CHAPTER 949

AWARDS FOR THE VICTIMS OF CRIMES

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Cross−reference: See definitions in s. 939.22.
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SUBCHAPTER I

CRIME VICTIM COMPENSATION

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 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.

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

(4) "Medical treatment" includes medical, surgical, psychiatric, psychological, dental, optometric, chiropractic, podiatric and hospital care; 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.

(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).

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

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

(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.

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; 2015 a. 350.

949.02 Administration. The department shall administer this subchapter. The department shall appoint a program director to assist in administering this subchapter. The department shall promulgate rules for the implementation and operation of this subchapter. The rules shall include procedures to ensure that any limitation of an award is calculated in a fair and equitable manner.

History: 1975 c. 344; 1979 c. 189; 1985 a. 242; 2003 a. 33; 2007 a. 20.
Cross−reference: See also ch. Jus 11, Wis. adm. code.

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); 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, 942.09, 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, 948.21 (1), 948.30 or 948.51.

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

(c) The commission or the attempt to commit the crime specified in s. 346.67 (1) if the victim was a pedestrian, a person riding a bicycle, or a person 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; 2015 a. 350.

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 outside this state, the resident has the same rights under this subchapter as if the act had occurred in this state upon a showing that the state, territory, country or political subdivision of a country 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. The department need not keep a current record of laws in other countries. Upon request, the department 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; 1985 a. 242; 2007 a. 20.

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

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

(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).

(b) Upon request, the department shall furnish law enforcement agencies with the application forms under par. (a). The law enforcement agency investigating a crime shall provide information about the availability of crime victim compensation under this subchapter 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; 2015 a. 195 s. 82; 2015 a. 350.

949.05 Award; to whom payable. In any case in which a person is injured or killed by an incident specified in s. 949.03 (1) (a), by any act or omission of any other person that is within the description of crimes under s. 949.03 (1) (b) or by any act or omission of any person that is within the description of the crime listed and the condition provided under s. 949.03 (1) (c), the department may order the payment of an award:

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

(2) In the case of personal injury to or death 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 the injury to or death; or

(3) Except as provided in s. 949.06 (1m), 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; 1985 a. 135 s. 83 (3); 1985 a. 242; 1989 a. 140; 1995 a. 153; 2013 a. 165.

949.06 Computation of award. **(1)** 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, subject to the limits set forth under par. (bg).

(b) Work loss of a victim, a parent of a victim, or in the case of a homicide, a family member of a victim, shall be subject to the limits set forth under par. (bg) and shall be determined as follows:

1. If the victim or parent of a victim was employed at the time of the injury, loss of actual earnings shall be based upon his or her net income at the time of the injury.

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 income, the award may be based upon a sufficient showing by the victim that he or she actually incurred loss of income.

3. If a victim is released by a physician to return to work with restrictions but is unable to return to the job he or she was performing at the time the crime was committed, 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.

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

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

(bm) If at the time of the injury, the victim was a caregiver in his or her home, 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 s. 949.08 (1m) (a), whichever is less.

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

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

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

(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.

(d) Reasonable funeral and burial expenses, not to exceed $5,000.

(e) Loss of support, which shall be determined on the basis of the victim's net annual income at the time of death, and shall be calculated as follows:

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

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

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

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

(1m) (a) In this subsection, "family member" means any spouse, domestic partner under ch. 770, parent, grandparent, stepparent, foster parent, child, stepchild, adopted child, grandchild, foster child, brother, sister, half brother, or half sister.

(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 s. 949.08 (1m) (a).

(3) Any award made under this section shall be reduced by the amount of any payment 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 program, including worker's compensation and unemployment insurance. The department may reduce an award related to a crime under s. 346.62 (4), 346.63 (2) or (6), 940.09, 940.10, or 940.25, if the victim was not in compliance with s. 344.62 (1) at the time of the crime, by an amount equal to the payment the victim would have received from an insurance program or payment if the victim had been in compliance with s. 344.62 (1). The department may not reduce an award by an amount received or to be received from an insurance payment or program if it has deducted that amount from an award for economic loss under sub. (1) (e) 3.

(c) From public funds.

(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; 2015 a. 350.

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

949.07 Manner of payment. The award may be paid in a lump sum or in 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; 2015 a. 350.

949.08 Limitations on awards. (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 requirements under this subsection in the interest of justice.

(1m) (a) Except as provided in par. (b), the department may not make an award of more than $40,000 for any one injury or death and the department may not make any award for expenses incurred after 4 years from the date of the injury or death.

(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.

(2) 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 under the influence of an intoxicant, a controlled substance, or another drug to a degree that renders him or her incapable of safely driving. 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.

(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 under the influence of an intoxicant, a controlled substance, or another drug to a degree that renders him or her incapable of safely driving. 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.

(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; 2015 a. 350 ss. 22, 26 to 29.

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 subchapter 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; 2007 a. 20.

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

(2) The division of hearings and appeals in the department of administration shall appoint hearing examiners to make findings and orders under s. 227.46 and this subchapter.

(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; 1985 a. 182 s. 57; 1985 a. 242, 332; 2007 a. 20.

949.115 Subpoenas. The department or any of its authorized agents may issue subpoenas for persons or records for any investigation or hearing conducted under this subchapter and may enforce compliance with such subpoenas as provided in s. 885.12.

History: 1981 c. 20; 2007 a. 20.

949.12 Condition of claimant. 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 subchapter in which that condition is an element.

History: 1979 c. 189; 1981 c. 20; 2007 a. 20.

949.13 Agency cooperation. Upon request by the department, any state or local agency, including a district attorney or law enforcement agency, shall make available all reports, files and other appropriate information which the department requests in order to make a determination that a person is eligible for an award under this subchapter.

History: 1981 c. 20; 1985 a. 242; 2007 a. 20.

949.14 Attorney 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 a claimant. No attorney may ask for, contract for or receive any larger sum than the amount so allowed. Attorney fees shall not exceed 10 percent 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 a claimant in the amount of the overcharge.

History: 1975 c. 344, 421; 1977 c. 239; 1979 c. 189; 1985 a. 242; 1993 a. 490.

949.15 Department subrogation rights. (1) Whenever the department orders the payment of an award under this subchapter as a result of the occurrence of an event that creates a cause of action on the part of a claimant against any person, the department is subrogated to the rights of the claimant and may bring an action against the person for the amount of the damages sustained by the claimant. 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 claimant. If the person responsible for the injury or death has previously made restitution payments to the general fund under s. 973.20, any judgment obtained by the department under this section shall be reduced by the amount of the restitution payments to the general fund.

(2) In addition to the authority of the department to bring an action under sub. (1), the claimant may bring an action to recover damages. In any such action, the department has subrogation rights under sub. (1) and 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.

History: 1975 c. 344; 1979 c. 189; 1981 c. 20; 1985 a. 242; 1987 a. 398; 1993 a. 157; 2007 a. 20.

Election of remedies, retroactivity, joinder, statute of limitations, and subrogation are discussed. Bruner v. Kops, 105 Wis. 2d 614, 314 N.W.2d 892 (Ct. App. 1981).

Although a county was vicariously liable for damages due to injury, it was not a "person responsible for the injury." As such, no subrogation was required. Hamed v. Milwaukee County, 108 Wis. 2d 257, 321 N.W.2d 199 (1982).

The Department of Justice, Crime Victim Compensation Program is not an entity that is separate and distinct from the state. The program is an arm of the state and is considered stateless for diversity purposes under federal law. Bosse v. Pitts, 455 F. Supp. 868 (2006).

949.16 Confidentiality of records. The record of a proceeding before an examiner or the department under this subchapter 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; 2007 a. 20.

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 com-

petent 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. 973.20. 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 subchapter.

(13) APPLICABILITY. This section applies only to contracts which are entered into on or after May 18, 1985.

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

History: 1983 a. 467; 1987 a. 398; 2007 a. 20.

949.17 Offenses. (1) PROHIBITION. In connection with the crime victim compensation program, no person may:

(a) Submit a fraudulent application or claim for an award;

(b) Intentionally make or cause to be made any false statement or representation of a material fact; or

(c) Intentionally conceal or fail to disclose information affecting the amount of or the initial or continued right to any such award when reasonably requested to provide such information by the department.

(2) PENALTIES. Any person who violates this section shall be fined not more than $500 or imprisoned not more than 6 months or both. The person shall further forfeit any benefit received and shall reimburse the state for payments received or paid to or on behalf of the person.

(3) DAMAGES. The state has a civil cause of action for relief against any person who violates this section for the amount of damages which the state sustained by reason of the violation and, in addition, for punitive damages not more than double the amount of damages which the state may have sustained, together with interest, and the cost of the suit.

(4) ACTION. The attorney general may bring any action and has such powers as may be necessary to enforce this section.

History: 1975 c. 344, 421; 1981 c. 20.

949.18 Report by the department. The department's biennial report under s. 15.04 (1) (d) shall include a report of its activities under this subchapter including:

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

(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 subchapter.

(5) A complete statistical analysis of the cases handled under this subchapter, 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 subchapter.

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

History: 1975 c. 344; 1979 c. 189; 1983 a. 467, 524, 538; 2007 a. 20.

SUBCHAPTER II

SEXUAL ASSAULT FORENSIC EXAMINATION COMPENSATION

949.20 Definitions. In this subchapter:

(1) "Cooperate with a law enforcement agency" means to report a sex offense to a law enforcement agency or to aid a law enforcement agency in the investigation of a sex offense.

(2) "Department" means the department of justice.

(3) "Examination costs" means the costs of an examination that is done to gather evidence regarding a sex offense, any procedure during that examination process that tests for or prevents a sexually transmitted disease, and any medication provided or prescribed, during that examination process, that prevents or treats a sexually transmitted disease that the person performing the examination or procedure believes could be a consequence of the sex offense. "Examination costs" does not include any processing or administrative costs, attorney fees, or other expenses.

(4) "Guardian of the victim" means one of the following:

(a) If the victim is under 18 years of age, the parent, guardian, or legal custodian of the victim.

(b) If the victim has been determined to be incompetent under ch. 54, the guardian of the victim.

(5) "Health care provider" means any person providing health care services.

(6) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(7) "Sex offense" means an act committed in the state that, if committed by a competent adult, would be a violation, or an attempted violation, of s. 940.225, 948.02, 948.025, 948.05, 948.06, 948.08, or 948.09.

(8) "Sexually transmitted disease" has the meaning given in s. 252.11 (1).

(9) "Victim" means a person against whom a sex offense has been committed.

History: 2007 a. 20; 2009 a. 180.

949.22 Administration. The department shall administer this subchapter. The department shall appoint a program director to assist in administering this subchapter. The department shall promulgate rules for the implementation and operation of this subchapter. The rules shall include procedures to ensure that any limitation of an award is calculated in a fair and equitable manner.

History: 2007 a. 20.

949.24 Application for award. (1) ELIGIBILITY. Any health care provider who conducts an examination to gather evidence regarding a sex offense may apply for an award under this subchapter.

(2) FORMS. The department shall prescribe application forms for awards under this subchapter and shall furnish health care providers with the forms.

(3) MEDICAL RECORDS. An applicant shall submit to the department reports from any physician, physician's assistant, or nurse who treated or examined the victim to gather evidence regarding a sex offense, performed any procedure during that treatment or examination that tests for or prevents a sexually transmitted disease, or provided or prescribed any medication to prevent or treat a sexually transmitted disease. The applicant may not submit to the department any other records than those pertaining to the examination, treatment, procedure, or medication for which the applicant is seeking an award.

History: 2007 a. 20.

949.26 Computation of awards. (1) Except as provided in sub. (1m), the department shall make an award under this section to a health care provider who conducts an examination to gather evidence regarding a sex offense to reimburse the health care provider only for the examination costs, as follows:

(a) If, under sub. (2) (b), the health care provider is not authorized to seek payment from insurance or another available source of payment, the award shall be the examination costs, regardless of whether the victim, or any guardian of the victim, cooperates with a law enforcement agency regarding the sex offense.

(b) If, under sub. (2) (b), the health care provider is authorized to seek payment from insurance or another available source of payment and the victim, or any guardian of the victim, does not cooperate with a law enforcement agency regarding the sex offense, the award shall be the examination costs, reduced by any payment to be received as a result of the authorization under sub. (2) (b).

(1m) The department may not make an award under this section if, under sub. (2) (b), the health care provider is authorized to seek payment and the victim, or any guardian of the victim, cooperates with a law enforcement agency.

(2) (a) A health care provider seeking an award under this section may not seek payment for any examination costs from the victim or any guardian of the victim.

(b) A health care provider seeking an award under this section may not seek payment for any examination costs from insurance or another available source of payment unless the victim or any guardian of the victim authorizes the health care provider to seek payment.

(3) The department may not refuse to make an award under this section because the victim or the guardian of the victim does not cooperate with a law enforcement agency regarding the sex offense, or due to lack of an investigation or prosecution of the sex offense.

History: 2007 a. 20.

949.28 Limitations on awards. (1) No order for the payment of an award under this subchapter may be made unless the application was made within one year after the date of the examination. The department may waive the one−year requirement under this subsection in the interest of justice.

(2) The department may not make an award under this subchapter that exceeds the examination costs of the victim.

(3) The department may not make an award under this subchapter for any part of the examination costs of the victim for which the health care provider seeking the award has received compensation from any other source.

History: 2007 a. 20.

949.31 Hearings. (1) The procedure of ch. 227 for contested cases applies to hearings under this subchapter except as otherwise provided in this section and s. 949.32.

(2) The division of hearings and appeals in the department of administration shall appoint hearing examiners to make findings and orders under s. 227.46 and this subchapter.

(3) All hearings shall be open to the public unless in a particular case the examiner determines that the hearing, or a portion of the hearing, shall be held in private having regard to the fact that the offender has not been convicted or to the interest of the victim.

History: 2007 a. 20.

949.315 Subpoenas. The department or any of its authorized agents may issue subpoenas for persons or records for any investigation or hearing conducted under this subchapter and may enforce compliance with such subpoenas as provided in s. 885.12.

History: 2007 a. 20.

949.32 Condition of victim. There is no privilege, except privileges arising from the attorney−client relationship, as to communications or records relevant to an issue of the physical condition of the victim in a proceeding under this subchapter in which that condition is an element.

History: 2007 a. 20.

949.33 Agency cooperation. Upon request by the department, any state or local agency, including a district attorney or law enforcement agency, shall make available all reports, files, and other appropriate information which the department requests in order to make a determination that a health care provider is eligible for an award under this subchapter.

History: 2007 a. 20.

949.36 Confidentiality. If a health care provider seeks an award under this subchapter, any personally identifiable information, as defined in s. 19.62 (5), of the victim who received the examination shall remain confidential unless written consent for the release of any personally identifiable information is provided by one of the following:

(1) Except as provided under sub. (2), the victim.

(2) If there is a guardian of the victim, the guardian of the victim.

History: 2007 a. 20.

949.37 Offenses. (1) PROHIBITION. In connection with an award under this subchapter, no person may do any of the following:

(a) Submit a fraudulent application or claim for an award.

(b) Intentionally make or cause to be made any false statement or representation of a material fact.

(c) Intentionally conceal or fail to disclose information affecting the amount of or the initial or continued right to any such award when reasonably requested to provide such information by the department.

(2) PENALTIES. Any person who violates this section shall be fined not more than $500 or imprisoned not more than 6 months or both. The person shall forfeit any benefit received and shall reimburse the state for payments received.

(3) DAMAGES. The state has a civil cause of action for relief against any person who violates this section for the amount of damages that the state sustained by reason of the violation and, in addition, for punitive damages not more than double the amount of damages that the state may have sustained, together with interest, and the cost of the suit.

(4) ACTION. The attorney general may bring any action and has such powers as may be necessary to enforce this section.

History: 2007 a. 20.

949.38 Report by the department. The department's biennial report under s. 15.04 (1) (d) shall include a report of its activities under this subchapter including all of the following:

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

(2) A description of the programs and policies instituted to promote awareness about the awards under this subchapter.

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

(4) A copy of the forms used under this subchapter.

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

(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 and month.

History: 2007 a. 20.