

CHAPTER 949

AWARDS FOR THE VICTIMS OF CRIMES

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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.

History: 1979 c. 189.

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 the act.

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

(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 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.

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

(4) "Medical treatment" includes medical, surgical, dental, 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.

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

(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).

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189.

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

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

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, 940.05, 940.06, 940.07, 940.08, 940.09, 940.19, 940.20, 940.201, 940.21, 940.225 (1) to (3), 940.23, 940.24, 940.28, 940.29, 940.30, 940.305, 940.31, 940.32, 943.02, 943.03, 943.04, 943.10, 943.20, 943.32 or 944.12.

History: 1975 c. 224 s. 145za; 1975 c. 344; 1977 c. 173, 239; 1979 c. 118.

949.035 Residents; victims of crime outside the state. (1) If a Wisconsin resident suffers injury or death in a situation described in s. 949.03 except that the act occurred in the United States outside this state, the resident has the same rights under this chapter as if the act had occurred in this state upon a showing that the state or territory in which the act occurred does not have a compensation of victims of crimes law which covers the injury or death suffered by the person.

(2) The department shall keep a current record of the laws relating to compensation of victims of crimes in other states and territories of the United States and, upon request, shall assist Wisconsin residents to determine if they meet the criteria specified in sub. (1).

(3) In this section, "resident" means a person who maintains a place of permanent abode in this state.

History: 1979 c. 34.

NOTE: Chapter 34, laws of 1979, which created this section, states in section 2103 (25) that it applies retrospectively to January 1, 1979.

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 the minor's behalf by his or her parent or guardian.

(b) Application by an incompetent may be made on the incompetent's behalf by the guardian or other person authorized to administer the incompetent's 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 AND DENTAL RECORDS.** The applicant shall submit to the department, prior to the hearing under s. 949.11, 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.

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.

History: 1975 c. 344.

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 injury or death by using the computation formulas for worker's compensation benefits described in ss. 102.11, 102.43 (intro.) and (1) to (4), 102.44 (3) and (4), 102.46, 102.47, 102.52, 102.53 and 102.55. Compensation shall also include reimbursement for the cost of medical treatment or, at the option of the person, Christian Science treatment in lieu of medical treatment, 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.

(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 worker's compensation schedule which could have been awarded if the victim had been employed.

(c) If the sole employment of the victim at the time of injury or death, and for the preceding 5 years, was limited to performing duties and responsibilities of a homemaker, any award made under this section shall be sufficient to ensure that the duties and responsibilities are continued until such time as the victim is able to resume the performance of the duties or until the cost of the services reaches the maximum allowable under sub. (3), whichever is less. Weekly payments shall not exceed the limits prescribed in s. 102.11.

(3) The department may not make a compensation award of less than \$200 nor more than \$10,000 for any one injury or death, except that a victim shall be compensated for the following

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expenses regardless of the \$200 limitation but subject to the \$10,000 maximum:

(a) Medical treatment expenses incurred by a victim of sexual assault for any purposes related to a criminal prosecution.

(b) Reasonable replacement value of any clothing which is held for evidentiary purposes, but not to exceed \$100.

(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 the victim's conduct, the victim of the crime contributed to the infliction of the victim's 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 the victim's 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 the victim's presence, or to apprehend a person who had committed a crime in the victim's 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 worker'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.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 198.

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, 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.

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 the victim's injuries or death.

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

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

History: 1975 c. 344, 421; 1979 c. 189.

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.

History: 1975 c. 344.

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.

History: 1975 c. 344

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.

History: 1975 c. 344; 1977 c. 239; 1979 c. 189.

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.

History: 1979 c. 189

949.14 Attorney's fees. (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 10% of the amount the attorney assisted the victim in obtaining.

(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 the attorney. 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.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189.

949.15 Recovery from offender. (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 is subrogated to the cause of action of the applicant against the person responsible for the injury or death and may bring an action against the person for the amount of the damages sustained by the applicant. If an amount greater than that paid 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.

(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

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(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.

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

949.16 Confidentiality of records. The record of a proceeding before an examiner or the department under this chapter is 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.

History: 1975 c. 344; 1977 c. 29; 1979 c. 189.

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 the claimant's behalf under this subchapter.

History: 1975 c. 344, 421.

949.18 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:

(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.

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