

# Draft Hearing Procedure Regulations for Indemnification of Citizens Benefiting the Public and Indemnification of Victims of Crime

The Victim Compensation and Government Claims Board staff has reviewed the regulations governing hearings for Indemnification of Citizens Benefiting the Public and Indemnification of Victims of Crime (“hearing procedures regulations”) and will be proposing regulatory changes updating these regulations.

Currently, VCP hearings are governed by Title 2, Article 5.2 and the General Hearing Procedures found in Title 2, Article 2.5. The staff proposes to include in the hearing regulations the most relevant information that applicants and applicant representatives need to know to participate in these hearings. The reorganization places this information in one location for easier reference. The hearing regulations also clarify the hearing officer’s authority in overseeing the conduct of the hearing.

The draft hearing regulations specify that all VCP hearings are not open to the public, unless the applicant or applicant representative requests that the hearing be public. Government Code section 13959 states that a victim may request a hearing to be closed if it involves a minor, sexual assault, or domestic violence. However, VCP records and information are by law not public records, and necessarily involve highly confidential and privileged information.<sup>1</sup> Thus, all VCP hearings should be closed to the public unless the applicant requests otherwise.

The hearing regulations also seek to repeal section 647.34 Copies of Submitted Materials, which requires applicants to provide five copies of written materials at hearings, as non-substantive and non-material. The staff does not need nor want applicants to submit multiple copies of written materials. The Program now uses an electronic filing system and multiple copies of written materials are unnecessary.

The draft hearing regulations also include numerous suggestions for clarity, including revisions to reflect the commonly used program name “VCP” and other terms used by the VCP staff.

Below is a summary of the proposed changes.

## Summary of Proposed Regulations

- **Rule 647.1 Applicability**

Propose revisions to clarify that these hearing procedures also apply to an application for assistance as a minor witness under Government Code section 13957(b)(B)(iii).

- **Rule 647.2 Applicable Law**

Propose revisions to include language from the General Hearing Procedures under Title 2, Article 2.5 to clarify that VCP hearings are not governed by the

---

<sup>1</sup> Gov. Code, § 6254.17.

Administrative Procedures Act for easier reference by applicant and applicant representatives.

- **Rule 647.4 Considerations of Application and Supplemental Claims**

Propose revising the title to reflect that supplemental claims are treated the same as applications. Delete (a) which adds to the statute. Also includes revisions for clarity and plain English.

- **Rule 647.5 Duty to Furnish Correct Address**

Propose revisions to include language from the General Hearing Procedures under Title 2, Article 2.5 for easier reference by applicants and applicant representatives.

- **Rule 647.20 Right to a Hearing**

Propose language clarifying that an applicant has a right to a hearing if the Program asserts that there is an overpayment of benefits. Also, clarifies the Program legal interpretation that an applicant does not have a right to a hearing where benefits are approved and the rate of reimbursement is reduced based upon the rate set by the Board.

- **Rule 647.20.1 Denial of Hearing for Failure to State Basis to Grant Relief**

Propose changes for consistency with the statute which requires a hearing for a denial. Proposed revision would allow for a hearing on the written record if the applicant, after notice, fails to state a basis to grant relief.<sup>2</sup>

- **Rule 647.21 Notice of Hearing**

Propose revisions to include language from the General Hearing Procedures under Title 2, Article 2.5 for easier reference by applicants and applicant representatives. Deletes language that duplicates the statute.

- **Rule 647.22 Information About Hearing Procedures**

Propose language clarifying that information about the hearing procedures will be provided upon request.

- **Rule 647.23 Representation of Applicant**

Proposed revisions to reflect that an attorney shall not recover attorney fees for representing him or herself.

---

<sup>2</sup> Gov. Code, §§ 13959.

- **Rule 647.24 Access to Application Information**

Propose revision to reflect that the public may not request applicant information unless authorized by law or ordered by the court.

- **Rule 647.25 Objection to Informal Hearing Process**

Propose repealing existing regulation and replacing it with a regulation explaining Hearings by Electronic Means for clarity based upon language from the General Hearing Procedures under Title 2, Article 2.5. Most VCP hearings are conducted by telephone.

- **Rule 647.26 Request for a Continuance**

Propose no changes.

- **Rule 647.30 Conduct of Hearing**

Propose changes to clarify the authority of the hearing officer in the conduct of the hearing, including specifying that all oral evidence is record and the hearing officer determines when the record closes.

- **Rule 647.31 Evidence**

Propose revisions to include language from the General Hearing Procedures under Title 2, Article 2.5 for easier reference by applicants and applicant representatives. Clarifies that the hearing officer determines whether to accept or reject evidence if it is repetitive, irrelevant, tangential, of limited probative value, or unreliable.

- **Rule 647.32 Burden of Proof**

Propose language codifying a precedent decision of the Board that states that, if there is insufficient evidence that the crime identified in the application occurred, the application may still be considered eligible there is a preponderance of evidence that a qualifying crime occurred to the victim, even if it is not the crime for which the application was submitted.

- **Repeal Rule 649.34 Copies of Submitted Materials**

Repeal the requirement that applicants provide five copies of written materials at hearings, as non-substantive and non-material. The staff does not need nor want applicants to submit multiple copies of written materials. The Program now uses an electronic filing system and multiple copies of written materials are unnecessary.

- **Rule 647.35 Failure to Appear or Proceed**

Proposed language to clarify that an applicant will be considered to have failed to appear for a scheduled telephone hearing if they fail to answer their phone and

that a hearing will be based on any material already in the record if the an applicant or applicant's representative's cellular phone stops working during a telephone hearing.

- **Rule 647.36 Proposed Decision by Hearing Officer**

Propose revisions to include language from the General Hearing Procedures under Title 2, Article 2.5 for easier reference by applicants and applicant representatives.

- **Rule 647.37 Action of Proposed Decision by Board**

Propose revisions to include language from the General Hearing Procedures under Title 2, Article 2.5 for easier reference by applicants and applicant representatives. Also, clarifies that the Board considers proposed decisions in closed session.

- **Rule 647.38 Requests for Reconsideration**

Propose language for plain English.

DRAFT

STATE OF CALIFORNIA  
VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

TITLE 2. ADMINISTRATION  
DIVISION 2. FINANCIAL OPERATIONS  
CHAPTER 1. VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
ARTICLE 5.6. INDEMNIFICATION OF VICTIMS OF CRIME

PROPOSED TEXT

Text proposed as a new regulation, or to be added to an existing regulation, is shown in underlined type. Text to be deleted from an existing regulation is shown in ~~strikeout~~ type.

§ 647.1. Applicability

(a) This article applies to:

(1) an application for assistance to ~~victims of crimes~~ the Victim Compensation Program under Government Code sections 13950-13966; and

(2) an application for assistance as a minor witness under Government Code section 13947(a)(B)(iii); and

~~(23)~~ an application for indemnification by persons benefiting the public under Government Code sections 13970-13974.1.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920, and 13974, Government Code.  
Reference: Sections 13959 and 13973, Government Code.

§ 647.2. Applicable ~~Regulations~~ Law

(a) The formal hearing provisions of the Administrative Procedure Act (Gov. Code, §§ 11500-11529) do not apply.

(b) The alternative dispute procedures of the Administrative Procedure Act (Gov. Code, §§ 11420.10-11420.30) do not apply.

(c) The declaratory decision provisions of the Administrative Procedure Act (Gov. Code, §§ 11465.10-11465.70) do not apply.

(d) If there is any inconsistency or conflict between the provisions of article 2.5 and this article, the provisions of this article shall apply to the applications stated in section 647.1.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 11420.10(c), 11425.10(a)(2), 11465.70(c), 13959 and 13973, Government Code.

DRAFT

§ 647.3. Definitions

(a) As used in this article:

(1) "Attorney" shall mean an active member of the California bar; and

(2) ~~"Party" shall mean an applicant.~~ (1) "Applicant" means a person submitting an application as defined in subsection (a)(~~2~~3);

(3) "Application" means the following:

(A) an application for assistance or a supplemental claim in the Victims Compensation Program under Government Code sections 13950-13966;

(B) an application for assistance as a minor witness under Government Code section 13947(a)(B)(iii); and

(C) an application for indemnification by persons benefiting the public under Government Code sections 13970-13974.1; or

~~(3) "Hearing" means an evidentiary proceeding for the determination of facts upon which the Board makes its decision;~~

~~(4) "Hearing officer" means a person appointed by the Executive Officer to preside at a hearing;~~

~~(5) "Shall" means the action or conduct is mandatory.~~

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920, and 13974, Government Code.  
Reference: Sections 13952(d), 13957.7(g), 13959 and 13973, Government Code.

§ 647.4 Consideration of Applications and Supplemental Claims

~~(a) Verification of applications and supplemental claims shall take place within the average 90 days prescribed by Section 13958 of the code.~~

~~(b)~~ Following the verification process, VCP staff shall make a recommendation to the Board regarding the application or supplemental claim. Staff may recommend that the Board allow the application or supplemental claim, disallow the application or supplemental claim, or allow the application or supplemental claim in part and disallow the application or supplemental claim in part.

~~(c) If the VCP staff recommends that the Board allow the application or supplemental claim, the matter shall be placed on the Board's consent hearing agenda. Notice of the hearing and staff recommendation for approval shall be given.~~

~~(eb) In the event that VCP staff recommends denial disallowance of an application or supplemental claim in whole or in part, the staff of VCP shall prepare a notice of staff recommendation "Notice of Staff Recommended Disallowance," or in the case of approval of payment in some amount less than that for which the application or supplemental claim was made, a "Notice of Staff Recommended Partial Disallowance." Such notice shall include a statement as to why the matter is recommended for disallowance denial and shall be mailed to the affected applicant and his or her representative at their last known address of record as set forth on the application or most recent supplemental claim on file with the VCP, or more current notice of address change from the applicant or his or her representative. Such notice shall be mailed within the average 90 days prescribed by Section 13958 of the code. Every "Notice of staff recommendation to deny Staff Recommended Disallowance" or "Notice of Staff Recommended Partial Disallowance" shall contain the following statement in bold upper case type:~~

~~"THIS STAFF RECOMMENDED DISALLOWANCE DOES NOT CONSTITUTE A FINAL ADMINISTRATIVE DETERMINATION BY THE VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD (VCGCB) TO DENY YOUR APPLICATION OR CLAIM. IT MERELY CONSTITUTES NOTICE THAT THE STAFF OF THE BOARD FOLLOWING ITS VERIFICATION PROCESS HAS RECOMMENDED DISALLOWANCE OR PARTIAL DISALLOWANCE. THIS RECOMMENDATION IS SUBJECT TO HEARING BY THE VCGCB. TO PARTICIPATE IN SUCH HEARING AND TO ENSURE A FULL DISCUSSION OF ALL RELEVANT ISSUES YOU SHOULD FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE."~~

~~"This staff recommendation does not constitute a final administrative determination by the Victim Compensation and Government Claims Board (VCGCB) to deny your application or claim. You have a right to a hearing. To request a hearing and to ensure a full discussion of all relevant issues, you should follow the procedures set forth in this notice."~~

~~(ec) If the VCP staff recommends denial of an the application or supplemental claim is recommended by staff for disallowance or partial disallowance in whole or in part, the applicant shall have has 45 calendar days from the date of the mailing of the notice of the staff recommendation such notice to request in writing, that the matter be set for hearing to contest the staff recommendation. ~~Nothing in this section shall be construed~~~~

~~to prevent an applicant or his or her representative from communicating with VCP staff during the period between notice of disallowance and the date of hearing in order to supply additional information. Nothing in this section shall be construed to prevent VCP staff from amending their initial recommendation where additional documentation or information provides the necessary evidence to recommend approval of an application or supplemental claim. All written requests for hearing shall be mailed or delivered to the headquarters office of the Victims of Crime Program at VCP in Sacramento, California, the address for which shall be provided on this notice. Failure to request a hearing within the stated 45 days shall result in the matter being placed on the board's consent hearing agenda with a staff recommendation for disallowance or partial disallowance. Such items may be removed from the consent agenda and made subject to a hearing only upon request by a member of the board. Board staff shall notify the applicant or his or her representative of such hearing.~~

~~(f) Upon receipt of a written request for hearing as specified in Paragraph (e) of this section and after considering the convenience to the applicant as to location for hearing, the staff of the board shall set a hearing to consider the disputed application or supplemental claim, and shall notify the applicant or his or her representative of the hearing.~~

~~(d) Nothing in this section shall be construed to prevent an applicant or his or her representative from communicating with VCP staff during the period between notice of the staff recommendation and the date of hearing in order to supply additional information. Nothing in this section shall be construed to prevent VCP staff from amending the initial recommendation where additional documentation or information provides the necessary evidence to recommend approval of an application or supplemental claim.~~

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13956, 13958, 13959 and 13960, Government Code

§ 647.5. Duty to Furnish Correct Address

(a) An applicant shall inform the Board of the applicant's correct address.

(b) A representative of an applicant shall inform the Board of the representative's correct address.

(c) An applicant or representative of an applicant shall promptly inform the Board of any change of address of the party or representative.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 11440.20(a), 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13963 and 13973, Government Code; Section 4902, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

DRAFT

§ 647.20. Right to Hearing

(a) An applicant may request a hearing to contest any of the following actions:

(1) a staff recommendation that the Board deny an application because there is not finding good cause for the late filing of an application;

~~(2) a staff determination that an application is not complete; and~~

~~(3) a staff recommendation that the Board deny, in whole or in part, an application or supplemental claim; and~~

(3) a staff determination that an applicant should reimburse the Program for an overpayment of benefits.

(b) An applicant does not have a right to a hearing where benefits are approved and the rate of reimbursement is reduced based upon the rate approved by the Board.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.

Reference: Sections 13952, 13957.2(a), 13959, 13965 and 13973, Government Code.

DRAFT

§ 647.20.1. ~~Denial of Hearing on the Written Record~~ for Failure to State Basis to Grant Relief

(a) The Executive Officer or Hearing Officer may limit a hearing to the written record ~~deny a request for a hearing~~ if ~~it~~ the application or supplemental claim fails to state a basis upon which the applicant may be granted relief.

(b) Prior to making a determination that the hearing will be limited to the written record, ~~denying a request for a hearing under subsection (a),~~ the applicant shall be:

(1) notified that the request fails to state a basis upon which the applicant may be granted relief ~~of the reason for denying the request for a hearing;~~ and

(2) given thirty days to submit written materials that either refute the reason for the denial, or show that there is a basis upon which relief may be granted.

(c) If applicant fails within thirty (30) calendar days to show that there is a basis upon relief may be granted, the Executive Officer or Hearing Officer will write a proposed decision based upon the written record.

~~(c) The Executive Officer shall review written materials submitted under subsection (b)(2), and any other pertinent materials, and prepare a written decision that complies with section 619.1.~~

~~(d) A copy of the Executive Officer's decision shall be mailed or delivered to the applicant.~~

~~(d) The procedure in this section is a hearing under section 617.6.~~

~~(1) An applicant may object to the use of the informal hearing process upon receipt of the notice under subsection (b)(1).~~

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 13959 and 13973, Government Code.

§ 647.21. Notice of Hearing

~~The Board shall, if practicable, schedule the hearing in a location convenient to the applicant.~~

(a) The Board shall send a notice to the applicant and the applicant's representative of the following:

(1) the date, time and location of the hearing;

(2) notice that the hearing will be conducted electronically, if applicable; and

(3) information about requesting a copy of the hearing procedures.

(b) A notice of hearing shall be sent at least ten calendar days before the start of the hearing.

AUTHORITY:

~~Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 11445.30, 13959 and 13973, Government Code.~~

Note: Authority cited: Sections 11400.2, 13920, 13959(b) and 13974, Government Code;  
Reference: Sections 11445.30(a), 13959(f) and 13973, Government Code.

DRAFT

§ 647.22. Information About Hearing Procedures

The Board shall provide information about the hearing rules and procedures ~~at the hearing~~ upon request to applicants and representatives.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 11425.10(a)(2), 13959 and 13973, Government Code.

DRAFT

§ 647.23. Representation of Applicant

(a) A representative shall provide written disclosure to an applicant if the person represents any other person or entity with a financial interest in the outcome of the application.

(1) The applicant must provide written acknowledgment of receiving the disclosure and written consent to the representation.

(2) The representative's written disclosure and the acknowledgment and consent shall be available upon request by the Board, Board staff, or the hearing officer.

(3) A person who does not have a written disclosure, acknowledgment of disclosure and consent to representation as required by this section shall be prohibited from representing an applicant at a hearing.

(b) No person shall charge, receive or collect any amount from an applicant for services rendered in connection with any proceeding under this article except as provided in Government Code section 13957.7(g).

(c) The Board shall not pay any fees for representation by a person who is not an attorney.

(d) An attorney shall not recover any attorney fees for representing himself or herself.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 13959, 13957.7(g) and 13973, Government Code.

§ 647.24. Access to Application Information

(a) A representative may receive access to personal information about an applicant in connection with a hearing if:

- (1) the applicant authorizes it in writing;
- (2) an original authorization is submitted to the Board;
- (3) the applicant is entitled to have access to the information; and
- (4) access is authorized by Government Code section 13968(d), if applicable.

(b) Written authorization under this section must include:

- (1) the name, address and phone number of the applicant;
- (2) the name, address and phone number of the representative;
- (4) the signature of the applicant;
- (5) the date on which the authorization was signed;
- (6) a description of the information or documents that are authorized to be released; and
- (7) the date on which the authorization expires.

(c) An authorization under this section is valid for no longer than three years after the date it was signed.

(d) "Personal information" shall have the same meaning as in Civil Code section 1798(a).

(e) Members of the public may not inspect applications or application materials that may be withheld under the Public Records Act, Government Code section 6250-6270 unless the inspection or disclosure is authorized by this section or pursuant to a court order.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 13957.7(g), 13959 and 13973, Government Code.

~~§ 647.25. Objection to Informal Hearing Process~~

~~An applicant must object to having an informal hearing at the time the applicant confirms appearance at a hearing.~~

~~AUTHORITY:~~

~~Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 11445.30, 13959 and 13973, Government Code.~~

§ 647.25 Hearing by Electronic Means

(a) The Board or hearing officer may conduct all or part of a hearing by telephone, videoconference, or other simultaneous electronic means if the applicant:

(1) has an opportunity to participate; and

(3) has an opportunity prior to the hearing to request copies of the documentation that is considered by the hearing officer.

(b) For purposes of this section, the following individuals may participant in an electronic hearing:

(1) an applicant;

(2) an applicant's representative; and

(3) a witness whose testimony will be provided by telephone, videoconference, or other electronic means.

(c) An applicant must object to having a hearing conducted by telephone, videoconference or other electronic means at the time the applicant confirms appearance at a hearing. If an applicant objects to having a hearing by electronic means, the hearing shall be rescheduled to take place in person in a location convenient to the applicant as is practical and the applicant shall receive a notice stating the new date, time, and location of the hearing.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11440.30, Government Code.

§ 647.26. Request for Continuance

(a) A request for a continuance of a hearing must be in writing and submitted to the Executive Officer as soon as the need for the request is known to the party.

(b) A request for a continuance that is made less than ten working days prior to the date of the hearing may be granted only if good cause exists.

(c) A request for a continuance cannot be based on the applicant or representative's cellular phone not functioning at the time of a hearing that is being conducted by telephone.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 13959 and 13973, Government Code.

DRAFT

§ 647.30. Conduct of Hearing

(a) The Executive Officer or hearing officer shall determine whether the hearing shall:

~~(1) be based upon the written record, by electronic means, or in person permit the presentation of oral evidence under section 617.7; or~~

~~(2) be limited to the submission of written materials under section 617.6.~~

(2) include oral evidence taken under oath or affirmation in a hearing.

~~(b) The determination made under subsection (a) shall be based on the following factors:~~

~~(1) complexity of legal or factual issues;~~

~~(2) necessity to evaluate credibility of witnesses for a proper determination of issues;~~

~~(3) party's representation by legal counsel; and~~

~~(4) any other factor likely to affect a just and proper determination of the issues.~~

~~(c) Section 617.5 governs hearings held under this article that are conducted by the Board.~~

(b) If the hearing officer determines that oral evidence will be taken, any oral evidence shall be audio recorded.

(c) No additional evidence or argument shall be considered as a part of the hearing after the hearing record is closed by the hearing officer. The hearing officer retains the discretion to re-open the record, if necessary.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.

Reference: Sections 11445.10(a), 11445.20(c), 13959 and 13973, Government Code.

§ 647.31. Evidence

(a) The technical rules of evidence relating to evidence and witnesses shall not apply.

(b) The board or hearing officer shall control the taking of testimony and evidence in any manner suited to learning the relevant facts and safeguarding the rights of the parties, including the limitation or exclusion of:

(1) repetitious evidence;

(2) irrelevant evidence;

(3) evidence that is tangential to the issues to be determined;

(4) evidence that is of limited probative value; or

(5) evidence that is unreliable.

~~(b)~~ (c) The Board or hearing officer may rely on evidence that is:

~~(1)~~ (1) reliable; and

(2) the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action.

~~(c) Objections to and arguments about evidence may be considered when determining the weight to be given to the evidence.~~

(d) The Board or hearing officer may rely on written reports and other information received from the law enforcement agency or other governmental agency responsible for investigating the crime.

(e) The Board or hearing officer may review and consider:

(1) the application for assistance;

(2) the report and recommendation of staff;

(3) evidence obtained by staff;

(4) evidence submitted by the applicant;

(5) testimony provided by the applicant; and

(6) testimony provided by witnesses.

(f) The Board or hearing officer may take official notice of ~~under section 647.8 of the board's written policies.~~ the following:

(1) the Board 's written policies;

(2) those matters which must be judicially noticed by a court under Evidence Code section 451;

(3) those matters which may be judicially noticed by a court under Evidence Code section 452.

Evidence Code sections 455 and 459, subdivisions (c) and (d) shall not apply.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 11425.10(a)(1), 11425.50(c), 13959(e) and 13973, Government Code.

DRAFT

§ 647.32. Burden of Proof

(a) The applicant shall have the burden of proof on all issues necessary to establish eligibility.

(b) The Board shall have the burden of proof on all issues necessary to disqualify an applicant under Government Code section 13956, subsections (a), (b), or (c).

(c) The standard of proof is a preponderance of the evidence.

(d) If there is insufficient evidence that the crime identified in the application occurred, the application may still be considered eligible there is a preponderance of evidence that a qualifying crime occurred to the victim, even if it is not the crime for which the application was submitted.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 13959(e) and 13973, Government Code; and Graham v. State Board of Control (1995) 33 Cal.App.4th 253, 39 Cal.Rptr.2d 146.

DRAFT

§ 647.33. Exclusion of Public

~~(a) A hearing based upon an application to the Victim Compensation Program or application from a minor witness shall be closed to the public unless the applicant or the applicant's representative requests that the hearing be open to the public. The Board or hearing officer may exclude members of the public from a hearing if requested by the applicant or the applicant's representative and the application being considered is the result of:~~

- ~~(1) a crime against a minor;~~
- ~~(2) a crime of sexual assault; or~~
- ~~(3) a crime of domestic violence.~~

(b) The Board or hearing officer shall not exclude:

- (1) Board members;
- (2) the hearing officer;
- (3) Board staff;
- (4) the applicant;
- (5) a minor applicant's parents or guardians;
- (6) the applicant's representative;
- (7) witnesses; and

(8) other persons of the applicant's choice to provide assistance to the applicant during the hearing.

(c) The Board or hearing officer may exclude an applicant, representative, or witness if the individual is threatening, abusing, or harassing the board member, the hearing officer, or others.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 6254.17, 11125.8, 11425.20, 13959, 13959(b) and 13973, Government Code.

~~§ 647.34. Copies of Submitted Materials~~

~~A person appearing in a hearing shall provide five legible copies of any written material to be submitted into the record or introduced into evidence at the hearing.~~

~~AUTHORITY:~~

~~Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code. Reference: Sections 13963 and 13973, Government Code.~~

DRAFT

§ 647.35. Failure to Appear or Proceed

(a) If an applicant or representative either fails to appear at a hearing, or fails to proceed, the Board or hearing officer may base its decision on any material listed in section 647.31(e)(1)-(4).

(b) If an applicant does not answer the telephone at the time of a scheduled telephone hearing, the Board or hearing officer may base its decision on any material listed in section 647.31(e)(1)-(4).

(c) If an applicant or representative's cellular telephone stops working during a scheduled telephone hearing, the hearing will be based on any material in the record up to that point in time.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 13959(e) and 13973, Government Code.

DRAFT

§ 647.36. Proposed Decision by Hearing Officer

(a) The hearing officer may take the matter under submission at the conclusion of the hearing.

(b) The hearing officer shall prepare a proposed decision that shall:

(1) be written; and

(2) contain a statement of the factual and legal bases for the decision.

(c) If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the decision shall identify any specific evidence of the demeanor, manner or attitude of the witness that supports the credibility determination.

(d) The decision shall be based on evidence in the hearing record and on matters subject to official notice under section 647.31.

(e) The board members or hearing officer may use relevant experience, technical competence and specialized knowledge to evaluate the evidence.

(f) The proposed decision shall be submitted to the Executive Officer.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Reference: Sections 11425.10(a)(6), 11425.50 and 13969.1(a), Government Code.

§ 647.37. Action on Proposed Decision by Board

(a) The Executive Officer shall schedule consideration of a hearing officer's proposed decision on the agenda of a Board meeting.

(b) The Board shall deliberate regarding a proposed decision in a closed session.

(c) The Board may take any of the following actions concerning the proposed decision:

(1) adopt the proposed decision in whole or in part;

(2) reject the proposed decision in whole or in part; or

(3) defer decision and request the hearing officer to address specific issues or provide additional information.

(d) If the Board rejects the proposed decision in whole or in part, it may take any of the following actions:

(1) decide the case itself after reviewing the record, including a transcript of the hearing;

(2) decide the case itself based upon a statement of facts agreed to by the parties;

(3) decide the case itself by conducting a hearing to take additional evidence or argument;

(4) order the hearing officer to take additional evidence or argument; or

(5) order the hearing officer to address specific issues in the proposed decision.

(d) If the Board rejects the proposed decision in whole or in part and orders a hearing officer to take additional evidence under subsection (c)(4), or respond to specific issues under subsection (c)(5), the hearing officer:

(1) shall take additional evidence as directed by the Board or as necessary in the hearing officer's discretion; and

(2) shall prepare a proposed decision as required by section 647.36.

(f) If the Board remands the matter to a hearing officer under subsection (c)(4) or (c)(5), it shall be returned to the hearing officer who prepared the proposed decision, if practicable.

(1) If the hearing officer who prepared the proposed decision is not reasonably available, the Executive Officer may assign it to another hearing officer.

(2) If the matter is assigned to another hearing officer, the new hearing officer shall review the entire record, including a transcript, before taking additional evidence.

AUTHORITY:

Note: Authority cited: Sections 11400.20, 13920, 13974, Government Code; Reference: Sections 11125.8, 11126(c)(3), 11500, 13959 and 13973, Government Code.

DRAFT

§ 647.38. Requests for Reconsideration

Requests for reconsideration filed by applicants or their representatives in accordance with Section 13959(i) of the Government code shall be accepted by the Board only after the Board has acted on the application or supplemental claim at a hearing following a a notice of staff recommendation to deny or deny in part. ~~"Notice of Staff Recommended Disallowance" or a "Notice of Staff Recommended Partial Disallowance."~~ Requests for reconsideration shall not be granted unless the applicant produces to the Board new and additional evidence not reasonably available to the applicant at the time of the hearing. Nothing in this section shall be construed to prevent the Board from granting reconsideration on its own motion.

AUTHORITY:

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13954, 13956, 13959 and 13959(i), Government Code.

DRAFT