
SUBSTITUTE HOUSE BILL 2895

State of Washington 64th Legislature 2016 Regular Session

By House Public Safety (originally sponsored by Representative MacEwen)

READ FIRST TIME 02/05/16.

1 AN ACT Relating to alien victims of certain qualifying criminal
2 activity; and adding a new chapter to Title 7 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** This act may be known and cited as the
5 safety and access for immigrant victims act.

6 NEW SECTION. **Sec. 2.** The legislature finds that ensuring that
7 all victims of crimes are able to access the protections available to
8 them under law is in the best interest of victims, law enforcement,
9 and the entire community. Immigrants are frequently reluctant to
10 cooperate with or contact law enforcement when they are victims of
11 crimes, and the protections available to immigrants under the law are
12 designed to strengthen the ability of law enforcement agencies to
13 detect, investigate, and prosecute cases of trafficking in persons,
14 domestic violence, sexual assault, and other crimes while offering
15 protection to such victims.

16 NEW SECTION. **Sec. 3.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

1 (1) "Certification" means any law enforcement certification or
2 statement required by federal immigration law including, but not
3 limited to, the information required by 8 U.S.C. Sec. 1184 (o) and
4 (p), or any successor statutes regarding T or U nonimmigrant visas or
5 their successor programs, including current United States citizenship
6 and immigration services form I-914 supplement B or form I-918
7 supplement B, respectively, and any successor forms.

8 (2) "Certifying agency" means a state or local law enforcement
9 agency, prosecutor, administrative judge, hearing office, or other
10 authority that has responsibility for the investigation or
11 prosecution of criminal activity. A certifying agency includes an
12 agency that has investigative jurisdiction in its respective area of
13 expertise including, but not limited to, the Washington state patrol,
14 the Washington department of labor and industries, and the Washington
15 department of social and health services.

16 (3) "Criminal activity" includes any activity that constitutes a
17 crime as defined in RCW 7.69.020, for which the nature and elements
18 of the offenses are substantially similar to the offenses described
19 in 8 U.S.C. Sec. 1101(a)(15)(U), and the attempt, conspiracy, or
20 solicitation to commit any of those offenses.

21 (4) "Law enforcement agency" means any agency in Washington that
22 qualifies as a criminal justice agency under RCW 10.97.030(5) and is
23 charged with the enforcement of state, county, municipal, or federal
24 laws, or with managing custody of detained persons in the state, and
25 includes municipal police departments, sheriff's departments, campus
26 police departments, the Washington state patrol, and the juvenile
27 justice rehabilitative administration.

28 (5) "Law enforcement official" means any officer or other agent
29 of a state or local law enforcement agency authorized to enforce
30 criminal statutes, regulations, or local ordinances.

31 (6) "Victim of criminal activity" means any individual who has:
32 (a) Reported criminal activity to a law enforcement agency or
33 certifying agency, or otherwise participated in the detection,
34 investigation, or prosecution of criminal activity; and (b) suffered
35 direct or proximate harm as a result of the commission of any
36 criminal activity and may include, but is not limited to, an indirect
37 victim, regardless of the direct victim's immigration or citizenship
38 status, including the spouse, children under twenty-one years of age
39 and, if the direct victim is under twenty-one years of age, parents,
40 and unmarried siblings under eighteen years of age where the direct

1 victim is deceased, incompetent, or incapacitated. Bystander victims
2 must also be considered. More than one victim may be identified and
3 provided with certification depending upon the circumstances. For
4 purposes of this subsection, "incapacitated" means unable to interact
5 with law enforcement agency or certifying agency personnel as a
6 result of a cognitive impairment or other physical limitation, or
7 because of physical restraint or disability or age, such as minors.
8 This definition applies to this chapter only.

9 (7) "Victim of trafficking" means any individual who is or has
10 been a victim of human trafficking, which includes, but is not
11 limited to, the following acts: (a) Sex trafficking in which a
12 commercial sex act was induced by force, fraud, or coercion; (b) sex
13 trafficking and the victim was under the age of eighteen years; (c)
14 recruiting, harboring, transportation of, providing, or obtaining a
15 person for labor or services through the use of force, fraud, or
16 coercion for subjection to involuntary servitude, peonage, debt
17 bondage, or slavery; or (d) another act or circumstance involving
18 human trafficking.

19 NEW SECTION. **Sec. 4.** (1) Upon the request by the victim or
20 representative thereof including, but not limited to, the victim's
21 attorney, accredited representative, or domestic violence, sexual
22 assault, or victim's service provider, a certifying agency shall: (a)
23 Make a determination on United States citizenship and immigration
24 services form I-918 supplement B or relevant successor certification
25 form, whether the victim was a victim of criminal activity and has
26 been helpful, is being helpful, or is likely to be helpful to the
27 detection or investigation or prosecution of that criminal activity;
28 or (b) make a determination on United States citizenship and
29 immigration services form I-914 supplement B or relevant successor
30 certification form, whether the victim is or has been a victim of
31 trafficking and, unless the victim is under the age of eighteen,
32 whether he or she has complied with any reasonable requests from law
33 enforcement in any related investigation or prosecution of the acts
34 of trafficking in which he or she was a victim.

35 (2) The certifying official shall fully complete and sign the
36 certification, including, if applicable, the specific details
37 regarding the nature of the crime investigated or prosecuted and a
38 detailed description of the victim's helpfulness or likely

1 helpfulness to the detection or investigation or prosecution of
2 criminal activity.

3 (3) A certifying agency shall process the certification within
4 ninety days of request, unless the victim is in federal immigration
5 removal proceedings, in which case the certifying agency shall
6 execute the certification no later than fourteen days after the
7 request is received by the agency. In any case in which the victim or
8 the victim's children would lose any benefits under 8 U.S.C. Sec.
9 1184 (o) and (p) by virtue of having reached the age of twenty-one
10 years within ninety days after the certifying agency receives the
11 certification request, the certifying agency shall execute the
12 certification no later than fourteen days before the date on which
13 the victim or child would reach the age of twenty-one years or ninety
14 days from the date of the request, whichever is earlier. Requests for
15 expedited certification must be affirmatively raised by the victim.

16 (4) A current investigation, the filing of charges, and a
17 prosecution or conviction are not required for a victim to request
18 and obtain the certification from a certifying official.

19 (5) A certifying agency may only withdraw the certification if
20 the victim unreasonably refuses to provide information and assistance
21 related to the investigation or prosecution of the associated
22 criminal activity when reasonably requested by the certifying agency.

23 (6) The head of each certifying agency shall designate an agent,
24 who performs a supervisory role within the agency, to perform the
25 following responsibilities:

26 (a) Respond to requests for certifications;

27 (b) Provide outreach to victims of criminal activity and
28 trafficking to inform them of the agency's certification process; and

29 (c) Keep written documentation regarding the number of victims
30 who requested certifications, the number of certification forms that
31 were signed, the number of certification forms that were denied, and
32 the number of certifications that were withdrawn, which must be
33 reported to the office of crime victims advocacy on an annual basis.

34 (7) All certifying agencies shall develop a language access
35 protocol for limited English proficient and deaf or hard of hearing
36 victims of criminal activity.

37 (8) A certifying agency shall reissue any certification within
38 ninety days of receiving a request from the victim of criminal
39 activity or trafficking or representative thereof including, but not

1 limited to, the victim's attorney, accredited representative, or
2 domestic violence, sexual assault, or victim's service provider.

3 (9) A certifying agency shall not disclose personal identifying
4 information, or information regarding the citizenship or immigration
5 status of any victim of criminal activity or trafficking who is
6 requesting a certification unless required to do so by applicable
7 federal law or court order, or unless the certifying agency has
8 written authorization from the victim or, if the victim is a minor or
9 is otherwise not legally competent, by the victim's parent or
10 guardian. This subsection does not modify prosecutor or law
11 enforcement obligations to disclose information and evidence to
12 defendants under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10
13 L. Ed. 2d 215 (1963), or *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct.
14 1555; 131 L. Ed. 2d 490 (1995), or any related Washington case law,
15 statutes, or court rules.

16 (10) The Washington state criminal justice training commission,
17 in collaboration with the office of crime victims advocacy and the
18 crime victim certification steering committee, shall develop and
19 adopt minimum standards for a course of study on U and T nonimmigrant
20 visas, other legal protections for immigrant survivors of criminal
21 activity, and promising practices in working with immigrant crime
22 victims.

23 NEW SECTION. **Sec. 5.** The office of crime victims advocacy shall
24 convene a crime victim certification steering committee within ninety
25 days of the effective date of this section. The committee must
26 include members representing immigrant communities, law enforcement,
27 prosecutors, the criminal justice training commission, providers of
28 services to survivors of crime victims including domestic violence,
29 sexual assault, human trafficking, and other crimes, a representative
30 from the department of labor and industries charged with enforcement
31 of workplace standards, and may include other entities concerned with
32 victim safety and effective collaboration between immigrant
33 communities and local law enforcement entities. The committee is
34 responsible for the following:

35 (1) Monitoring compliance under this chapter;

36 (2) Developing and implementing training of law enforcement,
37 prosecutors, victim advocates, state agency personnel, court
38 personnel, and others about this chapter;

1 (3) Dissemination of information about this chapter to affected
2 communities and the general public;
3 (4) Establishing mechanisms by which the public can report
4 concerns and recommendations regarding implementation of this
5 chapter;
6 (5) Identifying implementation issues and other trends, and
7 providing recommendations to the governor and the legislature for
8 addressing these issues;
9 (6) Other responsibilities relating to this chapter identified by
10 the committee.

11 NEW SECTION. **Sec. 6.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

15 NEW SECTION. **Sec. 7.** Sections 1 through 5 of this act
16 constitute a new chapter in Title 7 RCW.

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