

Chapter Jus 11

AWARDS FOR VICTIMS OF CRIME

Subchapter I — Crime Victim Compensation

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Note: Chapter Ind 81 as it existed on February 29, 1992 was repealed and a new chapter Jus 11 was created effective March 1, 1992.

Subchapter I — Crime Victim Compensation

Jus 11.01 Description of the program. (1) AUTHORITY AND PURPOSE. This subchapter is promulgated pursuant to s. 949.02, Stats., for the purpose of administering the awards for the Crime Victim Compensation Program in Wisconsin which provides assistance to innocent victims of crimes and their families in order to ease their financial burdens.

(2) APPLICABILITY. This subchapter applies to all persons who apply for financial assistance from the Crime Victim Compensation Program and to all related matters, proceedings and hearings.

(3) ADMINISTRATION. Chapter 949, Stats., and this subchapter shall be administered by a director appointed by the attorney general.

(4) SERVICE AND FILING. Papers and petitions required to be served upon, or filed with the department of justice, by this subchapter shall be served either in person or by mail and shall be addressed: Wisconsin Department of Justice, Office of Crime Victim Services, 17 West Main Street, Post Office Box 7951, Madison, WI 53707-7951. The papers and petitions are deemed served or filed when received by the department.

(5) DEFINITIONS. In this subchapter:

(a) “Contested case” has the meaning specified in s. 227.01 (3), Stats.

(b) “Crime” has the meaning specified in s. 949.01 (1), Stats.

(c) “Department” has the meaning specified in s. 949.01 (1m), Stats.

(d) “Dependent” has the meaning specified in s. 949.01 (2), Stats.

(e) “Family member” has the meaning specified in s. 949.06 (1m) (a), Stats.

(f) “Law enforcement agency” has the meaning specified in s. 949.01 (3), Stats.

(g) “Medical treatment” has the meaning specified in s. 949.01 (4), Stats.

(gm) “Parent of the victim” has the meaning specified in s. 949.01 (4g), Stats.

(h) “Personal injury” has the meaning specified in s. 949.01 (5), Stats.

(i) “Victim” has the meaning specified in s. 949.01 (6), Stats.

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92; CR 15-058: am. (1) to (4), (5) (intro.) Register May 2016 No. 725, eff. 6-1-16; correction in (4) under 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 19-136: am. (1), (2), cr. (5) (gm) Register September 2021 No. 789, eff. 10-1-21.

Jus 11.02 Filing of claims. (1) FILING DEADLINE. A claim must be filed by the applicant within the time limits specified in s. Jus 11.07 (1).

(2) APPLICATION FORM. A claim shall be filed on the application form prescribed by the department and shall contain at least the following information:

(a) The name and address of the victim of the crime.

(b) The name and address of the applicant and the relationship of the applicant to the victim.

(c) An accurate description of the crime and the date on which the crime occurred.

(d) The law enforcement agency to which the crime was reported and the date on which the crime was reported.

(e) The nature and extent of the injuries the victim sustained from the crime; the name and address of any person who gave medical treatment to the victim for these injuries; the name and address of any hospital or similar institution where the victim received medical treatment for the injuries and the costs of such treatment.

(f) The work loss the victim sustained as a result of the crime.

(g) The source and amount of benefit the victim, dependent or applicant has received, or is to receive, from any collateral source for economic loss that resulted from the crime and the name of the collateral source.

(h) Whether the claimant knows the offender, and the nature of the relationship, if any.

(i) A release authorizing the department to obtain any report, document or other information it needs in its determination of the claim.

(j) Any additional information or material the department determines is reasonably related to the application.

Note: A copy of the application form may be obtained at the Wisconsin department of justice at no charge.

(3) INCOMPLETE APPLICATIONS. Whenever an application is not complete or the department otherwise lacks information required under sub. (2), the department shall request the applicant to provide the required information. If the applicant fails within 30 days to provide the information or to indicate why the information is unavailable, the applicant shall be denied an award under s. Jus 11.07 (7).

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92; CR 19-136: am. (2) (c), (g), (h) Register September 2021 No. 789, eff. 10-1-21.

Jus 11.03 Claims investigation and decision. (1) CLAIMS DETERMINATION. Claims may be investigated and verified, and an eligibility determination may be made, regardless of whether the alleged offender has been apprehended, prosecuted

for, or convicted of, any crime based upon the same incident or has been found not guilty of such crime.

(2) SUSPEND PROCEEDINGS. The department may suspend proceedings upon its own motion or that of a prosecuting attorney for a period it deems appropriate on the grounds that a prosecution for an offense arising out of the act has been commenced or is imminent.

(3) WRITTEN DECISION. The department, by the Crime Victim Compensation Program director, shall issue a written decision setting forth the denial of the claim and the reasons, and shall furnish the applicant with a copy of the decision. The decision shall also advise the applicant of any right to a contested case hearing.

(4) CLOSED CLAIMS. A claim for compensation is closed when any of the following conditions occur:

(a) The statutory maximum allowed under s. 949.08 (1m) (a) and (b), Stats., has been awarded by the department.

(b) The 30 day time period for appealing the decision of the department has passed without a request from the applicant for a contested case hearing.

(c) The 30 day period for appealing the decision of the hearing examiner has passed without further appeal being made by the applicant.

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92; correction in (4) (a) made under s. 13.92 (4) (b) 7., Stats., Register May 2016 No. 725; CR 19-136: am. (1), (3), (4) (a) Register September 2021 No. 789, eff. 10-1-21; correction in (1) made under s. 35.17, Stats., Register September 2021 No. 789.

Jus 11.04 Economic loss. The department may make awards for unreimbursed economic losses as follows:

(1) Actual cost of reasonable and necessary medical treatment, subject to the limits set forth under s. 949.06 (1) (bg), Stats.

(2) Loss of actual earnings if the victim was employed or loss of potential earnings if the victim was not employed at the time of the crime based upon a sufficient showing by the victim that the victim incurred an actual loss of earnings. The department shall determine an award for work loss incurred as a direct result of an injury as follows:

(a) If the victim was employed at the time of the injury, an award for work loss shall be equal to the victim's unreimbursed net salary. In this paragraph "net salary" means income less deductions for federal withholding tax, state withholding tax, Medicare, and FICA tax. In this paragraph "disability period" means the length of time a victim is unable to work as a direct result of personal injuries caused by the crime.

(b) 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 earnings, the award may be based upon a sufficient showing by the victim that the victim incurred an actual loss of earnings. The victim must have received an offer of employment and must have been unable to begin employment as a direct result of a disability caused by the crime.

(c) The amount of the award under pars. (a) and (b) may be reduced by any income from substitute work actually performed by the victim or by income the victim would have earned in, [if] available, appropriate substitute work the victim was capable of performing but unreasonably failed to undertake.

(d) If the victim was self-employed at the time of the injury, the loss of actual earnings may be determined by taking into account the net business profit reported on the previous year's federal income tax return or the current year's net business profit based on current financial records. Net loss of earnings shall be determined by deducting self-employment tax as set forth by the IRS, federal withholding tax, state withholding tax, Medicare, and FICA tax from the net business profit.

(dm) The disability period shall be determined by a physician if it exceeds 2 weeks from the date of the crime. If a physician determines that a claimant's disability is partially related to the victimization, the department shall reimburse the percentage of lost net wages determined by the physician to be directly related to the crime.

(e) If the victim failed to report earnings to federal and state revenue departments, if required to do so by law, the department may not make an award under this subsection based upon any such unreported income.

(2m) The department may award each parent of a victim not more than \$3,000 total for reimbursement of mental health treatment and for work loss directly related to the crime.

(3) Actual costs of ordinary, necessary and reasonable household and caregiver services in an amount sufficient to ensure that the victim's 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), Stats., whichever is less. The department may require that a physician certify that the victim is unable to perform the household or caretaker duties and responsibilities.

(3m) If as a direct result of the injury, the victim suffered a protracted disability, reasonable and necessary housing accessibility adaptations, not to exceed the limitations of s. 949.06 (1) (br), Stats.

(4) Reasonable replacement value of any clothing and bedding that is held for evidentiary purposes, not to exceed the limitations of s. 949.06 (1) (c), Stats.

(4m) Reasonable replacement value of any computer or mobile telephone that is held for evidentiary purposes, not to exceed the limitations of s. 949.06 (1) (cg), Stats.

(5) Reasonable replacement value of property, other than clothing and bedding under s. 949.06 (1) (c), Stats., that is held for evidentiary purposes and is rendered unusable as a result of crime laboratory testing, not to exceed the limitations of s. 949.06 (1) (cm), Stats.

(6) Reasonable funeral and burial expenses not to exceed the limitations of s. 949.06 (1) (d), Stats. The costs of a reception, wake, or purchase of clothing for burial are not recoverable expenses under this section.

(7) Loss of support, which shall be determined on the basis of the victim's net annual income at the time of death, and calculated in accordance with s. 949.06 (1) (e), Stats.

(8) Reasonable and necessary costs associated with securing and cleaning up a crime scene not to exceed the limitations under s. 949.06 (1) (f), Stats. In this subsection:

(a) "Securing a crime scene" means taking reasonable steps to make the crime scene free of danger and the risk of future loss.

(b) "Cleaning up a crime scene" means removing or attempting to remove from the crime scene any stains or debris caused by the crime or the processing of the crime scene.

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92; correction in (6) made under s. 13.92 (4) (b) 7., Stats., Register May 2016 No. 725; correction in (3) under 13.92 (4) (b) 7., Stats., Register June 2016 No. 726; CR 19-136: am. (1), (2) (a), (d), cr. (2) (dm), (2m), am. (3), cr. (3m), (4m), am. (6), (7), (8) (a) Register September 2021 No. 789, eff. 10-1-21.

Jus 11.05 Awards. (1) TO WHOM PAYABLE. The department may make an award for economic loss to or for the benefit of any of the following persons:

(a) A victim.

(b) A dependent.

(c) A third person, other than a collateral source or business,

that has incurred an expense as a direct result of the victim's personal injury or death.

(d) A family member or person who lived with the victim immediately prior to the crime, as a result of the person's or family member's reaction to the death. In this subsection:

1. The victim must be a victim of s. 940.01, 940.02, 940.05, 940.06, 940.07, 940.08 or 940.09, Stats.

2. A dependent may recover both under s. 949.06 (1), Stats., and this subsection subject to the limitations of s. 949.08 (1m) (a), Stats.

(2) MAXIMUM AWARD. An award shall not exceed the economic loss to the claimant or exceed the limitations of s. 949.08 (1m) (a), Stats.

(3) DEPENDENTS' LOSS OF SUPPORT. In determining the amount of the award, the department shall determine loss of support based on the victim's net income at the time of death and loss of support shall be calculated equal to four times the victim's annual net income. The department shall deduct from the loss of support award an amount equal to benefits the dependents received or are to receive, over the course of 4 years, as survivor benefits from the federal social security program. The department shall determine if the dependents have received or will receive life insurance proceeds due to the victim's death and each dependent's loss of support award shall be reduced by the life insurance proceeds available to them.

(4) COLLATERAL SOURCES. (a) Any award made under this subchapter shall be reduced by the amount of any payment received, or to be received, as a result of the injury or death:

1. From, or on behalf of, the person who committed the crime.
2. From insurance payments or programs, including workers compensation, unemployment compensation and social security.
3. From public funds.
4. From an award under s. 949.26, Stats.
5. From one or more 3rd parties held liable for the victim's injury or death.

(b) If the claimant fails to take advantage of a source of benefits that would have been available to the claimant or that would have reimbursed the claimant for all or a portion of an economic loss, the department shall reduce or deny an award to the extent that it would have been paid by such source of benefits. The department may waive this requirement in the interest of justice.

(5) AWARDS TO MINOR DEPENDENTS. The department may award benefits to the parent of a minor dependent child, the child's guardian or to such person, or trustee, for the minor dependent child's use as may be found to be best calculated to serve the interest of the child or for the support and maintenance of a minor dependent child or children.

(6) AWARDS TO PROVIDERS. 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.

(7) AWARDS NOT SUBJECT TO ATTACHMENT. No award made under this subchapter may be subject to execution, attachment, garnishment or other process, except that an award for economic loss 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.

(8) ACTUAL LOSS. The department may not make an award when the department determines in a particular case that the claimant would not ordinarily have been required to pay for the services but for ch. 949, Stats.

(9) DEPENDENTS. If 2 or more dependents are entitled to the

award as a result of the death of a victim, the department shall apportion the award among the dependents. The department may apportion the award among the dependents in equal amounts.

(10) PROBATE AWARD. The department may apportion an award for a victim's economic loss in a manner which the department determines to be just or in the best interest of the applicant.

(11) PERIODIC AWARDS. In the case of the death of the victim or in the case of a protracted loss of earnings, the department may make periodic awards. The department shall periodically verify whether the claimant is entitled to continue to receive such payments.

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92; CR 15-058: am. (4) (a) (intro.), (7) Register May 2016 No. 725, eff. 6-1-16; correction in (6) made under s. 13.92 (4) (b) 7., Stats., Register May 2016 No. 725; CR 19-136: am. (1) (c), (2), cons. and renum. (3) (intro.) and (a) to (3) and am., r. (3) (b), am. (4) (a) 4. Register September 2021 No. 789, eff. 10-1-21.

Jus 11.06 Mental health treatment. **(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:

- (a) A physician who has completed a residency in psychiatry.
- (e) A psychologist.
- (f) A marriage and family therapist.
- (g) A professional counselor.
- (h) A clinical social worker.

(2) ELIGIBLE SERVICES. Eligible types of mental health treatment under this subchapter include:

- (a) Inpatient psychiatric services provided within the psychiatric unit of a general hospital or a psychiatric facility.
- (b) Outpatient psychotherapy services.
- (d) Complementary mental health services may be considered for payment by the department if administered in conjunction with any of the above-listed treatments, prescribed by an eligible provider, and administered by an accredited practitioner.

(3) LIMITATIONS ON ELIGIBLE SERVICES. Limitations on eligible services include:

- (a) Collateral interviews are limited to the non-offending family members.
- (b) Group psychotherapy sessions are limited to those in which not more than 10 individuals receive psychotherapy services together from an eligible provider.
- (c) Court appearances or evaluations are not eligible services.

(4) AUTHORIZATION PROCESS. The department shall require eligible providers of services to submit an authorization request which may include the following information:

- (a) The name, address, and medical assistance or identification number of the provider conducting the diagnostic examination and performing the psychotherapy services.
- (b) A detailed summary of the problems for which the victim or claimant is seeking mental health treatment.
- (c) A detailed summary of the diagnostic examination, including the severity of the victim's or claimant's mental illness, medically significant emotional or social dysfunctions, the medical necessity for treatment and the suggested outcome of treatment.
- (d) A statement of the estimated frequency of treatment sessions and the estimated cost of treatment.
- (e) A statement of the relationship between the crime and the need for treatment, and to what extent the treatment is directly related to the crime.

(f) A statement of the victim's or claimant's psychological condition prior to the crime.

(5) REVIEW PROCESS. (a) Department claims specialists shall review authorization requests for mental health claims. The department may appoint persons who meet the same minimum requirements that providers are expected to meet to review authorization requests.

(b) The department shall review the progress of the treatment periodically as the department determines it is reasonable to do so. Progress reports shall describe the victim's current symptoms, problem changes in symptoms since the last report, progress made toward each treatment goal, a list of impediments to progress, and a plan to address impediments.

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92; CR 15-058: am. (1) (intro.), (2) (intro.) Register May 2016 No. 725, eff. 6-1-16; CR 19-136: am. (1) (intro.), (a), r. (1) (b) to (d), cr. (1) (e) to (h), am. (2) (a), (b), r. (2) (c), cr. (2) (d), am. (4) (intro.), (b), (c), (e), (f) Register September 2021 No. 789, eff. 10-1-21.

Jus 11.07 Limitations on awards. The department may not make an award if the department determines that any of the following apply:

(1) The application was not filed within one year after the date of the personal injury or death, subject to the exception under s. 949.08 (1m) (b), Stats. The department may waive the one year filing requirement under this subsection in the interest of justice.

(2) The incident upon which the claim is based was not reported to a law enforcement agency within 5 days of its occurrence or, if the incident could not have reasonably been reported within that period, within 5 days of the time when a report could reasonably have been made. The department may waive the time limit on reporting under this subsection in the interest of justice.

(a) Lack of knowledge of the provisions of ch. 949, Stats., and of this subchapter does not extend the time in which an incident must be reported to a law enforcement agency.

(b) Compliance with sub. (5) (a), (b) and (c) constitutes a report to a law enforcement agency under this subsection.

(3) The victim engaged in conduct which substantially contributed to the victim's injury or death or engaged in conduct in which the victim could have reasonably foreseen could lead to injury or death. This paragraph does not apply to awards to victims under s. 949.03 (1) (a), Stats. In determining whether the victim engaged in contributory conduct under this subsection the department:

(a) Shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim and the ability of the victim to have reasonably avoided the incident upon which the claim is based.

(b) May consider whether the victim was under the influence of an intoxicant or controlled substance at the time of the incident upon which the claim is based; whether the victim has engaged in an ongoing course of criminal conduct within 5 years or less of the date of the incident upon which the claim is based; or whether the incident upon which the claim is based occurred while the victim was incarcerated in a city or county detention facility pending the disposition of criminal charges or, after being convicted of an offense, was serving a sentence of imprisonment.

(4) The victim committed a crime which caused, or contributed to, the victim's injury or death.

(5) The victim has not cooperated with appropriate law enforcement agencies. In this subsection "cooperation with appropriate law enforcement agencies" means the victim has cooper-

ated with the reasonable requests of the law enforcement agency investigating the incident, including:

(a) Providing a true, accurate and complete description of the crime, including the circumstances which led to the crime.

(b) Describing the assailant and telling the appropriate law enforcement agency the offender's name and whereabouts, if known.

(c) Reporting the incident to the law enforcement agency within a reasonable time so as to enable the agency to identify and apprehend the offender, identify witnesses, and conduct a thorough investigation of the incident.

(d) Participating, if requested by the law enforcement agency, in follow-up investigative activities including, but not limited to, viewing photographs and lineups and other investigative procedures.

(e) Agreeing to participate in the initiation of proceedings against the offender, agreeing to appear and testify on behalf of the prosecution and assisting in the prosecution of the offender at all stages. The department may waive the provisions of this paragraph upon good cause shown by the victim that the failure to cooperate in the prosecution is due to a compelling health or safety reason.

(6) The applicant has not cooperated with the department in the administration of the program. Cooperation with the department means that the applicant provides all information deemed necessary by the department within 30 days of its request. The department may waive this requirement upon good cause shown by the applicant that the failure to take the steps required by the department was beyond the control of the applicant.

(7) The injured victim is an adult passenger in a vehicle operated by the offender and the crime involved is specified in s. 346.63 (2) or 940.25, Stats., 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 subsection 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, Stats. This subsection applies, however, if the victim is also a victim of a crime specified in s. 940.09, Stats.

(8) The victim has been certified to the department under s. 49.855 (7), Stats., as being delinquent in child support or maintenance payments.

Note: 1999 Wis. Act 9 repealed s. 49.855 (7), Stats.

(9) The award would unjustly benefit the offender or accomplice. In this subsection "unjust benefit" includes:

(a) The extent to which the offender or accomplice has the legal responsibility to reimburse the victim or claimant for economic loss.

(b) The extent to which an award to a victim or claimant will provide support to the offender or accomplice by paying for living expenses of the offender or accomplice including food, shelter, clothing and entertainment.

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92; correction in (9) (a) made under s. 13.93 (2m) (b) 12., Stats., Register, September, 1994, No. 465; corrections in (7) and (8) made under s. 13.93 (2m) (b) 7., Stats., Register September 2001 No. 549; CR 15-058: am. (2) (a) Register May 2016 No. 725, eff. 6-1-16; CR 19-136: am. (1), (2), (7) Register September 2021 No. 789, eff. 10-1-21; correction in (1) made under s. 35.17, Stats., Register September 2021 No. 789.

Jus 11.09 Contested case hearing. **(1) PETITION FOR HEARING.** The applicant may petition the department for a contested case hearing to review the decision of the department.

(a) The applicant filing a petition for hearing shall be designated as "petitioner." The department of justice shall be designated as "respondent."

(b) The petition for hearing shall request that a hearing be granted in the particular case and clearly state the particular finding or findings of the department which applicant claims are in error.

(c) The applicant shall file with the department the written request for a contested case hearing within 30 days of the date of the written decision of the department. The time during which the applicant may request a contested case hearing to review the decision of the department shall begin with the date of mailing of the decision.

(d) The department shall either grant or deny the request for a contested case hearing by mailing to the petitioner an order granting or denying the request. If a hearing is not granted within 60 days of receipt of the request for a contested case hearing, the request shall be deemed denied.

(2) PREHEARING CONFERENCE. In any action to be set for hearing, the hearing examiner may conduct a prehearing conference in person or by telephone in all proceedings for hearings under this subchapter.

(a) The hearing examiner shall attempt to obtain from the parties to the prehearing conference a stipulation as to any issue of fact or law over which there is no genuine dispute, including:

1. Whether a crime has been committed.
2. Whether the applicant sustained injuries or death as a direct result of a crime.
3. The nature and extent of the applicant's injuries.
4. The economic loss sustained by the applicant.
5. The amount the applicant has been, or expects to be, compensated from other sources.

(b) Failure of any interested party to appear in person or by attorney at the prehearing conference constitutes a waiver of that interested party's right to become a party to the administrative proceedings.

(c) Failure of petitioner to appear in person or by attorney at the prehearing conference shall result in the entry of a decision dismissing the petition.

(3) HEARING PRACTICES AND PROCEDURES. The hearing examiner shall conduct contested case hearings in accordance with the rules in this subsection.

(a) The department shall request the division of hearings and appeals, department of administration, to appoint a hearing examiner to preside over the contested case hearing.

(b) Chapter **HA 1** rules of procedures and practice shall apply in all contested case hearings held under this subchapter, except as specifically provided otherwise.

(c) All hearings held under this subchapter shall be class 1 proceedings as defined in s. 227.01 (3) (a), Stats.

(d) The department shall attach to the request for a contested case hearing:

1. The application.
2. The written decision of the department.
3. The written request for a hearing.
4. The order granting the hearing.
5. A list of all interested parties.
6. Any other documents the department deems necessary.

(e) The claimant shall proceed with the burden of proving by a preponderance of the credible evidence that:

1. A crime occurred which meets the definition under s. 949.03, Stats.
2. The victim incurred a personal injury as defined under s. 949.01 (5), Stats., or a death, as a direct result of the incident.

3. The victim or claimant suffered an economic loss as defined in s. 949.06, Stats., as a direct result of the injury or death.

(f) The department shall have the burden of proving by the preponderance of the credible evidence any limitations to an award or any defenses to the claimant's application.

(g) 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 for the fact that the offender has not been convicted and for the interest of the victim.

(h) 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, Stats.

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92; CR 15-058: am. (2) (intro.), (3) (b), (c), (h) Register May 2016 No. 725, eff. 6-1-16; CR 19-136: am. (1) (d), (3) (g) Register September 2021 No. 789, eff. 10-1-21.

Jus 11.10 Review by attorney general. (1) PETITION FOR REVIEW. After entry of a decision of the hearing examiner, any party who is adversely affected by that decision may submit a written petition for review by the attorney general of the record upon which that decision was based.

(a) The petition for review shall be served upon the attorney general and upon all other parties to the action, either personally or by certified mail, within ten days of the entry of the decision of the hearing examiner.

(b) The petition shall specify in detail the grounds for the review, the relief which the petitioner seeks and citation to any supporting authorities.

(c) Papers and petitions under this section shall be served in person or by mail and shall be addressed: Attorney General, 114 East State Capitol, Madison, WI 53702.

(2) DISCRETION. Within 14 days of receipt of the petition for review, the attorney general shall issue an order either granting or denying review of the decision. The attorney general shall not delegate the review to anyone who has had prior involvement in either the contested case hearing or decision-making process.

(a) If the order of the attorney general denies review, the decision of the hearing examiner shall become the final decision of the department.

(b) If the order of the attorney general grants review, the attorney general may order a transcript of the proceedings before the hearing examiner, the filing of briefs, presentation of oral arguments, or rehearing of all or part of the evidence presented at the original contested case hearing.

(3) LIMITATIONS. The petition for review by the attorney general under this section is not a prerequisite for the petition for rehearing under s. 227.49, Stats., or under s. 227.52, Stats. A petition for review pending under this section shall not in any manner affect or extend the time limits for filing an action under ss. 227.49 and 227.52, Stats.

(4) ATTORNEY GENERAL'S DECISION. The attorney general's decision shall set forth the findings of fact and conclusions of law which are at variance with, or in addition to, the determinations of the hearing examiner. The decision shall state the evidence relied on and the reasons for the decision.

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92.

Jus 11.11 Duties of a law enforcement agency. (1) PROVIDE FORMS. The department shall prescribe application forms for awards under this subchapter and may furnish law enforcement agencies with the forms. The law enforcement agency investigating a crime shall provide information as provided under s. 950.08 (2g) (b), Stats.

Note: A copy of the application form may be obtained from the Wisconsin department of justice at no charge.

(2) PROVIDE INFORMATION. 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: Cr. Register, February, 1992, No. 434, eff. 3-1-92; CR 15-058: am. Register May 2016 No. 725, eff. 6-1-16; correction in (1) made under s. 35.17, Stats., Register May 2016 No. 725; CR 19-136: am. (1) Register September 2021 No. 789, eff. 10-1-21.

Jus 11.12 Attorney fees. (1) AMOUNT OF FEES. The department shall determine and allow reasonable attorney fees, commensurate with legal services rendered, which shall be paid directly to an attorney representing the claimant.

(a) Attorney fees may not exceed 10% of the amount the attorney assisted the applicant in obtaining.

(b) Attorney fees shall be paid out of, not in addition to, the amount awarded to the claimant.

(c) Where there is no dispute of the department's determination of the amount of the award due to the claimant, and where no contested case hearing is held, the attorney fee shall be the lesser of 10% of the amount the attorney assisted the claimant in obtaining or \$100.

(2) NO ADDITIONAL ATTORNEY FEES. No person may ask for, contract for or receive any fee in excess of that allowed by the department.

(a) The attorney shall provide a fee agreement to the department.

(b) Whoever charges a fee in violation of s. 949.14 (1), Stats., 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 received the court shall direct payment to a claimant in the amount of the overcharge.

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92.

Jus 11.13 Recovery. (1) DEPARTMENT SUBROGATION. Whenever an order for the payment of an award for personal injury or death is or has been made under this subchapter, the department is subrogated to the cause of action of the claimant 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 claimant. The department is also subrogated to the cause of action of the claimant against one or more 3rd parties liable for the acts of the person responsible for the injury or death. 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, Stats., any judgment obtained by the department under this section shall be reduced by the amount of the restitution payments to the general fund.

(2) CLAIMANT ACTION. 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 this section and the claimant shall join the department as a party under s. 803.03 (2) (a), Stats. After joinder, the department has the options specified in s. 803.03 (2) (b), Stats.

(3) JUDGMENT ALLOCATED. 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.

(4) CIVIL ACTION NOT NECESSARY. In order to receive compensation under ch. 949, Stats., it is not necessary that an applicant first bring an action against the offender. If such an action is brought, and the applicant is successful, the proceeds of the action are subject to the provisions of this subchapter. The department shall notify the claimant of the requirements of this paragraph at the time the department makes an award to the claimant.

(5) APPLICANT RESPONSIBILITY. If a claimant receives from any source or third party any payment for damages, injuries or economic loss for which the applicant has been previously compensated under ch. 949, Stats., and this subchapter the applicant shall:

(a) Immediately notify the department.

(b) Within 30 days, reimburse the department, to the extent of the payment received, the amount previously awarded the applicant under ch. 949, Stats.

(6) DEPARTMENT RESPONSIBILITY. The department shall notify a claimant of the requirements under sub. (5).

History: Cr. Register, February, 1992, No. 434, eff. 3-1-92; CR 15-058: am. (1), (4), (5) (intro.) Register May 2016 No. 725, eff. 6-1-16.

Subchapter II — Sexual Assault Forensic Examination Compensation

Jus 11.14 Description of the program. (1) AUTHORITY AND PURPOSE. This subchapter is promulgated under s. 949.22, Stats., for the purpose of administering the awards of compensation to health care providers who perform sexual assault forensic examinations and providing procedures to ensure any limitation of an award is calculated in a fair and equitable manner.

(2) APPLICABILITY. This subchapter applies to all applications for an award to cover the costs of performing a sexual assault forensic examination.

(3) ADMINISTRATION. This subchapter shall be administered by the director appointed by the attorney general to administer ch. 949, Stats.

(4) SERVICE AND FILING. Papers an required to be filed with the department of justice shall be filed either in person or by mail and shall be addressed: Wisconsin Department of Justice, Office of Crime Victim Services, 17 West Main Street, Post Office Box 7951, Madison, WI 53707-7951. The papers are deemed filed when received by the department.

(5) DEFINITIONS. In this subchapter:

(a) "Department" has the meaning specified in s. 949.20 (2), Stats.

(b) "Sex offense" has the meaning specified in s. 949.20 (7), Stats.

History: CR 15-058: cr. Register May 2016 No. 725; correction in (5) (intro.) made under s. 35.17, Stats., Register May 2016 No. 725; correction in (4) under 13.92 (4) (b) 6., Stats., Register June 2016 No. 726.

Jus 11.15 Eligibility for an award. (1) INCORPORATION OF SUBCHAPTER II OF CH. 949, STATS. The health care provider must follow all requirements of subch. II of ch. 949, Stats.

(2) EXAMINATION SERVICES FOR WHICH COSTS ARE COVERED. A health care provider is eligible to be paid an award for all of the following services:

(a) Collection of the victim's medical history.

(b) Collection of a forensic history of the events of the assault.

(c) Physical examination of the victim for evidence of the assault.

(d) Photographs of the physical evidence of the sex offense, if the health care provider conducting the examination has been trained to take photographs for use as evidence.

(e) Evaluation, testing, and prophylaxis for sexually transmitted diseases.

(f) Evaluation of the risk of pregnancy.

(g) Collection of blood and urine using the collection kit provided by law enforcement.

(3) OTHER COSTS WHICH ARE COVERED. A health care provider is also eligible to be reimbursed for other expenses incurred in conducting the examination, including but not limited to, the cost for the use of its facility for the examination.

(4) RELATIONSHIP WITH S. 50.375, STATS. Nothing in this subchapter affects a health care provider's duties under s. 50.375, Stats.

History: CR 15-058; cr. Register May 2016 No. 725.

Jus 11.16 Procedures for payment of awards of examination costs. **(1) ITEMIZED BILL.** A health care provider seeking an award for examination costs shall provide an itemized bill to the department with individual charges listed for each service for which reimbursement is sought. Only one itemized bill shall be submitted for each examination. The health care

provider shall also indicate the amount sought for all of the following categories of examination costs:

(a) Services of the provider.

(b) Facilities used for the examination.

(c) Any other expenses.

(2) NO BILLING OF VICTIM. Per s. 949.26 (2) (a), Stats., a health care provider seeking an award under this subchapter may not seek payment for any examination costs from the victim or any guardian of the victim.

(3) PAYMENT DIRECTLY TO HEALTH CARE PROVIDER. The department will pay the award directly to the health care provider that performed the examination.

(4) MAXIMUM AMOUNT OF AWARD. The department will pay two-thirds of the amount billed for eligible services, up to a maximum of \$1200 for each examination. In exceptional cases, the department in its sole discretion may approve an award in excess of the maximum amount if the health care provider submits evidence that that maximum amount did not fairly and equitably compensate it for the costs incurred in conducting the examination. Beginning January 1, 2017, the maximum amount of an award shall be adjusted annually by the "inflation factor" as defined in s. 79.05 (1) (am), Stats., and certified by the department of revenue under s. 79.05 (2m), Stats.

History: CR 15-058; cr. Register May 2016 No. 725.