



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-1537/3
CMH:wlj&cs:rs

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

d-note

don't gen

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

Analysis by the Legislative Reference Bureau

JUSTICE

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1 **SECTION 1.** 20.455 (2) (kh) of the statutes is repealed.

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

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

3 20.455 (2) (Lm) *Crime laboratories; deoxyribonucleic acid analysis.* All moneys
4 received from crime laboratories and drug law enforcement surcharges authorized
5 under s. 165.755 and deoxyribonucleic acid analysis surcharges authorized under s.
6 973.046 to provide deoxyribonucleic acid analysis, to administer s. 165.77, to pay for
7 the costs of mailing and materials under s. 165.76 for the submission of biological
8 specimens by the departments of corrections and health and family services and by
9 county sheriffs, and to transfer to the appropriation account under par. (kd) the
10 amounts in the schedule under par. (kd), ~~and to transfer to the appropriation account~~
11 ~~under par. (kh) the amounts in the schedule under par. (kh).~~

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

13 20.455 (5) (b) *Awards for victims of crimes.* The amounts in the schedule for
14 the payment of compensation and funeral and burial expenses awards to the victims
15 of crimes under subch. I of ch. 949.

16 **SECTION 4.** 20.455 (5) (d) of the statutes is created to read:

17 20.455 (5) (d) *Reimbursement for forensic examinations.* A sum sufficient for
18 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.

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

1 20.455 (5) (i) *Victim compensation, inmate payments.* All moneys received
2 under s. 303.06 (2) and (3) for the administration of subch. I of ch. 949 and for crime
3 victim compensation payments or services.

4 **SECTION 6.** 20.455 (5) (kj) of the statutes is amended to read:

5 20.455 (5) (kj) *Victim payments, victim surcharge.* The amounts in the schedule
6 for the payment of compensation and funeral and burial expenses awards to the
7 victims of crimes under subch. I of ch. 949. All moneys transferred from the
8 appropriation account under par. (g) shall be credited to this appropriation account.
9 If the department of justice determines that the total of the amounts in this
10 appropriation account and the amounts for compensation and awards to victims of
11 crime under subch. I of ch. 949 in the appropriation accounts under pars. (b), (h), (i)
12 and (m) exceeds the amount needed to fully fund compensation and awards to victims
13 of crimes under subch. I of ch. 949, the department of justice may transfer moneys
14 from this appropriation account to the appropriation account under par. (kk). The
15 amount transferred to the appropriation account under par. (kk) may not exceed the
16 amount by which the total amounts appropriated under this paragraph and pars. (b),
17 (h), (i) and (m) for compensation and awards to victims of crimes under subch. I of
18 ch. 949 exceed the amount needed to fully fund compensation and awards to victims
19 of crimes under subch. I of ch. 949.

20 **SECTION 7.** 803.03 (2) (c) of the statutes is amended to read:

21 803.03 (2) (c) *Scheduling and pretrial conferences.* At the scheduling
22 conference and pretrial conference, the judge to whom the case has been assigned
23 shall inquire concerning the existence of and joinder of persons with subrogated,
24 derivative or assigned rights and shall make such orders as are necessary to
25 effectuate the purposes of this section. If the case is an action to recover damages

1 based on alleged criminally injurious conduct, the court shall inquire to see if an
2 award has been made under subch. I of ch. 949 and if the department of justice is
3 subrogated to the cause of action under s. 949.15.

4 **SECTION 8.** 806.025 (2) (am) of the statutes is amended to read:

5 806.025 (2) (am) If money remains after the payment of all unpaid orders and
6 judgments under par. (a), order reimbursement to the department of justice for an
7 award made under subch. I of ch. 949 for which the department is subrogated under
8 s. 949.15.

9 **SECTION 9.** 938.346 (1) (h) 3. of the statutes is amended to read:

10 938.346 (1) (h) 3. The right to compensation, as provided under subch. I of ch.
11 949.

12 **SECTION 10.** Subchapter I (title) of chapter 949 [precedes 949.001] of the
13 statutes is created to read:

14 **CHAPTER 949**

15 **SUBCHAPTER I**

16 **CRIME VICTIM COMPENSATION**

17 **SECTION 11.** 949.01 (intro.) of the statutes is amended to read:

18 **949.01 Definitions.** (intro.) In this chapter subchapter:

19 **SECTION 12.** 949.02 of the statutes is amended to read:

20 **949.02 Administration.** The department shall administer this chapter
21 subchapter. The department shall appoint a program director to assist in
22 administering this chapter subchapter. The department shall promulgate rules for
23 the implementation and operation of this chapter subchapter. The rules shall
24 include procedures to ensure that any limitation of an award is calculated in a fair
25 and equitable manner.

1 **SECTION 13.** 949.035 (1) of the statutes is amended to read:

2 949.035 (1) If a Wisconsin resident suffers injury or death in a situation
3 described in s. 949.03 except that the act occurred outside this state, the resident has
4 the same rights under this chapter subchapter as if the act had occurred in this state
5 upon a showing that the state, territory, country or political subdivision of a country
6 in which the act occurred does not have a compensation of victims of crimes law which
7 covers the injury or death suffered by the person.

8 **SECTION 14.** 949.04 (1) (intro.) of the statutes is amended to read:

9 949.04 (1) **ELIGIBILITY.** (intro.) Any person may apply for an award under this
10 chapter subchapter.

11 **SECTION 15.** 949.04 (2) of the statutes is amended to read:

12 949.04 (2) **FORMS.** The department shall prescribe application forms for awards
13 under this chapter subchapter and shall furnish law enforcement agencies with the
14 forms. The law enforcement agency investigating a crime shall provide forms to each
15 person who may be eligible to file a claim under this subchapter.

16 **SECTION 16.** 949.06 (1) (intro.) of the statutes is amended to read:

17 949.06 (1) (intro.) In accordance with this chapter subchapter, the department
18 shall make awards, as appropriate, for any of the following economic losses incurred
19 as a direct result of an injury:

20 **SECTION 17.** 949.06 (1m) (b) of the statutes is amended to read:

21 949.06 (1m) (b) In accordance with this chapter subchapter, the department
22 shall make awards, as appropriate, to persons who, immediately prior to the crime,
23 lived in the same household with and to family members of a victim of s. 940.01,
24 940.02, 940.05, 940.06, 940.07, 940.08 or 940.09 for any of the economic losses
25 specified in sub. (1) as a result of the person's or family member's reaction to the

1 death. A dependent may recover both under sub. (1) and this subsection, subject to
2 the limitation under sub. (2).

3 **SECTION 18.** 949.06 (3) (f) of the statutes is created to read:

4 949.06 (3) (f) From an award under s. 949.26.

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

6 949.06 (4) (b) The department may suspend proceedings under this ~~chapter~~
7 subchapter for a period it deems appropriate on the grounds that a prosecution for
8 an offense arising out of the act or omission has been commenced or is imminent.

9 **SECTION 20.** 949.09 of the statutes is amended to read:

10 **949.09 Effect of conviction.** If any person has been convicted of any offense
11 with respect to an act or omission on which a claim under this ~~chapter~~ subchapter
12 is based, proof of that conviction shall be taken as conclusive evidence that the
13 offense has been committed, unless an appeal or any proceeding with regard thereto
14 is pending.

15 **SECTION 21.** 949.11 (1) of the statutes is amended to read:

16 949.11 (1) The procedure of ch. 227 for contested cases applies to hearings
17 under this ~~chapter~~ subchapter except as otherwise provided in this section and ss.
18 949.12 and 949.14.

19 **SECTION 22.** 949.11 (2) of the statutes is amended to read:

20 949.11 (2) The division of hearings and appeals in the department of
21 administration shall appoint hearing examiners to make findings and orders under
22 s. 227.46 and this ~~chapter~~ subchapter.

23 **SECTION 23.** 949.115 of the statutes is amended to read:

24 **949.115 Subpoenas.** The department or any of its authorized agents may
25 issue subpoenas for persons or records for any investigation or hearing conducted

1 under this ~~chapter~~ subchapter and may enforce compliance with such subpoenas as
2 provided in s. 885.12.

3 **SECTION 24.** 949.12 of the statutes is amended to read:

4 **949.12 Condition of claimant.** There is no privilege, except privileges
5 arising from the attorney-client relationship, as to communications or records
6 relevant to an issue of the physical, mental or emotional condition of the claimant
7 or victim in a proceeding under this ~~chapter~~ subchapter in which that condition is
8 an element.

9 **SECTION 25.** 949.13 of the statutes is amended to read:

10 **949.13 Agency cooperation.** Upon request by the department, any state or
11 local agency, including a district attorney or law enforcement agency, shall make
12 available all reports, files and other appropriate information which the department
13 requests in order to make a determination that a person is eligible for an award
14 under this ~~chapter~~ subchapter.

15 **SECTION 26.** 949.15 (1) of the statutes is amended to read:

16 **949.15 (1)** Whenever the department orders the payment of an award under
17 this ~~chapter~~ subchapter as a result of the occurrence of an event that creates a cause
18 of action on the part of a claimant against any person, the department is subrogated
19 to the rights of the claimant and may bring an action against the person for the
20 amount of the damages sustained by the claimant. If an amount greater than that
21 paid under the award order is recovered and collected in any such action, the
22 department shall pay the balance to the claimant. If the person responsible for the
23 injury or death has previously made restitution payments to the general fund under
24 s. 973.20, any judgment obtained by the department under this section shall be
25 reduced by the amount of the restitution payments to the general fund.

1 **SECTION 27.** 949.16 of the statutes is amended to read:

2 **949.16 Confidentiality of records.** The record of a proceeding before an
3 examiner or the department under this ~~chapter~~ subchapter is a public record. Any
4 record or report obtained by an examiner or the department, the confidentiality of
5 which is protected by any other law or rule, shall remain confidential.

6 **SECTION 28.** 949.165 (12) of the statutes is amended to read:

7 949.165 (12) PAYMENT IS NOT AN AWARD. Any payment from an escrow account
8 under this section shall not be considered as an award by the department under this
9 ~~chapter~~ subchapter.

10 **SECTION 29.** 949.18 (intro.) of the statutes is amended to read:

11 **949.18 Report by the department.** (intro.) The department's biennial
12 report under s. 15.04 (1) (d) shall include a report of its activities under this ~~chapter~~
13 subchapter including:

14 **SECTION 30.** 949.18 (1) of the statutes is amended to read:

15 949.18 (1) An explanation of the procedures for filing and processing claims
16 under this ~~chapter~~ subchapter.

17 **SECTION 31.** 949.18 (4) of the statutes is amended to read:

18 949.18 (4) A copy of the forms utilized under this ~~chapter~~ subchapter.

19 **SECTION 32.** 949.18 (5) (intro.) of the statutes is amended to read:

20 949.18 (5) (intro.) A complete statistical analysis of the cases handled under
21 this ~~chapter~~ subchapter, including:

22 **SECTION 33.** 949.18 (5) (e) of the statutes is amended to read:

23 949.18 (5) (e) A summary of cases handled under this ~~chapter~~ subchapter.

24 **SECTION 34.** Subchapter II of chapter 949 [precedes 949.20] of the statutes is
25 created to read:

1 (7) "Sex offense" means an act committed in the state that, if committed by a
2 competent adult, would be a violation, or an attempted violation, of s. 940.225,
3 948.02, 948.025, 948.05, 948.06, 948.08, or 948.09.

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

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

6 **949.22 Administration.** The department shall administer this subchapter.
7 The department shall appoint a program director to assist in administering this
8 subchapter. The department shall promulgate rules for the implementation and
9 operation of this subchapter. The rules shall include procedures to ensure that any
10 limitation of an award is calculated in a fair and equitable manner.

11 **949.24 Application for award. (1) ELIGIBILITY.** Any health care provider who
12 conducts an examination to gather evidence regarding a sex offense may apply for
13 an award under this subchapter.

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

16 (3) **MEDICAL RECORDS.** An applicant shall submit to the department reports
17 from any physician, physician's assistant, or nurse who treated or examined the
18 victim to gather evidence regarding a sex offense, performed any procedure during
19 that treatment or examination that tests for or prevents a sexually transmitted
20 disease, or provided or prescribed any medication to prevent or treat a sexually
21 transmitted disease. The applicant may not submit to the department any other
22 records than those pertaining to the examination, treatment, procedure, or
23 medication for which the applicant is seeking an award.

24 **949.26 Computation of awards. (1)** Except as provided in sub. (1m), the
25 department shall make an award under this section to a health care provider who

1 conducts an examination to gather evidence regarding a sex offense to reimburse the
2 health care provider only for the examination costs, as follows:

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

7 (b) If, under sub. (2) (b), the health care provider is authorized to seek payment
8 from insurance or another available source of payment and the victim, or any
9 guardian of the victim, does not cooperate with a law enforcement agency regarding
10 the sex offense, the award shall be the examination costs, reduced by any payment
11 to be received as a result of the authorization under sub. (2) (b).

12 **(1m)** The department may not make an award under this section if, under sub.
13 (2) (b), the health care provider is authorized to seek payment and the victim, or any
14 guardian of the victim, cooperates with a law enforcement agency.

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

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

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

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

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

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

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

12 **949.31 Hearings.** (1) The procedure of ch. 227 for contested cases applies to
13 hearings under this subchapter except as otherwise provided in this section and s.
14 949.32.

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

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

22 **949.315 Subpoenas.** The department or any of its authorized agents may
23 issue subpoenas for persons or records for any investigation or hearing conducted
24 under this subchapter and may enforce compliance with such subpoenas as provided
25 in s. 885.12.

1 **949.32 Condition of victim.** There is no privilege, except privileges arising
2 from the attorney-client relationship, as to communications or records relevant to
3 an issue of the physical condition of the victim in a proceeding under this subchapter
4 in which that condition is an element.

5 **949.33 Agency cooperation.** Upon request by the department, any state or
6 local agency, including a district attorney or law enforcement agency, shall make
7 available all reports, files, and other appropriate information which the department
8 requests in order to make a determination that a health care provider is eligible for
9 an award under this subchapter.

10 **949.36 Confidentiality.** If a health care provider seeks an award under this
11 subchapter, any personally identifiable information, as defined in s. 19.62 (5), of the
12 victim who received the examination shall remain confidential unless written
13 consent for the release of any personally identifiable information is provided by one
14 of the following:

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

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

17 **949.37 Offenses. (1) PROHIBITION.** In connection with an award under this
18 subchapter, no person may do any of the following:

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

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

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

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

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

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

11 **949.38 Report by the department.** The department's biennial report under
12 s. 15.04 (1) (d) shall include a report of its activities under this subchapter including
13 all of the following:

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

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

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

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

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

22 (a) The number of claims filed.

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

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

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

1 **SECTION 35.** 950.04 (1v) (rm) of the statutes is amended to read:

2 950.04 (1v) (rm) To compensation, as provided under subch. I of ch. 949.

3 **SECTION 36.** 950.08 (2g) (b) of the statutes is amended to read:

4 950.08 (2g) (b) The availability of compensation under subch. I of ch. 949 and
5 the address and telephone number at which to contact the department for
6 information concerning compensation under subch. I of ch. 949.

7 **SECTION 37.** 950.08 (2r) (d) of the statutes is amended to read:

8 950.08 (2r) (d) The availability of compensation under subch. I of ch. 949,
9 including information concerning eligibility for compensation and the procedure for
10 applying for compensation.

11 **SECTION 38.** 973.09 (1) (b) of the statutes is amended to read:

12 973.09 (1) (b) If the court places the person on probation, the court shall order
13 the person to pay restitution under s. 973.20, unless the court finds there is
14 substantial reason not to order restitution as a condition of probation. If the court
15 does not require restitution to be paid to a victim, the court shall state its reason on
16 the record. If the court does require restitution, it shall notify the department of
17 justice of its decision if the victim may be eligible for compensation under subch. I
18 of ch. 949.

19 **SECTION 39.** 973.20 (9) (a) of the statutes is amended to read:

20 973.20 (9) (a) If a crime victim is paid an award under subch. I of ch. 949 for
21 any loss arising out of a criminal act, the state is subrogated to the rights of the victim
22 to any restitution required by the court. The rights of the state are subordinate to
23 the claims of victims who have suffered a loss arising out of the offenses or any
24 transaction which is part of the same continuous scheme of criminal activity.

25

SECTION 40. 973.20 (9) (b) of the statutes is amended to read:

1 973.20 (9) (b) When restitution is ordered, the court shall inquire to see if an
 2 award has been made under subch. I of ch. 949 and if the department of justice is
 3 subrogated to the cause of action under s. 949.15. If the restitution ordered is less
 4 than or equal to the award under subch. I of ch. 949, the restitution shall be paid only
 5 to the general fund. If the restitution ordered is greater than the award under subch.
 6 I of ch. 949, the general fund shall receive an amount equal to the award under subch.
 7 I of ch. 949 and the balance shall be paid to the victim.

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

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

12 (END)

LRB-1537/3
CMH:jlw

This draft reconciles LRB-1537/3 and LRB-0434/4
 by adding the treatment of s. 973.20 (9)(b) by -1537
 to the treatment of s. 973.20 (9)(b) to -0434.
 Both drafts should continue to appear in the compile. ✓

CMH

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1537/4dn
CMH:jld:pg

January 30, 2007

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

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

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

3 20.455 (2) (Lm) *Crime laboratories; deoxyribonucleic acid analysis.* All moneys
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6 973.046 to provide deoxyribonucleic acid analysis, to administer s. 165.77, to pay for
7 the costs of mailing and materials under s. 165.76 for the submission of biological
8 specimens by the departments of corrections and health and family services and by
9 county sheriffs, and to transfer to the appropriation account under par. (kd) the
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11 ~~under par. (kh) the amounts in the schedule under par. (kh).~~

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9 If the department of justice determines that the total of the amounts in this
10 appropriation account and the amounts for compensation and awards to victims of
11 crime under subch. I of ch. 949 in the appropriation accounts under pars. (b), (h), (i)
12 and (m) exceeds the amount needed to fully fund compensation and awards to victims
13 of crimes under subch. I of ch. 949, the department of justice may transfer moneys
14 from this appropriation account to the appropriation account under par. (kk). The
15 amount transferred to the appropriation account under par. (kk) may not exceed the
16 amount by which the total amounts appropriated under this paragraph and pars. (b),
17 (h), (i) and (m) for compensation and awards to victims of crimes under subch. I of
18 ch. 949 exceed the amount needed to fully fund compensation and awards to victims
19 of crimes under subch. I of ch. 949.

20 **SECTION 7.** 803.03 (2) (c) of the statutes is amended to read:

21 803.03 (2) (c) *Scheduling and pretrial conferences.* At the scheduling
22 conference and pretrial conference, the judge to whom the case has been assigned
23 shall inquire concerning the existence of and joinder of persons with subrogated,
24 derivative or assigned rights and shall make such orders as are necessary to
25 effectuate the purposes of this section. If the case is an action to recover damages

1 based on alleged criminally injurious conduct, the court shall inquire to see if an
2 award has been made under subch. I of ch. 949 and if the department of justice is
3 subrogated to the cause of action under s. 949.15.

4 **SECTION 8.** 806.025 (2) (am) of the statutes is amended to read:

5 806.025 (2) (am) If money remains after the payment of all unpaid orders and
6 judgments under par. (a), order reimbursement to the department of justice for an
7 award made under subch. I of ch. 949 for which the department is subrogated under
8 s. 949.15.

9 **SECTION 9.** 938.346 (1) (h) 3. of the statutes is amended to read:

10 938.346 (1) (h) 3. The right to compensation, as provided under subch. I of ch.
11 949.

12 **SECTION 10.** Subchapter I (title) of chapter 949 [precedes 949.001] of the
13 statutes is created to read:

14 **CHAPTER 949**

15 **SUBCHAPTER I**

16 **CRIME VICTIM COMPENSATION**

17 **SECTION 11.** 949.01 (intro.) of the statutes is amended to read:

18 **949.01 Definitions.** (intro.) In this chapter subchapter:

19 **SECTION 12.** 949.02 of the statutes is amended to read:

20 **949.02 Administration.** The department shall administer this chapter
21 subchapter. The department shall appoint a program director to assist in
22 administering this chapter subchapter. The department shall promulgate rules for
23 the implementation and operation of this chapter subchapter. The rules shall
24 include procedures to ensure that any limitation of an award is calculated in a fair
25 and equitable manner.

1 **SECTION 13.** 949.035 (1) of the statutes is amended to read:

2 949.035 (1) If a Wisconsin resident suffers injury or death in a situation
3 described in s. 949.03 except that the act occurred outside this state, the resident has
4 the same rights under this ~~chapter~~ subchapter as if the act had occurred in this state
5 upon a showing that the state, territory, country or political subdivision of a country
6 in which the act occurred does not have a compensation of victims of crimes law which
7 covers the injury or death suffered by the person.

8 **SECTION 14.** 949.04 (1) (intro.) of the statutes is amended to read:

9 949.04 (1) ELIGIBILITY. (intro.) Any person may apply for an award under this
10 ~~chapter~~ subchapter.

11 **SECTION 15.** 949.04 (2) of the statutes is amended to read:

12 949.04 (2) FORMS. The department shall prescribe application forms for awards
13 under this ~~chapter~~ subchapter and shall furnish law enforcement agencies with the
14 forms. The law enforcement agency investigating a crime shall provide forms to each
15 person who may be eligible to file a claim under this subchapter.

16 **SECTION 16.** 949.06 (1) (intro.) of the statutes is amended to read:

17 949.06 (1) (intro.) In accordance with this ~~chapter~~ subchapter, the department
18 shall make awards, as appropriate, for any of the following economic losses incurred
19 as a direct result of an injury:

20 **SECTION 17.** 949.06 (1m) (b) of the statutes is amended to read:

21 949.06 (1m) (b) In accordance with this ~~chapter~~ subchapter, the department
22 shall make awards, as appropriate, to persons who, immediately prior to the crime,
23 lived in the same household with and to family members of a victim of s. 940.01,
24 940.02, 940.05, 940.06, 940.07, 940.08 or 940.09 for any of the economic losses
25 specified in sub. (1) as a result of the person's or family member's reaction to the

1 death. A dependent may recover both under sub. (1) and this subsection, subject to
2 the limitation under sub. (2).

3 **SECTION 18.** 949.06 (3) (f) of the statutes is created to read:

4 949.06 (3) (f) From an award under s. 949.26.

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

6 949.06 (4) (b) The department may suspend proceedings under this ~~chapter~~
7 subchapter for a period it deems appropriate on the grounds that a prosecution for
8 an offense arising out of the act or omission has been commenced or is imminent.

9 **SECTION 20.** 949.09 of the statutes is amended to read:

10 **949.09 Effect of conviction.** If any person has been convicted of any offense
11 with respect to an act or omission on which a claim under this ~~chapter~~ subchapter
12 is based, proof of that conviction shall be taken as conclusive evidence that the
13 offense has been committed, unless an appeal or any proceeding with regard thereto
14 is pending.

15 **SECTION 21.** 949.11 (1) of the statutes is amended to read:

16 949.11 (1) The procedure of ch. 227 for contested cases applies to hearings
17 under this ~~chapter~~ subchapter except as otherwise provided in this section and ss.
18 949.12 and 949.14.

19 **SECTION 22.** 949.11 (2) of the statutes is amended to read:

20 949.11 (2) The division of hearings and appeals in the department of
21 administration shall appoint hearing examiners to make findings and orders under
22 s. 227.46 and this ~~chapter~~ subchapter.

23 **SECTION 23.** 949.115 of the statutes is amended to read:

24 **949.115 Subpoenas.** The department or any of its authorized agents may
25 issue subpoenas for persons or records for any investigation or hearing conducted

1 under this ~~chapter~~ subchapter and may enforce compliance with such subpoenas as
2 provided in s. 885.12.

3 **SECTION 24.** 949.12 of the statutes is amended to read:

4 **949.12 Condition of claimant.** There is no privilege, except privileges
5 arising from the attorney-client relationship, as to communications or records
6 relevant to an issue of the physical, mental or emotional condition of the claimant
7 or victim in a proceeding under this ~~chapter~~ subchapter in which that condition is
8 an element.

9 **SECTION 25.** 949.13 of the statutes is amended to read:

10 **949.13 Agency cooperation.** Upon request by the department, any state or
11 local agency, including a district attorney or law enforcement agency, shall make
12 available all reports, files and other appropriate information which the department
13 requests in order to make a determination that a person is eligible for an award
14 under this ~~chapter~~ subchapter.

15 **SECTION 26.** 949.15 (1) of the statutes is amended to read:

16 **949.15 (1)** Whenever the department orders the payment of an award under
17 this ~~chapter~~ subchapter as a result of the occurrence of an event that creates a cause
18 of action on the part of a claimant against any person, the department is subrogated
19 to the rights of the claimant and may bring an action against the person for the
20 amount of the damages sustained by the claimant. If an amount greater than that
21 paid under the award order is recovered and collected in any such action, the
22 department shall pay the balance to the claimant. If the person responsible for the
23 injury or death has previously made restitution payments to the general fund under
24 s. 973.20, any judgment obtained by the department under this section shall be
25 reduced by the amount of the restitution payments to the general fund.

1 **SECTION 27.** 949.16 of the statutes is amended to read:

2 **949.16 Confidentiality of records.** The record of a proceeding before an
3 examiner or the department under this ~~chapter~~ subchapter is a public record. Any
4 record or report obtained by an examiner or the department, the confidentiality of
5 which is protected by any other law or rule, shall remain confidential.

6 **SECTION 28.** 949.165 (12) of the statutes is amended to read:

7 **949.165 (12) PAYMENT IS NOT AN AWARD.** Any payment from an escrow account
8 under this section shall not be considered as an award by the department under this
9 ~~chapter~~ subchapter.

10 **SECTION 29.** 949.18 (intro.) of the statutes is amended to read:

11 **949.18 Report by the department.** (intro.) The department's biennial
12 report under s. 15.04 (1) (d) shall include a report of its activities under this ~~chapter~~
13 subchapter including:

14 **SECTION 30.** 949.18 (1) of the statutes is amended to read:

15 **949.18 (1)** An explanation of the procedures for filing and processing claims
16 under this ~~chapter~~ subchapter.

17 **SECTION 31.** 949.18 (4) of the statutes is amended to read:

18 **949.18 (4)** A copy of the forms utilized under this ~~chapter~~ subchapter.

19 **SECTION 32.** 949.18 (5) (intro.) of the statutes is amended to read:

20 **949.18 (5) (intro.)** A complete statistical analysis of the cases handled under
21 this ~~chapter~~ subchapter, including:

22 **SECTION 33.** 949.18 (5) (e) of the statutes is amended to read:

23 **949.18 (5) (e)** A summary of cases handled under this ~~chapter~~ subchapter.

24 **SECTION 34.** Subchapter II of chapter 949 [precedes 949.20] of the statutes is
25 created to read:

1 (7) "Sex offense" means an act committed in the state that, if committed by a
2 competent adult, would be a violation, or an attempted violation, of s. 940.225,
3 948.02, 948.025, 948.05, 948.06, 948.08, or 948.09.

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

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

6 **949.22 Administration.** The department shall administer this subchapter.
7 The department shall appoint a program director to assist in administering this
8 subchapter. The department shall promulgate rules for the implementation and
9 operation of this subchapter. The rules shall include procedures to ensure that any
10 limitation of an award is calculated in a fair and equitable manner.

11 **949.24 Application for award. (1) ELIGIBILITY.** Any health care provider who
12 conducts an examination to gather evidence regarding a sex offense may apply for
13 an award under this subchapter.

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

16 (3) **MEDICAL RECORDS.** An applicant shall submit to the department reports
17 from any physician, physician's assistant, or nurse who treated or examined the
18 victim to gather evidence regarding a sex offense, performed any procedure during
19 that treatment or examination that tests for or prevents a sexually transmitted
20 disease, or provided or prescribed any medication to prevent or treat a sexually
21 transmitted disease. The applicant may not submit to the department any other
22 records than those pertaining to the examination, treatment, procedure, or
23 medication for which the applicant is seeking an award.

24 **949.26 Computation of awards. (1)** Except as provided in sub. (1m), the
25 department shall make an award under this section to a health care provider who

1 conducts an examination to gather evidence regarding a sex offense to reimburse the
2 health care provider only for the examination costs, as follows:

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

7 (b) If, under sub. (2) (b), the health care provider is authorized to seek payment
8 from insurance or another available source of payment and the victim, or any
9 guardian of the victim, does not cooperate with a law enforcement agency regarding
10 the sex offense, the award shall be the examination costs, reduced by any payment
11 to be received as a result of the authorization under sub. (2) (b).

12 **(1m)** The department may not make an award under this section if, under sub.
13 (2) (b), the health care provider is authorized to seek payment and the victim, or any
14 guardian of the victim, cooperates with a law enforcement agency.

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

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

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

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

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

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

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

12 **949.31 Hearings.** (1) The procedure of ch. 227 for contested cases applies to
13 hearings under this subchapter except as otherwise provided in this section and s.
14 949.32.

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

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

22 **949.315 Subpoenas.** The department or any of its authorized agents may
23 issue subpoenas for persons or records for any investigation or hearing conducted
24 under this subchapter and may enforce compliance with such subpoenas as provided
25 in s. 885.12.

1 **949.32 Condition of victim.** There is no privilege, except privileges arising
2 from the attorney-client relationship, as to communications or records relevant to
3 an issue of the physical condition of the victim in a proceeding under this subchapter
4 in which that condition is an element.

5 **949.33 Agency cooperation.** Upon request by the department, any state or
6 local agency, including a district attorney or law enforcement agency, shall make
7 available all reports, files, and other appropriate information which the department
8 requests in order to make a determination that a health care provider is eligible for
9 an award under this subchapter.

10 **949.36 Confidentiality.** If a health care provider seeks an award under this
11 subchapter, any personally identifiable information, as defined in s. 19.62 (5), of the
12 victim who received the examination shall remain confidential unless written
13 consent for the release of any personally identifiable information is provided by one
14 of the following:

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

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

17 **949.37 Offenses. (1) PROHIBITION.** In connection with an award under this
18 subchapter, no person may do any of the following:

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

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

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

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

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

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

11 **949.38 Report by the department.** The department's biennial report under
12 s. 15.04 (1) (d) shall include a report of its activities under this subchapter including
13 all of the following:

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

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

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

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

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

22 (a) The number of claims filed.

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

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

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

1 **SECTION 35.** 950.04 (1v) (rm) of the statutes is amended to read:

2 950.04 (1v) (rm) To compensation, as provided under subch. I of ch. 949.

3 **SECTION 36.** 950.08 (2g) (b) of the statutes is amended to read:

4 950.08 (2g) (b) The availability of compensation under subch. I of ch. 949 and
5 the address and telephone number at which to contact the department for
6 information concerning compensation under subch. I of ch. 949.

7 **SECTION 37.** 950.08 (2r) (d) of the statutes is amended to read:

8 950.08 (2r) (d) The availability of compensation under subch. I of ch. 949,
9 including information concerning eligibility for compensation and the procedure for
10 applying for compensation.

11 **SECTION 38.** 973.09 (1) (b) of the statutes is amended to read:

12 973.09 (1) (b) If the court places the person on probation, the court shall order
13 the person to pay restitution under s. 973.20, unless the court finds there is
14 substantial reason not to order restitution as a condition of probation. If the court
15 does not require restitution to be paid to a victim, the court shall state its reason on
16 the record. If the court does require restitution, it shall notify the department of
17 justice of its decision if the victim may be eligible for compensation under subch. I
18 of ch. 949.

19 **SECTION 39.** 973.20 (9) (a) of the statutes is amended to read:

20 973.20 (9) (a) If a crime victim is paid an award under subch. I of ch. 949 for
21 any loss arising out of a criminal act, the state is subrogated to the rights of the victim
22 to any restitution required by the court. The rights of the state are subordinate to
23 the claims of victims who have suffered a loss arising out of the offenses or any
24 transaction which is part of the same continuous scheme of criminal activity.

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

