



October 11, 2007

Gerald F. Uelmen  
Executive Director  
California Commission on the Fair Administration of Justice  
900 Lafayette Street, Suite 608  
Santa Clara, CA 95050

ROSARIO MARIN  
Secretary  
State and Consumer Services Agency  
Chairperson  
JOHN CHIANG  
State Controller  
Board Member  
MICHAEL A. RAMOS  
San Bernardino County District Attorney  
Board Member  
KAREN McGAGIN  
Executive Officer

Re: Penal Code sections 4900-4906

Dear Mr. Uelmen:

Thank you for the opportunity to provide information about the role of the Victim Compensation and Government Claims Board (Board) for claims filed pursuant to Penal Code sections 4900-4906.

As you are aware, California law allows persons who allege that they were erroneously incarcerated to file claims with the Board. Claims are regularly heard by a Board hearing officer. Pursuant to statute, the Attorney General can participate in the hearing and may introduce evidence in opposition to the claim.

Under the Penal Code, in order to prevail, claimants must prove, by a preponderance of the evidence, that:

1. the crime with which he or she was charged was either not committed at all, or, if committed, was not committed by him or her;
2. he or she did not, by any act or omission on his or her part, either intentionally or negligently, contribute to the bringing about of his or her arrest or conviction for the crime with which he or she was charged; and
3. he or she sustained pecuniary injury through his or her erroneous conviction and imprisonment.

The hearing officer timely prepares a proposed decision that is submitted to the Board at its regularly scheduled meeting. After considering the recommendation and any public comment regarding the recommendation, the Board will adopt the proposed decision, reject the proposed decision and decide the matter on its own, or return the claim to the hearing officer for further hearing.

If the Board adopts a proposed decision recommending payment in the statutory amount of \$100 per day served subsequent to conviction, the Board then submits a recommendation to the Legislature. The Legislature decides if the claim should receive appropriate funding. (Pen. Code, § 4904.) Whether or not the sum of \$100 per day is adequate compensation is a question that is reserved for the Legislature.

The following is a summary of approved Penal Code sections 4900-4906 claims during the past five years:

David Jones	Approved on March 15, 2007 for \$74,600
John Stoll	Approved on May 18, 2006 for \$704,700
Kenneth Marsh	Approved on January 19, 2006 for \$756,900
Pete Rose	Approved on October 20, 2005 for \$328,200
Kevin Baruxes	Approved on June 25, 2004 for \$258,700
Quedellis Walker	Approved on September 19, 2003 for \$421,000
David Quindt	Approved on February 28, 2003 for \$17,200
Leonard McSherry	Approved on August 23, 2002 for \$481,200
Frederick Daye	Approved on March 22, 2002 for \$389,000

In addition, the Board approved an additional six claims prior to 2002, with the earliest approved claim occurring in 1984, for a total of 15 approved claims. During this period of time (1984 to 2007), the Board denied 25 claims. An additional 19 claims have been rejected for being untimely, incomplete, or because the claimant had not been released from incarceration.

Sincerely,

  
Karen McGagin  
Executive Officer