



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1689/1
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2015 ASSEMBLY BILL 643

January 7, 2016 – Introduced by Representatives HUTTON, BALLWEG, E. BROOKS, HORLACHER, JARCHOW, KLEEFISCH, KNODL, KREMER, T. LARSON, RIPP, ROHRKASTE, SUBECK and TITTL, cosponsored by Senators PETROWSKI, WANGGAARD, HARRIS DODD, OLSEN and L. TAYLOR. Referred to Committee on Criminal Justice and Public Safety.

1 **AN ACT** *to repeal* 949.06 (3) (d) and 949.10; *to renumber and amend* 949.06
2 (1) (e) and 949.06 (2); *to amend* 949.01 (4), 949.01 (5), 949.03 (1) (b), 949.03 (1)
3 (c), 949.04 (2) (b), 949.06 (1) (a), 949.06 (1) (b) (intro.), 949.06 (1) (b) 1., 949.06
4 (1) (b) 2., 949.06 (1) (bm), 949.06 (1) (d), 949.06 (1m) (a), 949.06 (1m) (b), 949.06
5 (3) (b), 949.07, 949.08 (1), 949.08 (2) (e) and 949.08 (2) (em); and *to create*
6 949.01 (4g), 949.03 (1) (bn), 949.06 (1) (b) 4., 949.06 (1) (bg), 949.06 (1) (br),
7 949.06 (1) (cg), 949.06 (1) (e) 2. and 3. and 949.08 (1m) (b) of the statutes;
8 **relating to:** compensating victims of crime.

Analysis by the Legislative Reference Bureau

This bill makes changes to the administration of financial compensation to victims of crime. Under current law, a person who is the victim of a crime or a close relative of a victim of a homicide may receive compensation for certain losses he or she suffers as a result of the crime, including payment for medical treatment, replacement of property taken as evidence, and certain economic losses, including loss of income that occurs as a result of the crime and lost economic benefits to dependents who had been supported financially by the victim of the crime.

Under current law, within one year after the crime occurs, the victim or the victim's close relative may apply to the Department of Justice (DOJ) for an award if

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the person reported the crime to law enforcement within five days after the crime occurred. Current law allows DOJ to grant an award after the one-year deadline for application has passed if the department determines it is in the interest of justice. Under current law, DOJ may award up to \$40,000 per injury or death. DOJ may make periodic payments in the case of a death or protracted disability. Current law also allows DOJ to provide, in cases of homicide, up to an additional \$2,000 for funeral and burial expenses.

This bill makes several changes to DOJ's victim compensation award program. Under the bill, if a victim suffers a disability as a result of the crime, covered expenses may include reasonable housing accessibility adaptations. The bill adds victims of certain crimes to the list of persons eligible for compensation and increases the funeral and burial allowance to \$5,000. The bill also allows a parent of a child who was the victim to receive compensation up to \$3,000 for economic losses and for mental health treatment.

Under the bill, DOJ will consider reimbursing crime-related expenses incurred within four years after the crime occurred, except that if a victim was a minor child at the time the crime occurred, he or she may receive payments for up to four years after he or she applies for compensation. The bill allows DOJ to make periodic payments without requiring death or a protracted disability.

The bill clarifies the method for determining the amount to compensate a dependent for the loss of the victim's economic support. Under the bill, DOJ multiplies the victim's annual net earnings by four and subtracts from that amount four years' worth of federal Social Security payments the dependents are expected to receive and any life insurance proceeds the dependents receive.

Under the bill, if the victim's losses or the relative's losses are due to certain crimes involving a motor vehicle and the victim did not carry the minimum insurance required by law, the bill allows DOJ to reduce the amount it pays by the amount the victim would have received in insurance proceeds if he or she had carried the mandatory insurance.

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.** 949.01 (4) of the statutes is amended to read:

2 949.01 (4) "Medical treatment" includes medical, surgical, psychiatric,
3 psychological, dental, optometric, chiropractic, podiatric and hospital care;
4 medicines prescription medications; medical, dental and surgical supplies; crutches;
5 artificial members; appliances and training in the use of artificial members and

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1 appliances. “Medical treatment” includes any Christian Science treatment for cure
2 or relief from the effects of injury.

3 **SECTION 2.** 949.01 (4g) of the statutes is created to read:

4 949.01 (4g) “Parent of a victim” means a person who is a parent, guardian, or
5 legal custodian of a child under the age of 18 who is a victim under sub. (6).

6 **SECTION 3.** 949.01 (5) of the statutes is amended to read:

7 949.01 (5) “Personal injury” means actual bodily harm and includes pregnancy
8 and mental or nervous shock psychological trauma.

9 **SECTION 4.** 949.03 (1) (b) of the statutes is amended to read:

10 949.03 (1) (b) The commission or the attempt to commit any crime specified in
11 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
12 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.235,
13 940.24, 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32,
14 941.327, 942.09, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81,
15 943.86, 943.87, 948.02, 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07,
16 948.075, 948.08, 948.085, 948.09, 948.095, 948.20, 948.21 (1), 948.30 or 948.51.

17 **SECTION 5.** 949.03 (1) (bn) of the statutes is created to read:

18 949.03 (1) (bn) The commission or the attempt to commit abuse described in
19 s. 48.02 (1) (g).

20 **SECTION 6.** 949.03 (1) (c) of the statutes is amended to read:

21 949.03 (1) (c) The commission or the attempt to commit the crime specified in
22 s. 346.67 (1) if the victim was a pedestrian, a person riding a bicycle, or a person in
23 a buggy.

24 **SECTION 7.** 949.04 (2) (b) of the statutes is amended to read:

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1 949.04 (2) (b) ~~The~~ Upon request, the department shall furnish law enforcement
2 agencies with the application forms under par. (a). The law enforcement agency
3 investigating a crime shall provide ~~forms~~ information about the availability of crime
4 victim compensation under this subchapter to each person who may be eligible to file
5 a claim under this subchapter.

6 **SECTION 8.** 949.06 (1) (a) of the statutes is amended to read:

7 949.06 (1) (a) Medical treatment, subject to the limits set forth under par. (bg).

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

9 949.06 (1) (b) (intro.) Work loss, ~~which shall be of a victim, a parent of a victim,~~
10 or in the case of a homicide, a family member of a victim, shall be subject to the limits
11 set forth under par. (bg) and shall be determined as follows:

12 **SECTION 10.** 949.06 (1) (b) 1. of the statutes is amended to read:

13 949.06 (1) (b) 1. If the victim or parent of a victim was employed at the time of
14 the injury, loss of actual earnings shall be based upon ~~the victim's~~ his or her net salary
15 income at the time of the injury.

16 **SECTION 11.** 949.06 (1) (b) 2. of the statutes is amended to read:

17 949.06 (1) (b) 2. If the victim was not employed at the time of the injury or, if
18 as a direct result of the injury, the victim suffered a disability causing a loss of
19 potential earnings income, the award may be based upon a sufficient showing by the
20 victim that he or she actually incurred loss of earnings. ~~The amount of~~ income.

21 3. If a victim is released by a physician to return to work with restrictions but
22 is unable to return to the job he or she was performing at the time the crime was
23 committed, the award shall be reduced by any income from substitute work actually
24 performed by the victim or by income the victim would have earned in available

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1 appropriate substitute work the victim was capable of performing, but unreasonably
2 failed to undertake.

3 **SECTION 12.** 949.06 (1) (b) 4. of the statutes is created to read:

4 949.06 (1) (b) 4. The department may award each victim, parent of a victim,
5 or in the case of a homicide, family member of a victim not more than 2 weeks of lost
6 wages without requiring proof of disability from a physician.

7 **SECTION 13.** 949.06 (1) (bg) of the statutes is created to read:

8 949.06 (1) (bg) The department may award each parent of a victim not more
9 than \$3,000 total for reimbursement of expenses under par. (a) related to mental
10 health treatment and for work loss under par. (b).

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

12 949.06 (1) (bm) If the victim is a homemaker at the time of the injury, the victim
13 was a caregiver in his or her home, an amount sufficient to ensure that the duties
14 and responsibilities are continued until the victim is able to resume the performance
15 of the duties, or until the cost of services reaches the maximum allowable under sub.
16 (2) s. 949.08 (1m) (a), whichever is less.

17 **SECTION 15.** 949.06 (1) (br) of the statutes is created to read:

18 949.06 (1) (br) If as a direct result of the personal injury, the victim suffered
19 a protracted disability, reasonable and necessary housing accessibility adaptations,
20 but not to exceed \$5,000.

21 **SECTION 16.** 949.06 (1) (cg) of the statutes is created to read:

22 949.06 (1) (cg) Reasonable replacement value of any computer or mobile
23 telephone that is held for evidentiary purposes, but not to exceed \$200.

24 **SECTION 17.** 949.06 (1) (d) of the statutes is amended to read:

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1 949.06 (1) (d) Reasonable funeral and burial expenses, not to exceed \$2,000
2 \$5,000. ~~The funeral and burial award may not be considered by the department~~
3 ~~under sub. (2).~~

4 **SECTION 18.** 949.06 (1) (e) of the statutes is renumbered 949.06 (1) (e) (intro.)
5 and amended to read:

6 949.06 (1) (e) (intro.) ~~Dependent's economic loss, which shall include~~
7 ~~contributions of things of economic value provided by the victim to dependents but~~
8 ~~lost as a result of the victim's death.~~ Loss of support, which shall be determined on
9 the basis of the victim's net salary annual income at the time of death, and shall be
10 calculated as ~~an amount equal to 4 times~~ follows:

11 1. The department shall determine the victim's average net annual earnings
12 income, and shall multiply that amount by 4. Subject to subds. 2. and 3., the loss of
13 support award is this amount.

14 **SECTION 19.** 949.06 (1) (e) 2. and 3. of the statutes are created to read:

15 949.06 (1) (e) 2. The department shall deduct from the amount calculated
16 under subd. 1. an amount equal to benefits the dependents received or are to receive,
17 over the course of 4 years, as a survivor benefit from the federal social security
18 program.

19 3. The department shall deduct from the amount calculated under subd. 1. the
20 amount of any life insurance proceeds the dependents received as a result of the
21 victim's death.

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

23 949.06 (1m) (a) In this subsection, "family member" means any spouse,
24 domestic partner under ch. 770, parent, grandparent, stepparent, foster parent,
25 child, stepchild, adopted child, grandchild, foster child, brother, sister, half brother,

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1 ~~or half sister, aunt, uncle, nephew, niece, or parent or sibling of spouse or of a~~
2 ~~domestic partner under ch. 770.~~

3 **SECTION 21.** 949.06 (1m) (b) of the statutes is amended to read:

4 949.06 (1m) (b) In accordance with this subchapter, the department shall make
5 awards, as appropriate, to persons who, immediately prior to the crime, lived in the
6 same household with and to family members of a victim of s. 940.01, 940.02, 940.05,
7 940.06, 940.07, 940.08 or 940.09 for any of the economic losses specified in sub. (1)
8 as a result of the person's or family member's reaction to the death. A dependent may
9 recover both under sub. (1) and this subsection, subject to the limitation under sub.
10 (2) s. 949.08 (1m) (a).

11 **SECTION 22.** 949.06 (2) of the statutes is renumbered 949.08 (1m) (a) and
12 amended to read:

13 949.08 (1m) (a) The Except as provided in par. (b), the department may not
14 make an award of more than \$40,000 for any one injury or death and the department
15 may not make any award for expenses incurred after 4 years from the date of the
16 injury or death.

17 **SECTION 23.** 949.06 (3) (b) of the statutes is amended to read:

18 949.06 (3) (b) From insurance payments or program, including worker's
19 compensation and unemployment insurance. The department may reduce an award
20 related to a crime under s. 346.62 (4), 346.63 (2) or (6), 940.09, 940.10, or 940.25, if
21 the victim was not in compliance with s. 344.62 (1) at the time of the crime, by an
22 amount equal to the payment the victim would have received from an insurance
23 program or payment if the victim had been in compliance with s. 344.62 (1). The
24 department may not reduce an award by an amount received or to be received from

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1 an insurance payment or program if it has deducted that amount from an award for
2 economic loss under sub. (1) (e) 3.

3 **SECTION 24.** 949.06 (3) (d) of the statutes is repealed.

4 **SECTION 25.** 949.07 of the statutes is amended to read:

5 **949.07 Manner of payment.** The award, ~~combining both the compensation~~
6 ~~award and the funeral and burial award, if applicable, shall~~ may be paid in a lump
7 sum, ~~except that in the case of death or protracted disability the award may provide~~
8 ~~for~~ or in periodic payments. The department may pay any portion of an award
9 directly to the provider of any service which is the basis for that portion of the award.
10 No award may be subject to execution, attachment, garnishment or other process,
11 except that an award for allowable expense is not exempt from a claim of a creditor
12 to the extent that the creditor provided products, services or accommodations the
13 costs of which are included in the award.

14 **SECTION 26.** 949.08 (1) of the statutes is amended to read:

15 949.08 (1) No order for the payment of an award may be made unless the
16 application was made within 1 year after the date of the personal injury or death, and
17 the personal injury or death was the result of an incident or offense which had been
18 reported to the police within 5 days of its occurrence or, if the incident or offense could
19 not reasonably have been reported within such period, within 5 days of the time when
20 a report could reasonably have been made. The department may waive the ~~one-year~~
21 ~~requirement~~ requirements under this subsection in the interest of justice.

22 **SECTION 27.** 949.08 (1m) (b) of the statutes is created to read:

23 949.08 (1m) (b) If an applicant was a child at the time of the injury, the
24 department may consider for payment eligible expenses that the applicant incurred
25 not more than 1 year before he or she submitted an application for an award under

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1 this subchapter. The department may not make any award after 4 years have passed
2 since the date the person made the application or after 4 years have passed since the
3 date on which the person incurred the expense prior to submitting the application,
4 whichever occurs first.

5 **SECTION 28.** 949.08 (2) (e) of the statutes is amended to read:

6 949.08 (2) (e) Is an adult passenger in the offender's vehicle, the crime involved
7 is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender was
8 ~~committing that offense~~ under the influence of an intoxicant, a controlled substance,
9 or another drug to a degree that renders him or her incapable of safely driving. This
10 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,
11 940.305, 940.31 or 948.30.

12 **SECTION 29.** 949.08 (2) (em) of the statutes is amended to read:

13 949.08 (2) (em) Is an adult passenger in the offender's commercial motor
14 vehicle, the crime involved is specified in s. 346.63 (6) or 940.25, and the passenger
15 knew the offender was ~~committing that offense~~ under the influence of an intoxicant,
16 a controlled substance, or another drug to a degree that renders him or her incapable
17 of safely driving. This paragraph does not apply if the victim is also a victim of a
18 crime specified in s. 940.30, 940.305, 940.31, or 948.30.

19 **SECTION 30.** 949.10 of the statutes is repealed.

20 (END)