

TITLE 2. ADMINISTRATION  
DIVISION 2. FINANCIAL OPERATIONS  
CHAPTER 1. VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
ARTICLE 5.2. HEARINGS FOR INDEMNIFICATION OF CITIZENS BENEFITING THE  
PUBLIC AND INDEMNIFICATION OF VICTIMS OF CRIME

FINAL TEXT

§ 647.1. Applicability

(a) This article applies to:

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

(2) an application for assistance as a minor witness under Government Code section 13957(a)(2)(B)(iii); and

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

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

Reference: Sections 13959 and 13973, Government Code.

§ 647.2. Applicable 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 California Code of Regulations, title 2, article 2.5 and this article, the provisions of this article shall apply to the applications stated in section 647.1.

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.

§ 647.3. Definitions

(a) As used in this article:

- (1) "Attorney" shall mean an active member of the California Bar; and
- (2) "Applicant" means a person submitting an application as defined in subsection (a)(3);
- (3) "Application" means the following:
  - (A) an application for assistance or a supplemental claim to the Victim Compensation Program under Government Code sections 13950- 13966;
  - (B) an application for assistance as a minor witness under Government Code section 13957(a)(2)(B)(iii); or
  - (C) an application for indemnification by persons benefiting the public under Government Code sections 13970- 13974.1.
- (4) "Hearing" means an evidentiary proceeding for the determination of facts upon which the Board makes its decision;
- (5) "Hearing officer" means a person appointed by the Executive Officer to preside at a hearing;
- (6) "Shall" means the action or conduct is mandatory.

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) 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, deny the application or supplemental claim, or allow the application or supplemental claim in part and deny the application or supplemental claim in part.

(b) In the event that VCP staff recommends denial of an application or supplemental claim in whole or in part, the staff of VCP shall prepare a notice of staff recommendation. Such notice shall include a statement as to why the matter is recommended for denial and shall be mailed to the affected applicant and his or her representative at their last known address of record. Every notice of staff recommendation to deny shall contain the following:

"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."

(c) If the VCP staff recommends denial of an application or supplemental claim in whole or in part, the applicant has 45 calendar days from the date of the mailing of the notice of the staff recommendation to request in writing that the matter be set for hearing to contest the staff recommendation. All written requests for hearing shall be mailed or delivered to the headquarters office of the VCP in Sacramento, California, the address for which shall be provided on this notice.

(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.

Note: Authority cited: Section 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 13956, 13958 and 13959, 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.

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

Reference: Sections 13959 and 13973, Government Code.

§ 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 good cause for the late filing of an application;

(2) 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 applicant's sole objection is to the rates and limitations set by the Board.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 13957.2(a), 13959, 13965 and 13973, Government Code.

§ 647.20.1. 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 if the request for a hearing 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, the applicant shall be:

(1) notified that the request fails to state a basis upon which the applicant may be granted relief; and

(2) given thirty (30) calendar 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 which relief may be granted, the Executive Officer or Hearing Officer shall write a proposed decision based upon the written record.

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

§ 647.21. Notice of Hearing

(a) The Board shall send a notice to the applicant and, if applicable, to 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 how to request a copy of the hearing procedures.

(b) A notice of hearing shall be sent at least 20 calendar days before the start of the hearing.

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

§ 647.22. Information About Hearing Procedures

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

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

§ 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.

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 13954(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) an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure.

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

(d) 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.

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

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

(b) If an applicant objects to having a hearing conducted by telephone, videoconference or other electronic means, the Board must receive the objection no less than 10 calendar days before a scheduled 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 as convenient to the applicant as is practical and the applicant shall receive a notice stating the new date, time, and location of the hearing.

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

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

§ 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; or

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

(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.

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.

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

(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.

(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 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.

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

§ 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 if 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.

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.

§ 647.33. Exclusion of Public

(a) A hearing based upon an application under Government Code sections 13950-13966 shall be closed to the public unless the applicant or the applicant's representative requests that the hearing be open to the public.

(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 during their testimony;

(8) translator or interpreter; and

(9) 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.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference:, Sections 6254.17, 11125.8, 11425.20, 13954(d) and 13959, Government Code.

§ 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 and the hearing officer is unable to reach the applicant or representative by telephone, the hearing will be based on the material in the record up to that point in time.

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

§ 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 is:

(1) written; and

(2) contains 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, or other facts that support 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.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Sections 11425.10(a)(6), 11425.50 and 13959, Government Code.

§ 647.37. Notice and Public Comment on Proposed Decision

Section 619.4 shall not apply to hearings under this article.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.  
Reference: Section 11125.7(d), Government Code.

§ 647.37.1. 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 the 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 obtain 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.

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

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

#### § 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 notice of staff recommendation to the Board to deny or deny in part. 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.

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13954, 13956, 13959 and 13960, Government Code.

## ARTICLE 5.5. INDEMNIFICATION OF CITIZENS BENEFITING THE PUBLIC

### § 648.1. Time for Presenting Claims

There shall be presented to the Board all claims filed by citizens who have benefited the public through their actions as "good Samaritans" to the people around them. A claim filed under this article shall be presented to the Victim Compensation and Government Claims Board no later than one year after occurrence of the injury or damage. A claim filed after such shall not be considered unless the Board determines that, for good sufficient reason, the claim was not filed within said period.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13970, Government Code.

## § 648.2. Contents of Claims

All claims shall be filed in duplicate, shall be signed and verified by the claimant, or claimant's parent or guardian if claimant is a minor, and shall state the facts constituting the claim in simple, concise language. In the event the claim is filed on behalf of the claimant by a law enforcement or public safety agency, the claim shall be signed by such agency and need not be verified.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13970, Government Code.

§ 648.3. Form of Claims

All claims or amendments filed with the Victim Compensation and Government Claims Board under this article shall be filed on forms, (identified as Form BC-VOC-100--APPLICATION FOR VICTIM OF CRIME COMPENSATION), provided by the Board.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13952, Government Code.

§ 648.4. Disallowance

A claim for indemnification will not be allowed if the crime prevented, or the crime committed by the criminal was against the person or property of the person who prevented the crime, apprehended the criminal, or who substantially and materially assisted a peace officer for this purpose.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13973, Government Code.

§ 648.5. Indemnification

The maximum amount of any claim the Victim Compensation and Government Claims Board shall approve for payment shall not exceed the amount necessary to indemnify or reimburse the claimant for:

- (a) The actual value of property damaged or destroyed, or the cost of repairing such property.
- (b) Necessary expenses incurred for hospitalization or medical treatment, loss of wages, or other necessary expenses directly related to the injury or death. If continued hospitalization or medical treatment is necessary, a partial award may be made and the claim subsequently reconsidered for the purpose of recommending an additional award.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13957(a), Government Code.

§ 648.6. Issues for Hearing on Application to Indemnify Citizens Benefiting the Public

(a) An applicant must prove all of the following:

(1) the nature of the crime committed by the apprehended criminal or prevented by the action of the applicant; or

(A) the nature of the action of the applicant in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe; and

(B) the circumstances involved;

(2) the applicant's action substantially and materially contributed to:

(A) the apprehension of a criminal;

(B) the prevention of a crime; or

(C) the rescue of a person in immediate danger of injury or death due to fire, drowning, or other catastrophe;

(3) as a direct consequence of subdivision (a)(2), the applicant suffered:

(A) personal injury;

(B) property damage; or

(C) death; and

(4) the extent of the injury or damage under subdivision (a)(3) for which applicant was not compensated from any other source.

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

Reference: Section 13973, Government Code.