

1975 Senate Bill 139

Date published: June 8, 1976

CHAPTER 344, Laws of 1975
(Vetoed in Part)

AN ACT to create 20.445 (6), 71.01 (3) (g), 72.76 (1) (o) and chapter 949 of the statutes, relating to compensating victims of crimes, granting rule-making authority, making an appropriation and providing a penalty.

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

SECTION 1. Legislative declaration. The policy of this state is to encourage the cooperation of the public in law enforcement and to promote the public welfare. The legislature finds that this policy will be furthered by the payment of awards to the victims or their dependents of certain serious crimes or to persons injured in attempting to prevent the commission of crimes or to apprehend suspected criminals.

SECTION 2. 20.445 (6) of the statutes is created to read:

20.445 (6) **PUBLIC SERVICES** (a) *Awards for the victims of crimes.* A sum sufficient for payment of compensation and funeral and burial expense awards to the victims of crimes under and the administration of ch. 949.

SECTION 2g. 71.01 (3) (g) of the statutes is created to read:

71.01 (3) (g) Awards received under ch. 949.

SECTION 2r. 72.76 (1) (o) of the statutes is created to read:

72.76 (1) (o) The transfer is payment of an award under ch. 949.

SECTION 3. Chapter 949 of the statutes is created to read:

CHAPTER 949

AWARDS FOR THE VICTIMS OF CRIMES

949.01 Definitions. In this chapter:

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

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

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

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

(5) "Victim" means a person, other than an on-duty peace officer or fireman, who is injured or killed by an incident specified in s. 949.03 (1) (a), or by any act or omission of any other person which is within the description of any of the offenses listed in s. 949.03 (1) (b).

949.02 Administration. This chapter shall be administered by the department of industry, labor and human relations. The department shall make rules for the implementation and operation of this chapter.

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

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

(b) The commission or the attempt to commit any crime specified in s. 940.01, 940.02, 940.03, 940.05, 940.06, 940.07, 940.08, 940.09, 940.20, 940.201, 940.206, 940.21, 940.22, 940.23, 940.24, 940.28, 940.29, 940.30, 940.31, 940.32, 943.10, 943.20, 943.32, 944.01, 944.02, 944.10, 944.11 or 944.12.

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

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

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

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

(3) **MEDICAL RECORDS.** The applicant shall submit to the department, prior to the hearing under s. 949.09, reports from all physicians who treated or examined the victim at the time of or subsequent to his injury or death. The department may also order such other examinations and reports of the victim's previous medical history, injury or death as it believes would be of material aid in its determination.

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

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

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

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

949.06 Computation of award. (1) Compensation under this chapter shall be computed on the basis of the victim's salary at the time of his injury or death by using the computation formulas for workmen's compensation benefits described in ss. 102.11, 102.46, 102.47, 102.52, 102.53 and 102.55. Compensation shall also include reimbursement for the cost of medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches, artificial members, appliances, and training in the use of artificial members and appliances, or, at the option of the person, Christian Science treatment in lieu of medical treatment, medicines and medical supplies, as may be reasonably required to cure and relieve from the effects of the injury, and to attain efficient use of artificial members and appliances. A rape victim shall be compensated for all medical, surgical and hospital expenses incurred for any purposes related to a criminal prosecution.

(2) If the victim was not employed at the time of the injury or death, the department shall make its award on whichever of the following bases results in the higher award.

(a) On the basis of the highest salary earned by the victim within the preceding 5 years.

(b) On the basis of the lowest payment under the workmen's compensation schedule which could have been awarded if the victim had been employed.

(3) The department may not make a compensation award of more than \$10,000 nor less than \$200 for any one injury or death.

(4) In all cases of death of the victim, a reasonable award may be made for funeral and burial expenses, not exceeding \$2,000. This award may not be considered

by the department under sub. (3), but such funeral and burial expense award may be limited under subs. (5) and (6).

(5) In determining the amount of an award, the examiner shall determine whether, because of his conduct, the victim of the crime contributed to the infliction of his injury or death, and may reduce the amount of the award or reject the claim altogether, in accordance with such determination. The examiner may disregard for this purpose the responsibility of the victim for his own injury or death where the record shows that such responsibility was attributable to efforts by the victim to prevent a crime or an attempted crime from occurring in his presence, or to apprehend a person who had committed a crime in his presence or to aid a peace officer upon request.

(6) If the examiner finds that the claimant will not suffer financial hardship, as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury, if not granted financial assistance under this subchapter, the examiner shall deny an award under subs. (3) and (4). In determining such financial hardship, the examiner shall consider all of the financial resources of the claimant. The department shall adopt specific standards by rule for determining such financial hardship. Any award made under this section shall be reduced by the amount of any payments received or to be received as a result of the injury or death:

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

(b) From insurance payments or programs including workmen's and unemployment compensation.

(c) From public funds.

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

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

(b) Upon application made by an appropriate prosecuting authority, the department may suspend proceedings under this chapter for such period as it deems appropriate on the ground that a prosecution for an offense arising out of such act or omission has been commenced or is imminent.

949.07 Manner of payment. The award, combining both the compensation award and the funeral and burial award, if applicable, shall be paid in a lump sum, except that in the case of death or protracted disability the award may provide for periodic payments. No award may be subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim. The department may, in its discretion, pay any portion of an award directly to the provider of any service which is the basis for that portion of the claim.

949.08 Limitations on awards. (1) No order for the payment of an award may be made unless the application was made within 2 years after the date of the personal injury or death, and the personal injury or death was the result of an incident or offense which had been reported to the police within 5 days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within 5 days of the time when a report could reasonably have been made.

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

(a) Is the child, parent, brother, sister or spouse of the offender and resides in the same household as the offender;

(b) Was at the time of the personal injury or death of the victim maintaining a sexual relationship with such person or with any member of the family of such person;
or

(c) Committed a crime which caused or contributed to his injuries or death.

(3) Orders for payment of awards may be made only as to injuries or deaths resulting from incidents or offenses occurring on or after January 1, 1976.

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

949.10 Emergency awards. (1) Notwithstanding s. 949.06, if an examiner to whom a claim is assigned determines, prior to the holding of a hearing, that an award will probably be made and that undue hardship will result to the claimant if immediate payment is not made, the examiner may order emergency awards as follows:

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

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

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

949.11 Hearings. (1) Upon receipt of an application under s. 949.04, the department shall fix a time and place for a hearing and shall give notice thereof to each interested party.

(2) Any interested party may appear and be heard, produce evidence and cross-examine witnesses in person or by an attorney licensed to practice law in this state. The department may also hear such other persons as in its judgment may possess relevant information.

(3) The department may, by subpoena, compel the attendance of witnesses and the production of documents, records and any other materials.

(4) The rules of evidence for the conduct of judicial proceedings shall not apply to the hearings conducted by the department.

(5) The department shall authorize an examiner to make findings and orders on claims for awards under this chapter.

(6) Notwithstanding s. 227.07, all hearings shall be open to the public unless in a particular case the examiner determines that the hearing, or a portion thereof, shall be held in private having regard to the fact that the offender has not been convicted or to the interest of the victim of an alleged sexual offense.

949.12 Appeal. (1) Any party in interest who is dissatisfied with the findings or order of an examiner may file a written petition with the department for review of the findings or order.

(2) Such petition shall be filed within 20 days from the date that a copy of the findings or order of the examiner was mailed to the parties in interest.

(3) Upon receipt of an application under sub. (1) or upon its own motion, the department shall review the record and affirm or modify the decision of the examiner to whom the claim is assigned. The action of the department in affirming or modifying the decision shall be final. The department shall place on file a written report setting forth its decision, and if such decision varies in any respect from the report of the examiner to whom the claim is assigned, setting forth its reasons for the decision. If the department receives no application within the 30-day period or fails to act upon its own motion within the 30-day period, the decision of the examiner to whom the claim was assigned shall be final.

(4) The department promptly shall notify any party in interest of its final decision and furnish each with a copy of the report setting forth the decision.

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949.13 Judicial review. Within 30 days after receipt of the copy of the report containing the final decision of the department a party may file a petition in a circuit court of Dane county for a review thereof as provided in s. 227.16. The court shall summarily hear the petition and may make any appropriate order or decree within the scope of s. 227.20.

949.14 Attorney's fees. (1) The department may determine and allow reasonable attorney's fees to be paid out of, but not in addition to, the amount of the award granted to the applicant. No attorney may ask for, contract for or receive any larger sum than the amount so allowed. In no case shall such fees exceed 20% of the award.

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

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

949.15 Recovery from offender. Whenever an order for the payment of an award for personal injury or death is or has been made under this chapter, the department shall be subrogated to the cause of action of the applicant against the person responsible for such injury or death and shall be entitled to bring an action against such person for the amount of the damages sustained by the applicant. If an amount greater than that paid pursuant to the award order is recovered and collected in any such action, the department shall pay the balance to the applicant.

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

949.17 Penalty. Whoever asserts a fraudulent claim under this subchapter may be fined not more than \$500 or imprisoned not to exceed 6 months or both, and shall further forfeit any benefit received and shall reimburse the state for payments received or paid on his behalf under this subchapter.

949.18 Reports by department. The department shall annually prepare and transmit to the governor and legislature a report of its activities under this chapter including the name of each applicant, a brief description of the facts in each case, and the amount of any award.

SECTION 4. Program Responsibility citation. In the list of program responsibility citations enumerated for the department of industry, labor and human relations under section 15.221 (intro.) of the statutes, reference to chapter "949" is inserted.
