

1983 Assembly Bill 24

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1983 Wisconsin Act 467

AN ACT to amend 949.18 (intro.); and to create 949.165 and 949.18 (6) of the statutes, relating to escrow accounts for the benefit of victims of serious crimes and reimbursement of costs.

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

SECTION 1. 949.01 (6) of the statutes is amended to read:

949.01 (6) "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). This definition does not apply to s. 949.165.

SECTION 2. 949.165 of the statutes is created to read:

949.165 Escrow accounts; moneys received as a result of the commission of a serious crime. (1) DEFINITIONS. In this section:

(a) "Serious crime" has the meaning designated in s. 969.08 (10) (b) and includes solicitation, conspiracy or attempt to commit a serious crime.

(b) "Victim" has the meaning specified in s. 950.02 (4).

(2) PAYMENT TO AND ESTABLISHMENT OF ESCROW ACCOUNTS. Every person or other legal entity contracting with any person, or the representative or assignee of any person, accused or convicted of a serious crime in this state, with respect to the reenactment of the serious crime, by a movie, book, magazine article, tape recording, phonograph record, radio or television presentation or live entertainment of any kind, or from the expression of the accused or convicted person's thoughts, feelings, opinions or emotions regarding the serious crime, shall submit a copy of the contract to the department and pay over to the department any moneys which would otherwise, by terms of the contract, be owing to the person so accused or convicted or his or her representatives. This subsection applies only if the reenactment of the serious crime constitutes a substantial portion of the movie, book, article, recording, record, presentation, entertainment or expression. The department shall deposit the moneys in an interest-bearing escrow account for the payment of money judgments to any victim or the legal representative of any victim of serious crimes committed by:

(a) The convicted person; or

(b) The accused person, but only if the accused person is eventually convicted of the serious crime charged.

(3) NOTICE TO POTENTIAL CLAIMANTS. The department, at least once every 6 months for 3 years from the date it receives the moneys, shall cause to have published a legal notice in newspapers of general circulation in the county in which the serious crime was committed advising the victims that the escrow moneys are available to satisfy money

judgments under this section. The department may provide for additional notice. When the department is reasonably satisfied that all victims have received actual notice, the department may cease to provide the notice required under this subsection.

(4) **PRIORITY OF PAYMENTS.** (a) Claims on moneys in an escrow account have the following priority:

1. First priority for legal representation payments under sub. (5).
2. Second priority for payments to satisfy money judgments under sub. (6).
3. Third priority for reimbursement, recoupment and restitution payments under sub. (7).

(b) The department shall make payments from escrow accounts in accordance with the priority schedule under par. (a). The department may make payments at any time from an escrow account, except that no payment may be made for a claim if there is another existing or pending claim entitled to a higher priority.

(c) If the amount of claims for the same priority exceeds the amount of moneys available in an escrow account, the department may prorate the payments.

(5) **FIRST PRIORITY PAYMENTS; LEGAL REPRESENTATION.** The department shall make payments from an escrow account to a person charged with a serious crime upon the order of a court of competent jurisdiction after a showing by the person that the moneys shall be used for the exclusive purpose of his or her legal representation in a criminal action or in the defense of a civil action.

(6) **SECOND PRIORITY PAYMENTS; SATISFACTION OF MONEY JUDGMENTS.** (a) The department shall make payments to victims or legal representatives of victims of serious crimes who have obtained money judgments against the accused or convicted person. The victim or legal representative of the victim shall bring a civil action and obtain a money judgment. The victim shall then file a claim with the department for payment.

(b) In the case of death of the victim, one or more dependents may obtain a payment under this section in the same manner as a victim. If 2 or more dependents are entitled to payments under this subsection, the department shall apportion the payments among the dependents.

(c) If the state is subrogated to a cause of action under s. 949.15, the state may seek reimbursement under this subsection. If the judgment is apportioned under s. 949.15 (3), the payments under this subsection shall be prorated accordingly.

(d) The victim or the legal representative of a victim shall notify the department when he or she brings the action described in par. (a), but failure to notify under this paragraph does not bar any payment from an escrow account.

(7) **THIRD PRIORITY PAYMENTS; LEGAL FEES AND RESTITUTION.** The department shall make payments from an escrow account for any governmental entity for the reimbursement for or recoupment of the costs of legal representation of the person charged with the serious crime or for any unpaid restitution under s. 973.09. The governmental entity shall file a claim for the applicable amount with the department.

(8) **PAYMENT TO ACCUSED OR CONVICTED PERSON.** If either of the following conditions occur, the department shall pay all of the remaining moneys in an escrow account to the accused or convicted person:

(a) The charges against the person are dismissed with prejudice or the person is found not guilty of the serious crime charged.

(b) Three years have elapsed from the date of the establishment of the escrow account and no civil actions seeking money judgments, unsatisfied money judgments or claims under this section are pending against the defendant in this state.

(9) INTERPLEADER. If a court determines that a person accused of a serious crime is incompetent to proceed under s. 971.14 or if the charges are dismissed without prejudice, the department shall bring an action of interpleader to determine the disposition of the escrow account.

(10) STATUTE OF LIMITATIONS. If an escrow account is established under this section, no otherwise applicable statute of limitations on the time within which a civil action may be brought bars an action by a victim of a serious crime committed by a person accused or convicted of the serious crime as to a claim resulting from the serious crime until 3 years have elapsed from the time the escrow account was established.

(11) ACT TO DEFEAT PURPOSE; VOID. Any act by any person accused or convicted of a serious crime, whether by execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be void as against the public policy of this state.

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

(13) APPLICABILITY. This section applies only to contracts which are entered into on or after one year after the effective date of this subsection (1983).

(14) PENALTY. Any person who violates sub. (2) shall be fined not more than \$500 or imprisoned not more than 30 days or both.

SECTION 3. 949.18 (intro.) of the statutes is amended to read:

949.18 Report by the department. (intro.) 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. The report shall include:

SECTION 4. 949.18 (6) of the statutes is created to read:

949.18 (6) The status of existing escrow accounts under s. 949.165.
