

Report From Agency

REPORT TO THE LEGISLATURE

Department of Justice

JUS 11, Wis. Admin. Code

Clearinghouse Rule 19-136

I. The Proposed Rule:

The proposed rule, including the analysis and text, is attached.

II. Reference to Applicable Forms:

N/A

III. Basis and Purpose of the Proposed Rules:

The State of Wisconsin Department of Justice (“Department”) proposes to modify its rules for administering the Crime Victim Compensation Program. Chapter 949, Stats., established the Crime Victim Compensation Program (the “Program”) to help pay for unreimbursed eligible expenses that result from crime. This Program is administered by the Department through ch. Jus 11. In 2015 Wis. Act 350, the State of Wisconsin made statutory revisions providing for new benefits available for victims, along with new limitations on awards. This proposed rule effectuates the statutory changes enacted in 2015 Wis. Act 350, revises outdated terminology, and eliminates provisions that have become unnecessary. Specifically, the following updates have been made:

- Proposed ss. Jus 11.01 (1) and (2) update the terminology used to identify the program administered by the Department as the Crime Victim Compensation Program.
- Proposed s. Jus 11.01 (5) (gm) incorporates a new definition created by s. 949.01 (4g), Stats., for who is the “parent of the victim.”

- Proposed ss. Jus 11.02 (2) (c), (g) and (h) remove specific language to create a more general criterion of information to be contained on an application form.
- Proposed ss. Jus 11.03 (1), (3) and (4) (a) update language in Jus 11.03 to: (1) refer specifically to an eligibility determination; (2) clarify that the program manager has the responsibility for issuing a denial decision on a claim and that written decisions are only required when denying a claim; and (3) update the reference to the statute to reflect a single maximum award amount.
- Proposed ss. Jus 11.04 (1) and (2) (a) clarify that an award is subject to the statutory limitation and remove the requirement that a physician must certify the disability period for any victim claiming economic loss because he or she is unable to work. Proposed s. Jus 11.04 (2) (d) specifies how net business profits are calculated to conform with the statutory changes in 2015 Wis. Act 350.
- Proposed s. Jus 11.04 (2) (dm) reflects a statutory change that a physician only needs to determine the disability period if the period exceeds 2 weeks, as well as the percent of lost net wages. Proposed s. Jus 11.04 (2m) reflects a new benefit for parents of a minor victim created in 2015 Wis. Act 350.
- Proposed s. Jus 11.04 (3) updates language to refer to awards for “caregiver” services instead of “homemaker” services, and also allows the Department to require physician certification that a victim is unable to perform such tasks.
- Proposed ss. Jus 11.04 (3m) and (4m) incorporate new statutory benefits in 2015 Wis. Act 350 for housing adaptations and for replacement of computers and mobile telephones held by law enforcement for evidentiary purposes.
- Proposed s. Jus 11.04 (6) reflects a statutory change in 2015 Wis. Act 350 that increases crime victim funeral benefits to \$5,000 and specifies that such amount is included in a maximum award. Proposed s. Jus 11.04 (7) reflects a statutory change to simplify how a loss of support award for crime victim dependents is calculated.

- Proposed s. Jus 11.05 (1) (c) clarifies that an award can be made to reimburse a third party who is not financially responsible for the support of the victim. Proposed s. Jus 11.05 (2) reflects a statutory change that the maximum award amount now includes funeral expenses.
- Proposed s. Jus 11.05 (3) reflects statutory changes to simplify the calculation for a loss of support award.
- Repeal of s. Jus 11.05 (3) (b) removes the provision for calculation of economic loss and loss of support awards that was replaced by the changes in proposed s. Jus 11.05 (3).
- Proposed s. Jus 11.05 (4) (a) 4. removes the reference to emergency awards that is no longer needed.
- Repeal of s. Jus 11.05 (4) (a) 4. (Note) removes a note that is no longer needed given the amendment in s. Jus 11.05 (4) (a) 4.
- Proposed s. Jus 11.06 (1) updates who is a qualified mental health treatment provider. The Program provides that victims may get an award to cover eligible services provided by a qualified mental health treatment provider.
- Proposed ss. Jus 11.06 (2) (a) and (b) reflect the changes regarding qualified providers in proposed s. Jus 11.06 (1). These sections also remove the requirement that inpatient psychiatric services must be prescribed by a physician.
- Repeal of s. Jus 11.06 (2) (c) reflects a change regarding eligible psychotherapy expenses, and proposed s. Jus 11.06 (2) (d) adds a new provision to expand the range of eligible mental health services that may be covered by an award.
- Proposed ss. Jus 11.06 (4) (intro), (b), (c), (e) and (f) clarify that awards may be made to claimants, in addition to victims. Under 2015 Wis. Act 350, parents of minor victims may receive awards for mental health services and lost wages related to the crime. These sections update language to reflect these statutory changes.

- Proposed s. Jus 11.07 (1) reflects the statutory change that allows adults who were victimized as children to file an application regardless of the date of the crime.
- Proposed s. Jus 11.07 (2) allows a waiver of the time limits for a victim reporting the crime to law enforcement when it is in the interest of justice to do so. Proposed s. Jus 11.07 (7) also clarifies that an award cannot be made to an adult passenger victim who knowingly rides with a driver who is impaired.
- Repeal of s. Jus 11.08 removes the provision for emergency awards that is no longer needed.
- Proposed s. Jus 11.09 (1) (d) allows the Department additional time to make a decision about a request for a hearing to contest a decision made by the Program. Proposed s. Jus 11.09 (3) (g) also permits that those hearings may be closed for the benefit of any victim, and not just sexual assault victims.
- Proposed s. Jus 11.11 (1) clarifies the responsibility of law enforcement to provide information to crime victims about the availability of crime victim compensation.

IV. Economic Impact Analysis under s. 227.137(2), Stats.:

The separate fiscal and economic impact report previously submitted to the Legislative Council on October 31, 2019 is resubmitted here with one correction. The word “indeterminate” is checked in box 7, where previously no box was checked.

V. Revised Economic Impact Analysis under s. 227.137(4), Stats.:

The proposed rules have not been modified in any way that changes their economic impact. Therefore, no revised economic impact analysis is required.

VI. Material from the Small Business Regulatory Review Board:

The proposed rules will not have a significant effect on small business. Therefore, a report of the Small Business Regulatory Review Board under s. 227.14(2g), Stats., is not required.

VII. Energy Impact Report under s. 227.117(2), Stats.:

The requirements of s. 227.117, Stats., are not applicable because the proposed rules will have no impact on energy availability.

VIII. Hearing and Public Comments:

Pursuant to s. 227.16(2)(b), Stats., Jus 11 was adopted without public hearing. The proposed rule brings Chapter Jus 11 into conformity with statutory changes enacted in 2015 Wis. Act 350.

The Department posted the statement of scope and proposed rule on its Office of Crime Victim Services webpage and requested comments on the economic impact of the proposed rules. Specifically, the Department solicited information and advice from individuals, businesses, associations representing businesses, and local government units who may be affected by the proposed rules for use in analyzing and determining the economic impact that the rules would have on businesses, individuals, public utility rate payers, local government units, and the state's economy as a whole. Comments were accepted from April 10, 2019, through April 30, 2019. No comments were received.

The Department also sent emails to individuals representing the following organizations that included the statement of scope and proposed rule: Wisconsin Victim/Witness Professionals Association; Wisconsin District Attorney's Association; Wisconsin Hospital Association; Wisconsin Funeral Directors Association; Wisconsin Chiefs of Police Association; Wisconsin Coalition Against Sexual Assault; and End Abuse Wisconsin. The email to these organizations solicited information and advice on the economic impact of draft proposed rules. Comments were accepted from April 11, 2019, through April 30, 2019. No comments were received.

The Department also published a solicitation in the Administrative Register requesting information and advice from businesses, associations representing businesses, local governmental units, and individuals who may be affected by the proposed rules. This public notice was published in Wisconsin Administrative Register No. 760A3. Comments were accepted from April 15, 2019, through April 30, 2019. No comments were received.

IX. Copy of Recommendations of Legislative Council Staff:

A copy of the Wisconsin Legislative Council Rules Clearinghouse Report on the proposed rules, received by the Department on November 20, 2019, is simultaneously submitted with this report.

X. Response to Recommendations of Legislative Council Staff:

The Legislative Council Staff made no comments in the following categories: 1. Statutory Authority; 3. Conflict with or Duplication of Existing Rules; 4. Adequacy of References to Related Statutes, Rules and Forms; 5. Clarity, Grammar, Punctuation, and Use of Plain Language; 6. Potential Conflicts with, and Comparability to, Related Federal Regulations; and 7. Compliance with Permit Action Deadline Requirements.

The Legislative Council Staff made comments only in the following category: 2. Form, Style and Placement in Administrative Code. The Department responds to those recommendations as follows:

Comment a. was accepted in whole.

Comment b. was accepted in whole.

Comment c. was accepted in whole.

Comment d. was accepted in part, and rejected in part. The Department accepted Legislative Council's recommendation to restructure the proposed rule into three separate Sections. However, the provision recommended for Jus 11.06 (1) (i) was removed because "[a] qualified treatment trainee under clinical supervision as defined by s. DHS 35.03 (17m)" is not yet "licensed by the state in which he or she practices." So Jus 11.06 (1) (i) would not fall under the qualifications set forth in Legislative Council's

wording of Jus 11.06 (1). This discrepancy was resolved by the Department by amending Jus 11.06 (1) to read: “(1) ELIGIBLE PROVIDERS. Eligible providers of mental health treatment under this subchapter include a qualified treatment trainee under clinical supervision as defined by s. DHS 35.03 (17m) or any of the following individuals licensed by the state in which he or she practices:” and removing Jus 11.06 (1) (i).

Comment e. was accepted in whole.

Comment f. was accepted in whole, and the Department eliminated proposed Jus 11.07 (1) (a) as unnecessary because it was a verbatim recital of the exception referenced in Jus 11.07 (1), which is also found at s. 949.08(1m)(b), Stats.

Comment g. was accepted in whole.

Comment h. was accepted in whole.

Comment i. was rejected in whole because the proposed rule conforms to statutory changes that are already in place.

Comment j. was accepted in whole.