name, or any other parties in connection with the qualifying crime, along with the name, telephone number and address, of any attorney representing the applicant in such civil proceedings.

~~(11) (9)~~ A promise to contact and repay the VCP Board if the applicant receives any payments from the offender, a civil suit, an insurance policy, or any other governmental or private agency to cover expenses that the VCP Board has already paid.

~~(12) (10)~~ A statement disclosing all collateral benefits for which the victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible. Collateral benefits include, but are not limited to, including any private or public insurance or benefits, any form of public or private assistance, any salary or bereavement leave, and any restitution paid by the perpetrator(s) of the qualifying crime. payable from private or public programs of assistance for which the victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible.

(b) In addition to the information as specified in subparagraph (a) above, applicants seeking types of assistance as set forth in Government Code section Section 13957 of the code shall provide the following information relative to each category of assistance claimed:

(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized a statement from the professional treating provider for itemizing all medical or mental health expenses incurred as of the date of the application including was filed; and the provider's license number, of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. Providers of services A service provider who are is not required to obtain a professional or occupational license but is authorized by law to offer such services as part of their on-going ongoing business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their Federal Employer Identification Number. The VCP Board may require the submission of mental health treatment session or progress notes in order to determine whether the treatment will best aid the victim or derivative victim and is necessary as a direct result of the qualifying crime. Session notes will be kept in a confidential locked file and after review, shall be returned to the provider or destroyed by the VCP Board upon request of the treating provider.

(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime, the applicant shall produce evidence of income loss as well as a statement of disability from the treating medical or mental health provider, as described in Section 649.32 of these regulations.

(3) If funeral or burial expenses are claimed to have been incurred as a direct result of the qualifying crime, the applicant shall provide an itemized statement for all funeral or burial expenses incurred.

(4) If rehabilitative services are claimed, the applicant shall produce ~~that~~ evidence of that need, and documentation for rehabilitation as specified in Section 649.25 ~~649.24(c)~~ of these regulations.

~~(c) A copy of the crime report evidencing the commission of the qualifying crime, including and setting forth the circumstances and factual events surrounding the crime it. In order to expedite the processing of the application, applicants will be encouraged to obtain and submit, along with the with their application, a copy of the crime report as prepared by the law enforcement agency to which the qualifying crime was reported. In cases in which If the applicant or his or her their representative are is unable to obtain the crime report or declines to do so obtain such crime report, VOC the Board employees or the joint powers victim witness center employees shall obtain the crime report.~~

~~No~~ An application shall not be deemed complete until ~~VOC the Board~~ or its contract agencies have received a copy of the crime report, unless ~~VCP Board staff or employees of its contract agencies are~~ is otherwise able to verify that a qualifying crime occurred.

(d) If a crime report is missing information or not yet available, the Board may accept a summary report for purposes of determining eligibility when the following criteria are met:

1. It must be signed and dated by a law enforcement officer with personal knowledge of the investigation; and

2. It must provide sufficient, specific facts to support any findings or conclusions reached; and

3. It must include the officer's title and badge number, and the law enforcement agency's name, phone number, and address.

~~(d) All applications and supplemental claims must be certified under penalty of perjury by the victim or derivative victim where the victim or derivative victim is the applicant, or shall be attested to under information and belief if completed by an applicant other than the victim or derivative victim, or by an authorized representative.~~

NOTE: Authority cited: Section 13920 ~~13974~~, Government Code. Reference: Sections 13951, 13952, 13952.5, 13954, 13956, 13957, 13957.2, 13957.5, 13957.7 and 13963, Government Code

§ 649.15 Good Cause for Filing Late Applications.

(a) A ~~petition~~ request for relief from the period of limitations on grounds of good cause must be filed with the Board in writing ~~not no~~ more than 30 calendar days following the date notice is mailed to the applicant and/or ~~his or her~~ their representative of the late filing. The request ~~, and shall include a the statement under penalty of perjury which describes the reasons the applicant was unable to file their claim within the applicable limitations period.~~ An applicant failing to ~~petition for~~ submit a request for relief in writing within the 30 calendar days ~~set forth herein~~ will have ~~his or her~~ their application recommended for denial.

(b) An applicant seeking relief from the period of limitations on the filing of an application shall, with their request for relief and accompanying statement, submit any corroborating documents which serve to verify the stated justification(s) for late filing.

(c) ~~(b)~~ In determining whether good cause exists justifying to justify the late filing of an application, the VCP Board staff may consider other factors in determining whether good cause exists, including, but not limited to the following: shall consider all of the following factors:

~~(1) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss while testifying during the prosecution or in the punishment of the person accused or convicted of the crime.~~

~~(2) Whether the victim or derivative victim incurs emotional harm or a pecuniary loss when the person convicted of the crime is scheduled for a parole hearing or released from incarceration. An applicant seeking relief from the period of limitations on the filing of an application shall, with his or her petition for relief and accompanying statement, submit any corroborating documents which serve to verify the stated justifications for late filing.~~

(1) The physical, emotional, psychological, or developmental condition of the victim (for example, victim's age, cultural or linguistic barriers, disabilities, mental health diagnosis);

(2) Whether the victim sought treatment for interpersonal crimes upon which the application is based (for example, sexual assault, child molestation, domestic violence, human trafficking, or child abuse) within one year of the filing date; or

(3) Whether the victim incurred a new pecuniary loss within one year of the filing date as a direct result of the qualifying crime.

(d) ~~(c)~~ If VCP Board staff does not find good cause for the late filing and recommends that the application be denied, the applicant may request a hearing to determine the existence or nonexistence of good cause.

(e) ~~(d)~~ In all cases the determination by the Board as to the existence or nonexistence of good cause constitutes the final administrative determination on the issue, subject only to a proper motion for reconsideration upon a showing of new and additional evidence not reasonably available at the time of the initial hearing. Nothing in this Section shall be construed to prevent an applicant or ~~his or her~~ their representative from filing the above stated declaration and ~~petition~~ request for relief upon a showing of good cause simultaneously with the late application.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13953 and 13954, Government Code.

§ 649.16 Applications by Derivative Victims.

(a) The period of limitations for filing an application is tolled for derivative victims when the Board accepts and files an application that was submitted by, a victim or on behalf of, a victim for the same qualifying crime is accepted by the VCP.

(b) An applicant shall only be eligible once as a derivative victim of a crime regardless of the number of direct victims for that same crime.

(c) A derivative victim's application shall be denied if the direct victim's application is denied for lack of a qualifying crime.

(d) The Board shall determine the eligibility of a derivative victim's application regardless of whether the direct victim has applied to the Board for the crime on which the derivative victim's application is based.

(e) An applicant shall either be eligible as a direct or derivative victim. An applicant cannot be eligible as both a direct victim and a derivative victim for the same qualifying crime.

NOTE: Authority cited: Sections 13920, 13955, 13957, and 13957.5 ~~and 13974~~, Government Code.
Reference: Sections 13951, 13952 and 13953, Government Code.

§ 649.18 Reimbursement of Funeral/Burial Expenses.

(a) ~~As funeral practices vary across cultures, the~~ The following ~~traditional~~ funeral and burial expenses, or their equivalent expenses, may be reimbursed:

- (1) Burial costs, including but not limited to ~~expenses for:~~ the burial vault; casket; costs associated with the transport of the body; cremation charges; labor cost for opening and closing the grave; headstone; marker, or tombstone and the charge for its setting; the single-width, single-depth grave site; and, endowment care -- a one-time charge controlled by state law that ensures permanent maintenance of the grave.
- (2) Funeral service costs, including but not limited to ~~expenses for:~~ preparation of the body for viewing; newspaper notices; copies of the death certificate; flowers for gravesite, chapel, and hearse; photography costs; musician's fees; burial clothing; cost of transport to the burial site; on-site funeral service fees for chapels or other memorial service locations; licensed security guard services; gravesite service fees and costs, including equipment charges; and, items necessary for performing services in other cultural traditions.
- (3) Memorial service costs including flowers, ~~and~~ pictures, and picture frames at the service.
- (4) If a double grave or headstone has been chosen, reimbursement may be made based upon an estimate of a single grave or headstone or half the cost of the double grave or headstone, whichever is the less expensive.

(b) The following expenses are not reimbursable by the ~~CalVCB Board~~: coroner's charges; finance or interest charges or processing fees on a funeral/burial bill; a pre-purchased funeral or grave for the victim; alcoholic beverages; any expenses based upon a ~~CalVCB~~ an application filed by a mortuary, cemetery or other third-party service provider.

(c) If more than one applicant seeks reimbursement of funeral/burial expenses for the same deceased victim, the total amount paid by the Board shall not exceed the maximum amount as set forth in statute. Eligible bills will be paid in the order in which they are received.

Note: Authority cited: Section 13920, Government Code. Reference: Section 13957(a)(8)(B), Government Code.

§ 649.19 ~~Residential Security Home Security Device or System.~~

(a) ~~The VCP Board will may~~ reimburse the costs of a victim or derivative victim's new or additional residential security upon verification that the expense is necessary as a direct result of the crime. ~~home security device or system.~~ Examples of ~~home security device or system items~~ installing or increasing residential security include, but are not limited to, the following:

- (1) Alarms, keypads, cameras, and motion detectors;
- (2) Installation costs;
- (3) Monitoring costs;

(4) Window bars and security doors; ~~and~~

(5) Replacing or increasing the number of locks; and-

(6) Replacement of doors and windows damaged as a direct result of the qualifying crime and necessary to secure the premises.

(b) Examples of items which do not qualify as “installing or increasing residential security” and are not reimbursable include, but are not limited, to the following:

(1) Weapons (guns or non-lethal weapons);

(2) Guard dogs; and

(3) Self-defense courses.

(c) Evidence to support this may include, but is not limited to, the following:

(1) The qualifying crime occurred in the victim’s or derivative victim’s home;

(2) The victim or derivative victim obtained an Emergency Protective Order, Temporary Restraining Order, or Restraining Order After Hearing against the suspect; or

(3) A mental health provider or law enforcement official determined the expenses to be necessary as a direct result of the crime.

NOTE: Authority cited: Sections 13920 ~~and 13974~~, Government Code. Reference: Section 13957, Government Code.

§ 649.24. Reimbursement to Service Providers Ineligible for Reimbursement.

(a) ~~A provider who fails to submit requested documentation to verify losses or injury may be found to be ineligible for reimbursement by VCP.~~ if any of the following circumstances apply:

(1) A provider fails to submit requested documentation to verify the victim’s or derivative victim’s losses or injury.

(2) A provider fails to submit requested documentation to verify the services provided.

(3) A provider provides, or causes another to provide, false information to the Board.

(4) A provider misrepresents a victim’s or derivative victim’s disability, injury, or other need for treatment or services.

(5) A provider fails to comply with statutes and regulations established by their licensing, oversight, or governing bodies.

(6) A provider fails to comply with any statutes or regulations governing claims before the Board.

(7) A provider fails to comply with a corrective action plan imposed by the Board. A corrective action plan need not be imposed as a prerequisite to a finding of ineligibility based upon any of the preceding circumstances.

(b) A provider who fails to adhere to statutes and regulations established by their licensing, oversight, or governing bodies may be found to be ineligible for reimbursement by VCP. The finding of ineligibility may extend to pending and future claims. The finding of ineligibility does not prevent reimbursement to victims or derivative victims for pecuniary losses.

(c) The Board shall notify the provider of the finding of ineligibility, the extent, and duration of ineligibility, and allow the provider 45 calendar days to challenge it. A finding of ineligibility is final if no challenge is timely received.

(d) The provider may challenge the finding of ineligibility by requesting an informal hearing before a hearing officer. The hearing officer will schedule the informal hearing, which may be on the written record, with at least ten calendar days' notice to the provider, taking into consideration the availability of the provider, any witnesses, and the hearing officer. After the hearing concludes and the administrative record is closed, the hearing officer shall prepare a proposed decision for the Board's consideration. The Board's determination of the provider's eligibility is final upon its vote.

(e) A provider who disagrees with the Board's final determination of ineligibility may challenge the Board's final decision by filing a writ of mandate.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13954 and 13957.2(a), Government Code.

§ 649.28. Oversight of Medical, Medical-Related, and Mental Health Counseling Providers

(a) A provider of outpatient medical, medical-related, or mental health counseling related services who receives payment from, or whose services were reimbursed by, the Victim Compensation Program Board may be subject to shall be subject to a clinical or fiscal audit, or both, to ensure that treatment and reimbursement were authorized by law.

(b) A provider shall make all necessary clinical and fiscal records available to the Board staff for review upon request for up to three years after the date that reimbursement was paid.

(c) A corrective action plan may be imposed by the Board if any of the following circumstances apply:

(1) A provider fails to comply with a clinical or fiscal audit.

(2) A provider fails to submit requested documentation to verify the victim's or derivative victim's losses or injury.

(3) A provider fails to submit requested documentation to verify the services provided.

(4) A provider provides, or causes another to provide, false information to the Board.

(5) A provider misrepresents a victim's or derivative victim's disability, injury, or other need for treatment or services.

(6) A provider fails to comply with statutes and regulations established by their licensing, oversight, or governing bodies.

(7) A provider fails to comply with any statutes or regulations governing claims before the Board.

(d) The corrective action plan shall identify the provider's noncompliance, the methods by which the provider must correct the noncompliance, and the deadline for correction.

(e) The Board shall notify the provider of the corrective action plan and allow the provider 45 calendar days to challenge it. A corrective action plan is automatically imposed if no challenge is timely received.

(1) The provider may challenge imposition of the corrective action plan by requesting an informal hearing before a hearing officer. The hearing officer will schedule the informal hearing, which may be on the written record, with at least ten calendar days' notice to the provider, taking into consideration the availability of the provider, any witnesses, and the hearing officer. After the hearing concludes and the administrative record is closed, the hearing officer shall prepare a proposed decision for the Board's consideration. The Board's determination on imposition of a corrective action plan is not subject to further review.

(2) The imposition of a correction action plan does not constitute a final decision by the Board for purposes of review by writ of mandate.

(f) A provider who fails to comply with a corrective action plan may be found ineligible for reimbursement pursuant to Section 649.24.

Note: Authority cited: Section 13920(e), Government Code. Reference: Sections 13954, 13957(a)(2) and 13957.2(a), Government Code.

§ 649.50 Involvement in a Vehicle-Related Qualifying Crime.

(a) A victim or derivative victim who was the driver of a vehicle, aircraft, or water vehicle may be found to have been involved in the events leading to the qualifying crime if ~~one of the following was present~~:

- (1) the victim or derivative victim was driving the vehicle with a blood alcohol content exceeding the legal limit;
- (2) the victim or derivative victim was driving while under the influence of alcohol and/or drugs;
- (3) the victim or derivative victim was cited or arrested by law enforcement based on events leading to the qualifying crime; or
- (4) the victim's or derivative victim's conduct was the primary cause of the vehicle collision.

(b) A victim or derivative victim who is a passenger in a vehicle driven by a person under the influence of alcohol or drugs may be found to have been involved in the events leading to the vehicle-related qualifying crime if ~~one of the following was present~~:

- (1) the victim or derivative victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs; or
- (2) the victim or derivative victim was under the influence of alcohol or drugs and if sober should have reasonably known that the driver was under the influence of alcohol or drugs.

(c) Subsection (b) shall not apply to passengers in a vehicle if:

- (1) the victim is under ~~14~~18 years of age; or
- ~~(2) the victim is under 18 years of age and the driver of the vehicle was a parent, guardian of the victim, or an adult who had responsibility for the victim; or.~~

~~(3) (2) the victim died, and the applicant is requesting funeral/burial expenses incurred on behalf of the victim. If this subdivision applies, the application may be partially allowed for funeral and burial expenses only.~~

(d) A victim or derivative victim may be found to have been involved in the events leading to the qualifying crime of a hit and run (California Vehicle Code section 20001) if ~~both of the following are present:~~

(1) the victim or derivative victim acted in a blatant, wrongful or provoking manner; ~~and or~~

(2) the victim's or derivative victim's conduct contributed to the events leading to the qualifying crime or was the primary cause of the vehicle collision.

(e) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when evaluating the factors listed in subsections (a), ~~and (b),~~ and (d).

NOTE: Authority cited: Sections 13920 and ~~13974~~, Government Code. Reference: Sections 13955 and 13956, Government Code.

Summary of Comments and Responses to Proposed Regulations

California Victim Compensation Board
TITLE 2. CALIFORNIA VICTIM COMPENSATION BOARD
ARTICLE 5. INDEMNIFICATION OF VICTIMS OF CRIME
Title 2, §§ 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50

SUMMARY OF COMMENTS AND RESPONSES TO PROPOSED REGULATIONS

On September 29, 2023, the California Victim Compensation Board (CalVCB) provided notice of proposed changes to the regulations governing claims from victims of crime located in sections 649.4, 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50, Title 2, of the California Code of Regulations. On November 28, 2023 and December 18, 2023, CalVCB provided notice of public hearings. The table below summarizes each of the comments received and CalVCB's response, sequentially organized by each section and subdivision of the proposed regulations.

RESPONSES TO COMMENTS TO PROPOSED REGULATIONS

Section 649.4		
SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
Margaret Petros, Executive Director at Mothers Against Murder	The current law excludes victims on parole, probation, etc. The law should be changed because all victims should be treated with the respect they deserve. All victims should be eligible for benefits.	CalVCB is not moving forward with any changes to Title 2, section 649.4 of the California Code of Regulations. The original language will remain in effect.
Anonymous 1	The Board should grant compensation to all victims even though they became a victim of a violent crime while incarcerated, on parole, or have a criminal record. They are already paying for their crime. They should be able to obtain support.	CalVCB is not moving forward with any changes to Title 2, section 649.4 of the California Code of Regulations. The original language will remain in effect.
Section 649.4, subdivision (f)		
SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
Margaret Petros, Executive Director at	CalVCB considered denying funeral and burial expenses of incarcerated victims twenty years ago and decided to pay the funeral and burial expenses. When	CalVCB is not moving forward with any changes to Title 2, section 649.4 of the California Code of Regulations. The original language will remain in effect.

Mothers Against Murder	<p>someone dies their criminal record ends, it legally closes by abatement, and they are no longer on probation or parole. This means the funeral and burial expenses are incurred after the deceased victim is off of probation and parole. When a felon dies they are no longer on parole or probation per abatement. If someone is raped, tortured, or murdered in prison, when parole ends victims should be able to obtain benefits.</p> <p>In the past, the Program paid for funeral and burial expenses for victims who died in prison because the expenses were incurred after the body was released to the family. The deceased victim was no longer in a correctional institution as they were released from custody due to death. This fits the statute of allowable expenses. Government Code section 13956, subd. (c)(1) allows the funeral and burial expenses for those no longer on parole or probation. Death abates this, the file is closed. The family would be eligible for funeral and burial expenses. This regulation contradicts the statute.</p>	
Anonymous 1	<p>There are other innocent victims involved when someone who is incarcerated is murdered. A funeral could be very important for the healing of a family member who lost a loved one to murder. The family members should not be punished, and the funeral expenses should be reimbursed.</p> <p>CalVCB has enough money to pay for these funeral burial expenses. There are millions of unused dollars. This is not a lack of resources issue.</p>	CalVCB is not moving forward with any changes to Title 2, section 649.4 of the California Code of Regulations. The original language will remain in effect.
<p>Carmen-Nicole Cox, Director of Governmental Affairs at ACLU</p> <p>Eric Henderson, Legislative Advocate at ACLU</p>	<p>The addition of this section would bar help to formerly incarcerated victims who were victimized while incarcerated, and to family members of incarcerated victims. The proposed provision does not appear to have a reasonable foundation in statute. Government Code section 13956, subdivision (c)(1) does not bar an applicant from receiving compensation after incarceration if they become a victim while incarcerated, it only says that they are</p>	CalVCB is not moving forward with any changes to Title 2, section 649.4 of the California Code of Regulations. The original language will remain in effect.

<p>Tanisha Cannon, Managing Director at Legal Services for Prisoners with Children</p> <p>Anthony DiMartino, Government Affairs Director at Californians for Safety and Justice</p> <p>Angel Rice, Co-Founder at Empowering Women Impacted by Incarceration</p> <p>Morgan Zamora, Prison Advocacy Coordinator at Ella Baker Center for Human Rights</p> <p>Joseph Griffin, Executive Director at Youth Alive</p> <p>Ed Little at Californians for Safety and Justice</p> <p>Gabriel Garcia, Policy and Advocacy Director at Youth Alive</p>	<p>ineligible to receive any award until release. Government Code section 13956, subdivision (c)(2) clarifies that a defendant serving a sentence may be awarded compensation when they are no longer serving a sentence. The proposed provision improperly creates a separate standard for incarcerated and formerly incarcerated victims, i.e. those on the sex offender registry, probation, or parole. These victims and their families will be permanently ineligible to receive compensation for injuries related to the crime. Family members should receive compensation to bury their loved ones murdered during the commission of a crime. There is no basis in the statute for creating this separate group of victims who were injured while incarcerated and this does not align with Government Code section 13956, subd. (c)(2). Further, Government Code section 13956, subd. (c)(2) applies to the applicant's correctional status, not the victim's status. This provision restricts anyone from applying if the victim was incarcerated at the time of injury, making applicants who are free from incarceration ineligible based on the victim's status. For example, a parent of an individual murdered while incarcerated will be ineligible for funeral expenses and mental health counseling. Denying healing services to formerly incarcerated victims and family members of incarcerated victims undermines public safety goals and denies help to vulnerable victims.</p>	
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Section 649.7, subdivision (a)

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
Margaret Petros, Executive Director at Mothers Against Murder	Not everyone can complete every field on an application. For example, some people do not have social security numbers. When a social security number is required on the application, then staff will deny the application for this reason even though it does not exist. The regulation should not make the process more difficult. The victim witness advocates need to complete the applications, not the victims.	No modification was made as the enumerated information required does not include a social security number. The information that is required is necessary to accurately and timely process the application and ensure the claimant is afforded notice. CalVCB does not employ or contract with victim witness advocates and cannot direct their work.

Section 649.7, subdivision (a)(3)

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
Michael Siegel, Attorney at Law	<p>The proposed requirement that adults provide their legal authority to apply on behalf of a minor claimant is not an issue that needs to be addressed by a regulation. Adult claimants do not profit from the approval of a minor's claim. This requirement puts a hardship in cases with minor claimants whose parents may not have access to birth certificates or other proof of parentage, especially undocumented and/or non-English speakers. A significant number of claims for children will be denied and they will not have access to services. Providers will be reluctant to provide services to children who do not have their birth certificates in hand. This regulation should be amended to limit the requirement of documentation to claims involving applicants who are not parents.</p> <p>Regarding relative caregivers, it is unclear what type of documentation a person could provide to prove status as a relative caregiver besides an affidavit. This could be an insurmountable requirement. Additionally, it may be problematic for step-parents and their step-children. Relative caregivers should be excluded from the list of persons required to provide authority to</p>	<p>Declined suggested modification to exclude parents and relative caregivers from the documentation requirement. CalVCB needs to verify that the people who apply and request benefits on behalf of a minor victim have custody of the minor. This is to ensure the minor victim receives the services they need.</p> <p>Declined suggested modification to list documents for Department of Children and Family Services (DCFS) workers. The regulation currently allows broad discretion to allow supporting documents which will benefit all minor victims.</p> <p>Declined suggested modification to delete the proposed requirement of providing supporting documentation. A birth certificate or any other specific document is not required to meet this provision. CalVCB agrees a declaration signed under penalty of perjury may be sufficient and it is not unduly burdensome.</p> <p>Declined suggested modification to delete the regulation in its entirety as the regulation is not duplicative and explains what constitutes a complete application.</p>

	<p>file claims on behalf of minors. In the alternative, a signed declaration under penalty of perjury should suffice.</p> <p>Regarding DCFS workers, it is unclear what kind of documentation would be required for DCFS workers who sign claims for county dependents, and whether they would be willing or able to provide the documentation.</p> <p>The regulation should be deleted in its entirety as there are current adequate laws and regulations to address when an adult is not authorized to file a claim for a minor.</p>	<p>This is necessary to accurately and timely process the application and ensure the claimant is afforded adequate notice of what is required.</p>
<p>Margaret Petros, Executive Director at Mothers Against Murder</p>	<p>The Board should specify which specific supporting documents should be submitted when a claimant files on behalf of the victim. For example, a power of attorney is an appropriate document. When the language is vague it leads to staff having different interpretations of what is acceptable documentation. Other acceptable documents listed in the language will prevent different staff interpretations.</p>	<p>Declined suggested modification to list specific supporting documents. The requirement for specific documents may unduly burden victims. The regulation currently allows broad discretion to allow supporting documents, which will benefit all victims.</p>
<p>Section 649.7, subdivision (a)(9)</p>		
SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
<p>Margaret Petros, Executive Director at Mothers Against Murder</p>	<p>If the representative is known at the time the application is filed, then the information should be on the application. Many times, a representative is unknown at the time of filing or the representative changes throughout the process. Currently, CalVCB has a form signed by the victim that authorizes a representative to represent a victim. It would be burdensome for a victim to be required to complete a second, duplicate application when a representative changes. Duplicate applications are inefficient, difficult for the victim, and increase staff work. To avoid confusion, the current representative form should be incorporated. The law gives the authority to</p>	<p>Declined suggested modification to delete the requirement to include the representative name. The requirement is only for the initial application. Once the initial application is deemed completed, there is no requirement in the regulation to complete a second application when a representative changes. This will not create a requirement for duplicate applications. The current use of the representative form is not affected by this proposed change. This provision ensures CalVCB has contact information for the representative if known at the time the application is submitted.</p>

	represent a victim. What is currently in place works fine.	
Anonymous 1	It does not make sense for a victim to complete a second application if they decide to obtain a representative after the original application is filed. This is a waste of resources and time. There are already too many duplicated papers in the victim's file. It will make the case records confusing if there are duplicate applications. Duplicate applications will be too complicated.	Declined suggested modification to delete the requirement to include the representative name. The requirement is only for the initial application. Once the initial application is deemed completed, there is no requirement in the regulation to complete a second application when a representative changes. This will not create a requirement for duplicate applications. The current use of the representative form is not affected by this proposed change. This provision ensures CalVCB has contact information for the representative if known at the time the application is submitted.
Section 649.7, subdivision (c)		
SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
Margaret Petros, Executive Director at Mothers Against Murder	<p>Include other evidence of crimes, not just the crime report. Make it clear that other documents can qualify the claim like medical or mental health records, court records, and restraining orders. It is usually a crime report, but when it is lacking for legitimate reasons, these other documents should be listed to be used to approve the claim.</p> <p>Agrees that a victim can submit the crime report. Concerned that CalVCB is shifting the burden of obtaining the crime report to the victim by using the words "unable" or "declines." The word declines should not be included because it gives the impression the victim may be uncooperative.</p> <p>Victims and applicants should not be burdened with obtaining a crime report. It is difficult to obtain crime reports from law enforcement, especially in murder cases. It is easier and free for CalVCB and victim advocates to obtain the reports. The agency is required to verify the claim. All</p>	<p>Declined suggested modification to include other forms of evidence. Other regulations and statutes are currently in place to allow additional types of evidence in the applicable circumstances. Additionally, the proposed change does not require possession of a crime report to process the application.</p> <p>Declined suggested modification to delete option for the applicant to provide the crime report. The victim is encouraged to provide the crime report to expedite processing the application. The burden is not shifted and only gives the victim the option to submit a crime report. The regulation still requires CalVCB and Joint Powers staff to attempt to obtain the crime report if it is not provided by the victim.</p> <p>Declined suggested modification to include victim witness advocates because CalVCB does not have contracts for victim witness advocates to process CalVCB applications.</p>

	<p>victim witness offices, not just Joint Powers, have a grant, and a part of the contract requirement to assist with CalVCB applications and obtain records. The language should be clear that they shall obtain the crime reports for CalVCB.</p> <p>The Board should add a time limit for staff to verify the crime and request a report immediately to avoid delays in completing an application. Advocates will sit on an application for weeks before they start verifying. The legislature has a time requirement for processing applications. The requirement that an application is incomplete without a crime report creates a loophole and freezes the time for processing.</p>	<p>Declined suggested modification to impose a time limit to obtain a crime report. Each law enforcement agency's record response time differs depending on the agency's resources and the type of crime. CalVCB does not have control of either of these factors. This regulation does not modify statutory processing time requirements and is not in conflict with statute.</p>
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Section 649.15

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
Gabriel Garcia, Policy and Advocacy Director at Youth Alive	Support the expanded interpretation of what constitutes good cause for late filing. This should be further expanded to include a victim's lack of awareness of CalVCB and lack of victim notification. This would continue to increase victims' access to benefits.	Declined suggested modification to add additional factors that may be considered. The current proposed language includes suggested factors and states other factors may be considered. The regulation does not prohibit the consideration of the suggested factors. A determination of good cause will be made based on the totality of the circumstances, which may include deficient notification and a lack of awareness of CalVCB.

Section 649.24

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
Margaret Petros, Executive Director at Mothers Against Murder	This is heavy handed language for providers of services and leads one to believe there is widespread fraud. This is not true. There are always some people who attempt to defraud a program, but it is not common because it is difficult to maneuver the program. The language is too	Declined request for deletion of the regulation. The addition of this language provides transparency to providers of the Program requirements. The language also ensures victims actually receive all benefits billed to CalVCB. This provision authorizes CalVCB to provide a corrective

	<p>extensive. It is unreasonable to expect providers to know the CalVCB regulations. It is difficult to find providers that assist victims and only a limited number of providers are willing to assist victims. This regulation is insulting to good providers. These are licensed providers and their licensing agencies should deal with these issues.</p>	<p>action plan when needed to ensure victims receive quality services. The language provides clarity and transparency to providers that CalVCB is authorized to pay a bill only if it is allowed by the statutes and regulations. If a bill is denied due to the failure to follow CalVCB's statutes and regulations, the denial notice specifically delineates the denial reason and references applicable provisions. The intention of the regulation is not to deter providers, but to ensure victims receive quality services. This regulation is in line with CalVCB's mission to assist victims.</p>
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Section 649.24, subdivision (a)(6)

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
<p>Margaret Petros, Executive Director at Mothers Against Murder</p>	<p>It is unreasonable to expect providers to know the CalVCB regulations. Not many people know about the statutes and regulations of CalVCB. It is too much to expect the providers of services to know about CalVCB's regulations.</p>	<p>Declined request for deletion of the regulation. The addition of this language provides clarity and transparency to providers. If a bill is denied due to the failure to follow CalVCB's statutes and regulations, the denial notice specifically delineates the denial reason and references applicable provisions. Providers are afforded notice of all relevant statutes and regulations at this point in the process to provide due process.</p>

Section 649.28

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
<p>Margaret Petros, Executive Director at Mothers Against Murder</p>	<p>This is heavy handed language for providers of services and leads one to believe there is widespread fraud. This is not true. There are always some people who attempt to defraud a program, but it is not common because it is difficult to maneuver the program. The language is too extensive. It is unreasonable to expect providers to know the CalVCB regulations. It is difficult to find providers that assist victims and only a limited number of</p>	<p>Declined request for deletion of the regulation. The addition of this language provides transparency to providers of the audit process and their rights to remediate the situation. This provision also authorizes CalVCB to provide a corrective action plan when needed to ensure victims receive quality services and allows providers to appeal the decision. If a bill is denied due to the failure to follow CalVCB's statutes and regulations, the</p>

	providers are willing to assist victims. This regulation is insulting to good providers. These are licensed providers and their licensing agencies should deal with these issues.	denial notice specifically delineates the denial reason and references applicable provisions. The intention of the regulation is not to deter providers, but to ensure victims receive quality services.
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Section 649.50, subdivision (c)

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
<p>Carmen-Nicole Cox, Director of Governmental Affairs at ACLU</p> <p>Eric Henderson, Legislative Advocate at ACLU</p> <p>Tanisha Cannon, Managing Director at Legal Services for Prisoners with Children</p> <p>Anthony DiMartino, Government Affairs Director at Californians for Safety and Justice</p> <p>Angel Rice, Co-Founder at Empowering Women Impacted by Incarceration</p> <p>Morgan Zamora, Prison Advocacy</p>	<p>Supports the change that ensures minor victims are not denied as passengers in DUIs due to involvement.</p> <p>Suggest limiting the definition of involvement to circumstances in which there is clear and convincing evidence that the victim or derivative victim was personally causing or threatening to cause serious bodily injury or death at the time of the qualifying crime and either initiated or directly caused the crime.</p>	<p>There are no suggested modifications to the provision for minor passengers in DUI collisions.</p> <p>Declined request to modify the burden of proof to clear and convincing evidence. The burden of proof is a preponderance of evidence as set forth in California Code of Regulations, Title 2, section 647.32, subdivision (c), to which no amendments are proposed.</p> <p>Declined request for modification to change the standard for involvement as this would be in conflict with Government Code section 13956, subdivision (a).</p>

<p>Coordinator at Ella Baker Center for Human Rights</p> <p>Joseph Griffin, Executive Director at Youth Alive</p> <p>Ed Little at Californians for Safety and Justice</p> <p>Gabriel Garcia, Policy and Advocacy Director at Youth Alive</p>		
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Section 649.52

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
<p>Carmen-Nicole Cox, Director of Governmental Affairs at ACLU</p> <p>Eric Henderson, Legislative Advocate at ACLU</p> <p>Tanisha Cannon, Managing Director at Legal Services for Prisoners with Children</p> <p>Anthony DiMartino, Government Affairs Director</p>	<p>The regulations that specify what constitutes involvement are unnecessarily broad and vague which can contribute to inconsistent interpretation and open the door to bias.</p> <p>Remove clauses encouraging that significant weight be given to law enforcement opinion. This is not required by Government Code section 13956. Law enforcement are often unaware that their recorded initial impressions can effect a survivor's eligibility for CalVCB services. This leaves analysts with limited information to make a decision, leaves room for racial bias to enter the process, and opens survivors up to judgment based on their past interactions with law enforcement, or their interactions with law enforcement in the wake of trauma following their victimization.</p>	<p>No response or modification. Comment is not relevant because CalVCB did not suggest or notice any proposed revisions to this section.</p>

<p>at Californians for Safety and Justice</p> <p>Angel Rice, Co-Founder at Empowering Women Impacted by Incarceration</p> <p>Morgan Zamora, Prison Advocacy Coordinator at Ella Baker Center for Human Rights</p> <p>Joseph Griffin, Executive Director at Youth Alive</p> <p>Ed Little at Californians for Safety and Justice</p> <p>Gabriel Garcia, Policy and Advocacy Director at Youth Alive</p>		
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Section 649.53

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
<p>Carmen-Nicole Cox, Director of Governmental Affairs at ACLU</p> <p>Eric Henderson, Legislative</p>	<p>The regulations that specify what constitutes involvement are unnecessarily broad and vague which can contribute to inconsistent interpretation and open the door to bias.</p> <p>Limit the definition of involvement to circumstances in which there is clear and</p>	<p>No response or modification. Comment is not relevant because CalVCB did not suggest or notice any proposed revisions to this section.</p>

<p>Advocate at ACLU</p> <p>Tanisha Cannon, Managing Director at Legal Services for Prisoners with Children</p> <p>Anthony DiMartino, Government Affairs Director at Californians for Safety and Justice</p> <p>Angel Rice, Co-Founder at Empowering Women Impacted by Incarceration</p> <p>Morgan Zamora, Prison Advocacy Coordinator at Ella Baker Center for Human Rights</p> <p>Joseph Griffin, Executive Director at Youth Alive</p> <p>Ed Little at Californians for Safety and Justice</p>	<p>convincing evidence that the victim or derivative victim was personally causing or threatening to cause serious bodily injury or death at the time of the qualifying crime and either initiated or directly caused the crime.</p> <p>Amend to encourage examination of evidence beyond a police report alone before denying an applicant based on involvement.</p>	
<p>Section 649.54</p>		

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
<p>Carmen-Nicole Cox, Director of Governmental Affairs at ACLU</p> <p>Eric Henderson, Legislative Advocate at ACLU</p> <p>Tanisha Cannon, Managing Director at Legal Services for Prisoners with Children</p> <p>Anthony DiMartino, Government Affairs Director at Californians for Safety and Justice</p> <p>Angel Rice, Co-Founder at Empowering Women Impacted by Incarceration</p> <p>Morgan Zamora, Prison Advocacy Coordinator at Ella Baker Center for Human Rights</p> <p>Joseph Griffin, Executive Director at Youth Alive</p>	<p>The regulations that specify what constitutes involvement are unnecessarily broad and vague which can contribute to inconsistent interpretation and open the door to bias.</p> <p>Limit the definition of involvement to circumstances in which there is clear and convincing evidence that the victim or derivative victim was personally causing or threatening to cause serious bodily injury or death at the time of the qualifying crime and either initiated or directly caused the crime.</p> <p>Remove this section authorizing denials solely due to the victim or derivative victim's involvement in a drug transaction.</p>	<p>No response or modification. Comment is not relevant because CalVCB did not suggest or notice any proposed revisions to this section.</p>

Ed Little at Californians for Safety and Justice		
Section 649.55		
SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
<p>Carmen-Nicole Cox, Director of Governmental Affairs at ACLU</p> <p>Eric Henderson, Legislative Advocate at ACLU</p> <p>Tanisha Cannon, Managing Director at Legal Services for Prisoners with Children</p> <p>Anthony DiMartino, Government Affairs Director at Californians for Safety and Justice</p> <p>Angel Rice, Co-Founder at Empowering Women Impacted by Incarceration</p> <p>Morgan Zamora, Prison Advocacy</p>	<p>The regulations that specify what constitutes involvement are unnecessarily broad and vague which can contribute to inconsistent interpretation and open the door to bias.</p> <p>Limit the definition of involvement to circumstances in which there is clear and convincing evidence that the victim or derivative victim was personally causing or threatening to cause serious bodily injury or death at the time of the qualifying crime and either initiated or directly caused the crime.</p> <p>Remove this section authorizing denials solely due to prior gang activity allegedly connected to the qualifying crime.</p>	<p>No response or modification. Comment is not relevant because CalVCB did not suggest or notice any proposed revisions to this section.</p>

<p>Coordinator at Ella Baker Center for Human Rights</p> <p>Joseph Griffin, Executive Director at Youth Alive</p> <p>Ed Little at Californians for Safety and Justice</p>		
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Section 649.57

SUBMITTER	SUMMARY OF COMMENTS	CalVCB RESPONSE
<p>Carmen-Nicole Cox, Director of Governmental Affairs at ACLU</p> <p>Eric Henderson, Legislative Advocate at ACLU</p> <p>Tanisha Cannon, Managing Director at Legal Services for Prisoners with Children</p> <p>Anthony DiMartino, Government Affairs Director at Californians for Safety and Justice</p> <p>Angel Rice, Co- Founder at Empowering</p>	<p>The regulations that specify what constitutes involvement are unnecessarily broad and vague which can contribute to inconsistent interpretation and open the door to bias.</p> <p>Limit the definition of involvement to circumstances in which there is clear and convincing evidence that the victim or derivative victim was personally causing or threatening to cause serious bodily injury or death at the time of the qualifying crime and either initiated or directly caused the crime.</p> <p>Amend to encourage examination of evidence beyond a police report alone before denying an applicant based on involvement.</p>	<p>No response or modification. Comment is not relevant because CalVCB did not suggest or notice any proposed revisions to this section.</p>

<p>Women Impacted by Incarceration</p> <p>Morgan Zamora, Prison Advocacy Coordinator at Ella Baker Center for Human Rights</p> <p>Joseph Griffin, Executive Director at Youth Alive</p> <p>Ed Little at Californians for Safety and Justice</p>		
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Updated Informative Digest / Policy Statement Overview

TITLE 2. CALIFORNIA VICTIM COMPENSATION BOARD
ARTICLE 5. INDEMNIFICATION OF VICTIMS OF CRIME
Title 2, §§ 649.7, 649.15, 649.16, 649.18, 649.19, 649.24, 649.28, 649.50

UPDATED INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

CalVCB was the first established and remains one of the largest victim compensation programs in the nation. A person is eligible for victim compensation if, as a direct result of a qualifying crime, they suffered a pecuniary loss. (Gov. Code, §§ 13955, 13957.) “Crime” is defined as a crime or public offense that would constitute a misdemeanor or felony offense. (Gov. Code, § 13951, subd. (b).) A crime is a “qualifying crime” for purposes of the California Victim Compensation Board (CalVCB), if the victim sustained a physical injury or an emotional injury and a threat of physical injury. (Gov. Code, § 13955, subd. (f)(1) & (2).) Victims of sexual assault, human trafficking, child molestation, or child abuse are only required to show they sustained an emotional injury. (Gov. Code, § 13955, subd. (f)(3).) An application for compensation must be filed within seven years of the qualifying crime, seven years after the victim attains 21 years of age, or seven years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained, whichever is later. (Gov. Code, § 13953, subd. (a).) The Board may for good cause grant an extension of the time period to file an application. (Gov. Code, § 13953, subd. (b).) An applicant may be found to be ineligible for compensation if they failed to reasonably cooperate with a law enforcement agency in the apprehension and conviction of the person who committed the qualifying crime or were involved in the events leading to the qualifying crime. (Gov. Code, § 13956.)

If CalVCB determines a qualifying crime occurred, CalVCB can help pay certain bills and expenses, as authorized by the Legislature, that are a direct result of the crime the application was based on. (Gov. Code, § 13957.) Eligible services include medical and dental care, mental health services, income loss, funeral and burial expenses, relocation, and residential security, among others enumerated in statute. (Gov. Code, § 13957.) However, CalVCB is a payor of last resort, meaning that, if a person is eligible for compensation, CalVCB provides compensation for costs that are not covered by other sources. (Gov. Code, §§ 13951 and 13954.)

The regulations governing victim compensation (Cal. Code Regs., tit. 2, §§ 601, et seq.) have not been significantly revised since 2012. As a result, several modifications are needed to provide clarity, transparency, and consistency.

The revision of Section 649.7 clarifies many of the requirements for a complete application. Additionally, it specifies when a person who signs the application as the applicant differs from the direct or derivative victim, they must include supporting documentation as to their legal authority to apply. Also, it allows the Board to now accept electronically signed applications and communications. Further, it explains when the Board may accept a summary report for purposes of determining eligibility.

The revision of Section 649.15 provides additional factors that may be considered as good cause for filing applications beyond the statutory deadline. Specifically, the Board may now

consider a victim's physical, emotional, psychological, or developmental condition. Additionally, the Board may now consider whether the victim sought treatment for interpersonal crimes or incurred new pecuniary losses within one year of the application filing date.

The revision of Section 649.16 clarifies who qualifies as a derivative victim. It further clarifies that the Board may accept an application from a derivative victim regardless of whether a direct victim applied to the Board. Also, it specifies that an applicant shall be eligible as a direct or derivative victim, not both.

The revision of Section 649.18 identifies ineligible funeral and burial expenses and clarifies the order of payment when there are multiple applications related to a single decedent.

The revision of Section 649.19 clarifies the evidence that will be considered and payments that may be made to improve or restore residential security. It specifies examples of evidence that may be used to verify the residential security is directly related to the crime on which the application is based.

The revision of Section 649.24 clarifies and expands on the circumstances that may render service providers ineligible for reimbursement. It specifies that a provider must provide requested documentation, cannot submit false information, and must comply with the provider's licensing, oversight, or governing bodies along with CalVCB statutes and regulations. If a provider fails to comply, the regulation gives the Board the ability to impose a corrective action plan to remedy the issues. Additionally, it explains the provider's ability to remediate the situation.

The revision of Section 649.28 clarifies and expands on CalVCB's ability to oversee medical, medical-related, and mental health providers who seek reimbursement from CalVCB for services provided. The language provides transparency into the audit, corrective action plan, and remediation processes.

The revision of Section 649.50 clarifies when a person is eligible or ineligible for compensation due to their involvement in a vehicle-related qualifying crime. It specifies that all minors who are passengers in a driving under the influence collision are eligible for CalVCB benefits. It clarifies that if a victim dies during a driving under the influence collision, then related applications may only be partially allowed for funeral burial expenses.

Overall, the proposed regulations will comply with the current law governing victim claims under Government Code sections 13950, et seq., clarify existing policies and practices, and provide the public with the specificity needed for applicants to successfully obtain compensation. The regulations also interpret and implement general aspects of the law, to ensure their consistent application in specific circumstances. By doing so, they will provide clear guidance to the public and enable the Board to decide these claims in a more uniform and efficient manner.

ITEM 8

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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of:

10 **Cartier Hunter**

11 Claim No. 23-ECO-20

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On June 2, 2023, Cartier Hunter (Hunter) submitted a claim as an erroneously convicted
14 person to the California Victim Compensation Board (CalVCB) seeking compensation pursuant to
15 Penal Code section 4900, which he supplemented on June 28, 2023, and August 25, 2023. As
16 supplemented, the claim is based upon Hunter's 2016 convictions for murder and being a felon in
17 possession of a firearm, both of which were vacated by a writ of habeas corpus in 2023, and the case
18 dismissed immediately thereafter without a finding of factual innocence. Hunter requests
19 compensation in the amount of \$449,960 for 3,214 days imprisonment solely as a result of his vacated
20 convictions. Hunter is represented by Lateef H. Gray of Pointer & Buelna.

21 The Attorney General is represented by Deputy Attorney General Dina Petrushenko. By letter
22 dated November 22, 2023, the Attorney General declined to object to Hunter's claim. The
23 administrative record closed on November 27, 2023, and the matter was assigned to CalVCB Senior
24 Attorney Laura Simpton. As required by subdivision (b) of Penal Code section 4900, CalVCB is
25 mandated to approve payment to Hunter in the amount of \$449,960 if sufficient funds are available,
26 upon appropriation by the Legislature, as indemnification for the demonstrated injury sustained by his
27 3,214 days imprisonment for his vacated convictions.

II. Procedural History

On April 30, 2014, Hunter was arrested and subsequently charged with first-degree murder and being a felon in possession of a firearm in Alameda County Superior Court case number 175142A.¹ Multiple enhancements for personal use of a firearm and inflicting great bodily injury were further alleged.² Hunter's codefendant Giovante Douglas (Douglas) was also charged with first-degree murder as an accomplice.³ Following a joint trial, the jury convicted Hunter on June 27, 2016, and he was sentenced on November 18, 2016, to an aggregate prison term of 50 years to life.⁴ The jury also convicted Douglas as charged, and he was sentenced to an aggregate prison term of 26 years to life.⁵

Hunter and Douglas appealed. In a consolidated decision filed December 19, 2018, the First District Court of Appeal struck a great bodily injury enhancement as to Hunter but otherwise affirmed the convictions for both Hunter and Douglas. Given their ages at the time of the crime (i.e., Hunter was 22, and Douglas was 19), the appellate court remanded for a limited hearing to present evidence related to their eventual youth offender parole hearing after 25 years imprisonment.⁶ The California Supreme Court denied review on March 20, 2019. Even with the stricken enhancement, Hunter's aggregate sentence remained 50 years to life.⁷

¹ Pen. Code, §§ 187 (murder), 29800 (firearm possession); see also Hunter Application (App.) at pp. 2-3. The pagination refers to the continuous page numbers for the 11-page PDF file submitted on June 2, 2023.

² Pen. Code, §§ 12022.5 (gun use), 12022.53 (personal gun use), 12022.7 (great bodily injury).

³ Codefendant Douglas submitted a separate claim for compensation under Penal Code section 4900, which is currently pending before the Board. (See *In re Douglas*, PC 4900 Claim number 23-ECO-38.)

⁴ *People v. Hunter, et al.*, California Court of Appeal, First District, case number A151644, unpublished decision filed Dec. 19, 2018, available on Westlaw at 2018 WL 6629552, at p. 2*; Abstract of Judgment (AOJ), filed Dec. 19, 2016, available via Alameda County Superior Court Online Services at <https://www.alameda.courts.ca.gov/online-services/criminal-record-requests>; see also Cal. Code Regs., tit. 2, § 617.8 (official notice).

⁵ *Hunter, supra*, 2018 WL 6629552, at p. *2; Douglas AOJ, filed Nov. 18, 2016, available via Alameda County Superior Court Online Services.

⁶ *Hunter, supra*, 2018 WL 6629552, at pp. *8-11.

⁷ Hunter App. at p. 3; Amended (AOJ), filed Dec. 3, 2018, available via Alameda County Superior Court Online Services.

1 On December 22, 2022, Hunter filed a petition for writ of habeas corpus in the Alameda County
2 Superior Court pursuant to Penal Code section 1473, alleging that the prosecution had presented false
3 evidence of guilt at trial.⁸ Relief under section 1473 requires a showing that the false evidence was
4 “substantially material” (i.e., a reasonable probability that it could have affected the outcome).⁹ The
5 superior court granted habeas relief on February 9, 2023. That same day, the court dismissed the
6 case on the prosecution’s motion.¹⁰ Hunter was released from prison shortly thereafter on February
7 16, 2023.¹¹ By then, Hunter had been incarcerated for 3,214 days as a result of his vacated
8 convictions, commencing with his arrest on April 30, 2014, up to his release on February 16, 2023.¹²

9 By email sent June 2, 2023, Hunter submitted a claim to CalVCB seeking compensation as an
10 erroneously convicted person under Penal Code section 4900. The claim, which lacked a valid
11 signature, requested compensation in the amount of \$449,960 for 3,214 days imprisonment as a result
12 of Hunter’s vacated convictions. The matter was initially assigned to CalVCB Senior Attorney Kristen
13 Sellers. On June 7, 2023, CalVCB informed Hunter, as well as the Attorney General’s representatives,
14 that additional information was needed. Hunter submitted a revised claim form on June 28, 2023,
15 which included some additional information but still lacked Hunter’s personal signature.¹³ By letter
16 dated July 26, 2023, CalVCB notified Hunter that his claim remained deficient and would be rejected
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18 ⁸ Hunter App. at pp. 9-10; see also Petition for Writ of Habeas Corpus filed Dec. 22, 2022, available via
19 Alameda County Superior Court Online Services. By then, Douglas had already been released from
20 custody after his petition for writ of habeas corpus, which raised the same allegation, was granted on
21 Sept. 12, 2022. (See *In re Giovante Douglas*, Alameda County Superior Court case number
22 HC175142B-1, docket and records available online.)

23 ⁹ Pen. Code, § 1473, subd. (b)(1); *In re Richards* (2016) 63 Cal.4th 291, 312-313 (explaining § 1473
24 relief intended if the “false evidence [was] of such significance that it may have affected the outcome of
25 the trial,” such that it “undermines ... confidence in the outcome”).

26 ¹⁰ Hunter App. at pp. 9-10; see also dockets for *People v. Hunter*, Alameda County Superior Court
27 case number 175142A, and *In re Hunter*, Alameda County Superior Court case number HC175142A-
28 1, available via Alameda County Superior Court Online Services.

¹¹ Hunter App. at p. 3; see also Hunter Second Revised (2nd Rev.) App. at p. 3. The pagination refers
to the continuous page numbers for the 11-page PDF file submitted on Aug. 25, 2023

¹² The number of days between Hunter’s arrest until his release was determined using the online
“Days Calculator” located at <https://www.timeanddate.com/date/duration.html>.

¹³ Hunter Revised (Rev.) App. at p. 6. The pagination refers to the continuous page numbers for the
12-page PDF file submitted on June 29, 2023.

1 unless cured within 30 days. Finally, on August 25, 2023, Hunter submitted a second revised claim
2 form, which included Hunter's personal signature.

3 On August 28, 2023, CalVCB notified the parties that it would take official notice of multiple
4 records from the superior court proceeding, deemed the second revised claim filed after confirming
5 compliance with Penal Code sections 4900 and 4901, and requested a response from the Attorney
6 General within 45 days. Following a single timely request for an extension of time pursuant to Penal
7 Code section 4902, subdivision (d), the Attorney General declined to object to Hunter's claim on
8 November 22, 2023. By then, the matter was reassigned to CalVCB Senior Attorney Laura Simpton.¹⁴
9 Following receipt of the Attorney General's declination, the administrative record closed on November
10 27, 2023.

11 **III. Factual Summary**

12 **A. Trial Evidence**

13 Around 10:30 a.m. on the morning of December 22, 2011, Charles Butler, Jr., (Butler) was
14 fatally shot while driving his car in Oakland. At the time of the shooting, Butler was stopped at the
15 intersection of 46th and West Streets. A Lexus pulled up behind him, and the passenger allegedly
16 stepped outside and fired six to nine shots at Butler's car. Butler was struck in the head multiple times.
17 His car accelerated forward, crashed into a row of parked cars, and then caught on fire. By then,
18 Butler was already dead. Meanwhile, the shooter stepped back into the Lexus, and the car sped
19 away. A total of ten casings were collected from the scene, all fired from the same semi-automatic
20 firearm.¹⁵

21 Approximately 15 minutes before the shooting, Butler was captured on video inside a nearby
22 market arguing with another man. The store owner identified 22-year-old Hunter as the person who
23 had argued with Butler and further identified 19-year-old Douglas as the person who had accompanied
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27 ¹⁴ Cal. Code Regs., tit. 2, § 615.10 (hearing officer assignments).

28 ¹⁵ *People v. Hunter, et al.*, California Court of Appeal, First District, case number A151644, unpublished
decision filed Dec. 19, 2018, available online at 2018 WL 6629552, *1-2.

1 Hunter into the store. The owner heard from another employee that the argument between Butler and
2 Hunter involved an accident that had occurred outside the store.¹⁶

3 Almost two years later, eyewitness A.W.,¹⁷ who claimed to know both Hunter and Giovante
4 Douglas (Douglas) from the neighborhood, identified Douglas as the Lexus driver and Hunter as the
5 passenger shooter. To explain her delay in reporting this information to police, A.W. testified that she
6 had been afraid but ultimately decided to assist law enforcement after seeing Butler's father on
7 television pleading for help to solve his son's murder. C.P., who also knew both Hunter and Douglas,
8 told police that he had seen them riding together in a Lexus shortly before the shooting. J.S., who
9 observed a Lexus speeding past his home shortly after hearing shots fired, initially identified Douglas
10 as the driver but then later testified it was Hunter. D.C., who lived in the neighborhood and knew both
11 Hunter and Douglas, told police that he overheard Hunter bragging about shooting Butler, but D.C.
12 denied hearing or making any such statement when testifying at trial.¹⁸

13 Officer P. Tran separately interviewed Hunter and Douglas in 2012. During the interview,
14 Hunter claimed to know Butler only in passing but denied being in the area at the time of the shooting.
15 Douglas also denied being present when the shooting occurred and further denied knowing Hunter or
16 ever driving a Lexus. At trial, Officer Tran testified that residents in the neighborhood were considered
17 "snitches" if they assisted law enforcement and may be at risk of physical harm. He claimed that
18 eyewitness A.W. had repeatedly expressed fear about testifying in this case. Officer Tran also testified
19 that C.P. claimed to have seen Douglas with a gun a few weeks after the murder, although C.P.
20 insisted at trial that he only assumed Douglas had a gun but did not actually see it.¹⁹

21 For the defense, an expert testified that, based upon the location of the casings and bullet
22 impacts on Butler's car, it would have been virtually impossible for the shooter to have been standing
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25 ¹⁶ *Hunter, supra*, at 2018 WL 6629552, at p. *2.

26 ¹⁷ Consistent with the appellate court decision, witnesses are referred to by their initials only.

27 ¹⁸ *Hunter, supra*, at 2018 WL 6629552, at pp. *1-2.

28 ¹⁹ *Hunter, supra*, at 2018 WL 6629552, at pp. *2-3, 7.

1 when the shooting occurred. The expert opined that it was highly likely that the shots were fired by a
2 person seated inside a car.²⁰

3 **B. Habeas Proceeding**

4 In support of his 2022 petition for writ of habeas corpus, Hunter presented a declaration from
5 A.W. that recanted her identification of Hunter and Douglas. Specifically, A.W. declared that she had
6 been pressured by Officer Tran to identify Hunter and Douglas, even though she did not witness the
7 shooting. A.W. insisted that she had “no idea if Mr. Douglas and/or Mr. Hunter had anything to do with
8 Mr. Butler’s death.”²¹ A.W. further declared that, in exchange for her false testimony, she received
9 housing and financial assistance totaling over \$30,000.²² As corroboration, A.W.’s longtime friend
10 N.R. declared that, as early as 2013, A.W. had admitted fabricating her testimony against Hunter and
11 Douglas and expressed regret for doing so.²³

12 **C. CalVCB Allegations**

13 In his claim to CalVCB, Hunter declares that he is innocent of Butler’s murder. In particular, he
14 denies being present when the shooting occurred. He further denies firing any shots at Butler or riding
15 in a car from which shots were fired at Butler. Hunter admits knowing Douglas but denies that he
16 personally knew Butler. In addition, Hunter accuses Officer Tran of fabricating evidence by bribing
17 witnesses, including A.W., to falsely implicate him in Butler’s murder.²⁴

18 Significantly, Officer Tran was charged with multiple felony offenses for perjury, bribery, and
19 threatening a witness, all as a result of his conduct during the investigation of Butler’s murder and
20 ensuing trial against Hunter and Douglas. Court records confirm that, on June 21, 2023, Officer Tran
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25 ²⁰ *Hunter, supra*, at 2018 WL 6629552, at p. *2.

26 ²¹ Petition for Habeas Corpus, Ex. A at p. 3 (A.W. declaration).

27 ²² Petition for Habeas Corpus at pp. 5, 18-20.

28 ²³ Petition for Habeas Corpus at p. 20.

²⁴ Hunter 2nd Rev. App. at pp. 4-5.

1 was held to answer on these charges following a preliminary hearing, and the case remains pending in
2 Alameda County Superior Court.²⁵

3 **IV. Determination of Issues**

4 Penal Code section 4900 allows a person, who has been erroneously convicted and
5 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
6 CalVCB.²⁶ Typically, claimants bear the burden to prove by a preponderance that (1) the crime with
7 which they were convicted either did not occur or was not committed by them and (2) they suffered
8 injury as a result of their erroneous conviction.²⁷ If the claimant satisfies their burden for both
9 elements, then CalVCB shall approve payment for the purpose of indemnifying the claimant for the
10 injury if sufficient funds are available, upon appropriation by the Legislature.²⁸ Payment is calculated
11 at the rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.²⁹

12 Under subdivision (b) of Penal Code section 4900, CalVCB's approval is mandated for certain
13 claimants, even without a preponderance of evidence that the claimant did not commit the crime for
14 which they were convicted.³⁰ Specifically, subdivision (b) compels approval of the claim for
15 compensation, without a hearing and within 60 days, when the following three elements are met. First,
16 the claimant's conviction must have been vacated either by a writ of habeas corpus or pursuant to
17 Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated
18 conviction must have been dismissed on remand, or the claimant must have been acquitted upon
19 retrial. Third, the Attorney General must decline to object to the application in this administrative
20 proceeding.³¹ If all three of these elements are satisfied, and CalVCB finds that the claimant sustained

22 ²⁵ Hunter 2nd Rev. App. at pp. 8-9; see also docket and complaint filed on April 24, 2023, in *People v.*
23 *Tran*, Alameda County Superior Court case number 23-CR-003838, available via Alameda County
Superior Court Online Services.

24 ²⁶ Pen. Code, § 4900, subd. (a).

25 ²⁷ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

26 ²⁸ Pen. Code, § 4904.

27 ²⁹ Pen. Code, § 4904.

28 ³⁰ Pen. Code, § 4900, subd. (b).

³¹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

1 injury through their erroneous conviction, then CalVCB shall approve payment for the purpose of
2 indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the
3 Legislature.³² CalVCB's approval of the claim is statutorily required, regardless of whether or not the
4 record proves the claimant is more likely innocent than guilty.

5 If the Attorney General objects, he must do so in writing, within 45 days from when the claimant
6 files the claim, and with clear and convincing evidence that the claimant is not entitled to
7 compensation. Only a single extension of time for 45 days is allowed for good cause. The Attorney
8 General bears the burden to prove, by clear and convincing evidence, that the claimant committed the
9 acts constituting the offense.³³ To meet that burden, the Attorney General may not rely solely on the
10 trial record for the vacated conviction to establish that the claimant is not entitled to compensation.³⁴ If
11 the Attorney General fails to meet this burden following a hearing on the claim, then CalVCB shall
12 approve payment to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient
13 funds are available upon appropriation by the Legislature.³⁵

14 **A. Innocence**

15 Here, Hunter's claim falls within the mandatory approval provision of subdivision (b) of Penal
16 Code section 4900, as all three of the required elements are met. First, Hunter's convictions for
17 murder and possession of a firearm in case number 175142A were vacated pursuant to a writ of
18 habeas corpus. Second, all charges against Hunter in that case were dismissed immediately
19 thereafter on the prosecution's motion. Third, the Attorney General declined to object in this
20 administrative proceeding. Consequently, CalVCB is required by subdivision (b) to approve
21 compensation for the injury sustained by Hunter if sufficient funds are available, upon appropriation by
22 the Legislature.³⁶ No finding is made as to the weight of evidence offered in support of Hunter's claim
23 regarding innocence.

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25 ³² Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

26 ³³ Pen. Code, § 4902, subd. (d).

27 ³⁴ Pen. Code, § 4903, subd. (d); Cal. Code Regs., tit. 2, § 645, subd. (g).


28 ³⁵ Pen. Code, §§ 4903, subd. (d), 4904.

³⁶ Pen. Code, §§ 4900, subd. (b), 4904.

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Here, as requested by Hunter without objection from the Attorney General, Hunter's injury amounts to \$449,960, representing \$140 per day of his 3,214 days imprisonment. This custodial calculation includes the date of Hunter's arrest on April 30, 2014, until the date of his release on February 16, 2023.⁴⁰ But-for his erroneous convictions in case number 175142A, Hunter would have been free for all 3,214 days of his imprisonment.

As mandated by subdivision (b) of Penal Code section 4900, the undersigned hearing officer recommends that CalVCB grant Hunter's claim and approve payment in the amount of \$449,960, if sufficient funds are available, upon appropriation by the Legislature, as indemnification for the injury sustained by his 3,214 days of imprisonment solely as a result of his vacated convictions for murder and possession of a firearm.


Laura Simpton
Hearing Officer
California Victim Compensation Board

⁴⁰ CalVCB accepts and relies upon Hunter’s unopposed custodial calculation of 3,214 days. (Hunter App. at pp. 3; cf. Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3 Cal.App.4th 882, 886 (construing “days” for custody credit to include partial days)).

ITEM 9

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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
8

9 In the Matter of:

10 **Giovante Douglas**

11 Claim No. 23-ECO-38

Proposed Decision

(Penal Code § 4900, subd. (b))

12 **I. Introduction**

13 On June 2, 2023, Giovante Douglas (Douglas) submitted a claim as an erroneously convicted
14 person to the California Victim Compensation Board (CalVCB) seeking compensation pursuant to
15 Penal Code section 4900, which he supplemented on September 15, 2023. As supplemented, the
16 claim is based upon Douglas' 2016 conviction for murder, which was vacated by a writ of habeas
17 corpus in 2022, and the case dismissed immediately thereafter without a finding of factual innocence.
18 Douglas requests compensation in the amount of \$457,660 for 3,269 days imprisonment solely as a
19 result of his vacated conviction. Douglas is represented by Lateef H. Gray of Pointer & Buelna.

20 The Attorney General is represented by Deputy Attorney General Dina Petrushenko. By letter
21 dated November 22, 2023, the Attorney General declined to object to Douglas' claim. The
22 administrative record closed on November 27, 2023, and the matter was assigned to CalVCB Senior
23 Attorney Laura Simpton. As required by subdivision (b) of Penal Code section 4900, CalVCB is
24 mandated to approve payment to Douglas in the amount of \$457,660 if sufficient funds are available,
25 upon appropriation by the Legislature, as indemnification for the demonstrated injury sustained by his
26 3,269 days imprisonment for his vacated conviction.

II. Procedural History

On October 1, 2013, Douglas was arrested and subsequently charged with first-degree murder with an enhancement for use of a firearm in Alameda County Superior Court case number 175142B.¹ Douglas' codefendant Cartier Hunter (Hunter) was also charged with first-degree murder and being a felon in possession of a firearm, along with multiple enhancements for personal use of a firearm and inflicting great bodily injury.² Following a joint trial, the jury convicted Douglas as charged on June 27, 2016, and he was sentenced on November 18, 2016, to 26 years to life.³ The jury also convicted Hunter as charged, and he was sentenced to an aggregate prison term of 50 years to life.⁴

Douglas and Hunter appealed. In a consolidated decision filed December 19, 2018, the First District Court of Appeal struck a great bodily injury enhancement as to Hunter but otherwise affirmed the convictions and remaining enhancements for both Hunter and Douglas. Given their ages at the time of the crime (i.e., Douglas was 19, and Hunter was 22), the appellate court remanded for a limited hearing to present evidence related to their eventual youth offender parole hearing after 25 years imprisonment.⁵ The California Supreme Court denied review on March 20, 2019.

On May 19, 2021, Douglas filed a petition for writ of habeas corpus in the Alameda County Superior Court pursuant to Penal Code section 1473, alleging that the prosecution had presented false evidence of guilt at trial.⁶ Relief under section 1473 requires a showing that the false evidence was

¹ Pen. Code, §§ 187 (murder), 12022 (firearm enhancement); see also Douglas Application (App.) at pp. 2-3. The pagination refers to the continuous page numbers for the nine-page PDF file submitted on June 2, 2023.

² Codefendant Hunter submitted a separate claim for compensation under Penal Code section 4900, which is currently pending before the Board. (See *In re Hunter*, PC 4900 Claim number 23-ECO-20.)

³ *People v. Hunter, et al.*, California Court of Appeal, First District, case number A151644, unpublished decision filed Dec. 19, 2018, available on Westlaw at 2018 WL 6629552, at p. 2*; Abstract of Judgment (AOJ), filed Nov. 18, 2016, submitted via email by Douglas on Sept. 15, 2023; see also Cal. Code Regs., tit. 2, § 617.8 (official notice).

⁴ *Hunter, supra*, 2018 WL 6629552, at p. *2; Hunter AOJ, filed Dec. 19, 2016, and Hunter Amended AOJ, filed Dec. 3, 2018, available via Alameda County Superior Court Online Services at <https://www.alameda.courts.ca.gov/online-services/criminal-record-requests>.

⁵ *Hunter, supra*, 2018 WL 6629552, at pp. *8-11.

⁶ Douglas App. at pp. 8-9; see also Petition for Writ of Habeas Corpus filed May 19, 2021, available via Alameda County Superior Court Online Services. Hunter subsequently filed a petition for writ of

1 “substantially material” (i.e., a reasonable probability that it could have affected the outcome).⁷ After
2 additional briefing by the prosecution and Douglas, the superior court granted habeas relief on
3 September 12, 2022. That same day, the court dismissed the case on the prosecution’s motion.⁸
4 Douglas was released from prison immediately thereafter on September 12, 2022.⁹ By then, Douglas
5 had been incarcerated for 3,269 days as a result of his vacated conviction, commencing with his arrest
6 on October 1, 2013, to and including his release on September 12, 2022.¹⁰

7 By email sent June 2, 2023, Douglas submitted a claim to CalVCB seeking compensation as
8 an erroneously convicted person under Penal Code section 4900. The claim, which lacked a valid
9 signature, requested compensation in the amount of \$457,660 for 3,269 days imprisonment as a result
10 of Douglas’ vacated murder conviction. Due to a clerical error, the claim was not forwarded to a
11 hearing officer until September 5, 2023, when Douglas sent another email inquiring about the status of
12 the claim. The matter was initially assigned to CalVCB Senior Attorney Kristen Sellers. By letter dated
13 September 8, 2023, CalVCB informed Douglas, as well as the Attorney General’s representatives, that
14 additional information was needed within 30 days or else the deficient claim would be rejected. On
15 September 15, 2023, Douglas timely submitted a revised claim form, which included Douglas’
16 signature, along with the AOJ.¹¹

19 habeas corpus raising the same allegation on December 22, 2022, which was granted February 9,
20 2023. (See *In re Cartier Hunter*, Alameda County Superior Court case number HC175142A-1, docket
21 and records available online.)

22 ⁷ Pen. Code, § 1473, subd. (b)(1); *In re Richards* (2016) 63 Cal.4th 291, 312-313 (explaining § 1473
23 relief intended if the “false evidence [was] of such significance that it may have affected the outcome of
24 the trial,” such that it “undermines ... confidence in the outcome”).

25 ⁸ Douglas App. at pp. 8-9; see also dockets for *People v. Douglas*, Alameda County Superior Court
26 case number 175142B, and *In re Douglas*, Alameda County Superior Court case number HC175142B-
27 1, available via Alameda County Superior Court Online Services.

28 ⁹ Douglas App. at p. 3; see also Douglas Revised (Rev.) App. at p. 3. The pagination refers to the
continuous page numbers for the seven-page PDF file submitted on Sept. 19, 2023

¹⁰ The number of days between Douglas’ arrest until his release was determined using the online
“Days Calculator” located at <https://www.timeanddate.com/date/duration.html>.

¹¹ Douglas Rev. App. at p. 6.

1 On September 19, 2023, CalVCB deemed the revised claim filed, after confirming compliance
2 with Penal Code sections 4900 and 4901, and then requested a response from the Attorney General
3 within 45 days. Following a single timely request for an extension of time pursuant to Penal Code
4 section 4902, subdivision (d), the Attorney General declined to object to Douglas' claim on November
5 22, 2023. By then, the matter was reassigned to CalVCB Senior Attorney Laura Simpton.¹² Following
6 receipt of the Attorney General's declination, the administrative record closed on November 27, 2023.

7 **III. Factual Summary**

8 **A. Trial Evidence**

9 Around 10:30 a.m. on the morning of December 22, 2011, Charles Butler, Jr., (Butler) was
10 fatally shot while driving his car in Oakland. At the time of the shooting, Butler was stopped at the
11 intersection of 46th and West Streets. A Lexus pulled up behind him, and the passenger allegedly
12 stepped outside and fired six to nine shots at Butler's car. Butler was struck in the head multiple times.
13 His car accelerated forward, crashed into a row of parked cars, and then caught on fire. By then,
14 Butler was already dead. Meanwhile, the shooter stepped back into the Lexus, and the car sped
15 away. A total of ten casings were collected from the scene, all fired from the same semi-automatic
16 firearm.¹³

17 Approximately 15 minutes before the shooting, Butler was captured on video inside a nearby
18 market arguing with another man. The store owner identified 22-year-old Hunter as the person who
19 had argued with Butler and further identified 19-year-old Douglas as the person who had accompanied
20 Hunter into the store. The owner heard from another employee that the argument between Butler and
21 Hunter involved an accident that had occurred outside the store.¹⁴

22 Almost two years later, eyewitness A.W.,¹⁵ who claimed to know both Douglas and Hunter from
23 the neighborhood, identified Douglas as the Lexus driver and Hunter as the passenger shooter. To
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25 ¹² Cal. Code Regs., tit. 2, § 615.10 (hearing officer assignments).

26 ¹³ *People v. Hunter, et al.*, California Court of Appeal, First District, case number A151644, unpublished
27 decision filed Dec. 19, 2018, available online at 2018 WL 6629552, *1-2.

27 ¹⁴ *Hunter, supra*, at 2018 WL 6629552, at p. *2.

28 ¹⁵ Consistent with the appellate court decision, witnesses are referred to by their initials only.

1 explain her delay in reporting this information to police, A.W. testified that she had been afraid but
2 ultimately decided to assist law enforcement after seeing Butler's father on television pleading for help
3 to solve his son's murder. C.P., who also knew both Douglas and Hunter, told police that he had seen
4 them riding together in a Lexus shortly before the shooting. J.S., who observed a Lexus speeding past
5 his home shortly after hearing shots fired, initially identified Douglas as the driver but then later testified
6 it was Hunter. D.C., who lived in the neighborhood and knew both Douglas and Hunter, told police that
7 he overheard Hunter bragging about shooting Butler, but D.C. denied hearing or making any such
8 statement when testifying at trial.¹⁶

9 Officer P. Tran separately interviewed Douglas and Hunter in 2012. During the interview,
10 Douglas denied being present when the shooting occurred and further denied knowing Hunter or ever
11 driving a Lexus. Hunter claimed to know Butler only in passing but also denied being in the area at the
12 time of the shooting. At trial, Officer Tran testified that residents in the neighborhood were considered
13 "snitches" if they assisted law enforcement and may be at risk of physical harm. He claimed that
14 eyewitness A.W. had repeatedly expressed fear about testifying in this case. Officer Tran also testified
15 that C.P. claimed to have seen Douglas with a gun a few weeks after the murder, although C.P.
16 insisted at trial that he only assumed Douglas had a gun but did not actually see it.¹⁷

17 For the defense, an expert testified that, based upon the location of the casings and bullet
18 impacts on Butler's car, it would have been virtually impossible for the shooter to have been standing
19 when the shooting occurred. The expert opined that it was highly likely that the shots were fired by a
20 person seated inside a car.¹⁸

21 **B. Habeas Proceeding**

22 In support of his 2021 petition for writ of habeas corpus, Douglas presented a declaration from
23 A.W. that recanted her identification of Douglas and Hunter. Specifically, A.W. declared that she had
24 been pressured by Officer Tran to identify Hunter and Douglas, even though she did not witness the
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26 ¹⁶ *Hunter, supra*, at 2018 WL 6629552, at pp. *1-2.

27 ¹⁷ *Hunter, supra*, at 2018 WL 6629552, at pp. *2-3, 7.

28 ¹⁸ *Hunter, supra*, at 2018 WL 6629552, at p. *2.

1 shooting. A.W. insisted that she had “no idea if Mr. Douglas and/or Mr. Hunter had anything to do with
2 Mr. Butler’s death.”¹⁹ A.W. further declared that, in exchange for her false testimony, she received
3 housing and financial assistance totaling over \$30,000.²⁰ As corroboration, A.W.’s longtime friend
4 N.R. declared that, as early as 2013, A.W. had admitted fabricating her testimony against Hunter and
5 Douglas and expressed regret for doing so.²¹

6 **C. CalVCB Allegations**

7 In his claim to CalVCB, Douglas declares that he is innocent of Butler’s murder. In particular,
8 he denies being present when the shooting occurred. He further denies firing any shots at Butler or
9 driving a car from which shots were fired at Butler. Douglas admits knowing Hunter but denies that he
10 personally knew Butler or A.W. In addition, Douglas accuses Officer Tran of fabricating evidence by
11 bribing witnesses, including A.W., to falsely implicate him in Butler’s murder.²²

12 Significantly, Officer Tran was charged with multiple felony offenses for perjury, bribery, and
13 threatening a witness, all as a result of his conduct during the investigation of Butler’s murder and
14 ensuing trial against Hunter and Douglas. Court records confirm that, on June 21, 2023, Officer Tran
15 was held to answer on these charges following a preliminary hearing, and the case remains pending in
16 Alameda County Superior Court.²³

17 **IV. Determination of Issues**

18 Penal Code section 4900 allows a person, who has been erroneously convicted and
19 imprisoned for a felony offense that they did not commit, to submit a claim for compensation to
20 CalVCB.²⁴ Typically, claimants bear the burden to prove by a preponderance that (1) the crime with
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22 ¹⁹ Petition for Habeas Corpus, Ex. A at p. 3 (A.W. declaration) filed in *In re Douglas*, Alameda County
23 Superior Court case number HC175142B-1, available via Alameda County Superior Court Online
Services.

24 ²⁰ *Ibid.*

25 ²¹ Petition for Habeas Corpus, Ex. B. at p. 2 (N.R. declaration).

26 ²² Douglas App. at pp. 4-5; Douglas Rev. App. at pp. 4-5.

27 ²³ See docket and complaint filed on April 24, 2023, in *People v. Tran*, Alameda County Superior Court
case number 23-CR-003838, available via Alameda County Superior Court Online Services.

28 ²⁴ Pen. Code, § 4900, subd. (a).

1 which they were convicted either did not occur or was not committed by them and (2) they suffered
2 injury as a result of their erroneous conviction.²⁵ If the claimant satisfies their burden for both
3 elements, then CalVCB shall approve payment for the purpose of indemnifying the claimant for the
4 injury if sufficient funds are available, upon appropriation by the Legislature.²⁶ Payment is calculated
5 at the rate of \$140 per day of imprisonment that resulted solely from the erroneous conviction.²⁷

6 Under subdivision (b) of Penal Code section 4900, CalVCB's approval is mandated for certain
7 claimants, even without a preponderance of evidence that the claimant did not commit the crime for
8 which they were convicted.²⁸ Specifically, subdivision (b) compels approval of the claim for
9 compensation, without a hearing and within 60 days, when the following three elements are met. First,
10 the claimant's conviction must have been vacated either by a writ of habeas corpus or pursuant to
11 Penal Code section 1473.6 or 1473.7, subdivision (a)(2). Second, the charges underlying the vacated
12 conviction must have been dismissed on remand, or the claimant must have been acquitted upon
13 retrial. Third, the Attorney General must decline to object to the application in this administrative
14 proceeding.²⁹ If all three of these elements are satisfied, and CalVCB finds that the claimant sustained
15 injury through their erroneous conviction, then CalVCB shall approve payment for the purpose of
16 indemnifying the claimant for the injury if sufficient funds are available, upon appropriation by the
17 Legislature.³⁰ CalVCB's approval of the claim is statutorily required, regardless of whether or not the
18 record proves the claimant is more likely innocent than guilty.

19 If the Attorney General objects, he must do so in writing, within 45 days from when the claimant
20 files the claim, and with clear and convincing evidence that the claimant is not entitled to
21 compensation. Only a single extension of time for 45 days is allowed for good cause. The Attorney
22 General bears the burden to prove, by clear and convincing evidence, that the claimant committed the

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24 ²⁵ Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).

25 ²⁶ Pen. Code, § 4904.

26 ²⁷ Pen. Code, § 4904.

27 ²⁸ Pen. Code, § 4900, subd. (b).

28 ²⁹ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d).

³⁰ Pen. Code, §§ 4900, subd. (b), 4902, subd. (d); 4904.

1 acts constituting the offense.³¹ To meet that burden, the Attorney General may not rely solely on the
2 trial record for the vacated conviction to establish that the claimant is not entitled to compensation.³² If
3 the Attorney General fails to meet this burden following a hearing on the claim, then CalVCB shall
4 approve payment to the claimant for their demonstrated injury, at the rate of \$140 per day, if sufficient
5 funds are available upon appropriation by the Legislature.³³

6 **A. Innocence**

7 Here, Douglas' claim falls within the mandatory approval provision of subdivision (b) of Penal
8 Code section 4900, as all three of the required elements are met. First, Douglas' conviction for murder
9 in case number 175142A was vacated pursuant to a writ of habeas corpus. Second, all charges
10 against Douglas in that case were dismissed immediately thereafter on the prosecution's motion.
11 Third, the Attorney General declined to object in this administrative proceeding. Consequently,
12 CalVCB is required by subdivision (b) to approve compensation for the injury sustained by Douglas if
13 sufficient funds are available, upon appropriation by the Legislature.³⁴ No finding is made as to the
14 weight of evidence offered in support of Douglas' claim regarding innocence.

15 **B. Injury**

16 By statute, the amount of compensation "shall be a sum equivalent to one hundred forty dollars
17 (\$140) per day of incarceration served, and shall include any time spent in custody, including a county
18 jail, that is considered to be part of the term of incarceration."³⁵ This compensation is "for the purpose
19 of indemnifying the claimant for the injury" sustained "through their erroneous conviction and
20 imprisonment...."³⁶ The requisite injury "may be established by showing that, but for the erroneous
21 conviction, the claimant would not have been in custody."³⁷

23 ³¹ Pen. Code, § 4902, subd. (d).

24 ³² Pen. Code, § 4903, subd. (d); Cal. Code Regs., tit. 2, § 645, subd. (g).

25 ³³ Pen. Code, §§ 4903, subd. (d), 4904.

26 ³⁴ Pen. Code, §§ 4900, subd. (b), 4904.

27 ³⁵ Pen. Code, § 4904.

27 ³⁶ Pen. Code, § 4904.


28 ³⁷ Cal. Code of Regs., tit. 2, § 640, subd. (f).

1 Here, as requested by Douglas without objection from the Attorney General, Douglas' injury
2 amounts to \$457,660, representing \$140 per day of his 3,269 days imprisonment. This custodial
3 calculation includes the date of Douglas' arrest on October 1, 2013, through and including the date of
4 his release on September 12, 2022.³⁸ But-for his erroneous convictions in case number 175142B,
5 Douglas would have been free for all 3,269 days of his imprisonment.

6 **V. Conclusion**

7 As mandated by subdivision (b) of Penal Code section 4900, the undersigned hearing officer
8 recommends that CalVCB grant Douglas' claim and approve payment in the amount of \$457,660, if
9 sufficient funds are available, upon appropriation by the Legislature, as indemnification for the injury
10 sustained by his 3,269 days of imprisonment solely as a result of his vacated conviction for murder.

11 Date: December 13, 2023

12 

13 Laura Simpton
Hearing Officer
California Victim Compensation Board

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27 ³⁸ CalVCB accepts and relies upon Douglas unopposed custodial calculation of 3,269 days. (Douglas
28 App. at pp. 3; see also Pen. Code, § 2900.5 (credit for days spent in custody); *People v. King* (1992) 3
Cal.App.4th 882, 886 (construing "days" for custody credit to include partial days)).

ITEM 10

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

8
9 In the Matter of:

10 **Giovanni Romero Hernandez**

11 Claim No. 23-ECO-64

Proposed Decision

(Penal Code §§ 1485.55, 4900 et seq.)

12 **I. Introduction**

13 On December 18, 2023, Giovanni Hernandez (Hernandez) submitted an application¹ to the
14 California Victim Compensation Board (CalVCB), seeking compensation as an erroneously convicted
15 person pursuant to Penal Code section 4900. His claim, as supplemented on December 20, 22, and
16 25, 2023, seeks compensation for the 6,140 days of imprisonment imposed for his convictions in Los
17 Angeles County Superior Court case number SA061371.² Hernandez's claim is based on the Superior
18 Court's orders vacating his convictions, ordering his immediate release from custody, and finding he
19 was factually innocent of all charges in this case. Hernandez is represented by Marisa Harris, former
20 supervising attorney at the Juvenile Innocence and Fair Sentencing Clinic at Loyola Law School. The

21
22 ¹ Hernandez's original application (App.) included: an erroneously convicted person claim form, order
23 granting the parties' joint motion for a finding of factual innocence, and an unsigned copy of the parties'
joint motion for a finding of factual innocence.

24 ² Hernandez's application was supplemented (Supp. App.) with: a file-stamped copy of the order
25 granting the parties' joint motion for a finding of factual innocence (Supp. App. at pp. 1-2); a signed and
26 file-stamped copy of the joint motion for a finding of factual innocence (Supp. App. at pp. 3-33); a
27 signed copy of the parties' joint petition for writ of habeas corpus (Supp. App. at pp. 34-64); June 15,
28 2023, minute orders (Supp. App. at pp. 65-67); the June 24, 2006, detention report (Supp. App. at pp.
68-73); the original abstract of judgment (Supp. App. at pp. 74-75); the felony complaint filed on August
28, 2006 (Supp. App. at pp. 76-85); Email from Marisa Harris on December 20, 2023, (Supp. App. at p.
68); declaration of Melissa Harris dated December 22, 2023 (Supp. App. at pp. 87-88); adult
subsequent action disposition information form dated June 28, 2023 (Supp. App. at pp. 89-90).

1 Attorney General's Office is represented by Dina Petrushenko. The matter was assigned to CalVCB
2 Senior Attorney Caitlin Christian. As mandated by Penal Code section 1485.55, it is recommended
3 that CalVCB approve Hernandez's claim in the amount of \$859,600 as indemnification for the injury he
4 sustained as a result of this erroneous conviction if sufficient funds are available upon appropriation by
5 the Legislature.³

6 **II. Procedural Background**

7 On August 24, 2006, at fourteen years old, Hernandez was arrested and subsequently charged
8 as an adult with one count of first-degree murder, four counts of attempted first degree murder, and
9 shooting at an occupied motor vehicle with enhancements for the personal use of a firearm and
10 committing these acts for the benefit of a criminal street gang.⁴ Hernandez was initially tried on these
11 charges in December of 2010; however, a mistrial was declared after the jury was unable to reach a
12 verdict.⁵ Hernandez remained incarcerated pending retrial.⁶

13 In 2012, Hernandez was retried, and, on June 22, 2012, the jury found him guilty of all charges.
14 On September 21, 2012, at the age of 21, Hernandez was sentenced to a total of 50 years to life in
15 state prison for these crimes.⁷ The Second District Court of Appeal affirmed Hernandez's convictions
16 in full on direct appeal in an unpublished opinion in Court of Appeal case number B244259.⁸ After
17 considering Hernandez's habeas petition in 2016, the Second District remanded the case to the
18 superior court for a supplemental mitigation hearing but otherwise affirmed his convictions in full.⁹

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20 ³ Pen. Code, §§ 1485.55, subds. (b)-(c), 4904.

21 ⁴ Supp. App. at pp. 36, 68, 89-90.

22 ⁵ Supp. App. at p. 24.

23 ⁶ Supp. App. at p. 74; *People v. Hernandez*, Los Angeles County Superior Court, docket number
24 SA061371, section entitled "Bail," available online <<<https://www.lacourt.org/criminalcasesummary/>>>
25 [documenting no bail orders from 2006 through 2012]; Cal. Code Regs., tit. 2, § 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].

26 ⁷ Supp. App. at p. 74; App. at p. 27.

27 ⁸ App. at p. 28; *People v. Hernandez* (December 30, 2013, B244259) [nonpub. opn.] at p. 2; Cal. Code
28 Regs., tit. 2, § 617.8, subd. (b); Evid. Code § 452, subd. (d).

⁹ Supp. App. at p. 21.

1 Hernandez began petitioning the Los Angeles Conviction Integrity Unit (CIU) for review of his
2 convictions in 2015, and a gang member sent letters and declarations claiming responsibility for
3 Hernandez's crimes in 2016, 2017, and 2019. In 2021, the CIU agreed to review Hernandez's case.¹⁰
4 After a two-year investigation, Hernandez and the CIU filed a joint petition for writ of habeas corpus in
5 the superior court, pursuant to section 1473, subdivision (b).¹¹ On June 15, 2023, the Superior Court
6 granted the parties' joint habeas petition, vacated Hernandez's convictions, set aside his sentence,
7 and ordered he be immediately released from custody.¹² Hernandez's incarceration, beginning with
8 his August 24, 2006, arrest and concluding with his June 15, 2023, release, was solely attributable to
9 his erroneous conviction in this case.¹³

10 On December 11, 2023, Hernandez and the CIU filed a joint motion for a finding of factual
11 innocence pursuant to section 1485.55.¹⁴ On December 13, 2023, the Superior Court granted the
12 parties' joint motion and issued a finding Hernandez was factually innocent of all charges in this
13 case.¹⁵

14 Hernandez submitted a claim to CalVCB seeking compensation as an erroneously convicted
15 person on November 13, 2023. At CalVCB's request, his application was supplemented with
16 additional supporting documentation on December 20, 22, and 25, 2023. The supplemental
17 documents included a file-stamped copy of the finding of factual innocence, a signed copy of the joint
18 motion for a finding of factual innocence, the joint petition for writ of habeas corpus, minute orders
19 reflecting the court's grant of the joint petition, the original charging document and abstract of
20 judgment, the original detention report, a disposition report in lieu of an amended abstract of judgment,
21 and a declaration from counsel confirming Hernandez's incarceration was solely the result of his
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24 ¹⁰ Supp. App. at p. 24.

25 ¹¹ Supp. App. at p. 34.

26 ¹² Supp. App. at pp. 65-66.

27 ¹³ Supp. App. at pp. 75, 87-88.

28 ¹⁴ Supp. App. at p. 3.

¹⁵ Supp. App. at pp. 1-2.

erroneous conviction. On January 2, 2024, after reviewing the supplemental documents, CalVCB deemed the claim filed, and the administrative record was closed.

III. Factual Background

A. The Crime

After leaving a party on the night of July 29, 2006, Jon Carrillo (Carrillo), a “shot caller” in the criminal street gang “Sotel 13,” got into a spat with members of a rival gang, the “Culver City Boys.” Just after midnight on July 30, 2006, Carrillo was cornered in his car and shot three times.¹⁶

Over the next several hours, Jose Z. and Oscar M. – both members of Sotel 13 – called their friend Felicia several times, each time casually asking whether Gary O. and Richard C., both members of the Culver City Boys, were at her house. Felicia repeatedly told them Gary and Richard were at her apartment but would be leaving later that morning to go to the beach.

A few minutes after 11 a.m., Rudy D., along with his three passengers, Vanesa, Sophia, and Victor, parked in front of Felicia’s apartment. Gary finally emerged and hopped into Rudy’s car at about 11:20 a.m. Moments later, a sedan pulled up beside them and asked Rudy where they were from, a question commonly used to determine gang affiliation. Rudy accelerated just as someone in the sedan began shooting at them. Rudy was shot in the head and crashed into a nearby parked car. The sedan drove off. Gary and Victor both suffered gunshot wounds. Gary died from resulting injuries. Victor recovered. Rudy also survived but suffered permanent brain damage. Vanessa and Sophia were not injured.

B. Law Enforcement’s Investigation

a. Events Leading to Hernandez’s Arrest

Vanessa and Sophia both told police the shooter was a dark-skinned Hispanic male. Vanessa said the shooter had a round face and was approximately 18 years old.¹⁷ Sophia said the shooter had a “larger build” and was approximately 22 years old.¹⁸

¹⁶ App. at p. 17.

¹⁷ App. at p. 15.

¹⁸ App. at p. 14.

1 On August 1, 2006, police received an anonymous tip, which alleged the shooting was
2 retaliation for the attack on Carrillo.¹⁹ An analysis of the discharged casings confirmed the shooting
3 was likely committed by Sotel 13 because the gun was used earlier in July to shoot at members of
4 another Sotel 13 rival. Based on this, police prepared a photographic lineup of Sotel 13 gang
5 members. Hernandez was included in the photo lineup. Both girls identified Hernandez, even though
6 he was thin, light-skinned, and only fourteen years old.²⁰

7 On August 24, 2006, police arrested Hernandez. Hernandez agreed to talk to the police
8 without a lawyer and, despite aggressive questioning, consistently denied any involvement in the
9 shooting.²¹

10 **b. Oscar and Felicia Denied Hernandez's Involvement**

11 Oscar was arrested for an unrelated crime in March of 2007. Oscar told police that, after
12 Carrillo was attacked, he met several other Sotel 13 members at a park to plan their revenge against
13 the Culver City boys. When asked about Hernandez's involvement, Oscar said Jose used
14 Hernandez's phone to make and receive calls. However, Hernandez was not otherwise involved in the
15 planning or execution of the shooting. According to Oscar, Speedy was the shooter, Pelon was the
16 driver, and Jose sat in a car nearby during the shooting. Speedy was four years older, 35 pounds
17 heavier, and three inches taller than Hernandez. Notably, Speedy had a round face and dark skin.²²

18 Police also interviewed Felicia. Felicia told police Oscar received a call shortly after the attack
19 on Carrillo and rushed out. When Felicia returned home, Gary and Richard were already there. She
20 could tell something strange was going on and overheard someone on the phone make a derogatory
21 comment about Sotel 13.²³ Oscar and Jose called Felicia several times that morning, including
22 minutes before the shooting when Felicia disclosed Gary and Richard would be leaving soon. Felicia
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25 ¹⁹ App. at p. 16.

26 ²⁰ App. at p. 17.

27 ²¹ App. at p. 18.

28 ²² App. at pp. 21, 22, 36.

²³ App. at p. 22.

1 did not mention Hernandez during the interview.²⁴

2 Oscar and Felicia were then placed in a room together. Oscar appeared agitated and neither
3 one of them seemed aware they were being recorded. Oscar told Felicia he would need to go into
4 witness protection because he named fellow gang members. Felicia was upset she would be called to
5 testify at Hernandez's trial. Oscar immediately retorted "but [Hernandez] got nothing to do with this."
6 Felicia said, "I know."²⁵

7 **C. Evidence Introduced at Trial.**

8 Vanessa and Sophia both told the jury they were "sure" Hernandez was the shooter.²⁶ A gang
9 expert claimed Hernandez admitted to being jumped into the gang. He therefore characterized
10 Hernandez as a "soldier" who would commit this type of crime.²⁷ The prosecution presented several
11 images, showing Hernandez making gang signs alongside armed Sotel 13 gang members, as well as
12 cell phone records, showing Hernandez's cell phone made several calls to and received several calls
13 from Sotel 13 gang members the morning of the shooting.²⁸ The parties also stipulated Hernandez
14 missed four calls in a row, minutes after the shooting, and his phone carrier was not able to determine
15 where Hernandez's phone was located when he missed those calls.²⁹

16 Edy, Hernandez's friend and neighbor, said Hernandez was not a member of Sotel 13 at the
17 time of the shooting because he had not yet been jumped into the gang.³⁰ Hernandez's family also
18 testified Hernandez was spending time with, but was not a member of, Sotel 13, even when presented
19 with images showing Hernandez alongside Sotel 13 gang members making gang signs and holding a
20 firearm.³¹ Hernandez's family also testified he was at home at the time of the shooting. Hernandez
21

22 ²⁴ App. at p. 23.

23 ²⁵ App. at p. 23.

24 ²⁶ App. at pp. 24-25.

25 ²⁷ *People v. Hernandez* (December 30, 2013; B244259) [nonpub. opn] at p. 8.

26 ²⁸ *People v. Hernandez, supra*, at pp. 7-10; App. at pp. 24-27.

27 ²⁹ App. at p. 27.

28 ³⁰ App. at pp. 25-26; *People v. Hernandez* (December 30, 2013; B244259) [nonpub. opn.] at p. 7.

29 ³¹ *People v. Hernandez, supra*, at pp. 8-10.

1 was grounded for coming home late the night before, and, at the time of the shooting, was helping his
2 mother bring in groceries. Hernandez's mother provided a receipt, confirming she checked out of the
3 grocery store at 10:59 a.m., and a neighbor corroborated that Hernandez was helping his mother bring
4 in the groceries at about 11:15, minutes before the shooting took place.³²

5 The jury also heard Felicia's interview with the police; however, the jury did not see the
6 interview with Oscar or the surreptitiously recorded conversation between Felicia and Oscar. As a
7 result, the jury did not hear Oscar and Felicia deny Hernandez's involvement in the shooting, nor
8 Oscar's explanation that only gang members were involved in the planning and commission of the
9 shooting.³³

10 **D. CIU's Post-Conviction Investigation**

11 **a. Jose Took Responsibility for the Shooting**

12 In 2010, Hernandez showed Jose his case file, which included a transcript of Oscar's
13 statements to the police. Jose called Oscar a "snitch," which Hernandez interpreted as confirmation
14 Speedy was the shooter and Pelon was the driver. Jose offered to take responsibility for the shooting,
15 but Hernandez declined, believing he would be acquitted at trial since he was not guilty.³⁴

16 Hernandez and Jose were housed in the same unit again in 2016. After reading the transcripts
17 from Hernandez's trial, Jose said Vanessa's account was mistaken. Hernandez suspected Jose knew
18 this because he was nearby in a lookout car, while Speedy and Pelon committed the shooting;
19 however, he did not feel comfortable asking Jose, a gang leader, for additional details. This time when
20 Jose offered to help, Hernandez agreed to let Jose take responsibility for the shooting.³⁵

21 In 2016, 2017, and again in 2019, Jose submitted letters and declarations claiming he was the
22 "trigger man," "mastermind," and actual shooter, but his claims were viewed with skepticism given he
23 was already serving a term of life in prison without the possibility of parole.³⁶ Police attempted to
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25 ³² App. at pp. 25-26; *People v. Hernandez* (December 30, 2013; B244259) [nonpub. opn.] at pp. 8-10.

26 ³³ App. at pp. 21-23, 27.

27 ³⁴ App. at p. 30.

28 ³⁵ App. at p. 31.

³⁶ *Ibid.*

1 locate Speedy and Pelon but determined both men had a history of arrests for gun-related crimes and
2 had since been deported to Mexico, but their whereabouts were otherwise unknown.³⁷

3 **b. CIU Investigated Hernandez's Case in 2021.**

4 The CIU agreed to investigate Hernandez's case in 2021.³⁸ Hernandez told the CIU he was at
5 a party with several Sotel 13 gang members when Carrillo was attacked. He rode with several Sotel
6 13 members to a park, where the members planned to retaliate against the Culver City Boys.
7 However, Hernandez was not yet in the gang's inner circle. He spent time with the gang and claimed
8 Sotel 13, but, since he had not yet been jumped in, and was therefore not a full-fledged member, he
9 was not included in their discussions. He felt awkward while the gang members met and discussed
10 their plans. He loaned Jose his cell phone but otherwise stood off to the side, in the parking lot, until a
11 Sotel 13 member agreed to drive him home.³⁹

12 Hernandez arrived home to find his mother waiting for him. She was angry and grounded him
13 for staying out so late.⁴⁰ Hernandez spent the next morning with his family. Hernandez learned about
14 the shooting from the news and called Edy. Later on, a Sotel 13 gang member told Hernandez two
15 people were shot in front of Felicia's house. Hernandez suspected Jose was the shooter because
16 Jose was vocally upset about the attack on Carrillo, but he was not provided with any details about the
17 shooting and did not feel comfortable asking.⁴¹

18 **c. CIU Confirmed Hernandez's innocence in 2023.**

19 The prosecution originally argued Hernandez missed the calls he received minutes after the
20 shooting because he was fleeing the crime scene. However, further analysis revealed none of these
21 calls were routed through the four cell towers in between Hernandez's house and the crime scene.
22 Instead, all the calls were routed through the tower north of Hernandez's home, which was more than
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24
25 ³⁷ App. at pp. 35-36.

26 ³⁸ App. at p. 28.

27 ³⁹ App. at p. 29.

28 ⁴⁰ App. at p. 30.

⁴¹ App. at pp. 29-30.

1 three miles north of the crime scene.⁴²

2 The CIU staged a conversation between Hernandez's sister, Jessica, and Jose. Jessica told
3 Jose she was desperate to secure Hernandez's release. Jose claimed to be the shooter, confirmed
4 Hernandez was not involved, and reiterated Hernandez was not a member of Sotel 13 at the time of
5 the shooting. However, Jose was unwilling to name anyone else who may have been involved.
6 During a recorded phone call later that day, Jose told a friend about his conversation with Jessica,
7 stating: "[I]t is [messed] up. He righteously didn't do it."⁴³

8 A CIU investigator posing as a private investigator hired by the Hernandez family also
9 interviewed Noah F., a former member of Sotel 13. Noah confirmed Hernandez was not involved in or
10 present for the shooting. Noah did not know who the shooter was but confirmed Speedy and Pelon
11 were in a car, staking out Felicia's apartment that morning, before the shooting. According to Noah,
12 Jose likely knew who the shooter was but only took responsibility for it because he was already serving
13 a life sentence.⁴⁴

14 As a result of Noah's comments, the CIU revisited Oscar's 2007 statements to the police.
15 Despite fear of recrimination, Oscar named Speedy and Pelon. Speedy's appearance matched the
16 description Vanessa and Sohpie originally provided. Jose's 2010 interaction with Hernandez
17 suggested Speedy and Pelon were the perpetrators, Noah saw Pelon and Speedy staking out Felicia's
18 apartment before the shooting, and CIU's investigation did not yield evidence discrediting their
19 involvement. In addition, Oscar's claim Hernandez was not involved was corroborated by Felicia,
20 Jose, Noah, all four of Hernandez's family members, Hernandez's neighbor, Hernandez's own claims
21 of innocence, and his cell phone records. Based on this, the CIU agreed to pursue joint petitions for
22 habeas relief and a finding of factual innocence on behalf of Hernandez.⁴⁵

25 ⁴² App. at p. 32.

26 ⁴³ App. at p. 33.

27 ⁴⁴ App. at p. 34.

28 ⁴⁵ App. at pp. 34, 36-37.

IV. Determination of Issues

Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned for a felony offense that they did not commit, to submit a claim for compensation to CalVCB.⁴⁶ Specifically, subdivision (a) of section 4900 provides that anyone who is innocent of the felony offense they were convicted of and imprisoned for, meaning the crime either did not occur or was not committed by the claimant, may “present a claim against the state to the California Victim Compensation Board for the injury sustained by the person through the erroneous conviction and imprisonment or incarceration.”⁴⁷ Thus, to prevail, the claimant generally must prove, by a preponderance of the evidence, that (1) the crime with which they were convicted either did not occur or was not committed by them and (2) they suffered injury as a result of their erroneous conviction.⁴⁸ Once such a claim is received and filed, Penal Code section 4902 requires the Attorney General to submit a written response.⁴⁹

However, an exception exists where, as here, the claimant has obtained a finding of factual innocence. Under subdivision (b) of Penal Code section 1485.55, the claimant may petition the superior court for a finding of factual innocence if the court has already granted a writ of habeas corpus. To obtain a finding of factual innocence, the petition must prove, by a preponderance of the evidence, “that the crime with which they were charged was either not committed at all or, if committed, was not committed by the petitioner.”⁵⁰ If the court makes such a finding, then under subdivision (c) of section 1485.55, CalVCB is bound by the court’s finding of factual innocence and must “recommend to the Legislature that an appropriation be made and any claim filed shall be paid

⁴⁶ Pen. Code, § 4900, subd. (a).

⁴⁷ Pen. Code, § 4900, subd. (a), emphasis added; see also Pen. Code, § 1170, subd. (h) (allowing prison term for specified felony convictions to be served in local county jail instead of state prison).

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

⁴⁹ Pen. Code, § 4902, subd. (a).

⁵⁰ Pen. Code, § 1485.55, subd. (b).

pursuant to Section 4904.”⁵¹ A finding of factual innocence issued pursuant to section 1485.55 is not appealable by the prosecution.⁵²

Penal Code section 4904, in turn, provides CalVCB must approve payment for the purpose of indemnifying claimants if (1) the claimant establishes they were injured within the meaning of section 4904, and (2) sufficient funds are available, upon appropriation by the Legislature.”⁵³ For purposes of this provision, injury “may be established by showing that, but for the erroneous conviction, the claimant would not have been in custody.”⁵⁴ Indemnification is therefore calculated in accord with the statutory mandate: payment shall be “a sum equivalent to one hundred forty dollars (\$140) per day of incarceration served, and shall include any time spent in custody, including a county jail, that is considered to be part of the term of incarceration.”⁵⁵ Since CalVCB is statutorily required to determine the extent of the injury caused by a claimant’s erroneous conviction, even when the court has issued a finding of factual innocence, CalVCB may request additional documents or argument as needed to complete this calculation.⁵⁶

A. Innocence

Pursuant to the court’s finding under Penal Code section 1485.55, CalVCB unequivocally accepts that Hernandez is factually innocent of all charges. Hernandez consistently maintained he was not involved with the shooting. His account was corroborated by cell phone records, the four family members and neighbor who said Hernandez was at home helping his mother minutes before the shooting, and statements from multiple sources stating Hernandez was not involved in the

⁵¹ Pen. Code, § 1485.55, subd. (c).

⁵² *People v. Caldwell* (2018) 29 Cal.App.5th 180, 188-89 (concluding that “a defendant may appeal denial of a factual innocence motion” despite the People’s inability to do so); *In re Anthony* (2015) 236 Cal.App.4th 204, 215 (holding that “section 1485.55 order is not appealable by the People”); see also Pen. Code, § 1485.5 (omitting any right of appeal of factual innocence determination rendered post-conviction); cf. Pen. Code, § 851.8, subd. (o) (expressly authorizing right of appeal by either party of factual innocence determination rendered pre-conviction).

⁵³ Pen. Code, § 4904.

⁵⁴ Cal. Code of Regs., tit. 2, § 640, subd. (f).

⁵⁵ Pen. Code, § 4904.

⁵⁶ Pen. Code, § 4904 (authorizing CalVCB to “request from both parties additional documents or arguments as needed to calculate compensation”).

1 shooting. Hernandez's claims and the corroborating statements are further bolstered by Jose's
2 statements during the recorded phone call, Noah's statements about former fellow gang members, and
3 statements Oscar made despite fear of recrimination. Finally, Speedy's appearance was consistent
4 with the original description of the shooter. Accordingly, the administrative record adequately
5 demonstrates Hernandez's innocence for purposes of compensation under Penal Code section 4900
6 as an erroneously convicted offender.

7 **B. Injury**

8 For purposes of relief under Penal Code section 4900, compensation is provided in the amount
9 of \$140 for each day of imprisonment solely attributable to the erroneous conviction.⁵⁷ Hernandez was
10 continuously incarcerated for the charges in this case from the time of his August 24, 2006, arrest,
11 through and including June 15, 2023, when he was released from custody for a total of 6,140 days.
12 He was not arrested for, charged with, nor convicted of any other offenses during that time. As a
13 result, the extent of his injury includes all 6,140 days of incarceration, as his total term of incarceration
14 was solely attributable to the charges in this case, Los Angeles County Superior Court case number
15 SA061371. Given the statutory rate of \$140 per day, Hernandez is therefore entitled to indemnification
16 in the amount of \$859,600 if sufficient funds are available upon appropriation by the Legislature.⁵⁸

17 **V. Conclusion**

18 As mandated by Penal Code section 1485.55, the undersigned hearing officer recommends
19 CalVCB approve payment to Hernandez in the amount of \$859,600 for his claim as an erroneously
20 convicted offender under Penal Code section 4900 as indemnification for the 6,140 days he spent in
21 prison for his erroneous convictions in Los Angeles County Superior Court case number SA061371 if
22 sufficient funds are available upon appropriation by the Legislature.

23 Date: January 5, 2024

Caitlin Christian

24 Caitlin Christian
25 Hearing Officer
California Victim Compensation Board

26
27 ⁵⁷ Pen. Code, § 4904; Cal. Code Regs., tit. 2, § 640, subd. (f); *Holmes v. Calif. Victim Comp. & Gov't*
Claims Board (2015) 239 Cal.App.4th 1400, 1405.

28 ⁵⁸ Pen. Code, § 4904, subd. (a).