

1979 Senate Bill 345

Date published: April 29, 1980

CHAPTER 189, Laws of 1979

AN ACT to repeal 15.227 (12), 20.445 (1) (b) and 949.13; to renumber 949.08 (3); to renumber and amend 949.15; to amend 803.03 (2) (c), 949.02, 949.07, 949.14 (1), 949.16 and 949.18; to repeal and recreate 949.11; and to create 15.257 (2), 20.455 (5), 20.923 (4) (a) 3, 230.08 (2) (w), 905.14, 949.001, 949.01 (1m), 949.08 (3), 949.12, 949.15 (2) and (3), 949.18 (1) to (5) and 973.09 (4m) of the statutes, relating to crime victims compensation, creating a crime victims compensation council and making appropriations.

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

SECTION 1. 15.227 (12) of the statutes is repealed.

SECTION 2. 15.257 (2) of the statutes is created to read:

15.257 (2) CRIME VICTIMS COMPENSATION COUNCIL. There is created in the department of justice a crime victims compensation council consisting of 7 persons appointed by the attorney general for staggered 3-year terms. Of the 7 members, 4 shall be citizen members, and one each shall be representatives of law enforcement, district attorneys and hospitals providing victim support services. The citizen members shall have demonstrated sensitivity and concern for crime victims.

SECTION 2m. At the appropriate place in the schedule in section 20.005 of the statutes, insert the following amounts for the purposes indicated:

	1979-80	1980-81
20.455 Justice, department of		
(5) CRIME VICTIM COMPENSATION		
(a) General program operations	GPR A 9,200	51,300

SECTION 3. 20.445 (1) (b) of the statutes is repealed.

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

20.455 (5) CRIME VICTIM COMPENSATION. (a) *General program operations.* The amounts in the schedule for general program operations.

(b) *Awards for victims of crimes.* A sum sufficient for the payment of compensation and funeral and burial expenses awards to the victims of crimes under ch. 949.

SECTION 5. 20.923 (4) (a) 3 of the statutes is created to read:

20.923 (4) (a) 3. Justice, department of; program director for crime victims compensation.

SECTION 6. 230.08 (2) (w) of the statutes is created to read:

230.08 (2) (w) The program director for crime victims compensation in the department of justice.

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

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

SECTION 8. 905.14 of the statutes is created to read:

905.14 Privilege in crime victim compensation proceedings. (1) Except as provided in sub. (2), no privilege under this chapter exists regarding communications or records relevant to an issue of the physical, mental or emotional condition of the claimant or victim in a proceeding under ch. 949 in which that condition is an element.

(2) The lawyer-client privilege applies in a proceeding under ch. 949.

SECTION 9. 949.001 of the statutes is created to read:

949.001 Legislative intent. The legislature finds and declares that the state has a moral responsibility to aid innocent victims of violent crime. In order to maintain and to strengthen our democratic system of law and social order, it is essential that the rights of the victim of a crime should be as fully protected as the rights of the criminal offender. Adequate protection and assistance of victims of crime will also encourage greater public cooperation in the successful apprehension and prosecution of criminal offenders. It is the intention of the legislature that the state should provide sufficient assistance to victims of crime and their families in order to ease their financial burden and to maintain their dignity as they go through a difficult and often traumatic period. It is also the intention of the legislature that the department should actively publicize the crime victim compensation program and promote its use.

SECTION 10. 949.01 (1m) of the statutes is created to read:

949.01 (1m) "Department" means the department of justice.

SECTION 11. 949.02 of the statutes is amended to read:

949.02 Administration. This chapter shall be administered by the department of ~~industry, labor and human relations~~. The department shall appoint a program director to assist in administering this chapter. ~~The department shall make promulgate~~ rules for the implementation and operation of this chapter.

SECTION 13. 949.07 of the statutes is amended to read:

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, 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.

SECTION 14. 949.08 (3) of the statutes is renumbered 949.08 (4).

SECTION 15. 949.08 (3) of the statutes is created to read:

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

SECTION 16. 949.11 of the statutes is repealed and recreated to read:

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

(2) The attorney general shall authorize a hearing examiner to make findings and orders under s. 227.09 and this chapter.

(3) 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.

SECTION 17. 949.12 of the statutes is created to read:

949.12 Evidence of physical condition. (1) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical, mental or emotional condition of the claimant or victim in a proceeding under this chapter in which that condition is an element.

(2) If the mental, physical or emotional condition of a victim or claimant is material to a claim, the department may order the victim or claimant to submit to a mental or physical examination by a physician or psychologist, and may order an autopsy of a deceased victim. The order may be made for good cause shown upon notice to the person to be examined and to all persons who have appeared. The order shall specify the time, place, manner, conditions and scope of the examination or autopsy and the person by whom it is to be made, and shall require the person to file with the department a detailed written report of the examination or autopsy. The report shall set out his or her findings, including results of all tests made, diagnoses, prognoses and other conclusions and reports of earlier examinations of the same conditions.

(3) On request of the person examined, the department shall furnish the person a copy of the report. If the victim is deceased, the department, on request, shall furnish the claimant a copy of the report.

(4) The department may require the claimant to supplement the application with any reasonably available medical or psychological reports relating to the injury for which awards are claimed.

SECTION 18. 949.13 of the statutes is repealed.

SECTION 19. 949.14 (1) of the statutes is amended to read:

949.14 (1) The department may determine and allow reasonable attorney 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. Attorney fees shall not exceed ~~20%~~ 10% of the amount the attorney assisted the victim in obtaining.

SECTION 20. 949.15 of the statutes is renumbered 949.15 (1) and amended to read:

949.15 (1) 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~~ is subrogated to the cause of action of the applicant against the person responsible for ~~such the~~ injury or death and ~~shall be entitled to~~ may bring an action against ~~such the~~ person for the amount of the damages sustained by the applicant. If an amount greater than that paid ~~pursuant to~~ under the award order is recovered and collected in any such action, the department shall pay the balance to the applicant. If the person responsible for the injury or death has previously made restitution payments to the general fund under s. 973.09, any judgment obtained by the department under this section shall be reduced by the amount of the restitution payments to the general fund.

SECTION 21. 949.15 (2) and (3) of the statutes are created to read:

949.15 (2) If a claimant brings an action to recover damages in which the department has subrogation rights under sub. (1), the claimant shall join the department as a party under s. 803.03 (2) (a). After joinder, the department has the options specified in s. 803.03 (2) (b).

(3) If a judgment or verdict in an action under sub. (1) or (2) indicates separately economic loss and noneconomic detriment, payments on the judgment shall be allocated between them in proportion to the amounts indicated. In such an action, the judge, on timely motion, shall direct the jury to return a special verdict, indicating separately the awards for noneconomic detriment, punitive damages and economic loss.

SECTION 22. 949.16 of the statutes is amended to read:

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

SECTION 23. 949.18 of the statutes is amended to read:

949.18 (title) Report by the 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 24. 949.18 (1) to (5) of the statutes are created to read:

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

(2) A description of the programs and policies instituted to promote public awareness about crime victim compensation.

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

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

(5) A complete statistical analysis of the cases handled under this chapter, including:

(a) The number of claims filed.

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

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

(d) A breakdown of claims by geographic area, month, age and sex of victim, type of crime committed and other relevant facts.

(e) A summary of cases handled under this chapter.

SECTION 25. 973.09 (4m) of the statutes is created to read:

973.09 (4m) If the defendant is placed on probation, the court shall determine if restitution would be an appropriate condition of probation. If restitution is ordered, the court shall inquire to see if an award has been made under ch. 949 and if the department of justice is subrogated to the cause of action under s. 949.15. If the restitution ordered is less than or equal to the award under ch. 949, the restitution shall be paid only to the general fund. If the restitution ordered is greater than the award under ch. 949, the general fund shall receive an amount equal to the award under ch. 949 and the balance shall be paid to the victim.

SECTION 26. **Program responsibilities.** (1) In the list of program responsibilities specified for the department of industry, labor and human relations in section 15.221 (intro.) of the statutes, reference to chapter "949" is deleted.

(2) In the list of program responsibilities specified for the department of justice in section 15.251 (intro.) of the statutes, reference to chapter "949" is inserted.

SECTION 27. Transition provisions. (1) The 3.5 authorized full-time employment positions, but not the personnel in those positions, and the property and records of the department of industry, labor and human relations related to the compensation of victims of crimes shall be transferred to the department of justice on the effective date of this act.

(2) Representatives of the department of industry, labor and human relations, the department of justice and the department of administration shall meet and agree, as soon as practicable after the day of publication of this act on the positions, property and records which are to be transferred. In case of disagreement, the decision of the department of administration shall control.

(3) All rules adopted and orders issued and all contracts entered into by the department of industry, labor and human relations which relate to crime victim compensation shall remain in full force and effect until modified or rescinded by the department of justice.

SECTION 28. Initial positions. The department of justice is initially authorized 4.0 positions for the purpose of administering crime victim compensation. These 4.0 positions consist of a transfer of 3.5 positions from the department of industry, labor and human relations by SECTION 27 of this act and an increase by 0.5 full-time employment position for the department of justice. The position of program director under section 949.02 of the statutes is included in the authorization of the 4.0 positions.

SECTION 28m. Position financing. The department of justice and the department of industry, labor and human relations shall submit to the joint committee on finance at its first quarterly meeting after the day of publication of this act a request to transfer funds from section 20.445 (1) (a) of the statutes to section 20.455 (5) (a) of the statutes to provide the required financing for the 3.5 full-time employment positions transferred under the provision of SECTION 27 of this act.

SECTION 29. Initial terms. The first members of the crime victims compensation council shall serve terms expiring as follows: 3 terms expire July 1, 1981, 2 terms expire July 1, 1982, and 2 terms expire July 1, 1983.

SECTION 30. Effective dates. (1) Except as provided in sub. (2), this act takes effect on the first day of the 3rd month commencing after its publication.

(2) The treatment of section 15.257 (2) of the statutes and SECTIONS 27 (2), 28m and 29 of this act by this act takes effect on the day following publication of this act.
