

## CHAPTER 949

## AWARDS FOR THE VICTIMS OF CRIMES

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**949.001 Legislative intent.** The legislature finds and declares that the state has a moral responsibility to aid innocent victims of violent crime. In order to maintain and to strengthen our democratic system of law and social order, it is essential that the rights of the victim of a crime should be as fully protected as the rights of the criminal offender. Adequate protection and assistance of victims of crime will also encourage greater public cooperation in the successful apprehension and prosecution of criminal offenders. It is the intention of the legislature that the state should provide sufficient assistance to victims of crime and their families in order to ease their financial burden and to maintain their dignity as they go through a difficult and often traumatic period. It is also the intention of the legislature that the department should actively publicize the crime victim compensation program and promote its use.

**History:** 1979 c. 189.

**949.01 Definitions.** In this chapter:

(1) "Crime" means an act committed in this state which would constitute a crime as defined in s. 939.12 if committed by a competent adult who has no legal defense for the act.

(1m) "Department" means the department of justice.

(2) "Dependent" means any spouse, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of spouse of a deceased victim who was wholly or partially dependent upon the victim's income at the time of the victim's death and includes any child of the victim born after the victim's death.

(3) "Law enforcement agency" has the meaning designated under s. 165.83 (1) (b).

(4) "Medical treatment" includes medical, surgical, dental, optometric, chiropractic,

podiatric and hospital care; medicines; medical, dental and surgical supplies; crutches; artificial members; appliances and training in the use of artificial members and appliances. "Medical treatment" includes any Christian Science treatment for cure or relief from the effects of injury.

(5) "Personal injury" means actual bodily harm and includes pregnancy and mental or nervous shock.

(6) "Victim" means a person, other than an on-duty peace officer or fireman, who is injured or killed by an incident specified in s. 949.03 (1) (a), or by any act or omission of any other person which is within the description of any of the offenses listed in s. 949.03 (1) (b). This definition does not apply to s. 949.165.

**History:** 1975 c. 344, 421; 1977 c. 239; 1979 c. 189; 1981 c. 20; 1983 a. 467.

**949.02 Administration.** This chapter shall be administered by the department. The department shall appoint a program director to assist in administering this chapter. The department shall promulgate rules for the implementation and operation of this chapter.

**History:** 1975 c. 344; 1979 c. 189.

**949.03 Compensable acts.** (1) The department may order the payment of an award for personal injury or death which results from:

(a) Preventing or attempting to prevent the commission of a crime; apprehending or attempting to apprehend a suspected criminal; aiding or attempting to aid a police officer to apprehend or arrest a suspected criminal; aiding or attempting to aid a victim of a crime specified in par. (b).

(b) The commission or the attempt to commit any crime specified in s. 346.63 (2), 940.01, 940.02, 940.05, 940.06, 940.07, 940.08, 940.09,

949.19, 949.20, 949.201, 949.21, 949.225 (1) to (3), 949.23, 949.24, 949.25, 949.26 (2), 949.28, 949.29, 949.30, 949.305, 949.31, 949.32, 949.02, 949.03, 949.04, 949.10, 949.20, 949.32 or 949.12.

**History:** 1975 c. 224 s. 145za; 1975 c. 344; 1977 c. 173, 239; 1979 c. 118; 1983 a. 199, 356, 538.

**949.035 Residents; victims of crime outside the state.** (1) If a Wisconsin resident suffers injury or death in a situation described in s. 949.03 except that the act occurred in the United States outside this state, the resident has the same rights under this chapter as if the act had occurred in this state upon a showing that the state or territory in which the act occurred does not have a compensation of victims of crimes law which covers the injury or death suffered by the person.

(2) The department shall keep a current record of the laws relating to compensation of victims of crimes in other states and territories of the United States and, upon request, shall assist Wisconsin residents to determine if they meet the criteria specified in sub. (1).

(3) In this section, "resident" means a person who maintains a place of permanent abode in this state.

**History:** 1979 c. 34

**949.04 Application for award.** (1) **ELIGIBILITY.** Any person may apply for an award under this chapter.

(a) Application by a minor may be made on the minor's behalf by his or her parent or guardian.

(b) Application by an incompetent may be made on the incompetent's behalf by the guardian or other person authorized to administer the incompetent's estate.

(2) **FORMS.** The department shall prescribe application forms for awards under this chapter and shall furnish law enforcement agencies with the forms. The law enforcement agency investigating a crime shall provide forms to each person who may be eligible to file a claim under this subchapter.

(3) **MEDICAL AND DENTAL RECORDS.** The applicant shall submit to the department reports from all physicians, osteopaths, dentists, optometrists, chiropractors or podiatrists who treated or examined the victim at the time of or subsequent to the victim's injury or death. The department may also order such other examinations and reports of the victim's previous medical and dental history, injury or death as it believes would be of material aid in its determination.

**History:** 1975 c. 344, 421; 1975 c. 422 s. 163; 1977 c. 239; 1981 c. 20.

**949.05 Award; to whom payable.** (1) In any case in which a person, other than an on-duty peace officer or fireman, is injured or killed by an incident specified in s. 949.03 (1) (a), or by any act or omission of any other person which is within the description of crimes under s. 949.03 (1) (b) the department may order the payment of an award:

(a) To or for the benefit of the injured person;

(b) In the case of personal injury of the victim, to any person responsible for the maintenance of the victim who has suffered pecuniary loss or incurred expenses as a result of such injury; or

(c) In the case of death of the victim, to or for the benefit of any one or more of the dependents of the victim. If 2 or more dependents are entitled to an award, the award shall be apportioned by the department among the dependents.

**History:** 1975 c. 344

**949.06 Computation of award.** (1) In accordance with this chapter, the department shall make awards, as appropriate, for any of the following economic losses incurred as a direct result of an injury:

(a) Medical treatment.

(b) Work loss, which shall be determined as follows:

1. If the victim was employed at the time of the injury, loss of actual earnings shall be based upon the victim's net salary at the time of the injury.

2. If the victim was not employed at the time of the injury or, if as a direct result of the injury, the victim suffered a disability causing a loss of potential earnings, the award may be based upon a sufficient showing by the victim that he or she actually incurred loss of earnings. The amount of the award shall be reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in available appropriate substitute work the victim was capable of performing, but unreasonably failed to undertake.

3. If the sole employment of the victim at the time of the injury or death, and for the preceding 5 years was limited to performing duties and responsibilities of a homemaker, the award shall be sufficient to ensure that the duties and responsibilities are continued until the victim is able to resume the performance of the duties, or until the cost of services reaches the maximum allowable under sub. (2), whichever is less.

4. Weekly payments under this paragraph shall not exceed the limits prescribed in s. 102.11.

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(c) Reasonable replacement value of any clothing that is held for evidentiary purposes, but not to exceed \$100.

(d) Reasonable funeral and burial expenses, not to exceed \$2,000. The funeral and burial award may not be considered by the department under sub. (2).

(e) Dependent's economic loss, which shall include contributions of things of economic value provided by the victim to dependents but lost as a result of the victim's death. Loss of support shall be determined on the basis of the victim's net salary at the time of death, and shall be calculated as an amount equal to 4 times the victim's average annual earnings.

(2) The department may not make an award of more than \$10,000 for any one injury or death.

(3) Any award made under this section shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:

(a) From, or on behalf of, the person who committed the crime.

(b) From insurance payments or program, including worker's compensation and unemployment compensation.

(c) From public funds.

(d) As an emergency award under s. 949.10.

(4) (a) An award may be made whether or not any person is prosecuted or convicted of any offense arising out of such act or omission.

(b) The department may suspend proceedings under this chapter for a period it deems appropriate on the grounds that a prosecution for an offense arising out of the act or omission has been commenced or is imminent.

**History:** 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314.

**949.07 Manner of payment.** The award, combining both the compensation award and the funeral and burial award, if applicable, shall be paid in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments. The department may pay any portion of an award directly to the provider of any service which is the basis for that portion of the award. No award may be subject to execution, attachment, garnishment or other process, except that an award for allowable expense is not exempt from a claim of a creditor to the extent that the creditor provided products, services or accommodations the costs of which are included in the award.

**History:** 1975 c. 344; 1979 c. 189; 1981 c. 20.

**949.08 Limitations on awards. (1)** No order for the payment of an award may be made unless the application was made within 2 years

after the date of the personal injury or death, and the personal injury or death was the result of an incident or offense which had been reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within 5 days of the time when a report could reasonably have been made.

(2) No award may be ordered if the victim:

(a) Engaged in conduct which substantially contributed to the infliction of the victim's injury or death or in which the victim could have reasonably foreseen could lead to the injury or death. This does not apply to awards to victims under s. 949.03 (1) (a).

(b) Committed a crime which caused or contributed to the victim's injury or death.

(c) Is the spouse of, or a person living in the same household with, the offender, the offender's relatives or accomplice or is the parent, child, brother or sister of the offender or the offender's accomplice. This paragraph does not apply if the department determines in a particular case that the interest of justice so requires.

(d) Has not cooperated with appropriate law enforcement agencies.

(e) Is an adult passenger in the offender's vehicle and the crime involved is specified in s. 346.63 (2) or 940.25 and the passenger knew the offender was under the influence of an intoxicant, a controlled substance or both or had a blood alcohol concentration of 0.1% or more, as defined in s. 885.235 (5). This paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 940.32.

(3) No award may be made to any claimant if the award would unjustly benefit the offender or accomplice.

(4) Orders for payment of awards may be made only as to injuries or deaths resulting from incidents or offenses occurring after 1976.

**History:** 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199.

**949.09 Effect of conviction.** If any person has been convicted of any offense with respect to an act or omission on which a claim under this chapter is based, proof of that conviction shall be taken as conclusive evidence that the offense has been committed, unless an appeal or any proceeding with regard thereto is pending.

**History:** 1975 c. 344.

**949.10 Emergency awards. (1)** Notwithstanding s. 949.06, if the department determines that an award will probably be made and that undue hardship will result to the claimant if immediate payment is not made, the department may order emergency awards as follows:

(a) An emergency compensation award may not exceed \$500.

(b) An emergency award for funeral and burial expenses may not exceed \$2,000.

(2) Any award under sub. (1) shall be deducted from the final award made to the claimant. The excess of the amount of such emergency award over the amount of the final award, or the full amount of the emergency award if no final award is made, shall be repaid by the claimant to the department.

History: 1975 c. 344; 1981 c. 20.

**949.11 Hearings.** (1) The procedure of ch. 227 for contested cases applies to hearings under this chapter except as otherwise provided in this section and ss. 949.12 and 949.14.

(2) The attorney general shall authorize a hearing examiner to make findings and orders under s. 227.09 and this chapter.

(3) All hearings shall be open to the public unless in a particular case the examiner determines that the hearing, or a portion thereof, shall be held in private having regard to the fact that the offender has not been convicted or to the interest of the victim of an alleged sexual offense.

History: 1975 c. 344; 1977 c. 239; 1979 c. 189

**949.115 Subpoenas.** The department or any of its authorized agents may issue subpoenas for persons or records for any investigation or hearing conducted under this chapter and may enforce compliance with such subpoenas as provided in s. 885.12.

History: 1981 c. 20

**949.12 Condition of claimant.** There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental or emotional condition of the claimant or victim in a proceeding under this chapter in which that condition is an element.

History: 1979 c. 189; 1981 c. 20.

**949.13 Agency cooperation.** Upon request by the department, any state or local agency, including a district attorney or law enforcement agency, shall make available all reports, files and other appropriate information which the department requests in order to make a determination that an applicant is eligible for an award under this chapter.

History: 1981 c. 20.

**949.14 Attorney's fees.** (1) The department may determine and allow reasonable attorney fees to be paid out of, but not in addition to, the amount of the award granted to the applicant. No attorney may ask for, contract for or receive

any larger sum than the amount so allowed. Attorney fees shall not exceed 10% of the amount the attorney assisted the victim in obtaining.

(2) The department shall provide for payment of such fee directly to the person entitled thereto.

(3) Whoever charges a fee in violation of sub. (1) shall forfeit double the amount retained by the attorney. This forfeiture shall be collected by this state in an action in debt, upon complaint of the department. Out of the sum recovered, the court shall direct payment to the applicant in the amount of the overcharge.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189

**949.15 Recovery from offender.** (1) Whenever an order for the payment of an award for personal injury or death is or has been made under this chapter, the department is subrogated to the cause of action of the applicant against the person responsible for the injury or death and may bring an action against the person for the amount of the damages sustained by the applicant. If an amount greater than that paid under the award order is recovered and collected in any such action, the department shall pay the balance to the applicant. If the person responsible for the injury or death has previously made restitution payments to the general fund under s. 973.09, any judgment obtained by the department under this section shall be reduced by the amount of the restitution payments to the general fund.

(2) In addition to the authority of the department to bring an action under sub. (1), the claimant may bring an action to recover damages. In any such action, the department has subrogation rights under sub. (1) and the claimant shall join the department as a party under s. 803.03 (2) (a). After joinder, the department has the options specified in s. 803.03 (2) (b).

(3) If a judgment or verdict in an action under sub. (1) or (2) indicates separately economic loss and noneconomic detriment, payments on the judgment shall be allocated between them in proportion to the amounts indicated. In such an action, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages and economic loss.

History: 1975 c. 344; 1979 c. 189; 1981 c. 20.

Election of remedies, retroactivity, joinder, statute of limitations, and subrogation discussed. *Bruner v. Kops*, 105 W (2d) 614, 314 NW (2d) 892 (Ct. App. 1981).

Although county was vicariously liable for damages due to injury, it was not "person responsible for the injury"; hence, no subrogation was required. *Hamed v. Milwaukee County*, 108 W (2d) 257, 321 NW (2d) 199 (1982).

**949.16 Confidentiality of records.** The record of a proceeding before an examiner or the

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department under this chapter is a public record. Any record or report obtained by an examiner or the department, the confidentiality of which is protected by any other law or rule, shall remain confidential.

History: 1975 c. 344; 1977 c. 29; 1979 c. 189.

**949.165 Escrow accounts; moneys received as a result of the commission of a serious crime. (1) DEFINITIONS.** In this section:

(a) "Serious crime" has the meaning designated in s. 969.08 (10) (b) and includes solicitation, conspiracy or attempt to commit a serious crime.

(b) "Victim" has the meaning specified in s. 950.02 (4).

**(2) PAYMENT TO AND ESTABLISHMENT OF ESCROW ACCOUNTS.** Every person or other legal entity contracting with any person, or the representative or assignee of any person, accused or convicted of a serious crime in this state, with respect to the reenactment of the serious crime, by a movie, book, magazine article, tape recording, phonograph record, radio or television presentation or live entertainment of any kind, or from the expression of the accused or convicted person's thoughts, feelings, opinions or emotions regarding the serious crime, shall submit a copy of the contract to the department and pay over to the department any moneys which would otherwise, by terms of the contract, be owing to the person so accused or convicted or his or her representatives. This subsection applies only if the reenactment of the serious crime constitutes a substantial portion of the movie, book, article, recording, record, presentation, entertainment or expression. The department shall deposit the moneys in an interest-bearing escrow account for the payment of money judgments to any victim or the legal representative of any victim of serious crimes committed by:

(a) The convicted person; or

(b) The accused person, but only if the accused person is eventually convicted of the serious crime charged.

**(3) NOTICE TO POTENTIAL CLAIMANTS.** The department, at least once every 6 months for 3 years from the date it receives the moneys, shall cause to have published a legal notice in newspapers of general circulation in the county in which the serious crime was committed advising the victims that the escrow moneys are available to satisfy money judgments under this section. The department may provide for additional notice. When the department is reasonably satisfied that all victims have received actual notice, the department may cease to provide the notice required under this subsection.

**(4) PRIORITY OF PAYMENTS.** (a) Claims on moneys in an escrow account have the following priority:

1. First priority for legal representation payments under sub. (5).

2. Second priority for payments to satisfy money judgments under sub. (6).

3. Third priority for reimbursement, recoupment and restitution payments under sub. (7).

(b) The department shall make payments from escrow accounts in accordance with the priority schedule under par. (a). The department may make payments at any time from an escrow account, except that no payment may be made for a claim if there is another existing or pending claim entitled to a higher priority.

(c) If the amount of claims for the same priority exceeds the amount of moneys available in an escrow account, the department may prorate the payments.

**(5) FIRST PRIORITY PAYMENTS; LEGAL REPRESENTATION.** The department shall make payments from an escrow account to a person charged with a serious crime upon the order of a court of competent jurisdiction after a showing by the person that the moneys shall be used for the exclusive purpose of his or her legal representation in a criminal action or in the defense of a civil action.

**(6) SECOND PRIORITY PAYMENTS; SATISFACTION OF MONEY JUDGMENTS.** (a) The department shall make payments to victims or legal representatives of victims of serious crimes who have obtained money judgments against the accused or convicted person. The victim or legal representative of the victim shall bring a civil action and obtain a money judgment. The victim shall then file a claim with the department for payment.

(b) In the case of death of the victim, one or more dependents may obtain a payment under this section in the same manner as a victim. If 2 or more dependents are entitled to payments under this subsection, the department shall apportion the payments among the dependents.

(c) If the state is subrogated to a cause of action under s. 949.15, the state may seek reimbursement under this subsection. If the judgment is apportioned under s. 949.15 (3), the payments under this subsection shall be prorated accordingly.

(d) The victim or the legal representative of a victim shall notify the department when he or she brings the action described in par. (a), but failure to notify under this paragraph does not bar any payment from an escrow account.

**(7) THIRD PRIORITY PAYMENTS; LEGAL FEES AND RESTITUTION.** The department shall make payments from an escrow account for any gov-

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ernmental entity for the reimbursement for or recoupment of the costs of legal representation of the person charged with the serious crime or for any unpaid restitution under s. 973.09. The governmental entity shall file a claim for the applicable amount with the department.

**(8) PAYMENT TO ACCUSED OR CONVICTED PERSON.** If either of the following conditions occur, the department shall pay all of the remaining moneys in an escrow account to the accused or convicted person:

(a) The charges against the person are dismissed with prejudice or the person is found not guilty of the serious crime charged.

(b) Three years have elapsed from the date of the establishment of the escrow account and no civil actions seeking money judgments, unsatisfied money judgments or claims under this section are pending against the defendant in this state.

**(9) INTERPLEADER.** If a court determines that a person accused of a serious crime is incompetent to proceed under s. 971.14 or if the charges are dismissed without prejudice, the department shall bring an action of interpleader to determine the disposition of the escrow account.

**(10) STATUTE OF LIMITATIONS.** If an escrow account is established under this section, no otherwise applicable statute of limitations on the time within which a civil action may be brought bars an action by a victim of a serious crime committed by a person accused or convicted of the serious crime as to a claim resulting from the serious crime until 3 years have elapsed from the time the escrow account was established.

**(11) ACT TO DEFEAT PURPOSE; VOID.** Any act by any person accused or convicted of a serious crime, whether by execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be void as against the public policy of this state.

**(12) PAYMENT IS NOT AN AWARD.** Any payment from an escrow account under this section shall not be considered as an award by the department under this chapter.

**(13) APPLICABILITY.** This section applies only to contracts which are entered into on or after May 18, 1985.

**(14) PENALTY.** Any person who violates sub. (2) shall be fined not more than \$500 or imprisoned not more than 30 days or both.

**History:** 1983 a. 467.

**949.17 Offenses. (1) PROHIBITION.** In connection with the crime victim compensation program, no person may:

(a) Submit a fraudulent application or claim for an award;

(b) Intentionally make or cause to be made any false statement or representation of a material fact; or

(c) Intentionally conceal or fail to disclose information affecting the amount of or the initial or continued right to any such award when reasonably requested to provide such information by the department.

**(2) PENALTIES.** Any person who violates this section shall be fined not more than \$500 or imprisoned not more than 6 months or both. The person shall further forfeit any benefit received and shall reimburse the state for payments received or paid to or on behalf of the person.

**(3) DAMAGES.** The state has a civil cause of action for relief against any person who violates this section for the amount of damages which the state sustained by reason of the violation and, in addition, for punitive damages not more than double the amount of damages which the state may have sustained, together with interest, and the cost of the suit.

**(4) ACTION.** The attorney general may bring any action and has such powers as may be necessary to enforce this section.

**History:** 1975 c. 344, 421; 1981 c. 20

**949.18 Report by the department.** The department's biennial report under s. 15.04(1)(d) shall include a report of its activities under this chapter including:

(1) An explanation of the procedures for filing and processing claims under this chapter.

(2) A description of the programs and policies instituted to promote public awareness about crime victim compensation.

(3) An analysis of future needs and suggested program improvements.

(4) A copy of the forms utilized under this chapter.

(5) A complete statistical analysis of the cases handled under this chapter, including:

(a) The number of claims filed.

(b) The number of claims approved and the amount of each award.

(c) The number of claims denied and the reasons for rejection.

(d) A breakdown of claims by geographic area, month, age and sex of victim, type of crime committed and other relevant facts.

(e) A summary of cases handled under this chapter.

(6) The status of existing escrow accounts under s. 949.165.

**History:** 1975 c. 344; 1979 c. 189; 1983 a. 467, 524, 538.