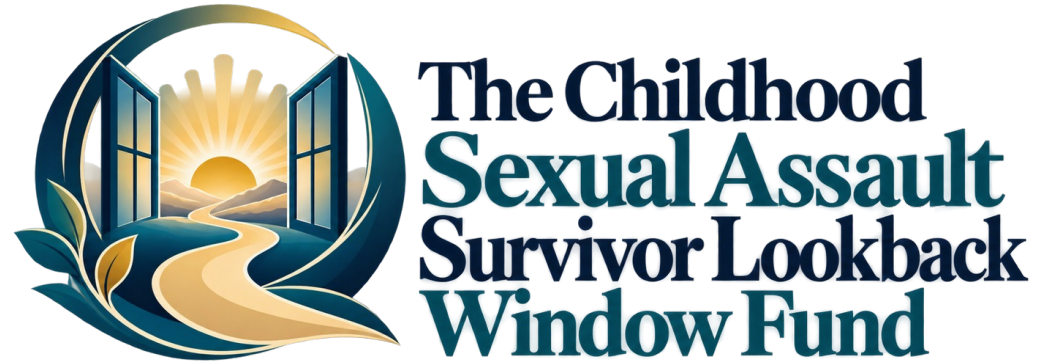




SUPPORTING SURVIVORS ON THE PATH TO JUSTICE AND HEALING

Why an Administrative Fund?

Prepared for the Interim Courts, Corrections and Justice Committee | Rep. Meredith Dixon

Why We're Here Today

Our laws haven't kept pace with what we now know about trauma and disclosure.



1 Laws are catching up

States are extending civil deadlines to reflect what we know about trauma and recovery.

2 A gap remains

Extensions help future claims, not survivors whose deadlines have already passed.

3 Windows reopen the door

States and countries have opened time-limited windows for previously barred claims.

House Bill 151 (2026), sponsored by Rep. Marianna Anaya, addresses both: it extends the deadline going forward and opens a window for time-barred claims.



Lessons from Other States

Litigated windows left states with open-ended or multibillion-dollar exposure and years of delay.

State	Claims	Public liability	Time to resolution
Maryland	12,305 against the State	\$3.5B–\$34B (Attorney General)	3+ years, unresolved
California (LA County)	14,000+	~\$4.8B; expected \$1.6B–\$3B	~6.5 years to first payment
New York	10,857	No estimate; NYC alone \$160M+ on 161 cases	7+ years, mostly pending
Pennsylvania	No window enacted	\$5B–\$32.5B (outside estimate)	Not applicable
Colorado	Not reported	Fiscal note: \$3.9M–\$11M per year	Struck down at ~18 months
New Mexico	Unknown	Unknown	Unknown

Figures cover different defendants, periods, and methods; California's covers one county.



Why Not Just Use the Courts?

The Tort Claims Act caps what each survivor can recover, not what the State spends.

1

Defense costs

The State defends every case, win or lose. Colorado's model (500 hours per complex case, 200 per simple) implies roughly \$45M in defense costs for 1,000 claims, before any survivor is paid.

2

Insurance and risk pools

Claims against school districts and agencies flow back through Public School Insurance Authority and Risk Management assessments, raising their costs for years.

3

No ceiling on volume

The cap applies per claimant, not to the number of claims. Total exposure stays open-ended until every case resolves.

4

Time and net recovery

Litigated windows took ~6.5 years to first payment in California and 7+ years in New York. Contingency fees often take a third or more of a survivor's recovery.

The fund caps the total. Litigation caps only each claim and spends a large share of every dollar on lawyers, insurers, and delay.



Legislative Grace, Trauma-Informed

2-year lookback window for previously time-barred civil claims.

- 1 Private-entity claims go to court.** Claims against private persons and entities are revived for the same window but litigated through the traditional civil court system, with full discovery and jury-trial rights.
- 2 Public-entity claims go to the fund.** Claims against the state and its political subdivisions are routed through a new legislative-grace compensation fund and commission — not through revived lawsuits in court.
- 3 A purpose-built commission.** Trauma-informed hearing rules, a preponderance standard, and confidentiality protections — built for this program, not adapted from an existing court process.
- 4 Outside the Tort Claims Act.** The fund operates entirely outside the TCA, disapplying sovereign immunity, the facilities-theory requirement, the limitation period, notice rules, and damages caps.
- 5 Constitutional footing.** A voluntary benefit program; acceptance of an award is consideration (release of the public body), not a donation under Art. IX, § 14.



What Survivors Want, and What the Fund Delivers

Survivors seek acknowledgment more than punishment, and litigation rarely provides it.

WHAT THE RESEARCH SHOWS

Validation first

Herman (2005): survivors most wanted the community to acknowledge the facts and the harm, more than punishment.

Money is secondary

Canadian study of 87 survivors: almost all said financial goals came second to being heard and publicly affirmed.

No apologies in court

England's national inquiry: no case-study survivor received an apology through civil claims; institutions feared admitting liability.

WHAT THE FUND DELIVERS

1

Validation and Acknowledgement, an opportunity to tell their story and be heard, in a trauma informed setting

2

Timeline certainty, statute determined window for claims and distribution

3

Annual institution-level reporting, de-identified by agency, facility type, and era

4

Mandatory reports as currently required by law

5

A final public report on institutional failures and prevention, naming no individuals

Litigation usually ends in settlements without admission or apology. The fund pays because the State acknowledges the harm.



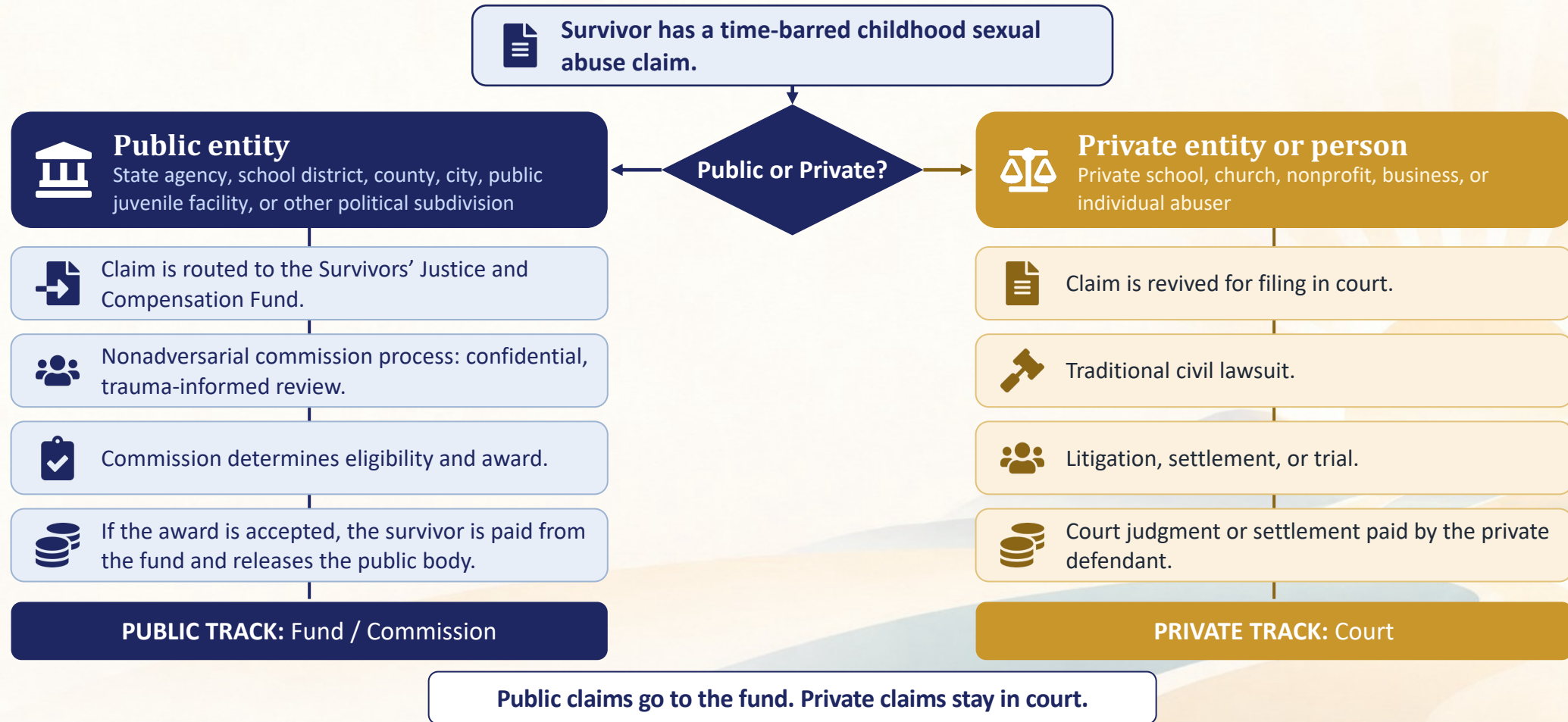
Revival Window & Timeline

How long the fund stays open, and how the calendar is sequenced.



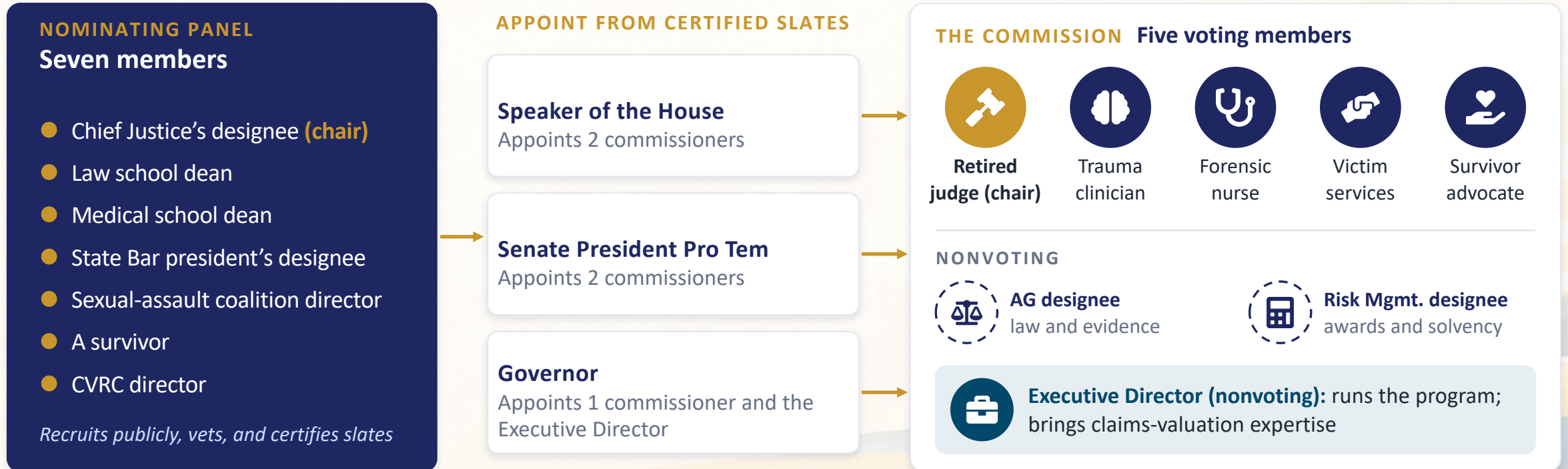
How a survivor's claim proceeds

Same Window, Different Paths



Who Decides Claims, and How They're Chosen

Merit screening first, then appointment across branches, so no single official controls the panel.



Safeguards: no current state employees, elected officials, or lobbyists. Modeled on New Mexico's judicial nominating commissions.



Evidentiary Standard & Due Process

How claims are proven, and why the accused never becomes a party.

- 1 **Preponderance of the evidence.** More likely than not — the standard used by virtually all U.S. crime-victim boards, more rigorous than Australia's "reasonable likelihood" threshold.
- 2 **Five-category evidence framework:** institutional corroboration, contemporaneous third-party corroboration, professional/medical corroboration, pattern corroboration across claims, and sworn testimony.
- 3 **Delay is not disqualifying.** Delayed disclosure and fragmentary chronology are not, standing alone, grounds for adverse credibility findings.
- 4 **The accused's due process is not violated. The commission adjudicates only the state's payment obligation** — never any individual's liability — so no constitutional due-process right attaches to the accused. Therefore, no role for defense or state insurance systems.



How to Budget for an Unknown Appropriation?

We can design the program now. We cannot know how many survivors will apply.



THE UNCERTAINTY

We can set award limits, filing deadlines, and program rules. But a small difference in filing volume can create a very large difference in the dollars required.

Additional information in appendices*



Benchmarking the Cap: New Mexico's Own Tort Claims Act

The \$250,000 fund cap is conservative even against what New Mexico law already allows today.

- 1 New Mexico's Tort Claims Act caps what a claimant can recover from a public entity: \$400,000 for general damages, plus a separate \$300,000 sub-cap for medical expenses (NMSA §41-4-19).
- 2 That yields a \$700,000 theoretical ceiling, but the medical portion requires documented medical expenses, so \$400,000 is the realistic ceiling in practice.
- 3 Litigation also costs the survivor. After a typical 40% contingency fee and case expenses, a full \$400,000 recovery nets about \$225,000, and only after years in court.
- 4 The fund's \$250,000 cap is not a discount. With attorney fees capped at 10% and free navigators, a survivor keeps \$225,000 to \$250,000 at the top award, without trial risk.

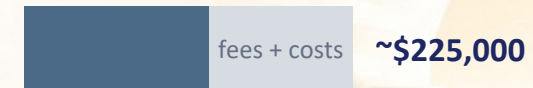
TCA theoretical maximum



TCA general damages



Litigated net to survivor



Fund cap



Keep in mind: the Tort Claims Act limits damages per claimant, **not defense, insurance, or court costs, or how many claims are filed.**



Per-Claimant Cap & Award Tiers

How much any one claimant can receive, and how awards are sized to conduct.

\$250,000 hard per-claimant cap (Tier 1 ceiling): set within the Tort Claims Act limits above, and above Australia's A\$150,000 and Scotland's £100,000.

Tier	Conduct	Base Award	Range
1	Penetrative abuse, repeated/prolonged, or by multiple actors	\$100,000	\$80,000–\$250,000
2	Penetrative abuse (limited) or repeated contact abuse	\$60,000	\$45,000–\$100,000
3	Contact sexual abuse (limited incidents)	\$35,000	\$25,000–\$60,000
4	Non-contact sexual exploitation	\$15,000	\$10,000–\$25,000

Fixed track (Track A): \$25,000 on paper review alone — sworn statement + one item of corroboration, no hearing.

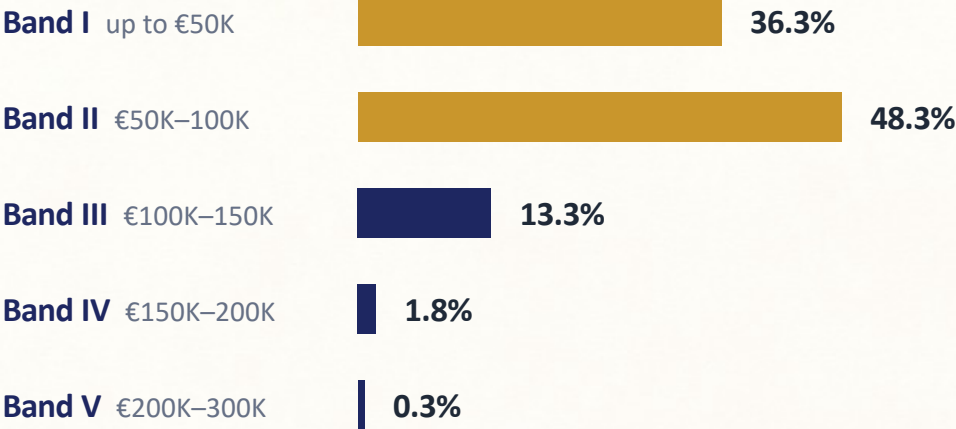
Adjustments: aggravating/mitigating factors move an award within its tier range; written reasons required beyond $\pm 20\%$ of the base.



Estimating the Average Award

Average = share of claims in each tier × that tier's award. The shares come from programs that have already paid out.

IRELAND'S FINAL SEVERITY MIX (~15,600 AWARDS)



About 85% in the bottom two bands. Average €62,250, about a fifth of the top award.

APPLIED TO NEW MEXICO'S TIERS (ILLUSTRATIVE MIXES)

Scenario	Assumed mix	Average
Lower severity, heavy Track A use	30% Track A; rest 10% T1, 35% T2, 35% T3, 20% T4	~\$40,000
Ireland-like distribution	15% T1, 48% T2, 25% T3, 12% T4	~\$54,000–\$59,000
High severity (detention, foster care)	40% T1 at \$150K–\$200K, 40% T2, 15% T3, 5% T4	~\$90,000–\$110,000

Tier base awards: T1 \$100K, T2 \$60K, T3 \$35K, T4 \$15K; Track A flat \$25K. Cap \$250K.

Cross-check: other programs' averages run 20–60% of their maximum award (Ireland ~21%, Scotland ~42%, Australia ~57–59%). On a \$250,000 cap, that implies roughly \$52,000–\$147,000.



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Estimating Claim Volume

Other states' filing rates set the starting range; three New Mexico factors push us toward the high end. (Comparison table in appendix.)

STARTING POINT: PER-CAPITA FILING RATES IN OTHER STATES

0.002% **0.01%** **0.02%** **0.05%**

North Carolina New Jersey Minnesota New York

Maryland's state-only rate (~0.2%) would imply several thousand.

× 2.1 million New Mexicans

≈ **40–1,050 claims**

40–1,050

starting point: per-capita rate alone

↓ **adjusted for NM-specific factors**

800–1,200

base-case claims

500–2,000

full planning range

- 1 **Elevated prevalence.** New Mexico's child sexual abuse victimization rate has been reported at roughly 130 per 100,000 children, versus a national rate near 82, per data presented to the Legislative Health and Human Services Committee.
- 2 **Concentrated public exposure.** The highest-volume defendants elsewhere (juvenile detention, foster care, public schools) map onto CYFD, state juvenile facilities, and school districts. NMPSIA paid \$33.6M on 141 abuse claims (2012–2021); CYFD civil-rights settlements totaled ~\$21M (2021–2024).
- 3 **Low process friction.** A confidential, nonadversarial fund draws claimants who would never file suit — half of Philadelphia's diocesan compensation program claimants had never come forward before.



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Sizing the Fund: Claims × Average Award

Total cost required, in \$ millions, across a range of claim volumes and average award levels.

Claims \ Avg. Award	\$40,000	\$60,000	\$80,000	\$100,000	\$120,000
500	\$20M	\$30M	\$40M	\$50M	\$60M
800	\$32M	\$48M	\$64M	\$80M	\$96M
1,000	\$40M	\$60M	\$80M	\$100M	\$120M
1,200	\$48M	\$72M	\$96M	\$120M	\$144M
1,500	\$60M	\$90M	\$120M	\$150M	\$180M
2,000	\$80M	\$120M	\$160M	\$200M	\$240M

Color intensity shows total cost required: light gold above \$50 million, medium gold above \$100 million, and full gold above \$200 million.

≤ \$50M

> \$50M

> \$100M

> \$200M

Dashed lines mark claims/award pairs that exactly exhaust \$75M or \$100M net of admin costs; not reached at 500 claims.



Fund Size & Appropriation

Two appropriation levels for committee consideration — same design, different resilience to volume risk.

\$75M

nonreverting · \$69M for awards after 8% admin (\$6M)

CLAIMS FILED

AVAILABLE PER CLAIMANT

500

low end

\$138,000

more than awards need; surplus likely

800–1,200

base case

\$57,500–\$86,000

2,000

high end

\$34,500

awards prorated if they average more

\$100M

nonreverting · \$92M for awards after 8% admin (\$8M)

CLAIMS FILED

AVAILABLE PER CLAIMANT

500

low end

\$184,000

more than awards need; surplus likely

800–1,200

base case

\$76,700–\$115,000

2,000

high end

\$46,000

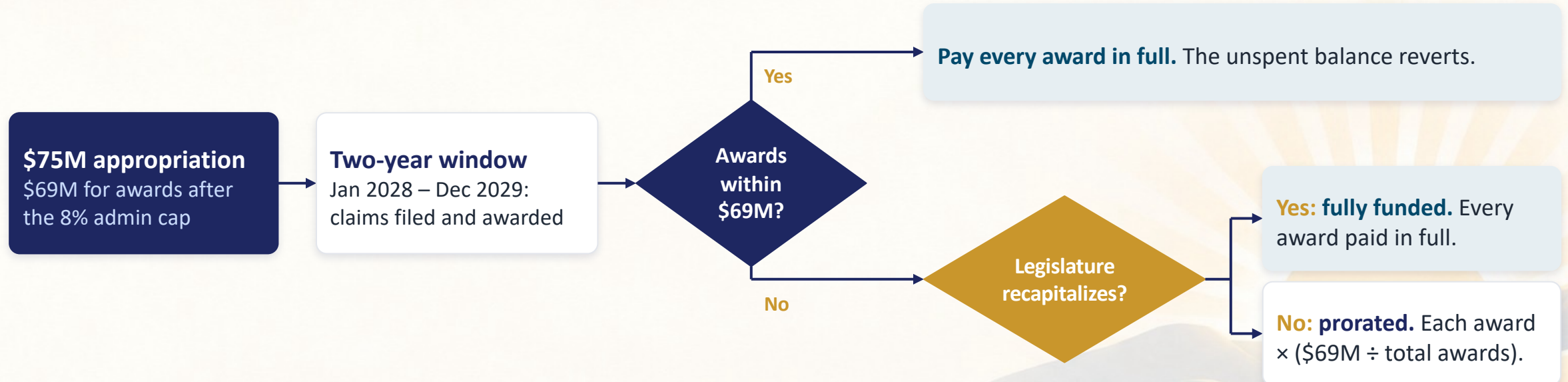
awards prorated if they average more

Available per claimant is money for awards divided by claims filed, not award size. Awards come from the tier rubric; if they total less than the fund, the balance goes unspent, and if more, awards are prorated.



Paying Claims: The Decision Tree

Assumes all payments are made after the window closes. Optional features below can change that.



OPTIONAL • AT ACCEPTANCE

Down payment. Pay part of each award up front (e.g., \$25,000, or 50% if less). The balance follows the same tree.

OPTIONAL • MIDWAY THROUGH THE WINDOW

Mid-point review. The commission reports claims filed and estimated awards, so the Legislature can plan before the window closes.



Finality & Attorney Fees

Why commission decisions are final, and how representation is paid for without eroding survivor recoveries.

FINALITY (NONAPPEALABILITY)

- 1 Final, with one narrow exception.** Decisions are not subject to appeal, certiorari, or collateral attack, except for fraud upon the commission.
- 2 Two safety valves replace appeal:** one internal reconsideration within 30 days (material factual error or new evidence), or declining the award.
- 3 Nothing is lost by declining.** The claim was already time-barred, so a claimant who declines is exactly where they started.
- 4 Voluntary participation.** Filing surrenders no live judicial remedy, and accepting an award is the claimant's own choice.

ATTORNEY FEES

10%

attorney-fee cap, inclusive of routine expenses, payable only from the award

- 1 Zero fees on Track A.** No attorney fees on the fixed-payment track.
- 2 Free help, funded by the program:** claim navigators and release-review counsel.
- 3 Filed and enforced.** Fee agreements must be filed with the commission; agreements over the cap are void. Counsel is never prohibited.



What This Proposal Does

Justice for survivors, with a fixed and predictable cost to the State.

1 Current deadlines shut survivors out

Survivors come forward at 52 on average; New Mexico's deadline is age 24 or 3 years after discovery.

2 Courts have no cost ceiling

Maryland faces an estimated \$3.5–\$34B; Los Angeles County took ~6.5 years to make a first payment.

3 The TCA caps recoveries, not spending

Defense costs, insurance assessments, and the number of claims all stay uncapped.

4 A comparable recovery, with dignity

The \$250K top award nets about what a maximum court win nets after fees, without a trial.

5 A fixed cost, known on day one

A \$75M or \$100M appropriation, with administration capped at 8%.

6 Designed for the range

Works from 500 to 2,000 claims: firm deadline, hard cap, fixed appropriation, annual solvency reports.

7 The Legislature stays in control

If claims exceed the fund, it recapitalizes or awards are prorated; a mid-point review gives early warning.

8 Built to withstand challenge

A voluntary benefit: acceptance releases the public body, and no new liability is created for past conduct.

Budget uncertainty cannot be eliminated, but program design can limit the exposure and clarify the trade-offs.



Questions and Discussion

