
Public Safety Committee

HB 2912

Brief Description: Enhancing crime victim participation in the criminal justice system process.

Sponsors: Representatives Pettigrew, Moscoso, Stanford and Goodman.

Brief Summary of Bill

- Requires law enforcement agencies and other entities to certify a victim as "helpful" for the purpose of a U nonimmigrant visa application upon the request of a victim.
- Creates the Crime Victim Certification Steering Committee within the Office of Crime Victims' Advocacy.

Hearing Date: 2/3/16

Staff: Kelly Leonard (786-7147).

Background:

The federal government has jurisdiction over the terms and conditions for immigrants to reside in the United States (U.S.). Noncitizen immigrants living permanently in the U.S. have "immigrant status," and noncitizens who enter or stay in the U.S. on a temporary basis have "nonimmigrant status."

U Visas. The U nonimmigrant status (U visa) is set aside for victims of certain crimes who are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U visa in an effort to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking, and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime. A person may qualify for a U visa if he or she:

- is or was the victim of a qualifying criminal activity that occurred in the U.S. or violated U.S. laws;
- suffered substantial physical or mental abuse as a result of the activity; and

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- is helpful, was helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the criminal activity.

Qualifying criminal activities include violations of the following federal crimes: Abduction, Abusive Sexual Contact, Blackmail, Domestic Violence, Extortion, False Imprisonment, Female Genital Mutilation, Felonious Assault, Fraud in Foreign Labor Contracting, Hostage, Incest, Involuntary Servitude, Kidnapping, Manslaughter, Murder, Obstruction of Justice, Peonage, Perjury, Prostitution, Rape, Sexual Assault, Sexual Exploitation, Slave Trade, Stalking, Torture, Trafficking, Witness Tampering, Unlawful Criminal Restraint, other relates crimes, and similar activity where the elements of the crime are substantially similar to the federal crime.

In order to obtain a U visa, a person must submit a particular form, Form I-918, Supplement B, completed by an agency certifying him or her as being helpful to law enforcement. Certifying agencies include any federal, state, or local law enforcement agency, prosecutor, judge, or other authority with the responsibility for the investigation or prosecution, conviction, or sentencing of criminal activity.

U visas are granted for a period not to exceed four years, but they can be extended for additional periods if the victim is re-certified. Persons with U nonimmigrant status may apply for permanent residence (also referred to as a green card) after three years if they meet certain statutory requirements.

T Visas. The T Nonimmigrant Status (T visa) for those who are or have been victims of human trafficking, and it allows victims to remain in the U.S. to assist in an investigation or prosecution of human trafficking. A person may qualify for a T visa if he or she:

- is or was a victim of trafficking;
- is in the U.S., American Samoa, the Commonwealth of the Northern Mariana Islands, or at a port of entry due to trafficking;
- complies with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and
- would suffer extreme hardship involving unusual and severe harm if removed from the U.S.

A person applying for a T visa is encouraged, but not required, to submit certification from an agency determining that he or she is a victim of a severe form of trafficking. The discretionary certification is completed on Form 914, Supplement B.

Like U visas, T visas are granted for a period not to exceed four years, and they can be extended for additional periods if the victim is re-certified. Persons with T nonimmigrant status may apply for permanent residence after three years if they meet certain statutory requirements.

Summary of Bill:

Certification. Upon the request of a victim or representative thereof including, but not limited to, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service provider, a certifying agency must make a determination and certify on U Visa Application Form I-918, Supplement B, whether the victim was a victim of criminal activity and

has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that criminal activity.

A current investigation, the filing of charges, and a prosecution or conviction are not required for a victim to request and obtain the certification. A certifying agency may only withdraw the certification if the victim unreasonably refuses to provide information and assistance when reasonably requested.

Deadlines. The certifying agency must complete requests for certification within 90 days of its receipt. However, requests for certification must be completed within 14 days if the victim is subject to removal proceedings. If the victim is under or has children under 21 years old, and he or she may lose the ability to procure a U or T visa based on age, the certifying agency must fulfill the request no later than 14 days before the victim or his or her children reach the 21 years old, or within 90 days, whichever is earlier. The requests for expedited certification must be affirmatively raised by the victim. A request for reissuing a certification must be completed within 90 days.

Disclosure. A certifying agency are prohibited from disclosing any personally identifying information or the immigration status of a victim or person requesting the certification or relevant successor certification, unless pursuant to federal law, a court order, written authorization from the victim, or the victim's parent or guardian.

Protocols. The head of each certifying agency shall designate an agent, who performs a supervisory role within the agency, to respond to requests for certifications and maintain records on certification requests and responses. Those records must be reported to the Office of Crime Victims' Advocacy (OCVA) on an annual basis.

All certifying agencies shall develop a language access protocol for limited English proficient and deaf or hard of hearing victims.

Crime Victim Certification Steering Committee. The OCVA must convene a Crime Victim Certification Steering Committee (Committee). The Committee must include members representing interests listed in the bill. The Committee is responsible for the following:

- monitoring compliance with the requirements of the certification process;
- developing and implementing training of law enforcement, prosecutors, victim advocates, state agency personnel, court personnel, and others about the requirements of the certification process;
- dissemination of information about the certification process to affected communities and the general public;
- establishing mechanisms by which the public can report concerns and recommendations regarding implementation of the requirements of the certification process;
- identifying implementation issues and other trends, and providing recommendations to the Governor and the Legislature for addressing these issues; and
- other responsibilities relating to the certification process identified by the Committee.

Criminal Justice Training Commission. The Criminal Justice Training Commission, in collaboration with the OCVA and the Committee, must develop and adopt minimum standards

for a course of study on U and T nonimmigrant visas, other legal protections for immigrant survivors of criminal activity, and promising practices in working with immigrant crime victims.

Appropriation: None.

Fiscal Note: Requested on January 26, 2016.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.