

2015 DRAFTING REQUEST

Bill

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Pre Topic:

No specific pre topic given

Topic:

Changes to victim compensation fund

Instructions:

See attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|-----------------------|-----------------------|----------------|-----------------------|-----------------|-----------------|
| /P1 | phurley 7/27/2015 | anienaja 7/23/2015 | _____ | lparisi 5/21/2015 | | State S&L |
| /P2 | phurley 9/23/2015 | kmochal 8/4/2015 | _____ | lparisi 8/4/2015 | | State S&L |
| /P3 | phurley 11/13/2015 | eweiss 11/17/2015 | _____ | sbasford 9/23/2015 | | State S&L |
| /P4 | phurley | | _____ | sbasford | | State |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|------------------------|----------------|-----------------------|----------------------|---------------------|
| /1 | 11/30/2015 | anienaja 11/30/2015 | _____ | lparisi 11/30/2015 | mbarman 12/3/2015 | S&L State S&L |

FE Sent For:

at intro
1/7/16

<END>

PROPOSED CHAPTER 949 REVISIONS

§ 949.06(1)(a) Medical treatment

new section is done by 1/28

- 1. Limit payment of medical treatment to a 4 year time period from the date of the crime or \$40,000, whichever comes first. OR
- 2. Specify limit of certain types of medical expenses, such as mental health and associated prescription costs from the date of the crime to a 4 year time period. Identify exceptions that apply to include claims involving child victims and adults who were victims of crimes as children, where the 4 year time period of the claim would start from the date of the application. May consider caps on expenses.
- 3. Extend benefits to parents of minor children for parents' mental health expenses and lost wages; set cap.

1-5 in 949.06(1m)(a)-(5), but see 95

§ 949.06(1)(b) Work loss

- 4. Limit any lost wage payments to four years after the date of the crime.
- 5. § 949.06(1)(b)(1) and (2) – Limit up to 4 years or \$40,000 whichever comes first.
- 6. Change “net salary” to “net income” in both the loss of support and economic loss subsections (§ 949.06(1)(b)(1) and (2); § 949.06(1)(e)). This change allows the Program to consider all types of income in addition to salary, e.g. replacement of a deceased victim’s social security income.
- 7. It is recommended that the substitute work provision be written in a separate paragraph from § 949.06(1)(b)2. Create a new paragraph to be section § 949.06(1)(b)3 to read: If a victim is released to return to work with restrictions per a physician but is unable to return to the job they were performing at the time of the crime, the award shall be reduced by any income from substitute work (and then use the rest of the language already in the statute).
- 8. Under § 949.06(1m)(a), family member defined; allow program to pay up to two weeks of lost wages without a physician certificate in cases involving a homicide survivor. This would require an administrative code change to Jus § 11.04(2)(a), which currently requires that the disability period be determined by a physician.

§ 949.06(1)(e) Economic loss and loss of support

1/28 1/28

- 9. Remove the provisions that apply to economic loss and revise loss of support provisions.
- 10. Simplify loss of support language. The current language results in a calculation that is confusing to administer and burdensome on surviving dependents.
- 11. Consider similar provisions from Minnesota, Iowa, and Illinois; identify alternative approaches:

| Minnesota | Iowa | Illinois |
|--|---|---|
| <ul style="list-style-type: none"> • Pays a monthly benefit to any dependent. • Monthly amount (currently \$350) is set by the legislature each year. • Pays regardless of whether the victim was working or supporting dependent at the time of death. • Social security benefits and other government payments are not deducted. • Benefit is payable for 3 years or until child reaches age 18; after 3 years the claim may be resubmitted and re-evaluated for continuing financial need. | <ul style="list-style-type: none"> • Pays for loss of support at a rate of \$4,000 per dependent. • Pays for dependent care if victim is disabled and was providing care to a dependent. • Payment is made at Iowa's minimum wage. | <ul style="list-style-type: none"> • Pays a maximum loss of support of \$1,000 per month if victim was working and supporting dependents at time of death. • Overall maximum is \$27,000 per claim. • Fairly complicated scheme calculating loss of earnings from previous six months over the victim's life expectancy; minor child's age on crime date current court-ordered child support; etc. |

Alternative Approaches to Consider for Wisconsin

- x60
- Make yearly payments to dependents for a limited time period, such as 4 years.
 - Deduct life insurance as a collateral source, only if left to a dependent.
 - Do not deduct social security benefits.
 - Determine whether the benefit should end at age 18 or be paid to dependents for 4 years regardless of their age at the time of the crime; determine whether to cap the total amount, such as a limit of \$4,000 per dependent; determine if benefits should be paid regardless of whether deceased victim was working.
 - If dependents were relying on financial support of the victim who was working at the time of death, loss of support is based on net wages. Award based on 4 times the victim's average net annual income for the time dependent was entitled to support, not to exceed 4 years.
 - If dependents are receiving court-ordered child support, loss of support is based on actual, documented amount the victim was providing to the dependent at the time of the victim's death.

§ 949.06(1)(d) Funeral benefit

- 12
- 13
- Increase funeral benefit to at least \$4,000, preferably \$5,000.
 - Include funeral benefit within overall \$40,000 maximum, not as a separate benefit.

§ 949.03(1)(b) Compensable acts

- ✓ 14 • Add drug endangered children under circumstances specified in § 48.02(1)(g).
- ✓ 15 • Add § 948.21(b)-(d) to cover neglect of a child which results in bodily harm, great bodily harm, or death.
- ✓ 16 • Change language of § 949.03(c) to include bicycles and buggies; to include passengers in a buggy. Statute would still not cover passengers and drivers of motor vehicles.

§ 949.06(1)(c) Computation of award

- ✓ 17 • Add replacement of cell phone or computer held as evidence, not to exceed a certain amount, such as \$200.00.

§ 949.01(4) Definition of "medical treatment"

- ✓ 18 • Include mental health treatment.
- ✓ 19 • Change medicines to "prescription medications".
- xxx 20 • Add adaptations to make victim's residence handicap accessible; define adaptations in a separate subsection; propose a cap on these costs. *def? imp 2*

§ 949.01(5) Definition of "Personal injury"

- ✓ 21 • Update the term "nervous shock" to "psychological trauma".

§ 949.01(6) Definition of "victim"

- xxx 22 • Clarify "victim" to distinguish from witness or bystander: "Victim" means a person who is killed or injured by an incident specified in section 949.03(1)(a), not to include a witness or bystander. *Can we just say person physically injured or killed? A witness could be injured. Or say + witness or bystander unless physically injured.*

§ 949.04(2)(b) Application for award

- ✓ 23 • Require that law enforcement to give out "information" regarding compensation, rather than "application".

§ 949.06(1)(bm) Homemaker benefit

- 24 • Update the language to remove the term “homemaker” to read: “If the victim was working at the time of the crime as a caregiver in the home, an amount sufficient to ...”

125 • **§ 949.06(1m)(a) Family member**

- 22 • Add foster parent.
22 • Remove aunt, uncle, nephew, niece, or parent or sibling of spouse or of a domestic partner under Ch. 770.

27 • **§ 949.06(3)(d) Emergency award and 949.10**

- Take out this provision. It is unnecessary to the administration of the Program.

72 • **§ 949.07 Manner of payment**

- Change this provision to say that the award “may” (not shall) be paid in a lump sum; allow for periodic payments on any claim.

29 • **§ 949.08(1) Limitations on awards**

- Add an “in the interest of justice” waiver provision for the 5 day reporting requirement, for clarification to read: “The department may waive the one-year and/or the 5 day reporting requirement under this subsection in the interest of justice.”

77 • **§ 949.08**

- 30 • Add provision that if claimant does not carry the mandatory minimum automobile insurance, the department may reduce award by the amount of coverage that was required.

77 • **§ 949.08(2)(e) and (em)**

- 31 • Adopt language of § Jus 11.07(7) to reflect that the victim only needs to know that the offender was under the influence of an intoxicant. Also update § Jus 11.07(7) to reflect the current prohibited BAC of 0.08.

a dependent for the loss of the victim's

the

Under the bill, DOJ must make all payments within four years after the crime occurred, except that if a victim is a child, the child may receive payments for up to four years after he or she applies for compensation. The bill allows DOJ to make period payments without requiring death or a protracted disability.

The bill clarifies the method for determining an amount to compensate for a dependent's loss of economic support. Under the bill, DOJ multiplies the victim's average annual 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. or the relative's losses

Under the bill, if the victim's losses are due to certain crimes involving a motor vehicle and the victim did not carry the minimum insurance required by law on his or her vehicle, 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 proper 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:

SECTION 1. 949.01 (4) of the statutes is amended to read:

949.01 (4) "Medical treatment" includes medical, surgical, psychiatric or psychological, dental, optometric, chiropractic, podiatric and hospital care; medicines prescription medications; medical, dental and surgical supplies; crutches; artificial members; appliances and training in the use of artificial members and appliances. "Medical treatment" includes any Christian Science treatment for cure or relief from the effects of injury.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189; 1981 c. 20; 1983 a. 467; 1985 a. 135 s. 83 (3); 1989 a. 140; 1995 a. 153; 2007 a. 20; 2009 a. 28.

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

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

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

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

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189; 1981 c. 20; 1983 a. 467; 1985 a. 135 s. 83 (3); 1989 a. 140; 1995 a. 153; 2007 a. 20; 2009 a. 28.

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

2 949.03 (1) (b) The commission or the attempt to commit any crime specified in
3 s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08,
4 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.235,
5 940.24, 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32,
6 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86,
7 943.87, 948.02, 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.075,
8 948.08, 948.085, 948.09, 948.095, 948.20, 948.21 (1) (b) to (d), 948.30 or 948.51.

History: 1975 c. 224 s. 145za; 1975 c. 344; 1977 c. 173, 239; 1979 c. 118; 1983 a. 199, 356, 538; 1985 a. 275; 1985 a. 293 s. 3; 1985 a. 306 s. 5; 1987 a. 90, 332, 380, 399, 403; 1989 a. 105, 140, 359; 1993 a. 92, 227; 1995 a. 153, 374, 456; 1997 a. 35, 143, 258; 2001 a. 109; 2005 a. 212, 277; 2007 a. 97, 116; 2011 a. 271; 2013 a. 362.

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

10 949.03 (1) (bn) The commission or the attempt to commit abuse described in
11 s. 48.02 (1) (g).

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

13 949.03 (1) (c) The commission or the attempt to commit the crime specified in
14 s. 346.67 (1) if the victim was a pedestrian, person riding a bicycle, or a passenger
15 in a buggy.

History: 1975 c. 224 s. 145za; 1975 c. 344; 1977 c. 173, 239; 1979 c. 118; 1983 a. 199, 356, 538; 1985 a. 275; 1985 a. 293 s. 3; 1985 a. 306 s. 5; 1987 a. 90, 332, 380, 399, 403; 1989 a. 105, 140, 359; 1993 a. 92, 227; 1995 a. 153, 374, 456; 1997 a. 35, 143, 258; 2001 a. 109; 2005 a. 212, 277; 2007 a. 97, 116; 2011 a. 271; 2013 a. 362.

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

17 949.04 (2) (b) The department shall furnish law enforcement agencies with the
18 forms under par. (a). The law enforcement agency investigating a crime shall provide
19 forms information regarding claims under this subchapter to each person who may
20 be eligible to file a claim under this subchapter.

History: 1975 c. 344, 421; 1975 c. 422 s. 163; 1977 c. 239; 1981 c. 20; 2005 a. 387; 2007 a. 20; 2009 a. 138; s. 13.92 (1) (bm) 2.

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

1 949.06 (1) (a) Medical treatment. The department may award no more than
2 \$3,000 to a parent of a victim for psychiatric or psychological care the parent receives.

3 History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

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

4 949.06 (1) (b) (intro.) Work loss, which shall be ~~of the victim or~~ ^{of the victim or} of a parent of
5 a victim. The department may award a parent of a victim not more than two weeks
6 of earnings under par. (a) without requiring a physician's certificate of proof. Work
7 loss is determined as follows:

8 History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

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

9 949.06 (1) (b) 1. If the victim or parent of a victim was employed at the time of
10 the injury, loss of actual earnings shall be based upon ~~the victim's~~ his or her net salary
11 income at the time of the injury.

12 History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

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

13 949.06 (1) (b) 2. If the victim was not employed at the time of the injury or, if
14 as a direct result of the injury, the victim suffered a disability causing a loss of
15 potential earnings income, the award may be based upon a sufficient showing by the
16 victim that he or she actually incurred loss of earnings. The amount of income.

17 3. If a victim is released by a ~~physical~~ ^{physician} to return to work with restrictions but
18 is unable to return to the job he or she was performing at the time the crime was
19 committed, the award shall be reduced by any income from substitute work actually
20 performed by the victim or by income the victim would have earned in available
21 appropriate substitute work the victim was capable of performing, but unreasonably
22 failed to undertake.

23 History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

23 SECTION 12. 949.06 (1) (bm) of the statutes is amended to read:

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

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

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

7 949.06 (1) (br) If as a direct result of the personal injury, the victim suffered
 8 a disability, reasonable and necessary housing accessibility adaptations, but not to
 9 exceed \$5,000.

10 **SECTION 14.** 949.06 (1) (cg) of the statutes is created to read:

11 949.06 (1) (cg) Reasonable replacement value of any computer or cellular
 12 telephone that is held for evidentiary purposes, but not to exceed \$200.

13 **SECTION 15.** 949.06 (1) (d) of the statutes is amended to read:

14 949.06 (1) (d) Reasonable funeral and burial expenses, not to exceed ~~\$2,000~~
 15 \$5,000. The funeral and burial award may not be considered by the department
 16 under ~~sub. (2)~~ s. 949.08 (1m)(a) ✓

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

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

18 949.06 (1) (e) Dependent's economic loss, which shall include contributions of
 19 things of economic value provided by the victim to dependents but lost as a result of
 20 the victim's death. Loss of support shall be determined on the basis of the victim's
 21 net salary income at the time of death, and shall be calculated as ~~an amount equal~~
 22 to 4 times follows:

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

4 949.06 (1)(e) 2. The department shall deduct from the amount calculated under subd. 1 an
5 amount equal to benefits the dependents received or are expected, over the course
6 of 4 years, to receive as a survivor benefit from the federal Social Security program.

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

plan

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

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

11 949.06 (1m) (a) In this subsection, "family member" means any spouse,
12 domestic partner under ch. 770, parent, grandparent, stepparent, foster parent,
13 child, stepchild, adopted child, grandchild, foster child, brother, sister, half brother,
14 or half sister, ~~aunt, uncle, nephew, niece, or parent or sibling of spouse or of a~~
15 ~~domestic partner under ch. 770.~~

INSERT A →

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

16 SECTION 18. 949.06 (2) of the statutes is renumbered 949.08 (1m) (a) and
17 amended to read:

18 949.08 (1m) (a) The Except as provided in par. (b), the department may not
19 make an award of more than \$40,000 for any one injury or death and the department
20 may not make any award after 4 years have passed since the date the injury or death
21 occurred.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

22 SECTION 19. 949.06 (3) (b) of the statutes is amended to read:

23 949.06 (3) (b) From insurance payments or program, including worker's
24 compensation and unemployment insurance. The department may reduce an award

Section #. 949.06 (1)(e) 2. and 3. of the statutes are created to read:

1 related to a crime under s. 346.62 (4), 346.63 (2) or (6), 940.09, 940.10, or 940.25, if
 2 the victim was not in compliance with s. 344.62 (1) at the time of the crime, by an
 3 amount equal to the payment the victim would have received from an insurance
 4 program or payment if the victim had been in compliance with s. 344.62 (1). The
 5 department may not reduce a reward by an amount received or to be received from
 6 an insurance payment or program if it has deducted that amount from an award for
 7 economic loss under sub. (1)(e) 3.

8 **History:** 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

8 **SECTION 20.** 949.06 (3) (d) of the statutes is repealed.

9 **SECTION 21.** 949.07 of the statutes is amended to read:

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

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

19 **SECTION 22.** 949.08 (1) of the statutes is amended to read:

20 949.08 (1) No order for the payment of an award may be made unless the
 21 application was made within 1 year after the date of the personal injury or death, and
 22 the personal injury or death was the result of an incident or offense which had been
 23 reported to the police within 5 days of its occurrence or, if the incident or offense could
 24 not reasonably have been reported within such period, within 5 days of the time when

1 a report could reasonably have been made. The department may waive the ~~one-year~~
 2 ~~requirement~~ requirements under this subsection in the interest of justice.

History: 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a. 9; 2003 a. 30, 97, 326.

3 **SECTION 23.** 949.08 (1m) (b) of the statutes is created to read:

4 949.08 (1m) (b) The department may not make any award to a person who was
 5 a child at the time of the injury or death after 4 years have passed since ^{the} ~~date~~ the
 6 person made an application for an award under this subchapter.

7 **SECTION 24.** 949.08 (2) (e) of the statutes is amended to read:

8 949.08 (2) (e) Is an adult passenger in the offender's vehicle, the crime involved
 9 is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender was
 10 ~~committing that offense~~ under the influence of an intoxicant or another drug. This
 11 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,
 12 940.305, 940.31 or 948.30.

History: 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a. 9; 2003 a. 30, 97, 326.

13 **SECTION 25.** 949.08 (2) (em) of the statutes is amended to read:

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

History: 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a. 9; 2003 a. 30, 97, 326.

19 **SECTION 26.** 949.10 (1) (b) of the statutes is amended to read:

20 949.10 (1) (b) An emergency award for funeral and burial expenses may not
 21 exceed ~~\$2,000~~ \$5,000.

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

22 **SECTION 27.** 949.10 (2) of the statutes is amended to read:

1 949.10 (2) Any award under sub. (1) [✓](a) shall be deducted from the final award
2 made to the claimant. The excess of the amount of such emergency award over the
3 amount of the final award, or the full amount of the emergency award if no final
4 award is made, shall be repaid by the claimant to the department.

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

(END)

(B) (CS)

INSERT A

Section #. 949.06 (1m) (b) of the statutes is amended to read:

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

(B)
949.06 (1m) (b)

s. 949.08 (1m)(a)

Stark, Sherri E.

Subject: FW: Victim compensation changes

From: Welsh, Erin B.

Sent: Tuesday, April 28, 2015 10:25 AM

To: Zupan, Kathleen J.

Subject: RE: Victim compensation changes

1. If benefits are extended to parents of minor children (presumably, the child was the victim) for the parents' mental health and/or lost wages do you want to place a cap on those benefits? If so, what should the cap be?
 - The benefit to the parent should be included in the \$40,000 overall benefit.
 - The parent should be allowed up to two weeks of lost wages, without having to provide a physician's certificate which is required under JUS 11.04(2)(a), if the parent misses work due to the child's injuries.
 - Mental health benefits available to the parent whose child is the victim of a crime should be capped at \$3,000. This would be included in the overall \$40,000 claim maximum.

2. How should economic loss and loss of support benefits be determined? The proposed revisions offer several options.
Here is what we propose:
 - Eliminate the economic loss provisions.
 - For loss of financial support for dependents and children under the age of 18:
 - Identify the deceased victim's net yearly income at the time of death.
 - Multiply deceased victim's net yearly income by 4 years.
 - Deduct 4 years worth of Social Security benefits to be received by the beneficiary/claimant.
 - Deduct total amount of life insurance received by the beneficiary/claimant.
 - The amount remaining is the loss of support award amount.

3. If benefits are extended to include adaptations to make a victim's residence handicap accessible, do you want to place a cap on these expenses or just include them in the \$40,000/4 year limit?
 - Allow for a one-time benefit of up to \$5,000 for reasonable and necessary adaptations to accommodate a crime-related disability.
 - This benefit would fall within the \$40,000/4-year limit.

4. With regard to the proposed change to the definition of "victim" to not include a witness or bystander, would it work to amend the definition so that a victim must be physically injured or killed by an incident specified in s. 949.03 (1) (a)? I think this would eliminate claims from a person who was psychologically harmed or traumatized, but not physically injured, as a witness or bystander.
 - No; this would eliminate being able to pay costs for victims of sensitive crimes (including children) who suffer trauma but do not have physical injuries.
 - It is okay to eliminate a witness or bystander who was never in harm's way. If the person was in harm's way, he/she would still be considered eligible.

5. With regard to the mandatory minimum automobile insurance, does this apply only to persons who were injured in traffic-related crimes? Does it apply to people who did not carry the required insurance at the time of the injury or death? Please clarify.
 - Yes and yes. Compliance with the mandatory minimum automobile insurance law would only apply to individuals injured or killed in traffic-related crimes who were required by law to carry such insurance.

*redline
949.03
(1)(a)*

344.01 (2)(d)

PROPOSED CHAPTER 949 REVISIONS

§ 949.06(1)(a) Medical treatment

- Limit payment of medical treatment to a 4 year time period from the date of the crime or \$40,000, whichever comes first.
- Specify limit of certain types of medical expenses, such as mental health and associated prescription costs from the date of the crime to a 4 year time period. Identify exceptions that apply to include claims involving child victims and adults who were victims of crimes as children, where the 4 year time period of the claim would start from the date of the application. May consider caps on expenses.
- Extend benefits to parents of minor children for parents' mental health expenses and lost wages; set cap.

§ 949.06(1)(b) Work loss

- Limit any lost wage payments to four years after the date of the crime.
- § 949.06(1)(b)(1) and (2) – Limit up to 4 years or \$40,000 whichever comes first.
- Change “net salary” to “net income” in both the loss of support and economic loss subsections (§ 949.06(1)(b)(1) and (2); § 949.06(1)(e)). This change allows the Program to consider all types of income in addition to salary, e.g. replacement of a deceased victim's social security income.
- It is recommended that the substitute work provision be written in a separate paragraph from § 949.06(1)(b)2. Create a new paragraph to be section § 949.06(1)(b)3 to read: If a victim is released to return to work with restrictions per a physician but is unable to return to the job they were performing at the time of the crime, the award shall be reduced by any income from substitute work (and then use the rest of the language already in the statute).
- Under § 949.06(1m)(a), family member defined; allow program to pay up to two weeks of lost wages without a physician certificate in cases involving a homicide survivor. This would require an administrative code change to Jus § 11.04(2)(a), which currently requires that the disability period be determined by a physician.

§ 949.06(1)(e) Economic loss and loss of support

- Remove the provisions that apply to economic loss and revise loss of support provisions.
- Simplify loss of support language. The current language results in a calculation that is confusing to administer and burdensome on surviving dependents.
- Consider similar provisions from Minnesota, Iowa, and Illinois; identify alternative approaches:

| Minnesota | Iowa | Illinois |
|--|---|---|
| <ul style="list-style-type: none"> • Pays a monthly benefit to any dependent. • Monthly amount (currently \$350) is set by the legislature each year. • Pays regardless of whether the victim was working or supporting dependent at the time of death. • Social security benefits and other government payments are not deducted. • Benefit is payable for 3 years or until child reaches age 18; after 3 years the claim may be resubmitted and re-evaluated for continuing financial need. | <ul style="list-style-type: none"> • Pays for loss of support at a rate of \$4,000 per dependent. • Pays for dependent care if victim is disabled and was providing care to a dependent. • Payment is made at Iowa's minimum wage. | <ul style="list-style-type: none"> • Pays a maximum loss of support of \$1,000 per month if victim was working and supporting dependents at time of death. • Overall maximum is \$27,000 per claim. • Fairly complicated scheme calculating loss of earnings from previous six months over the victim's life expectancy; minor child's age on crime date current court-ordered child support; etc. |

Alternative Approaches to Consider for Wisconsin

- Make yearly payments to dependents for a limited time period, such as 4 years.
- Deduct life insurance as a collateral source, only if left to a dependent.
- Do not deduct social security benefits.
- Determine whether the benefit should end at age 18 or be paid to dependents for 4 years regardless of their age at the time of the crime; determine whether to cap the total amount, such as a limit of \$4,000 per dependent; determine if benefits should be paid regardless of whether deceased victim was working.
- If dependents were relying on financial support of the victim who was working at the time of death, loss of support is based on net wages. Award based on 4 times the victim's average net annual income for the time dependent was entitled to support, not to exceed 4 years.
- If dependents are receiving court-ordered child support, loss of support is based on actual, documented amount the victim was providing to the dependent at the time of the victim's death.

§ 949.06(1)(d) Funeral benefit

- Increase funeral benefit to at least \$4,000, preferably \$5,000.
- Include funeral benefit within overall \$40,000 maximum, not as a separate benefit.

COMPENSABLE CRIMES

Rev. 9/14

| | |
|-----------------------------|--|
| 346.62(4) | Reckless Driving |
| 346.63(2) or (6) | Operating Under Influence of Intoxicant or Other Drug |
| 346.67(1) | Duty Upon Striking (Pedestrian Only) (Effective on or after 4/4/96) |
| 940.01 | First-Degree Intentional Homicide |
| 940.02 | First-Degree Reckless Homicide |
| 940.03 | Felony Murder |
| 940.05 | Second-Degree Intentional Homicide |
| 940.06 | Second-Degree Reckless Homicide |
| 940.07 | Homicide Resulting from Negligent Control of Vicious Animal |
| 940.08 | Homicide by Negligent Handling of Dangerous Weapon, Explosives or Fire |
| 940.09 | Homicide by Intoxicated Use of Vehicle or Firearm |
| 940.10 | Homicide by Negligent Operation of Vehicle |
| 940.19 | Battery; Substantial Battery; Aggravated Battery |
| 940.20 | Battery; Special Circumstances |
| 940.201 | Battery or Threat to Witnesses |
| 940.21 | Mayhem |
| 940.22(2) | Sexual Exploitation by a Therapist |
| 940.225 | Sexual Assault |
| 940.23 | Reckless Injury |
| 940.235 | Strangulation & Suffocation |
| 940.24 | Injury by Negligent Handling of Dangerous Weapon, Explosives or Fire |
| 940.25 | Injury by Intoxicated Use of a Vehicle |
| 940.285 | Abuse of Vulnerable Adults |
| 940.29 | Abuse of Residents of Penal Facilities |
| 940.30 | False Imprisonment |
| 940.302(2) | Human Trafficking |
| 940.305 | Taking Hostages |
| 940.31 | Kidnapping |
| 940.32 | Stalking (Effective 6/14/96) |
| 941.327 | Tampering with Household Products |
| 943.02 | Arson of Buildings; Damage of Property by Explosives |
| 943.03 | Arson of Property Other Than Building |
| 943.04 | Arson with Intent to Defraud |
| 943.10 | Burglary |
| 943.20 | Theft |
| 943.23(1g) | Operating Vehicle Without Owner's Consent While Possessing Dangerous Weapon |
| 943.32 | Robbery |
| 943.81 | Theft from a Financial Institution |
| 943.86 | Extortion against a Financial Institution |
| 943.87 | Robbery of a Financial Institution |
| 948.02 | Sexual Assault of a Child |
| 948.025 | Engaging in Repeated Acts of Sexual Assault of the Same Child |
| 948.03 | Physical Abuse of a Child |
| 948.04 | Causing Mental Harm to a Child |
| 948.05 | Sexual Exploitation of a Child (Effective 4/24/12) |
| 948.051 | Trafficking of a Child |
| 948.06 | Incest with a Child (Effective 4/24/12) |
| 948.07 | Child Enticement |
| 948.075 | Use of a Computer to Facilitate a Child Sex Crime (Effective 4/24/12) |
| 948.08 | Soliciting a Child for Prostitution (Effective 4/24/12) |

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948.09. Sexual Intercourse with a Child Age 16 or Older (Effective 4/24/12)
948.085 Sexual Assault of a Child Placed in Substitute Care
948.095 Sexual Assault of a Student by a School Instructional Staff Person
948.20 Abandonment of a Child
948.30 Abduction of Another's Child; Constructive Custody
948.51 Hazing

949.01 (intro.) Definitions. In this subchapter:

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

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

(2) "Dependent" means any spouse, domestic partner under ch. 770, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, brother, sister, half brother, half sister, or parent of spouse or of domestic partner under ch. 770, of a deceased victim who was wholly or partially dependent upon the victim's income at the time of the victim's death and includes any child of the victim born after the victim's death. (2m) "Housing accessibility adaptation means ~~XX~~ 20

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

(4) "Medical treatment" includes medical, surgical, dental, ^{psychiatric or psychological 18}optometric, chiropractic, podiatric and hospital care; ~~medicines~~; medical, dental and surgical supplies; crutches; artificial members; appliances and training in the use of artificial members and appliances. "Medical treatment" includes any Christian Science treatment for cure or relief from the effects of injury. ^{and housing accessibility adaptations 20}

(4m) "Pedestrian" has the meaning given in s. 340.01 (43).

(5) "Personal injury" means actual bodily harm and includes pregnancy and mental or ~~nervous shock~~ ^{psychological trauma 21}

(6) "Victim" means a person who is injured or killed by an incident specified in s. 949.03 (1) (a), or by any act or omission of any other person that is within the description of any of the offenses listed in s. 949.03 (1) (b) or within the description of the offense listed and the condition provided in s. 949.03 (1) (c). This definition does not apply to s. 949.165. ^{and does not include a person who merely witnesses the commission or attempt to commit a crime.}

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189; 1981 c. 20; 1983 a. 467; 1985 a. 135 s. 83 (3); 1989 a. 140; 1995 a. 153; 2007 a. 20; 2009 a. 28.

949.03 Compensable acts.

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

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

(b) The commission or the attempt to commit any crime specified in s. 346.62 (4), 346.63 (2) or (6), 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.10, 940.19, 940.20, 940.201, 940.21, 940.22 (2), 940.225, 940.23, 940.235, 940.24, 940.25, 940.285, 940.29, 940.30, 940.302 (2), 940.305, 940.31, 940.32, 941.327, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86, 943.87, 948.02, 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.075, 948.08, 948.085, 948.09, 948.095, 948.20, 948.30 or 948.51. ²¹

(c) The commission or the attempt to commit the crime specified in s. 346.67 (1) if the victim was a

¹⁵ ¹⁴ also described in 98.02(1)(h)

pedestrian *→ a person riding a bicycle, or a passenger in a
Lugger 16*

History: 1975 c. 224 s. 145za; 1975 c. 344; 1977 c. 173, 239; 1979 c. 118; 1983 a. 199, 356, 538; 1985 a. 275; 1985 a. 293 s. 3; 1985 a. 306 s. 5; 1987 a. 90, 332, 380, 399, 403; 1989 a. 105, 140, 359; 1993 a. 92, 227; 1995 a. 153, 374, 456; 1997 a. 35, 143, 258; 2001 a. 109; 2005 a. 212, 277; 2007 a. 97, 116; 2011 a. 271; 2013 a. 362.

949.04 Application for award.

(1) ELIGIBILITY.

(ag) Any person may apply for an award under this subchapter.

NOTE: Par. (ag) is shown as renumbered from sub. (1) (intro.) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

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

NOTE: Par. (ar) is shown as renumbered from par. (a) by the legislative reference bureau under s. 13.92 (1) (bm) 2.

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

(2) FORMS.

(a) The department shall prescribe application forms for awards under this subchapter. If the application results from the commission of or the attempt to commit a crime specified in s. 940.22 (2), 940.225, 948.02, 948.025, 948.051, 948.085, or 948.095 or a crime or an act compensable under s. 949.03 that was sexually motivated, as defined in s. 980.01 (5), any personally identifiable information, as defined in s. 19.62 (5), provided on the application form is not subject to inspection or copying under s. 19.35 (1).

123 (b) The department shall furnish law enforcement agencies with *information regarding claims under this subch* the forms under par. (a). The law enforcement agency investigating a crime shall provide ~~forms~~ to each person who may be eligible to file a claim under this subchapter.

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

History: 1975 c. 344, 421; 1975 c. 422 s. 163; 1977 c. 239; 1981 c. 20; 2005 a. 387; 2007 a. 20; 2009 a. 138; s. 13.92 (1) (bm) 2.

949.06 Computation of award.

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

(a) Medical treatment.

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

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

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

3 see language in 7.

Income
at the time of the injury, the vic was working as a caregiver in his or her home.
(bm) If the victim is a homemaker, an amount sufficient to ensure that the duties and responsibilities are continued until the victim is able to resume the performance of the duties, or until the cost of services reaches the maximum allowable under sub. (2), whichever is less.

(c) Reasonable replacement value of any clothing and bedding that is held for evidentiary purposes, but not to exceed \$300.

if (cg) cell phone or computer. total \$200 (see language in (c))

(cm) Reasonable replacement value for property, other than clothing and bedding under par. (c), that is held for evidentiary purposes and is rendered unusable as a result of crime laboratory testing, but not to exceed \$200.

Income
\$5000
(d) Reasonable funeral and burial expenses, not to exceed \$2,000. The funeral and burial award may not be considered by the department under sub. (2).

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

(f) Reasonable and necessary costs associated with securing and cleaning up a crime scene, not to exceed \$1,000.

(1m)

foster parent 25
(a) In this subsection, "family member" means any spouse, domestic partner under ch. 770, parent, grandparent, stepparent, child, stepchild, adopted child, grandchild, foster child, brother, sister, half brother, half sister, aunt, uncle, nephew, niece, or parent or sibling of spouse or of a domestic partner under ch. 770.

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

subject to 948.08 (123)
(2) The department may not make an award of more than \$40,000 for any one injury or death.

(3) (intro.) Any award made under this section shall be reduced by the amount of any payment received,

hand to 948.06

or to be received, as a result of the injury or death:

- (a) From, or on behalf of, the person who committed the crime.
- (b) From insurance payments or program, including worker's compensation and unemployment insurance.
- (c) From public funds.

~~(d) As an emergency award under s. 949.10~~ ^{(1)(a)} ~~repealed 27~~

- (e) From one or more 3rd parties held liable for the offender's acts.
- (f) From an award under s. 949.26.

(4)

- (a) An award may be made whether or not any person is prosecuted or convicted of any offense arising out of such act or omission.
- (b) The department may suspend proceedings under this subchapter for a period it deems appropriate on the grounds that a prosecution for an offense arising out of the act or omission has been commenced or is imminent.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198; 1981 c. 20, 314; 1985 a. 242; 1987 a. 27; 1993 a. 16, 446; 1997 a. 27, 39; 2003 a. 33; 2007 a. 20; 2009 a. 28, 276.

Cross-reference: See also ch. Jus 11, Wis. adm. code.

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

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

949.08 Limitations on awards.

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

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

- (a) Engaged in conduct which substantially contributed to the infliction of the victim's injury or death or

in which the victim could have reasonably foreseen could lead to the injury or death. This does not apply to awards to victims under s. 949.03 (1) (a).

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

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

(e) Is an adult passenger in the offender's vehicle, the crime involved is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender was committing that offense. This paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31 or 948.30.

*under the influence of
of an intoxicant or drug*

(em) Is an adult passenger in the offender's commercial motor vehicle, the crime involved is specified in s. 346.63 (6) or 940.25, and the passenger knew the offender was committing that offense. This paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30, 940.305, 940.31, or 948.30.

*under the inf
of an intoxic
drug*

(f) Has not cooperated with the department in the administration of the program.

(g) Is included on the statewide support lien docket under s. 49.854 (2) (b), unless the victim provides to the department a payment agreement that has been approved by the county child support agency under s. 59.53 (5) and that is consistent with rules promulgated under s. 49.858 (2) (a).

(2m) If a claimant other than a victim has not cooperated with the department in the administration of the program, no award may be ordered for the claimant.

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

History: 1975 c. 344, 421; 1979 c. 189; 1981 c. 20; 1983 a. 199; 1985 a. 242, 337; 1987 a. 27; 1987 a. 332 s. 64; 1989 a. 105, 140; 1991 a. 277; 1995 a. 404, 448; 1999 a. 9; 2003 a. 30, 97, 326.

949.10 Emergency awards.

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

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

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

\$5000

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

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

Chapter 949 Preliminary Draft – Suggested Changes

- P. 1, line 5 of the analysis "replacement of lost or damaged property" should read "reasonable replacement cost for clothing and bedding held as evidence"; remove "certain economic losses"; add "funeral and burial expenses".
- P.1, last line of the analysis change "victim's close relative" to "applicant".
- P.2, beginning with line 4 of the analysis Remove "generally makes the payment in one lump sum. However, DOJ may make periodic payments in the case of a death or protracted disability."
- P.2, 2nd paragraph line 1 To read, "This bill makes several changes for parents of child victims to DOJ's..."
- P.2, 2nd paragraph line 2 Remove "psychiatric or psychological care and" replace with "mental health treatment".
- Next line to read, "If a victim suffers a protracted disability as a result of the crime, reasonable housing accessibility adaptations may be allowed."
- P.2, 2nd paragraph line 6 To read, "The bill also allows each parent of a minor child who was the victim to receive compensation for economic losses-wage loss and mental health treatment, up to \$3,000 total for both benefits."
- P.2, 3rd paragraph line 1 of the analysis To read, "Under the bill, DOJ shall consider reimbursement of crime related expenses incurred within four years after the crime occurred. If a victim was a minor child at the time the crime occurred, the victim may receive payments for up to four years after he or she applies for compensation.
- P.2, 3rd paragraph of the analysis Remove the entire last sentence.
- P.2, 4th paragraph line 2 of the analysis Remove "economic"; to read "victim's support".
- P.2, 4th paragraph line 3 of the analysis To read, "victim's average net annual earnings..."
- P.2, 5th paragraph line 1 of the analysis Replace "relative's" with "applicant's" to read, "the applicant's losses..."
- P.2, 5th paragraph line 3 of the analysis Remove "on his or her vehicle".

Commented [whw1]: I think this first sentence is fine as is, because it is signaling a discussion of the several changes that the bill covers. I think this paragraph could be re-organized as follows:
P.2, 2nd paragraph of the analysis
This bill makes several changes to DOJ's victim compensation award program. Under the bill, covered expenses may include reasonable housing accessibility adaptations if a victim suffers a protracted disability as a result of the crime. 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 each parent of a minor child who was a victim to receive up to \$3,000 in compensation for wage losses and mental health treatment.

P.2, 5th paragraph, last line of the analysis
Replace "proper" with "mandatory" to read, "carried the mandatory insurance."

P.3, Sec. 6, line 22
Change "passenger" to "person" to read "or a person in a buggy".

P.4, Sec. 7, line 2
Replace "forms" with "application upon request".

P.4, Sec. 7, line 3
Replace "regarding claims" with "about the availability of crime victim compensation" to read, "information about the availability of crime victim compensation under this subchapter..."

P.4, Sec. 8, line 6-7
To read, "The department may award benefits to each parent of a victim for mental health treatment that the parent receives subject to limitations set forth under (list provision)." Note: the benefit for both lost wages and mental health treatment combined are capped at \$3,000 for each parent.

P.4, Sec. 9, line 9
To read, "Work loss of a victim, of a parent of a victim, or in the case of a homicide, of a family member, shall be determined as follows:"

P.4, Sec. 9, line 10
Add 949.06(1)(b)(3) to read, " 3. The department may award each parent of a victim, or in the case of a homicide, a family member not more than 2 weeks of lost wages without requiring proof of disability from a physician. (Note: the limitation of \$3,000 applies to the parent of a minor child victim only, not to homicide survivors.)

P.5, Sec. 13, line 11
To read, "a protracted disability..."

P.5, Sec. 14, line 14
Change "cellular" to "mobile"

P.5, Sec. 15, line 18-19
Remove "The funeral and burial award may not be considered by the department under sub. (2) s. 949.08(1m)(a)." Note: With the increased funeral benefit to \$5,000, the \$5,000 will be included in the overall \$40,000 maximum.

P.5, Sec. 16, line 21-23
Remove "Dependent's economic loss, which shall include contributions of things of economic value provided by the victim to dependents but lost as a result of the victim's death."

P.6, Sec. 16, line 1
To read, "the victim's average net annual earnings income, and..."

P.6, Sec. 17, line 6
To read, "the dependents received or are expected to be received, over..."

P.6, Sec. 17, line 10
To read, "the dependents received or to be received as a result..."

P.7, Sec. 20, line 5
To read, "may not make any award for expenses incurred beyond four years from the date of the injury or death."

P.7, Sec. 21, line 14
Remove "a reward"; replace with an award.

P.7, Sec. 21, lines 13-16
Note: Is this last sentence necessary? *YCS*

Commented [whw2]: Just add "upon request." at the end (or beginning?) of the sentence to read:
The department shall furnish law enforcement agencies with the forms under par. (a), upon request.

Commented [whw3]: a limitation to this award would need to be defined [presumably under s. 949.08(1)] to limit the benefit to each parent of a minor child victim to \$3,000 in compensation for wage losses and mental health treatment combined.

Commented [whw4]: The provisions added on P. 6, Sec. 17, Lines 4-11 appear to be redundant. §949.06(3) already reduces an award by any available collateral sources.

Commented [whw5]: Specifically, is there any language within the statute that would direct or allow the Program to count a collateral source of benefit against an applicant twice? We do not do this in practice, but I just want to clarify that there was nothing in the statute that we missed.

P. 7, Sec. 23, line 19-20

Remove ~~"combining both the compensation award and the funeral and burial award if applicable"~~

P.8, Sec. 25, line 13

Remove "or death"

P.8, Sec. 25, line 14

Add the following to read, "Eligible expenses incurred up to 1 year prior to the date the application was received may be considered for payment and will be included within the 4 year limitation period."

Change

Note: the result is that the program will reimburse expenses related to the crime for a total period of 4 years. If expenses were incurred within one year prior to the application date, those expenses may be paid but the four year period will begin with the date of the first expense for which payment is made.

P.8, Sec. 26, line 18

To read, "under the influence of an intoxicant, a controlled substance, or another drug which renders him or her incapable of safely driving."

P.8, Sec. 27, line 24

To read, "under the influence of an intoxicant, a controlled substance, or another drug which renders him or her incapable of safely driving."

P.9, Sec. 28 and 29

Section 949.10 can be eliminated.



State of Wisconsin
2015 - 2016 LEGISLATURE

LRB-1689/P1
PJH:klm&emw

RP2
mr

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

8-5

1 **AN ACT** *to repeal* 949.06 (3) (d); *to renumber and amend* 949.06 (2); *to amend*
2 949.01 (4), 949.01 (5), 949.03 (1) (b), 949.03 (1) (c), 949.04 (2) (b), 949.06 (1) (a),
3 949.06 (1) (b) (intro.), 949.06 (1) (b) 1., 949.06 (1) (b) 2., 949.06 (1) (bm), 949.06
4 (1) (d), 949.06 (1) (e), 949.06 (1m) (a), 949.06 (1m) (b), 949.06 (3) (b), 949.07,
5 949.08 (1), 949.08 (2) (e), 949.08 (2) (em), 949.10 (1) (b) and 949.10 (2); and *to*
6 **create** 949.01 (4g), 949.03 (1) (bn), 949.06 (1) (br), 949.06 (1) (cg), 949.06 (1) (e)
7 2. and 3. and 949.08 (1m) (b) of the statutes; **relating to:** compensating victims
8 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 crime may receive compensation for certain losses he or she suffers as a result of the crime, including payment for medical treatment, replacement of lost or damaged property, 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

crime-related expenses incurred ^{consider reimbursing}

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 and generally makes the payment in one lump sum. However, DOJ may make periodic payments in the case of a death or protracted disability. Current law also allows DOJ to provide 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, covered expenses may include psychiatric or psychological care and, if a victim suffers a disability as a result of the crime, 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 for economic losses and up to \$3,000 for costs of receiving psychological or psychiatric care. ^{mental health treatment}

up to \$3,000

Under the bill, DOJ must make all payments within four years after the crime occurred, except that if a victim is a child, the child 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.

was a minor child at the time the crime occurred, he or she

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 average annual 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.

net

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 on his or her vehicle, 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 proper insurance. ^{mandatory}

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

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, 943.02, 943.03, 943.04, 943.10, 943.20, 943.23 (1g), 943.32, 943.81, 943.86,
15 943.87, 948.02, 948.025, 948.03, 948.04, 948.05, 948.051, 948.06, 948.07, 948.075,
16 948.08, 948.085, 948.09, 948.095, 948.20, 948.21 (1) (b) to (d), 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 passenger
23 in a buggy. person

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

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

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

insert 1.5
 5 949.06 (1) (a) Medical treatment. *The department may award no more than*
 6 *\$3,000 to a parent of a victim for psychiatric or psychological care the parent receives.*

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 or of a parent of a~~ *of a victim*
 10 *victim. The department may award a parent of a victim not more than 2 weeks of*
 11 *earnings without requiring a physician's certificate of proof. Work loss is determined*
 12 as follows: *insert 4.11*

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

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

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

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

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

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

Insert
S.2

3 SECTION 12. 949.06 (1) (bm) of the statutes is amended to read:

4 949.06 (1) (bm) If the victim is a homemaker at the time of the injury, the victim
5 was a caregiver in his or her home, an amount sufficient to ensure that the duties
6 and responsibilities are continued until the victim is able to resume the performance
7 of the duties, or until the cost of services reaches the maximum allowable under sub-
8 (2) s. 949.08 (1m) (a), whichever is less.

Insert
6:10

9 SECTION 13. 949.06 (1) (br) of the statutes is created to read:

10 949.06 (1) (br) If as a direct result of the personal injury, the victim suffered
11 a disability, reasonable and necessary housing accessibility adaptations, but not to
12 exceed \$5,000.

protracted

13 SECTION 14. 949.06 (1) (cg) of the statutes is created to read:

14 949.06 (1) (cg) Reasonable replacement value of any computer or cellular
15 mobile telephone that is held for evidentiary purposes, but not to exceed \$200.

16 SECTION 15. 949.06 (1) (d) of the statutes is amended to read:

17 949.06 (1) (d) Reasonable funeral and burial expenses, not to exceed \$2,000
18 \$5,000. ~~The funeral and burial award may not be considered by the department~~

19 ~~under sub. (2) s. 949.08 (1m) (a).~~ *strike period*

20 SECTION 16. 949.06 (1) (e) of the statutes is amended to read:

21 949.06 (1) (e) ~~Dependent's economic loss, which shall include contributions of~~
22 ~~things of economic value provided by the victim to dependents but lost as a result of~~
23 ~~the victim's death.~~ which Loss of support shall be determined on the basis of the victim's
24 net salary income at the time of death, and shall be calculated as an amount equal
25 to 4 times follows:

SECTION 16

net

Income

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

4 **SECTION 17.** 949.06 (1) (e) 2. and 3. of the statutes are created to read:

5 949.06 (1) (e) 2. The department shall deduct from the amount calculated under
6 subd. 1. an amount equal to benefits the dependents received or are expected, over
7 the course of 4 years, to receive as a survivor benefit from the federal social security
8 program.

to receive

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

[Handwritten scribbles]

12 **SECTION 18.** 949.06 (1m) (a) of the statutes is amended to read:

13 949.06 (1m) (a) In this subsection, "family member" means any spouse,
14 domestic partner under ch. 770, parent, grandparent, stepparent, foster parent,
15 child, stepchild, adopted child, grandchild, foster child, brother, sister, half brother,
16 or half sister, aunt, uncle, nephew, niece, or parent or sibling of spouse or of a
17 domestic partner under ch. 770.

18 **SECTION 19.** 949.06 (1m) (b) of the statutes is amended to read:

19 949.06 (1m) (b) In accordance with this subchapter, the department shall make
20 awards, as appropriate, to persons who, immediately prior to the crime, lived in the
21 same household with and to family members of a victim of s. 940.01, 940.02, 940.05,
22 940.06, 940.07, 940.08 or 940.09 for any of the economic losses specified in sub. (1)
23 as a result of the person's or family member's reaction to the death. A dependent may
24 recover both under sub. (1) and this subsection, subject to the limitation under sub.
25 (2) s. 949.08 (1m) (a).

*For expenses
incurred
to*

1 SECTION 20. 949.06 (2) of the statutes is renumbered 949.08 (1m) (a) and
2 amended to read:

3 949.08 (1m) (a) The Except as provided in par. (b), the department may not
4 make an award of more than \$40,000 for any one injury or death and the department
5 may not make any award after 4 years have passed since ^{from} the date ^{of} the injury or death
6 occurred.

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

8 949.06 (3) (b) From insurance payments or program, including worker's
9 compensation and unemployment insurance. The department may reduce an award
10 related to a crime under s. 346.62 (4), 346.63 (2) or (6), 940.09, 940.10, or 940.25, if
11 the victim was not in compliance with s. 344.62 (1) at the time of the crime, by an
12 amount equal to the payment the victim would have received from an insurance
13 program or payment if the victim had been in compliance with s. 344.62 (1). The
14 department may not reduce a reward ^{an award} by an amount received or to be received from
15 an insurance payment or program if it has deducted that amount from an award for
16 economic loss under sub. (1) (e) 3.

17 SECTION 22. 949.06 (3) (d) of the statutes is repealed.

18 SECTION 23. 949.07 of the statutes is amended to read:

19 **949.07 Manner of payment.** The award, ^{strike} ~~combining both the compensation~~
20 ~~award and the funeral and burial award, if applicable, shall~~ may be paid in a lump
21 sum, ~~except that in the case of death or protracted disability the award may provide~~
22 ~~for or in~~ periodic payments. The department may pay any portion of an award
23 directly to the provider of any service which is the basis for that portion of the award.
24 No award may be subject to execution, attachment, garnishment or other process,
25 except that an award for allowable expense is not exempt from a claim of a creditor

1 to the extent that the creditor provided products, services or accommodations the
2 costs of which are included in the award.

3 **SECTION 24.** 949.08 (1) of the statutes is amended to read:

4 949.08 (1) No order for the payment of an award may be made unless the
5 application was made within 1 year after the date of the personal injury or death, and
6 the personal injury or death was the result of an incident or offense which had been
7 reported to the police within 5 days of its occurrence or, if the incident or offense could
8 not reasonably have been reported within such period, within 5 days of the time when
9 a report could reasonably have been made. The department may waive the ~~one-year~~
10 requirement requirements under this subsection in the interest of justice.

11 **SECTION 25.** 949.08 (1m) (b) of the statutes is created to read:

12 949.08 (1m) (b) The department may not make any award to a person who was
13 a child at the time of the injury or death after 4 years have passed since the date the
14 person made an application for an award under this subchapter.

15 **SECTION 26.** 949.08 (2) (e) of the statutes is amended to read:

Inset 8.18

16 949.08 (2) (e) Is an adult passenger in the offender's vehicle, the crime involved
17 is specified in s. 346.63 (2) or 940.25, and the passenger knew the offender was
18 ~~committing that offense~~ under the influence of an intoxicant or another drug. This
19 paragraph does not apply if the victim is also a victim of a crime specified in s. 940.30,
20 940.305, 940.31 or 948.30.

21 **SECTION 27.** 949.08 (2) (em) of the statutes is amended to read:

22 949.08 (2) (em) Is an adult passenger in the offender's commercial motor
23 vehicle, the crime involved is specified in s. 346.63 (6) or 940.25, and the passenger
24 knew the offender was ~~committing that offense~~ under the influence of an intoxicant

Inset 8.14
949.08 (2)
expenses incurred up to the date of the award

expenses incurred up to the date of the award
eligible

Insert 9.1

1 or another drug. This paragraph does not apply if the victim is also a victim of a crime
2 specified in s. 940.30, 940.305, 940.31, or 948.30.

repealed.

Insert 9.2

3 **SECTION 28.** 949.10 (1) (b) of the statutes is amended to read:

4 949.10 (1) (b) An emergency award for funeral and burial expenses may not
5 exceed ~~\$2,000~~ \$5,000.

6 **SECTION 29.** 949.10 (2) of the statutes is amended to read:

7 949.10 (2) Any award under sub. (1) (a) shall be deducted from the final award
8 made to the claimant. The excess of the amount of such emergency award over the
9 amount of the final award, or the full amount of the emergency award if no final
10 award is made, shall be repaid by the claimant to the department.

change component

11 (END)

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LEGISLATIVE REFERENCE BUREAU

LRB-1689/Plins
PJH:klm&emw

INSERT 4.5:

~~SO~~ subject to the limits set forth under sub. (1g)

par. (3g)
plain
of a victim

INSERT 4.11:

or in the case of a homicide, of a family member, shall be subject to the limits set forth under sub. (1g) and shall be

par. (3g)

INSERT 5.2:

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

of a victim

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

INSERT 6.10:

SECTION 2. 949.06 (1) (bg) of the statutes is created to read:

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

par.

INSERT 8.14:

949.08 (1m) (b) If an applicant was a child at the time of the injury, the department may consider for payment eligible expenses that the applicant incurred not more than 1 year before he or she submitted an application for an award under this subchapter. The department may not make any award after 4 years have passed since the date the person made the application or after 4 years have passed since the date on which the person incurred the expense prior to submitting the application, whichever occurs first.

INSERT 8.18:

, a controlled substance, or another drug, to a degree that renders him or her incapable of safely driving

INSERT 9.1:

, a controlled substance, or another drug, to a degree that renders him or her incapable of safely driving

**2015-2016 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

???ins
PJH:klm&emw

INSERT 9.2:

SECTION 1. 949.10 (1) (intro.) of the statutes is renumbered 949.10 (1) and amended to read:

949.10 (1) (intro.) Notwithstanding s. 949.06, if the department determines that an award will probably be made and that undue hardship will result to the claimant if immediate payment is not made, the department may order emergency awards as follows: An emergency compensation award may not exceed \$500.

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

SECTION 2. 949.10 (1) (a) of the statutes is repealed.

Hurley, Peggy

From: Pratt, Phillip
Sent: Monday, September 14, 2015 12:53 PM
To: Hurley, Peggy
Subject: FW: Draft review: LRB -1689/P2 Topic: Changes to victim compensation fund
Attachments: 15-1689/P2.pdf

Good Afternoon Peggy,

Could we get and update draft and add the "revenge porn" (§ 942.09) law to our compensable crimes list.

Thanks!

Phillip Pratt
Office of Rep. Rob Hutton
13th Assembly District
608.267.9837

msg: all of
942.09 or
just (3m)?

From: LRB.Legal
Sent: Tuesday, August 04, 2015 4:43 PM
To: Rep.Hutton <Rep.Hutton@legis.wisconsin.gov>
Subject: Draft review: LRB -1689/P2 Topic: Changes to victim compensation fund

- 9-167 waiting
to hear from
DOJ - PP

Following is the PDF version of draft LRB -1689/P2.

9-23: all
942.09
victims