

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

Title 2, §§ 640 - 646

**NOTICE OF SECOND MODIFICATION TO TEXT OF PROPOSED REGULATIONS**

Notice Published July 20, 2022

The California Victim Compensation Board (CalVCB) is providing notice of a second modification made to previously proposed regulations in Title 2, California Code of Regulations, sections 640 through 646. This second round of modifications appears in Section 640 concerning the process for presenting a claim as an erroneously convicted felon to CalVCB pursuant to Penal Code section 4900, as well as the proposed form that is incorporated by reference in section 640 for submitting such a claim. CalVCB is providing this notice pursuant to Government Code section 11346.8, subdivision (c), and California Code of Regulations, section 44 of Title 1.

On April 1, 2022, CalVCB proposed regulations for sections 640, 641, 642, 643, 644, 645 and 646 of Title 2, California Code of Regulations, governing claims by erroneously convicted felons under Penal Code section 4900. The 45-day comment period closed on May 16, 2022. On June 2, 2022, CalVCB provided notice of modification to sections 640, 641, 642, and 645 of these proposed regulations, as well as non-substantive changes to the proposed claim form. The 15-day comment period closed on June 17, 2022.

Shortly thereafter, Assembly Bill (AB) 200 (2021-2022) was enacted, effective June 30, 2022, which revised the statutory process by which approved claims under Penal Code section 4900 are paid. Previously, an approved claim by CalVCB solely resulted in a recommendation to the Legislature to make an appropriation to the claimant as indemnification for the injury sustained through their erroneous conviction and imprisonment. (Former Pen. Code, § 4904 (West 2021).) But after AB 200, CalVCB shall approve payment to the claimant for the injury if sufficient funds are available, upon appropriation by the Legislature. (Pen. Code, § 4904, as amended by Stats.2022, c. 58 (A.B.200), § 19, eff. June 30, 2022.) As a result of AB 200, CalVCB has determined that additional modifications are needed to the proposed claim form and related language in section 640.

The purpose of this notice is to inform the public of the second round of modifications and open a 15-day public comment period, running from **July 20, 2022**, through **August 4, 2022**. Consistent with the Administrative Procedure Act, CalVCB will only address comments received during this period concerning the latest modifications to the text of

the proposed regulations and claim form.

Details on how to submit comments are provided below. A copy of the full proposed regulations text as modified, along with the proposed claim form as modified, is attached to this Notice. In the Final Statement of Reasons, CalVCB will respond to all comments received during the comment periods for the original proposed regulations and both modifications.

## SUMMARY OF PROPOSED REGULATION MODIFICATIONS

CalVCB proposes to modify text in section 640, subdivisions (a), (e)(1), and (e)(2), as shown below. Additions and deletions from the original rulemaking proposal are shown in single underline and single strikethrough, respectively. Initial modifications to add text appear in double underline, and initial modifications to delete text appear in double strikethrough. The latest modifications are shown in bold with a single underline for new text and single strikethrough for deleted text.

### 2 CCR 640(a):

(a) Claims on behalf of persons erroneously convicted of felonies shall be ~~filed~~ submitted on an "Erroneously Convicted Person Claim Form," ~~Rev. September 2011~~ Rev. ~~March~~ **May** **July** 2022, hereby incorporated by reference, and provided by the Board or obtained on the Board's website. ~~(a) Claimants must include an original and one copy of the following:~~

- (1) completed claim form with a ~~detailed factual summary~~ statement of facts signed under penalty of perjury that shows the crime did not occur or was not committed by the claimant, and;
- (2) supporting documentation as specified in the claim form.

### 2 CCR 640(e)(1) & (e)(2):

~~(be) Upon receipt of a claim filing, the Board will provide the forward a complete copy of the claim and one (1) copy of the supporting evidence and documentation to the California Attorney General in either hardcopy or electronic PDF format. The Attorney General may offer evidence in support of or in opposition to the claim. If the Attorney General provides any evidence to the Board, it shall also provide a copy to the Claimant.~~

- (1) Unless the automatic **recommendation** provision in either Penal Code section 851.865 or Penal Code section 1485.55 applies, the Board will request a response from the Attorney General. The response may offer evidence in support of or in opposition to the claim. The Attorney General's response shall be submitted to both the Board and the claimant in hardcopy form with an electronic version in PDF format.

- (2) The automatic **recommendation** provisions in section 851.865 and section

1485.55 do not apply if the claimant lacks a court finding of factual innocence for each and every conviction underlying their incarceration. A court finding of factual innocence for any individual conviction is binding upon the Board.

## SUMMARY OF PROPOSED CLAIM FORM MODIFICATIONS

CalVCB also proposes to modify the text of the claim form, entitled “Erroneously Convicted Person Claim Form,” revised July 2022. The substantive modifications replace all references to a “recommendation” for compensation with, instead, “approval of a claim” for compensation. Each of these changes are set forth below in bold with a single underline for new text and single strikethrough for deletions. An additional, non-substantive modification to correct a typographical error is also included.

### Claim Form, pages 1 through 2, Eligibility Section:

Eligibility for Compensation ~~Recommendation~~ under Penal Code section 4900

If you were erroneously convicted and sentenced to state prison or incarcerated in county jail pursuant to Penal Code section 1170, subdivision (h), for a felony offense under California law, then you may be entitled to **a recommendation approval of your claim** for compensation under Penal Code section 4900. (Pen. Code, § 4900, subd. (a).) To be eligible for consideration, you must no longer be incarcerated for that conviction, and you must submit a completed claim form, with supporting documentation, within 10 years of your release from custody, dismissal of charges, pardon, or acquittal on retrial. (Pen. Code, § 4901; Cal. Code Regs., tit. 2, §§ 640, 642.)

With limited exceptions, you must present evidence to prove by a preponderance that (1) the charged crime was not committed at all or was not committed by you, and (2) you sustained injury as a result of your erroneous conviction and imprisonment. (Pen. Code, §§ 4900, subd. (a); 4903, subd. (a).) Both of these elements are presumed, and **a recommendation approval of your claim** for compensation is automatically mandated by law, if a court has found you factually innocent for every offense underlying your incarceration. (Pen. Code, §§ 1485.55, subd. (a), 4902, subd. (a).) Alternatively, if your conviction was vacated during a habeas proceeding or pursuant to Penal Code sections 1473.6 or 1473.7, subdivision (a)(2), and the charges were dismissed or acquitted upon remand, then **a recommendation approval of your claim** for compensation is mandated for your demonstrated injury, unless the Attorney General timely submits clear and convincing evidence of your guilt. (Pen. Code, §§ 4900, subd. (b), 4902, subd. (d), 4903, subd. (b).)

Compensation is calculated at a flat rate of \$140 per day of your erroneous imprisonment. (Pen. Code, § 4904.) Compensation is barred for any claimant who pled guilty with the specific intent to protect another from prosecution. (Pen. Code, § 4903,

subd. (e).) ~~In the event CalVCB approves your claim and recommends compensation, it is ultimately up to the Legislature to enact a bill to appropriate these funds on your behalf.~~ If your claim is approved, CalVCB shall approve payment if sufficient funds are available, upon appropriation by the Legislature. (Pen. Code, § 4904.)

#### **Claim Form, page 3, Section D:**

If yes, you must attach a copy of the Abstract of ~~Judgement~~ Judgment or other documentation to confirm the calculation for your sentence.

Upon satisfactory proof that the answer to both of these questions is yes, then you may be entitled to an automatic ~~recommendation~~ approval of your claim for compensation within 30 days and without an administrative hearing.

#### **Claim Form page 4, Section E:**

Upon satisfactory proof that the answer is yes to questions #1 and #3 or #2 and #3, then you may be entitled to ~~a recommendation~~ approval of your claim for compensation for your demonstrated injury, unless the Attorney General timely submits clear and convincing evidence of your guilt.

### **WRITTEN COMMENT PERIOD**

Any interested individual, or their authorized representative, may submit written comments regarding the modifications set forth above to the proposed regulations in Sections 640, 642, and 645. The written comment period closes on **August 4, 2022**. CalVCB will consider only comments received at its office by that date. Comments may be submitted by regular mail to:

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

Comments may also be submitted via email to [regulations@victims.ca.gov](mailto:regulations@victims.ca.gov) or by facsimile at (916) 491-6441 (FAX).

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of all documents related to this rulemaking, including the revised claim form, can be accessed via CalVCB's website at <https://victims.ca.gov/board/proposed-regulations/>.