

Chapter 7.98 RCW
ALIEN VICTIMS OF CRIME

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RCW 7.98.005 Finding. The legislature finds that ensuring that all victims of crimes are able to access the protections available to them under law is in the best interest of victims, law enforcement, and the entire community. Immigrants are frequently reluctant to cooperate with or contact law enforcement when they are victims of crimes, and the protections available to immigrants under the law are designed to strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases of trafficking in persons, domestic violence, sexual assault, and other crimes while offering protection to such victims. [2018 c 86 § 2.]

RCW 7.98.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

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

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

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

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

(6) "Victim of criminal activity" means any individual who has: (a) Reported criminal activity to a law enforcement agency or certifying agency, or otherwise participated in the detection, investigation, or prosecution of criminal activity; and (b) suffered direct or proximate harm as a result of the commission of any criminal activity and may include, but is not limited to, an indirect victim, regardless of the direct victim's immigration or citizenship status, including the spouse, children under twenty-one years of age and, if the direct victim is under twenty-one years of age, parents, and unmarried siblings under eighteen years of age where the direct victim is deceased, incompetent, or incapacitated. Bystander victims must also be considered. More than one victim may be identified and provided with certification depending upon the circumstances. For purposes of this subsection, "incapacitated" means unable to interact with law enforcement agency or certifying agency personnel as a result of a cognitive impairment or other physical limitation, or because of physical restraint or disability or age, such as minors. This definition applies to this chapter only.

(7) "Victim of trafficking" means any individual who is or has been a victim of human trafficking, which includes, but is not limited to, the following acts: (a) Sex trafficking in which a commercial sex act was induced by force, fraud, or coercion; (b) sex trafficking and the victim was under the age of eighteen years; (c) recruiting, harboring, transportation of, providing, or obtaining a person for labor or services through the use of force, fraud, or coercion for subjection to involuntary servitude, peonage, debt bondage, or slavery; or (d) another act or circumstance involving human trafficking. [2018 c 86 § 3.]

RCW 7.98.020 Crime victim certification—Certifying agencies.

(1) Upon the request by the 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 shall: (a) Make a determination on United States citizenship and immigration services form I-918 supplement B or relevant successor certification form, 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; or (b) make a determination on United States citizenship and immigration services form I-914 supplement B or relevant successor certification form, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of eighteen, whether he or she has complied with any reasonable requests from law enforcement in any related investigation or prosecution of the acts of trafficking in which he or she was a victim.

(2) Upon a certifying agency's affirmative determination under subsection (1) of this section, the certifying official shall fully complete and sign the certification, including, if applicable, the specific details regarding the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of criminal activity.

(3) A certifying agency shall process the certification within ninety days of request, unless the victim is in federal immigration

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

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

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

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

(a) Respond to requests for certifications;

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

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

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

(8) A certifying agency shall reissue any certification within ninety days of receiving a request from the victim of criminal activity or trafficking or representative thereof including, but not limited to, the victim's attorney, accredited representative, or domestic violence, sexual assault, or victim's service provider.

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

(10) The Washington state criminal justice training commission, in collaboration with the office of crime victims advocacy and the crime victim certification steering committee, shall 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.

[2018 c 86 § 4.]

RCW 7.98.030 Crime victim certification steering committee. The office of crime victims advocacy shall convene a crime victim certification steering committee within ninety days of June 7, 2018. The office of crime victims advocacy shall provide administrative support for the committee. The committee must include members representing immigrant communities, law enforcement, prosecutors, the criminal justice training commission, providers of services to survivors of crime victims including domestic violence, sexual assault, human trafficking, and other crimes, a representative from the department of labor and industries charged with enforcement of workplace standards, and may include other entities concerned with victim safety and effective collaboration between immigrant communities and local law enforcement entities. The members of the committee shall serve without compensation. Members are reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060, subject to available resources and other limitations in chapter 43.03 RCW. The committee is responsible for the following:

- (1) Monitoring compliance under this chapter;
- (2) Developing and implementing training of law enforcement, prosecutors, victim advocates, state agency personnel, court personnel, and others about this chapter;
- (3) Dissemination of information about this chapter to affected communities and the general public;
- (4) Establishing mechanisms by which the public can report concerns and recommendations regarding implementation of this chapter;
- (5) Identifying implementation issues and other trends, and providing recommendations to the governor and the legislature for addressing these issues;
- (6) Other responsibilities relating to this chapter identified by the committee. [2018 c 86 § 5.]

RCW 7.98.900 Short title—2018 c 86. This act may be known and cited as the safety and access for immigrant victims act. [2018 c 86 § 1.]