

State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1537/A
CMH:wlj:pg

stays → KM NR

DOA:.....Wavrunek, BB0350 – Sexual assault forensic examination program
FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

don't get out

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

(header) → JUSTICE CRIMES VICTIMS

Under current law, the Crime Victim Compensation program requires DOJ to compensate victims of certain crimes, their caretakers, and, in cases in which the victim dies, their family members, for medical expenses, lost wages, funeral and burial expenses, and other expenses that result from the victim's injury or death. DOJ may not compensate a victim who has not cooperated with appropriate law enforcement agencies. Any compensation that DOJ provides must be reduced by any insurance payments received, or to be received, as a result of the crime.

This bill creates the Sexual Assault Forensic Examination program to compensate, under limited circumstances, a health care provider who examines a victim of a sex offense for the costs of the examination, any procedure that tests for or prevents a sexually transmitted disease, and any medication to prevent or treat a sexually transmitted disease (examination costs). If the victim does not authorize the health care provider to seek payment from insurance or another program, DOJ must compensate the health care provider for the examination costs, regardless of whether the victim cooperates with a law enforcement agency. If the victim does authorize the health care provider to seek payment from insurance or another program, DOJ must compensate the health care provider for the examination costs, reduced by any payment from insurance or another program, only if the victim refuses to cooperate with a law enforcement agency.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.455 (5) (b) of the statutes is amended to read:

2 20.455 (5) (b) *Awards for victims of crimes.* The amounts in the schedule for
3 the payment of compensation and funeral and burial expenses awards to the victims
4 of crimes under subch. I of ch. 949.

5 **SECTION 2.** 20.455 (5) (d) of the statutes is created to read:

6 20.455 (5) (d) *Reimbursement for forensic examinations.* ^{A sum sufficient} ~~The amounts in the~~
7 ~~schedule~~ for the payments of awards under s. 949.26.

 ****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

8 **SECTION 3.** 20.455 (5) (i) of the statutes is amended to read:

9 20.455 (5) (i) *Victim compensation, inmate payments.* All moneys received
10 under s. 303.06 (2) and (3) for the administration of subch. I of ch. 949 and for crime
11 victim compensation payments or services.

12 **SECTION 4.** 20.455 (5) (kj) of the statutes is amended to read:

13 20.455 (5) (kj) *Victim payments, victim surcharge.* The amounts in the schedule
14 for the payment of compensation and funeral and burial expenses awards to the
15 victims of crimes under subch. I of ch. 949. All moneys transferred from the
16 appropriation account under par. (g) shall be credited to this appropriation account.
17 If the department of justice determines that the total of the amounts in this
18 appropriation account and the amounts for compensation and awards to victims of
19 crime under subch. I of ch. 949 in the appropriation accounts under pars. (b), (h), (i)
20 and (m) exceeds the amount needed to fully fund compensation and awards to victims

1 of crimes under subch. I of ch. 949, the department of justice may transfer moneys
2 from this appropriation account to the appropriation account under par. (kk). The
3 amount transferred to the appropriation account under par. (kk) may not exceed the
4 amount by which the total amounts appropriated under this paragraph and pars. (b),
5 (h), (i) and (m) for compensation and awards to victims of crimes under subch. I of
6 ch. 949 exceed the amount needed to fully fund compensation and awards to victims
7 of crimes under subch. I of ch. 949.

8 **SECTION 5.** 803.03 (2) (c) of the statutes is amended to read:

9 803.03 (2) (c) *Scheduling and pretrial conferences.* At the scheduling
10 conference and pretrial conference, the judge to whom the case has been assigned
11 shall inquire concerning the existence of and joinder of persons with subrogated,
12 derivative or assigned rights and shall make such orders as are necessary to
13 effectuate the purposes of this section. If the case is an action to recover damages
14 based on alleged criminally injurious conduct, the court shall inquire to see if an
15 award has been made under subch. I of ch. 949 and if the department of justice is
16 subrogated to the cause of action under s. 949.15.

17 **SECTION 6.** 806.025 (2) (am) of the statutes is amended to read:

18 806.025 (2) (am) If money remains after the payment of all unpaid orders and
19 judgments under par. (a), order reimbursement to the department of justice for an
20 award made under subch. I of ch. 949 for which the department is subrogated under
21 s. 949.15.

22 **SECTION 7.** 938.346 (1) (h) 3. of the statutes is amended to read:

23 938.346 (1) (h) 3. The right to compensation, as provided under subch. I of ch.
24 949.

1 SECTION 8. Subchapter I (title) of chapter 949 [precedes 949.001] of the statutes
2 is created to read:

3 CHAPTER 949

4 SUBCHAPTER I

5 CRIME VICTIM COMPENSATION

6 SECTION 9. 949.01 (intro.) of the statutes is amended to read:

7 **949.01 Definitions.** (intro.) In this chapter subchapter:

8 SECTION 10. 949.02 of the statutes is amended to read:

9 **949.02 Administration.** The department shall administer this chapter
10 subchapter. The department shall appoint a program director to assist in
11 administering this chapter subchapter. The department shall promulgate rules for
12 the implementation and operation of this chapter subchapter. The rules shall
13 include procedures to ensure that any limitation of an award is calculated in a fair
14 and equitable manner.

15 SECTION 11. 949.035 (1) of the statutes is amended to read:

16 949.035 (1) If a Wisconsin resident suffers injury or death in a situation
17 described in s. 949.03 except that the act occurred outside this state, the resident has
18 the same rights under this chapter subchapter as if the act had occurred in this state
19 upon a showing that the state, territory, country or political subdivision of a country
20 in which the act occurred does not have a compensation of victims of crimes law which
21 covers the injury or death suffered by the person.

22 SECTION 12. 949.04 (1) (intro.) of the statutes is amended to read:

23 949.04 (1) ELIGIBILITY. (intro.) Any person may apply for an award under this
24 chapter subchapter.

25 SECTION 13. 949.04 (2) of the statutes is amended to read:

1 949.04 (2) FORMS. The department shall prescribe application forms for awards
2 under this ~~chapter~~ subchapter and shall furnish law enforcement agencies with the
3 forms. The law enforcement agency investigating a crime shall provide forms to each
4 person who may be eligible to file a claim under this subchapter.

5 **SECTION 14.** 949.06 (1) (intro.) of the statutes is amended to read:

6 949.06 (1) (intro.) In accordance with this ~~chapter~~ subchapter, the department
7 shall make awards, as appropriate, for any of the following economic losses incurred
8 as a direct result of an injury:

9 **SECTION 15.** 949.06 (1m) (b) of the statutes is amended to read:

10 949.06 (1m) (b) In accordance with this ~~chapter~~ subchapter, the department
11 shall make awards, as appropriate, to persons who, immediately prior to the crime,
12 lived in the same household with and to family members of a victim of s. 940.01,
13 940.02, 940.05, 940.06, 940.07, 940.08 or 940.09 for any of the economic losses
14 specified in sub. (1) as a result of the person's or family member's reaction to the
15 death. A dependent may recover both under sub. (1) and this subsection, subject to
16 the limitation under sub. (2).

17 **SECTION 16.** 949.06 (3) (f) of the statutes is created to read:

18 949.06 (3) (f) From an award under s. 949.26.

19 **SECTION 17.** 949.06 (4) (b) of the statutes is amended to read:

20 949.06 (4) (b) The department may suspend proceedings under this ~~chapter~~
21 subchapter for a period it deems appropriate on the grounds that a prosecution for
22 an offense arising out of the act or omission has been commenced or is imminent.

23 **SECTION 18.** 949.09 of the statutes is amended to read:

24 **949.09 Effect of conviction.** If any person has been convicted of any offense
25 with respect to an act or omission on which a claim under this ~~chapter~~ subchapter

1 is based, proof of that conviction shall be taken as conclusive evidence that the
2 offense has been committed, unless an appeal or any proceeding with regard thereto
3 is pending.

4 **SECTION 19.** 949.11 (1) of the statutes is amended to read:

5 949.11 (1) The procedure of ch. 227 for contested cases applies to hearings
6 under this ~~chapter~~ subchapter except as otherwise provided in this section and ss.
7 949.12 and 949.14.

8 **SECTION 20.** 949.11 (2) of the statutes is amended to read:

9 949.11 (2) The division of hearings and appeals in the department of
10 administration shall appoint hearing examiners to make findings and orders under
11 s. 227.46 and this ~~chapter~~ subchapter.

12 **SECTION 21.** 949.115 of the statutes is amended to read:

13 **949.115 Subpoenas.** The department or any of its authorized agents may
14 issue subpoenas for persons or records for any investigation or hearing conducted
15 under this ~~chapter~~ subchapter and may enforce compliance with such subpoenas as
16 provided in s. 885.12.

17 **SECTION 22.** 949.12 of the statutes is amended to read:

18 **949.12 Condition of claimant.** There is no privilege, except privileges
19 arising from the attorney-client relationship, as to communications or records
20 relevant to an issue of the physical, mental or emotional condition of the claimant
21 or victim in a proceeding under this ~~chapter~~ subchapter in which that condition is
22 an element.

23 **SECTION 23.** 949.13 of the statutes is amended to read:

24 **949.13 Agency cooperation.** Upon request by the department, any state or
25 local agency, including a district attorney or law enforcement agency, shall make

1 available all reports, files and other appropriate information which the department
2 requests in order to make a determination that a person is eligible for an award
3 under this ~~chapter~~ subchapter.

4 **SECTION 24.** 949.15 (1) of the statutes is amended to read:

5 949.15 (1) Whenever the department orders the payment of an award under
6 this ~~chapter~~ subchapter as a result of the occurrence of an event that creates a cause
7 of action on the part of a claimant against any person, the department is subrogated
8 to the rights of the claimant and may bring an action against the person for the
9 amount of the damages sustained by the claimant. If an amount greater than that
10 paid under the award order is recovered and collected in any such action, the
11 department shall pay the balance to the claimant. If the person responsible for the
12 injury or death has previously made restitution payments to the general fund under
13 s. 973.20, any judgment obtained by the department under this section shall be
14 reduced by the amount of the restitution payments to the general fund.

15 **SECTION 25.** 949.16 of the statutes is amended to read:

16 **949.16 Confidentiality of records.** The record of a proceeding before an
17 examiner or the department under this ~~chapter~~ subchapter is a public record. Any
18 record or report obtained by an examiner or the department, the confidentiality of
19 which is protected by any other law or rule, shall remain confidential.

20 **SECTION 26.** 949.165 (12) of the statutes is amended to read:

21 949.165 (12) PAYMENT IS NOT AN AWARD. Any payment from an escrow account
22 under this section shall not be considered as an award by the department under this
23 ~~chapter~~ subchapter.

24 **SECTION 27.** 949.18 (intro.) of the statutes is amended to read:

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

4 **SECTION 28.** 949.18 (1) of the statutes is amended to read:

5 949.18 (1) An explanation of the procedures for filing and processing claims
6 under this chapter subchapter.

7 **SECTION 29.** 949.18 (4) of the statutes is amended to read:

8 949.18 (4) A copy of the forms utilized under this chapter subchapter.

9 **SECTION 30.** 949.18 (5) (intro.) of the statutes is amended to read:

10 949.18 (5) (intro.) A complete statistical analysis of the cases handled under
11 this chapter subchapter, including:

12 **SECTION 31.** 949.18 (5) (e) of the statutes is amended to read:

13 949.18 (5) (e) A summary of cases handled under this chapter subchapter.

14 **SECTION 32.** Subchapter II of chapter 949 [precedes 949.20] of the statutes is
15 created to read:

16 **CHAPTER 949**

17 **SUBCHAPTER II**

18 **SEXUAL ASSAULT FORENSIC**

19 **EXAMINATION COMPENSATION**

20 **949.20 Definitions.** In this subchapter:

21 (1) "Cooperate with a law enforcement agency" means to report a sex offense
22 to a law enforcement agency or to aid a law enforcement agency in the investigation
23 of a sex offense.

24 (2) "Department" means the department of justice.

1 (3) "Examination costs" means the costs of an examination that is done to
2 gather evidence regarding a sex offense, any procedure during that examination
3 process that tests for or prevents a sexually transmitted disease, and any medication
4 provided or prescribed, during that examination process, that prevents or treats a
5 sexually transmitted disease that the person performing the examination or
6 procedure believes could be a consequence of the sex offense. "Examination costs"
7 does not include any processing or administrative costs, attorney fees, or other
8 expenses.

9 (4) "Guardian of the victim" means one of the following:

10 1. If the victim is under 18 years of age, the parent, guardian, or legal custodian
11 of the victim.

12 2. If the victim has been determined to be incompetent under ch. 54, the
13 guardian of the victim.

14 (5) "Health care provider" means any person providing health care services.

15 (6) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

16 (7) "Sex offense" means an act committed in the state that, if committed by a
17 competent adult, would be a violation, or an attempted violation, of s. 940.225,
18 948.02, 948.025, 948.05, 948.06, 948.08, or 948.09.

19 (8) "Sexually transmitted disease" has the meaning given in s. 252.11 (1).

20 (9) "Victim" means a person against whom a sex offense has been committed.

21 **949.22 Administration.** The department shall administer this subchapter.
22 The department shall appoint a program director to assist in administering this
23 subchapter. The department shall promulgate rules for the implementation and
24 operation of this subchapter. The rules shall include procedures to ensure that any
25 limitation of an award is calculated in a fair and equitable manner.

1 **949.24 Application for award.** (1) ELIGIBILITY. Any health care provider who
2 conducts an examination to gather evidence regarding a sex offense may apply for
3 an award under this subchapter.

4 (2) FORMS. The department shall prescribe application forms for awards under
5 this subchapter and shall furnish health care providers with the forms.

6 (3) MEDICAL RECORDS. An applicant shall submit to the department reports
7 from any physician, physician's assistant, or nurse who treated or examined the
8 victim to gather evidence regarding a sex offense, performed any procedure during
9 that treatment or examination that tests for or prevents a sexually transmitted
10 disease, or provided or prescribed any medication to prevent or treat a sexually
11 transmitted disease. The applicant may not submit to the department any other
12 records than those pertaining to the examination, treatment, procedure, or
13 medication for which the applicant is seeking an award.

14 **949.26 Computation of awards.** (1) Except as provided in sub. (1m), the
15 department shall make an award under this section to a health care provider who
16 conducts an examination to gather evidence regarding a sex offense to reimburse the
17 health care provider only for the examination costs, as follows:

18 (a) If the health care provider is not authorized under sub. (2) (b) to seek
19 payment, the award shall be the examination costs, regardless of whether the victim,
20 *from insurance or another available source of payment*
or any guardian of the victim, cooperates with a law enforcement agency regarding
21 the sex offense.

22 (b) If the health care provider is authorized under sub. (2) (b) to seek payment
23 and the victim, or any guardian of the victim, does not cooperate with a law
24 enforcement agency regarding the sex offense, the award shall be the examination

1 costs, reduced by any payment to be received as a result of the authorization under
2 sub. (2) (b).

3 (1m) The department may not make an award under this section if the health
4 care provider is authorized under sub. (2) (b) to seek payment and the victim, or any
5 guardian of the victim, cooperates with a law enforcement agency.

6 (2) (a) A health care provider seeking an award under this section may not seek
7 payment for any examination costs from the victim or any guardian of the victim.

8 (b) A health care provider seeking an award under this section may not seek
9 payment for any examination costs from insurance or another available source of
10 payment unless the victim or any guardian of the victim authorizes the health care
11 provider to seek payment.

12 (3) The department may not refuse to make an award under this section
13 because the victim or the guardian of the victim does not cooperate with a law
14 enforcement agency regarding the sex offense, or due to lack of an investigation or
15 prosecution of the sex offense.

16 **949.28 Limitations on awards.** (1) No order for the payment of an award
17 under this subchapter may be made unless the application was made within one year
18 after the date of the examination. The department may waive the one-year
19 requirement under this subsection in the interest of justice.

20 (2) The department may not make an award under this subchapter that
21 exceeds the examination costs of the victim.

22 (3) The department may not make an award under this subchapter for any part
23 of the examination costs of the victim for which the health care provider seeking the
24 award has received compensation from any other source.

(4) The department may not make an award under this
subchapter if the total dollar amount awarded under
this section in that year is greater than \$50,000

1 **949.31 Hearings.** (1) The procedure of ch. 227 for contested cases applies to
2 hearings under this subchapter except as otherwise provided in this section and s.
3 949.32.

4 (2) The division of hearings and appeals in the department of administration
5 shall appoint hearing examiners to make findings and orders under s. 227.46 and
6 this subchapter.

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

11 **949.315 Subpoenas.** The department or any of its authorized agents may
12 issue subpoenas for persons or records for any investigation or hearing conducted
13 under this subchapter and may enforce compliance with such subpoenas as provided
14 in s. 885.12.

15 **949.32 Condition of victim.** There is no privilege, except privileges arising
16 from the attorney-client relationship, as to communications or records relevant to
17 an issue of the physical condition of the victim in a proceeding under this subchapter
18 in which that condition is an element.

19 **949.33 Agency cooperation.** Upon request by the department, any state or
20 local agency, including a district attorney or law enforcement agency, shall make
21 available all reports, files, and other appropriate information which the department
22 requests in order to make a determination that a health care provider is eligible for
23 an award under this subchapter.

24 **949.36 Confidentiality.** If a health care provider seeks an award under this
25 subchapter, any personally identifiable information, as defined in s. 19.62 (5), of the

1 victim who received the examination shall remain confidential unless written
2 consent for the release of any personally identifiable information is provided by one
3 of the following:

4 (1) Except as provided under sub. (2), the victim.

5 (2) If there is a guardian of the victim, the guardian of the victim.

6 **949.37 Offenses. (1) PROHIBITION.** In connection with an award under this
7 subchapter, no person may do any of the following:

8 (a) Submit a fraudulent application or claim for an award.

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

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

14 (2) PENALTIES. Any person who violates this section shall be fined not more than
15 \$500 or imprisoned not more than 6 months or both. The person shall forfeit any
16 benefit received and shall reimburse the state for payments received.

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

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

1 **949.38 Report by the department.** The department's biennial report under
2 s. 15.04 (1) (d) shall include a report of its activities under this subchapter including
3 all of the following:

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

6 (2) A description of the programs and policies instituted to promote awareness
7 about the awards under this subchapter.

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

9 (4) A copy of the forms used under this subchapter.

10 (5) A complete statistical analysis of the cases handled under this subchapter,
11 including all of the following:

12 (a) The number of claims filed.

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

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

15 (d) A breakdown of claims by geographic area and month.

16 **SECTION 33.** 950.04 (1v) (rm) of the statutes is amended to read:

17 950.04 (1v) (rm) To compensation, as provided under subch. I of ch. 949.

18 **SECTION 34.** 950.08 (2g) (b) of the statutes is amended to read:

19 950.08 (2g) (b) The availability of compensation under subch. I of ch. 949 and
20 the address and telephone number at which to contact the department for
21 information concerning compensation under subch. I of ch. 949.

22 **SECTION 35.** 950.08 (2r) (d) of the statutes is amended to read:

23 950.08 (2r) (d) The availability of compensation under subch. I of ch. 949,
24 including information concerning eligibility for compensation and the procedure for
25 applying for compensation.

1 **SECTION 36.** 973.09 (1) (b) of the statutes is amended to read:

2 973.09 (1) (b) If the court places the person on probation, the court shall order
3 the person to pay restitution under s. 973.20, unless the court finds there is
4 substantial reason not to order restitution as a condition of probation. If the court
5 does not require restitution to be paid to a victim, the court shall state its reason on
6 the record. If the court does require restitution, it shall notify the department of
7 justice of its decision if the victim may be eligible for compensation under subch. I
8 of ch. 949.

9 **SECTION 37.** 973.20 (9) (a) of the statutes is amended to read:

10 973.20 (9) (a) If a crime victim is paid an award under subch. I of ch. 949 for
11 any loss arising out of a criminal act, the state is subrogated to the rights of the victim
12 to any restitution required by the court. The rights of the state are subordinate to
13 the claims of victims who have suffered a loss arising out of the offenses or any
14 transaction which is part of the same continuous scheme of criminal activity.

15 **SECTION 38.** 973.20 (9) (b) of the statutes is amended to read:

16 973.20 (9) (b) When restitution is ordered, the court shall inquire to see if an
17 award has been made under subch. I of ch. 949 and if the department of justice is
18 subrogated to the cause of action under s. 949.15. If the restitution ordered is less
19 than or equal to the award under subch. I of ch. 949, the restitution shall be paid only
20 to the general fund. If the restitution ordered is greater than the award under subch.
21 I of ch. 949, the general fund shall receive an amount equal to the award under subch.
22 I of ch. 949 and the balance shall be paid to the victim.

23 **SECTION 9329. Initial applicability; Justice.**

Hanaman, Cathlene

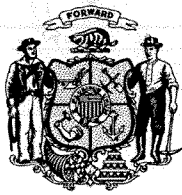
From: Wavrunek, Leah J - DOA
Sent: Saturday, January 27, 2007 4:59 PM
To: Hanaman, Cathlene
Subject: LRB-1537/2 Revisions

Hi Cathlene,

One quick change, and I may have missed it in the draft of LRB-1537/2. The old PR appropriation needs to be repealed. It is under current law as 20.455(2)(kh).

Thanks!
leah

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State of Wisconsin
2007 - 2008 LEGISLATURE

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DOA:.....Wavrunek, BB0350 - Sexual assault forensic examination program

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JUSTICE

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This bill creates the Sexual Assault Forensic Examination program to compensate, under limited circumstances, a health care provider who examines a victim of a sex offense for the costs of the examination, any procedure that tests for or prevents a sexually transmitted disease, and any medication to prevent or treat a sexually transmitted disease (examination costs). If the victim does not authorize the health care provider to seek payment from insurance or another program, DOJ must compensate the health care provider for the examination costs, regardless of whether the victim cooperates with a law enforcement agency. If the victim does authorize the health care provider to seek payment from insurance or another program, DOJ must compensate the health care provider for the examination costs, reduced by any payment from insurance or another program, only if the victim refuses to cooperate with a law enforcement agency.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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20.455 (5) (b) *Awards for victims of crimes.* The amounts in the schedule for the payment of compensation and funeral and burial expenses awards to the victims of crimes under subch. I of ch. 949.

SECTION 2. 20.455 (5) (d) of the statutes is created to read:

20.455 (5) (d) *Reimbursement for forensic examinations.* A sum sufficient for the payments of awards under s. 949.26.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 3. 20.455 (5) (i) of the statutes is amended to read:

20.455 (5) (i) *Victim compensation, inmate payments.* All moneys received under s. 303.06 (2) and (3) for the administration of subch. I of ch. 949 and for crime victim compensation payments or services.

SECTION 4. 20.455 (5) (kj) of the statutes is amended to read:

20.455 (5) (kj) *Victim payments, victim surcharge.* The amounts in the schedule for the payment of compensation and funeral and burial expenses awards to the victims of crimes under subch. I of ch. 949. All moneys transferred from the appropriation account under par. (g) shall be credited to this appropriation account. If the department of justice determines that the total of the amounts in this appropriation account and the amounts for compensation and awards to victims of crime under subch. I of ch. 949 in the appropriation accounts under pars. (b), (h), (i) and (m) exceeds the amount needed to fully fund compensation and awards to victims

1 of crimes under subch. I of ch. 949, the department of justice may transfer moneys
2 from this appropriation account to the appropriation account under par. (kk). The
3 amount transferred to the appropriation account under par. (kk) may not exceed the
4 amount by which the total amounts appropriated under this paragraph and pars. (b),
5 (h), (i) and (m) for compensation and awards to victims of crimes under subch. I of
6 ch. 949 exceed the amount needed to fully fund compensation and awards to victims
7 of crimes under subch. I of ch. 949.

8 **SECTION 5.** 803.03 (2) (c) of the statutes is amended to read:

9 803.03 (2) (c) *Scheduling and pretrial conferences.* At the scheduling
10 conference and pretrial conference, the judge to whom the case has been assigned
11 shall inquire concerning the existence of and joinder of persons with subrogated,
12 derivative or assigned rights and shall make such orders as are necessary to
13 effectuate the purposes of this section. If the case is an action to recover damages
14 based on alleged criminally injurious conduct, the court shall inquire to see if an
15 award has been made under subch. I of ch. 949 and if the department of justice is
16 subrogated to the cause of action under s. 949.15.

17 **SECTION 6.** 806.025 (2) (am) of the statutes is amended to read:

18 806.025 (2) (am) If money remains after the payment of all unpaid orders and
19 judgments under par. (a), order reimbursement to the department of justice for an
20 award made under subch. I of ch. 949 for which the department is subrogated under
21 s. 949.15.

22 **SECTION 7.** 938.346 (1) (h) 3. of the statutes is amended to read:

23 938.346 (1) (h) 3. The right to compensation, as provided under subch. I of ch.
24 949.

1 **SECTION 8.** Subchapter I (title) of chapter 949 [precedes 949.001] of the statutes
2 is created to read:

3 **CHAPTER 949**

4 SUBCHAPTER I

5 CRIME VICTIM COMPENSATION

6 **SECTION 9.** 949.01 (intro.) of the statutes is amended to read:

7 **949.01 Definitions.** (intro.) In this chapter subchapter:

8 **SECTION 10.** 949.02 of the statutes is amended to read:

9 **949.02 Administration.** The department shall administer this chapter
10 subchapter. The department shall appoint a program director to assist in
11 administering this chapter subchapter. The department shall promulgate rules for
12 the implementation and operation of this chapter subchapter. The rules shall
13 include procedures to ensure that any limitation of an award is calculated in a fair
14 and equitable manner.

15 **SECTION 11.** 949.035 (1) of the statutes is amended to read:

16 949.035 (1) If a Wisconsin resident suffers injury or death in a situation
17 described in s. 949.03 except that the act occurred outside this state, the resident has
18 the same rights under this chapter subchapter as if the act had occurred in this state
19 upon a showing that the state, territory, country or political subdivision of a country
20 in which the act occurred does not have a compensation of victims of crimes law which
21 covers the injury or death suffered by the person.

22 **SECTION 12.** 949.04 (1) (intro.) of the statutes is amended to read:

23 949.04 (1) **ELIGIBILITY.** (intro.) Any person may apply for an award under this
24 chapter subchapter.

25 **SECTION 13.** 949.04 (2) of the statutes is amended to read:

1 949.04 (2) FORMS. The department shall prescribe application forms for awards
2 under this ~~chapter~~ subchapter and shall furnish law enforcement agencies with the
3 forms. The law enforcement agency investigating a crime shall provide forms to each
4 person who may be eligible to file a claim under this subchapter.

5 **SECTION 14.** 949.06 (1) (intro.) of the statutes is amended to read:

6 949.06 (1) (intro.) In accordance with this ~~chapter~~ subchapter, the department
7 shall make awards, as appropriate, for any of the following economic losses incurred
8 as a direct result of an injury:

9 **SECTION 15.** 949.06 (1m) (b) of the statutes is amended to read:

10 949.06 (1m) (b) In accordance with this ~~chapter~~ subchapter, the department
11 shall make awards, as appropriate, to persons who, immediately prior to the crime,
12 lived in the same household with and to family members of a victim of s. 940.01,
13 940.02, 940.05, 940.06, 940.07, 940.08 or 940.09 for any of the economic losses
14 specified in sub. (1) as a result of the person's or family member's reaction to the
15 death. A dependent may recover both under sub. (1) and this subsection, subject to
16 the limitation under sub. (2).

17 **SECTION 16.** 949.06 (3) (f) of the statutes is created to read:

18 949.06 (3) (f) From an award under s. 949.26.

19 **SECTION 17.** 949.06 (4) (b) of the statutes is amended to read:

20 949.06 (4) (b) The department may suspend proceedings under this ~~chapter~~
21 subchapter for a period it deems appropriate on the grounds that a prosecution for
22 an offense arising out of the act or omission has been commenced or is imminent.

23 **SECTION 18.** 949.09 of the statutes is amended to read:

24 **949.09 Effect of conviction.** If any person has been convicted of any offense
25 with respect to an act or omission on which a claim under this ~~chapter~~ subchapter

1 is based, proof of that conviction shall be taken as conclusive evidence that the
2 offense has been committed, unless an appeal or any proceeding with regard thereto
3 is pending.

4 **SECTION 19.** 949.11 (1) of the statutes is amended to read:

5 949.11 (1) The procedure of ch. 227 for contested cases applies to hearings
6 under this ~~chapter~~ subchapter except as otherwise provided in this section and ss.
7 949.12 and 949.14.

8 **SECTION 20.** 949.11 (2) of the statutes is amended to read:

9 949.11 (2) The division of hearings and appeals in the department of
10 administration shall appoint hearing examiners to make findings and orders under
11 s. 227.46 and this ~~chapter~~ subchapter.

12 **SECTION 21.** 949.115 of the statutes is amended to read:

13 **949.115 Subpoenas.** The department or any of its authorized agents may
14 issue subpoenas for persons or records for any investigation or hearing conducted
15 under this ~~chapter~~ subchapter and may enforce compliance with such subpoenas as
16 provided in s. 885.12.

17 **SECTION 22.** 949.12 of the statutes is amended to read:

18 **949.12 Condition of claimant.** There is no privilege, except privileges
19 arising from the attorney-client relationship, as to communications or records
20 relevant to an issue of the physical, mental or emotional condition of the claimant
21 or victim in a proceeding under this ~~chapter~~ subchapter in which that condition is
22 an element.

23 **SECTION 23.** 949.13 of the statutes is amended to read:

24 **949.13 Agency cooperation.** Upon request by the department, any state or
25 local agency, including a district attorney or law enforcement agency, shall make

1 available all reports, files and other appropriate information which the department
2 requests in order to make a determination that a person is eligible for an award
3 under this ~~chapter~~ subchapter.

4 **SECTION 24.** 949.15 (1) of the statutes is amended to read:

5 949.15 (1) Whenever the department orders the payment of an award under
6 this ~~chapter~~ subchapter as a result of the occurrence of an event that creates a cause
7 of action on the part of a claimant against any person, the department is subrogated
8 to the rights of the claimant and may bring an action against the person for the
9 amount of the damages sustained by the claimant. If an amount greater than that
10 paid under the award order is recovered and collected in any such action, the
11 department shall pay the balance to the claimant. If the person responsible for the
12 injury or death has previously made restitution payments to the general fund under
13 s. 973.20, any judgment obtained by the department under this section shall be
14 reduced by the amount of the restitution payments to the general fund.

15 **SECTION 25.** 949.16 of the statutes is amended to read:

16 **949.16 Confidentiality of records.** The record of a proceeding before an
17 examiner or the department under this ~~chapter~~ subchapter is a public record. Any
18 record or report obtained by an examiner or the department, the confidentiality of
19 which is protected by any other law or rule, shall remain confidential.

20 **SECTION 26.** 949.165 (12) of the statutes is amended to read:

21 949.165 (12) PAYMENT IS NOT AN AWARD. Any payment from an escrow account
22 under this section shall not be considered as an award by the department under this
23 ~~chapter~~ subchapter.

24 **SECTION 27.** 949.18 (intro.) of the statutes is amended to read:

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

4 **SECTION 28.** 949.18 (1) of the statutes is amended to read:

5 949.18 (1) An explanation of the procedures for filing and processing claims
6 under this ~~chapter~~ subchapter.

7 **SECTION 29.** 949.18 (4) of the statutes is amended to read:

8 949.18 (4) A copy of the forms utilized under this ~~chapter~~ subchapter.

9 **SECTION 30.** 949.18 (5) (intro.) of the statutes is amended to read:

10 949.18 (5) (intro.) A complete statistical analysis of the cases handled under
11 this ~~chapter~~ subchapter, including:

12 **SECTION 31.** 949.18 (5) (e) of the statutes is amended to read:

13 949.18 (5) (e) A summary of cases handled under this ~~chapter~~ subchapter.

14 **SECTION 32.** Subchapter II of chapter 949 [precedes 949.20] of the statutes is
15 created to read:

16 **CHAPTER 949**

17 **SUBCHAPTER II**

18 **SEXUAL ASSAULT FORENSIC**

19 **EXAMINATION COMPENSATION**

20 **949.20 Definitions.** In this subchapter:

21 (1) "Cooperate with a law enforcement agency" means to report a sex offense
22 to a law enforcement agency or to aid a law enforcement agency in the investigation
23 of a sex offense.

24 (2) "Department" means the department of justice.

1 (3) "Examination costs" means the costs of an examination that is done to
2 gather evidence regarding a sex offense, any procedure during that examination
3 process that tests for or prevents a sexually transmitted disease, and any medication
4 provided or prescribed, during that examination process, that prevents or treats a
5 sexually transmitted disease that the person performing the examination or
6 procedure believes could be a consequence of the sex offense. "Examination costs"
7 does not include any processing or administrative costs, attorney fees, or other
8 expenses.

9 (4) "Guardian of the victim" means one of the following:

10 1. If the victim is under 18 years of age, the parent, guardian, or legal custodian
11 of the victim.

12 2. If the victim has been determined to be incompetent under ch. 54, the
13 guardian of the victim.

14 (5) "Health care provider" means any person providing health care services.

15 (6) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

16 (7) "Sex offense" means an act committed in the state that, if committed by a
17 competent adult, would be a violation, or an attempted violation, of s. 940.225,
18 948.02, 948.025, 948.05, 948.06, 948.08, or 948.09.

19 (8) "Sexually transmitted disease" has the meaning given in s. 252.11 (1).

20 (9) "Victim" means a person against whom a sex offense has been committed.

21 **949.22 Administration.** The department shall administer this subchapter.
22 The department shall appoint a program director to assist in administering this
23 subchapter. The department shall promulgate rules for the implementation and
24 operation of this subchapter. The rules shall include procedures to ensure that any
25 limitation of an award is calculated in a fair and equitable manner.

1 **949.24 Application for award.** (1) ELIGIBILITY. Any health care provider who
2 conducts an examination to gather evidence regarding a sex offense may apply for
3 an award under this subchapter.

4 (2) FORMS. The department shall prescribe application forms for awards under
5 this subchapter and shall furnish health care providers with the forms.

6 (3) MEDICAL RECORDS. An applicant shall submit to the department reports
7 from any physician, physician's assistant, or nurse who treated or examined the
8 victim to gather evidence regarding a sex offense, performed any procedure during
9 that treatment or examination that tests for or prevents a sexually transmitted
10 disease, or provided or prescribed any medication to prevent or treat a sexually
11 transmitted disease. The applicant may not submit to the department any other
12 records than those pertaining to the examination, treatment, procedure, or
13 medication for which the applicant is seeking an award.

14 **949.26 Computation of awards.** (1) Except as provided in sub. (1m), the
15 department shall make an award under this section to a health care provider who
16 conducts an examination to gather evidence regarding a sex offense to reimburse the
17 health care provider only for the examination costs, as follows:

18 (a) If, under sub. (2) (b), the health care provider is not authorized to seek
19 payment from insurance or another available source of payment, the award shall be
20 the examination costs, regardless of whether the victim, or any guardian of the
21 victim, cooperates with a law enforcement agency regarding the sex offense.

22 (b) If, under sub. (2) (b), the health care provider is authorized to seek payment
23 from insurance or another available source of payment and the victim, or any
24 guardian of the victim, does not cooperate with a law enforcement agency regarding

1 the sex offense, the award shall be the examination costs, reduced by any payment
2 to be received as a result of the authorization under sub. (2) (b).

3 (1m) The department may not make an award under this section if, under sub.
4 (2) (b), the health care provider is authorized to seek payment and the victim, or any
5 guardian of the victim, cooperates with a law enforcement agency.

6 (2) (a) A health care provider seeking an award under this section may not seek
7 payment for any examination costs from the victim or any guardian of the victim.

8 (b) A health care provider seeking an award under this section may not seek
9 payment for any examination costs from insurance or another available source of
10 payment unless the victim or any guardian of the victim authorizes the health care
11 provider to seek payment.

12 (3) The department may not refuse to make an award under this section
13 because the victim or the guardian of the victim does not cooperate with a law
14 enforcement agency regarding the sex offense, or due to lack of an investigation or
15 prosecution of the sex offense.

16 **949.28 Limitations on awards.** (1) No order for the payment of an award
17 under this subchapter may be made unless the application was made within one year
18 after the date of the examination. The department may waive the one-year
19 requirement under this subsection in the interest of justice.

20 (2) The department may not make an award under this subchapter that
21 exceeds the examination costs of the victim.

22 (3) The department may not make an award under this subchapter for any part
23 of the examination costs of the victim for which the health care provider seeking the
24 award has received compensation from any other source.

1 (4) The department may not make an award under this subchapter if the total
2 dollar amount awarded under this section in that year is greater than \$50,000.

3 **949.31 Hearings.** (1) The procedure of ch. 227 for contested cases applies to
4 hearings under this subchapter except as otherwise provided in this section and s.
5 949.32.

6 (2) The division of hearings and appeals in the department of administration
7 shall appoint hearing examiners to make findings and orders under s. 227.46 and
8 this subchapter.

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

13 **949.315 Subpoenas.** The department or any of its authorized agents may
14 issue subpoenas for persons or records for any investigation or hearing conducted
15 under this subchapter and may enforce compliance with such subpoenas as provided
16 in s. 885.12.

17 **949.32 Condition of victim.** There is no privilege, except privileges arising
18 from the attorney-client relationship, as to communications or records relevant to
19 an issue of the physical condition of the victim in a proceeding under this subchapter
20 in which that condition is an element.

21 **949.33 Agency cooperation.** Upon request by the department, any state or
22 local agency, including a district attorney or law enforcement agency, shall make
23 available all reports, files, and other appropriate information which the department
24 requests in order to make a determination that a health care provider is eligible for
25 an award under this subchapter.

1 **949.36 Confidentiality.** If a health care provider seeks an award under this
2 subchapter, any personally identifiable information, as defined in s. 19.62 (5), of the
3 victim who received the examination shall remain confidential unless written
4 consent for the release of any personally identifiable information is provided by one
5 of the following:

6 (1) Except as provided under sub. (2), the victim.

7 (2) If there is a guardian of the victim, the guardian of the victim.

8 **949.37 Offenses. (1) PROHIBITION.** In connection with an award under this
9 subchapter, no person may do any of the following:

10 (a) Submit a fraudulent application or claim for an award.

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

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

16 (2) **PENALTIES.** Any person who violates this section shall be fined not more than
17 \$500 or imprisoned not more than 6 months or both. The person shall forfeit any
18 benefit received and shall reimburse the state for payments received.

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

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

1 **949.38 Report by the department.** The department's biennial report under
2 s. 15.04 (1) (d) shall include a report of its activities under this subchapter including
3 all of the following:

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

6 (2) A description of the programs and policies instituted to promote awareness
7 about the awards under this subchapter.

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

9 (4) A copy of the forms used under this subchapter.

10 (5) A complete statistical analysis of the cases handled under this subchapter,
11 including all of the following:

12 (a) The number of claims filed.

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

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

15 (d) A breakdown of claims by geographic area and month.

16 **SECTION 33.** 950.04 (1v) (rm) of the statutes is amended to read:

17 950.04 (1v) (rm) To compensation, as provided under subch. I of ch. 949.

18 **SECTION 34.** 950.08 (2g) (b) of the statutes is amended to read:

19 950.08 (2g) (b) The availability of compensation under subch. I of ch. 949 and
20 the address and telephone number at which to contact the department for
21 information concerning compensation under subch. I of ch. 949.

22 **SECTION 35.** 950.08 (2r) (d) of the statutes is amended to read:

23 950.08 (2r) (d) The availability of compensation under subch. I of ch. 949,
24 including information concerning eligibility for compensation and the procedure for
25 applying for compensation.

1 **SECTION 36.** 973.09 (1) (b) of the statutes is amended to read:

2 973.09 (1) (b) If the court places the person on probation, the court shall order
3 the person to pay restitution under s. 973.20, unless the court finds there is
4 substantial reason not to order restitution as a condition of probation. If the court
5 does not require restitution to be paid to a victim, the court shall state its reason on
6 the record. If the court does require restitution, it shall notify the department of
7 justice of its decision if the victim may be eligible for compensation under subch. I
8 of ch. 949.

9 **SECTION 37.** 973.20 (9) (a) of the statutes is amended to read:

10 973.20 (9) (a) If a crime victim is paid an award under subch. I of ch. 949 for
11 any loss arising out of a criminal act, the state is subrogated to the rights of the victim
12 to any restitution required by the court. The rights of the state are subordinate to
13 the claims of victims who have suffered a loss arising out of the offenses or any
14 transaction which is part of the same continuous scheme of criminal activity.

15 **SECTION 38.** 973.20 (9) (b) of the statutes is amended to read:

16 973.20 (9) (b) When restitution is ordered, the court shall inquire to see if an
17 award has been made under subch. I of ch. 949 and if the department of justice is
18 subrogated to the cause of action under s. 949.15. If the restitution ordered is less
19 than or equal to the award under subch. I of ch. 949, the restitution shall be paid only
20 to the general fund. If the restitution ordered is greater than the award under subch.
21 I of ch. 949, the general fund shall receive an amount equal to the award under subch.
22 I of ch. 949 and the balance shall be paid to the victim.

23 **SECTION 9329. Initial applicability; Justice.**

1 (1) SEXUAL ASSAULT FORENSIC EXAMS. The treatment of section 20.455 (5) (d) of
2 the statutes and subchapter II of chapter 949 of the statutes first applies to
3 examinations conducted on the effective date of this subsection.

4 (END)

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SECTION 1. 20.455 (1) (kh) of the statutes is repealed.

SECTION 2. 20.455 (2) (Lm) of the statutes is amended to read:

20.455 (2) (Lm) *Crime laboratories; deoxyribonucleic acid analysis.* All moneys received from crime laboratories and drug law enforcement surcharges authorized under s. 165.755 and deoxyribonucleic acid analysis surcharges authorized under s. 973.046 to provide deoxyribonucleic acid analysis, to administer s. 165.77, to pay for the costs of mailing and materials under s. 165.76 for the submission of biological specimens by the departments of corrections and health and family services and by county sheriffs, and to transfer to the appropriation account under par. (kd) the amounts in the schedule under par. (kd), ~~and to transfer to the appropriation account under par. (kh) the amounts in the schedule under par. (kh).~~

History: 1971 c. 125; 1973 c. 90, 336; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 29, 418; 1979 c. 34 ss. 286m, 290, 523 to 526; 1979 c. 189, 219, 355; 1981 c. 20, 169; 1983 a. 27 ss. 427 to 430, 1800; 1983 a. 199, 523; 1985 a. 29, 120; 1987 a. 27, 326, 399; 1989 a. 31, 122, 336; 1991 a. 11, 39, 269; 1993 a. 16, 98, 193, 460, 496; 1995 a. 27 ss. 1014h to 1029, 9126 (19), 9130 (4); 1995 a. 227; 1997 a. 27, 237; 1999 a. 5, 9, 186; 2001 a. 16, 109; 2003 a. 33, 139, 309, 326; 2005 a. 25 ss. 356c to 363r, 415m to 415v, 415w, 416g, 416h; 2005 a. 60, 254, 433.