

**California Victim Compensation and Government Claims Board
Open Meeting Minutes
March 19, 2015, Board Meeting**

The California Victim Compensation and Government Claims Board (Board) convened its meeting in open session at the call of Marybel Batjer, Secretary, California Government Operations Agency, at 400 R Street, Sacramento, California, on Thursday, March 19, 2015, at 10:05 a.m. Also present was Board member Richard Chivaro, Deputy State Controller and Chief Counsel, acting for and in the absence of Betty T. Yee, Controller, and Board member Michael Ramos, San Bernardino County District Attorney.

Julie Nauman, Executive Officer, was in attendance. Tisha Heard, Board Liaison, recorded the meeting.

The Board meeting commenced with the Pledge of Allegiance.

Item 1. Approval of Minutes of the February 19, 2015, Board Meeting

The Board unanimously approved the minutes of the February 19, 2015, Board Meeting.

Item 2. Public Comment

None.

Item 3. Executive Officer Statement

National Crime Victims' Rights Week, April 19-25

Next month CalVCP will observe National Crime Victims' Rights Week, joining the nation in raising awareness for the rights for victims of crime. This year's theme, *Engaging Communities, Empowering Victims*, emphasizes the role of the entire community, individually and collectively. As the nation's first and largest victim compensation program, CalVCP believes that victims' rights need greater attention than one week in April; therefore, CalVCP has dedicated the entire month of April to honor and advocate for survivors of violence.

New PSA and Documentary Screening

The Public Affairs and Outreach Division will unveil a new PSA on sexual assault awareness. On April 22, CalVCP and Sacramento City College will present a screening of *The Hunting Ground*, a documentary featuring victims of sexual assault on college campuses and their struggle to exercise their rights. Admission is free and a panel discussion with campus staff and community partners will follow.

San Bernardino County DA's Office to Host Crime Victims' Rights Week Memorial

On April 20, Executive Officer Nauman will join San Bernardino County District Attorney and Board member Michael Ramos in the Second Annual National Crime Victims' Rights Week Memorial hosted by the San Bernardino County District Attorney's Office.

Digital Town Hall Meeting

On April 14, CalVCP will host its third annual online Victims' Rights Digital Town Hall. Panelists will discuss military sexual assault. Individuals can listen to speakers in Sacramento and exchange in dialogue on important matters.

Presentation of Work Products for OVC

Staff will present several work products for Board discussion that were completed for the Office for Victims of Crime. Those work products include the baseline data analysis and gap analysis identifying the underserved communities across California and the difficulties and challenges those underserved communities may have accessing CalVCP. From this work, CalVCP will develop strategies to address those challenges.

Item 4. Contract Report

Contractor: Continuity Consulting, Inc., 4VCGC220
Contract Amount: \$198,825.00
Contract Term: 02/23/14 – 09/30/15

The VCGCB was awarded a VOCA technology grant from the Office for Victims of Crime, Department of Justice, to support the submission of an FSR and BCP to develop a comprehensive online access system for claimant's, victim advocates, and providers so CalVCP can do its work more electronically.

The contract is for consulting services to assist with the development of an FSR and BCP involving the enhancement of the existing CaRES application. The enhancement will provide online access capabilities to stakeholders, including an online application, the ability to check the application status, and the ability of law enforcement personnel to download crime reports. The purpose is to develop the model so other states will know how to go through the process, step-by step, so they too can implement online access for their State programs.

Joint Powers Contracts (20), VCGC5044-VCGC5064
Term: 07/01/15 – 06/30/18
Total Contract Amount: \$33,176,502.00

The Board has historically entered into JP agreements with various counties within the State to provide fully verified victims of crime claims to the Board as required by Government Code sections 13954, 13962, and 13963. The renewal of the three-year contracts with 20 JP entities is consistent with CalVCP's allocation and budget.

The Board approved the Contract Report.

Item 5. Legislative Update

Executive Officer Nauman reported that the following bills were introduced:

AB 1140 (Bonta) — Victim Compensation Program Modernization

The bill would modernize Victim Compensation Program statutes by making a number of changes to eligibility and benefits.

AB 165 (Lara) — Government Claims Bill

VCGCB's first Government Claims Bill of 2015, which will appropriate the funds to pay claims approved by the Board from May 2014 through December 2014, as well as the erroneous conviction claims of Ronald Ross and Susan Mellen.

SB 304 (Gomez) — Government Claims Bill

VCGCB's second Government Claims Bill of 2015, which will appropriate the funds to pay claims approved by the Board from January 2015 through April 2015.

SB 518 (Leno) — Trauma Recovery Centers

The bill would require the Board to use the evidence-based Integrated Trauma Recovery Services model developed by the Trauma Recovery Center at San Francisco General Hospital University of California, San Francisco when it provides grants to trauma recovery centers.

SB 519 (Hancock) — Victim Compensation Program

The bill would require all correspondence by the Victim Compensation Program to an applicant to be written in English, Spanish, and Chinese. It also would prohibit the Board from requiring an applicant to submit documentation from the Internal Revenue Service, the Franchise Tax Board, the State Board of Equalization, the Social Security Administration, or the Employment Development Department in order to determine eligibility for compensation. It contains other changes to eligibility for compensation.

SB 556 (De Leon) — Claims Against Public Entities

The bill is a spot bill that currently makes non-substantive changes to the statute that requires the Board to respond to an application for a claim against the state within 45 days.

SB 635 (Nielsen) — Erroneous Conviction: Compensation

The bill would increase the amount of the recommended appropriation for compensation for an erroneous conviction from \$100 to \$136.98 per day of incarceration served after the claimant was convicted, but not to exceed \$50,000 per year for each full year of incarceration served.

SB 694 (Leno) — Erroneous Conviction: New Evidence

The bill would require the Board to recommend an appropriation to the Legislature for compensation of an erroneous conviction if a court finds that new evidence raises a reasonable probability of a different outcome if a new trial were granted.

AB 540 (Campos) — Restitution: Entertainment Profits

The bill would require an individual or entity that provides payment to a person, who has been convicted of a crime and is required to pay restitution, for the rights to his or her story to notify specified entities, including the Victim Compensation and Government Claims Board, of the amount to be paid.

AB 1050 (Low) — State Employees: Charitable Deductions

The bill would require a charitable organization to annually provide the Board with a written nondiscrimination policy in order to be included in the campaign for charitable contributions from state employees.

Item 6. Government Claims Program Consent Agenda (Nos. 1-295)

The Board unanimously adopted the staff recommendations for consent agenda item numbers 1-295.

Item 7. Applications for Discharge From Accountability for Collection

There were no applications for discharge from accountability for collection.

Item 8. Claim of Brian Banks (Pen. Code § 4900 et seq.)

Alex Simpson and Alissa Bjerkhoel, California Innocence Project, were in attendance on behalf of Brian Banks. Larenda Delaini was in attendance on behalf of the California Attorney General's Office.

Executive Officer Nauman explained that Brian Banks filed a claim as an erroneously convicted person pursuant to Penal Code section 4900. At the age of 16, Mr. Banks pled no contest to the charge of forcible rape and was sentenced to six years in prison. After serving 1,422 days in prison, Mr. Banks was released on parole. Shortly thereafter, his accuser recanted her accusations against him, admitting that she lied about the rape. The trial court granted Mr. Banks' writ of habeas corpus

in the interest of justice, reversing his rape conviction, and all charges were immediately dismissed by the Los Angeles County District Attorney's Office.

Executive Officer Nauman explained that the hearing officer recommended that the Board approve the Mr. Banks claim and make a recommendation to the Legislature that Mr. Banks be paid \$142,000, \$100 per day for 1,422 days of incarceration. Ms. Nauman stated that the Attorney General's Office concurred with the hearing officer's recommendation.

Mr. Simpson explained that Brian Banks was a promising young football star at Polytechnic High School in Long Beach when he was falsely accused and convicted of the sexual assault of Wanetta Gibson. Mr. Banks served more than five years for a crime that he did not commit and that never occurred. He explained that even though Mr. Banks was wrongfully convicted and had so much taken away from him, he is still a very positive person. Although Brian was the unfortunate victim of the criminal justice system, he worked to turn his life around. Brian is currently working with the NFL, not as a football player; rather, he is working the NFL front office as a public ambassador.

He explained that newly enacted Penal Code section 1485.55 states that if the district attorney or Attorney General stipulates to or does not contest the factual allegations underlying one or more of the grounds for granting a writ of habeas corpus or a motion to vacate a judgment, the facts underlying the basis for the court's ruling or order shall be binding on the Attorney General, the factfinder, and the Board. In a contested proceeding, if the court grants a writ of habeas corpus concerning a person who is unlawfully imprisoned or restrained, or when, pursuant to Section 1473.6, the court vacates a judgment on the basis of new evidence concerning a person who is no longer unlawfully imprisoned or restrained, and if the court finds that new evidence on the petition points unerringly to innocence, that finding shall be binding on the Board for a claim presented to the Board, and upon application by the person, the Board shall, without a hearing, recommend to the Legislature that an appropriation be made and the claim paid pursuant to Section 4904.

Lastly, Mr. Simpson stated that the California Innocence Project urged the Board to adopt the recommendation of the Attorney General and the Proposed Decision of the hearing officer and find and recommend to the Legislature that Brian Banks is entitled to compensation in the amount of \$142,000.

Ms. Delaini stated that the Attorney General's Office reviewed the claim filed by Brian Banks pursuant to Penal Code section 4900. Claimant was 16 years old at the time and facing a sentence of 41 years to life in prison when he pled guilty pursuant to *People v. West* and maintained his innocence, but did enter that plea and accepted a six-year prison sentence for the forcible rape of victim W.G. W.G.'s mother later sued the Long Beach Unified School District because the alleged rape occurred on school grounds, during school hours. The school district settled the lawsuit for \$750,000, which was given directly to W.G. in one lump sum. Years later, while claimant was on parole and registering as a sex offender, W.G. contacted him on Facebook and tried to become friends with him and recanted the rape allegations, although she admittedly refused to put her recantation in writing because she feared she would be forced to repay the \$750,000 that she received from the Long Beach Unified School District. Although W.G. later insisted that her recantations were untruthful, she made no less than 15 statements concerning the encounter with claimant, many of them were inconsistent in significant respects, and W.G. vacillated on the most important inquiry, which was whether claimant had actually penetrated her without her consent. Claimant, on the other hand, consistently maintained his innocence and his account of the incident had not changed. The Attorney General's Office had the opportunity to interview claimant for nearly two hours and found him to be credible. Because of the claimant's credibility, W.G.'s varying statements concerning the alleged rape, and the lack of definitive physical evidence, the Attorney General's Office believed that claimant demonstrated by a preponderance of the evidence that he

is innocent of the forcible rape offense to which he pled guilty. The Attorney General's Office did not address Mr. Banks' case in terms of any credibility findings or factual findings by the Superior Court that are bound by the Board. Instead, the Attorney General's Office believes Claimant actually satisfied his burden of demonstrating his innocence and the Attorney General's Office submits on the hearing officer's Proposed Decision.

Board member Ramos commented that he recalled Brian Banks' case because it was a huge media case in Southern California. Board member Ramos thanked the California Innocence Project for their work and the Deputy Attorney General for indicating, in a professional manner, the reason they agreed with the hearing officer's recommendation. He stated that as prosecutors ethics and integrity are the biggest assets they have when making decisions on people's lives. Because of cases like Mr. Banks, the San Bernardino County District Attorney's Office is in the process of creating a Prosecutors Integrity Unit wherein they will look at cases that are similar in nature to Mr. Banks to ensure that they are not just prosecuting the guilty but also protecting the innocent.

Chairperson Batjer commented that a terrible travesty of justice has been corrected. Chairperson Batjer thanked the California Innocence Project and the Attorney General for their hard work on the case.

The Board unanimously adopted hearing officer's recommendation to approve the claim of Brian Banks in the amount of \$142,000, which represented \$100 a day for 1,422 days Mr. Banks served in prison.

Victim Compensation Program

The Board commenced the Victim Compensation Program portion of the meeting at 10:26 a.m.

Closed Session

Pursuant to Government Code section 11126(c)(3), the Board adjourned into Closed Session with the Board's Executive Officer at 10:26 a.m. to deliberate on proposed decision numbers 1-78.

Open Session

The Board reconvened into Open Session pursuant to Government Code section 11126 (c)(3) at 10:31 a.m. The Board adopted the hearing officer's recommendations for proposed decision numbers 1-78.

Adjournment

The Board meeting adjourned at 10:32 a.m.