

HOUSE BILL REPORT

HB 2895

As Reported by House Committee On:
Public Safety

Title: An act relating to alien victims of certain qualifying criminal activity.

Brief Description: Concerning alien victims of certain qualifying criminal activity.

Sponsors: Representative MacEwen.

Brief History:

Committee Activity:

Public Safety: 2/3/16, 2/5/16 [DPS].

Brief Summary of Substitute Bill

- Requires law enforcement agencies and other entities to complete victim certifications for U and T nonimmigrant visa applications for qualifying victims of certain crimes.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

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."

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

U Visas. The U nonimmigrant status visa (U visa) is for victims of certain crimes who are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. 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
- 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 related 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 visas 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 visa (T visa) is for those who are or have been victims 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 recertified. Persons with T nonimmigrant status may apply for permanent residence after three years if they meet certain statutory requirements.

Summary of Substitute Bill:

Certifying Agency. "Certifying agency" includes any 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.

Victims. "Victim of criminal activity" means any individual who has reported criminal activity to a certifying agency, or otherwise participated in the detection, investigation, or prosecution of criminal activity, and has suffered direct or proximate harm as a result of the commission of any criminal activity. "Victim of criminal activity" may also include an indirect victim in certain circumstances.

"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: sex trafficking in which a commercial sex act was induced by force, fraud, or coercion; sex trafficking in which the victim was under the age of 18 years; 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 another act or circumstance involving human trafficking.

Certification. For U visa applications, upon the request of a victim or his or her representative, 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. For T visa applications, upon the request of a victim or his or her representative, a certifying agency must make a determination and certify on T Visa Application Form I-914, Supplement B, whether the victim is or has been a victim of trafficking and, unless the victim is under the age of 18, whether he or she has complied with any reasonable requests from law enforcement in any related investigation or prosecution of the related trafficking offense.

The certifying official must 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. 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 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 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 is prohibited from disclosing personal identifying information, or information regarding the citizenship or immigration status of any victim 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. This requirement does not affect a prosecutor's or law enforcement's obligations to disclose information and evidence to criminal defendants under other applicable laws and court rules.

Protocols. The head of each certifying agency must 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 must 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.

Substitute Bill Compared to Original Bill:

The substitute bill specifies that the act may be known and cited as the Safety and Access for Immigrant Victims Act.

"Certifying entity" is changed to "certifying agency," and the scope of the agencies required to comply with the certification requirement is modified. Other definitions and terminology are modified.

The substitute bill expands the requirements to include certification for qualifying victims of trafficking applying for T nonimmigrant visas. The substitute bill requires law enforcement agencies to make a determination of a victim's helpfulness or status as a crime victim. The rebuttable presumption that a victim is helpful is removed.

Certifying agencies must fulfill a request for certification within certain deadlines if a victim could lose the ability to procure a visa as a result of turning age 21 years old. Victims must affirmatively request expedited certification in order to receive it. Requests for reissuing a certification must be filled within 90 days.

The restrictions on disclosing personal identifying information is modified. The disclosure restrictions do not modify a prosecutor's or law enforcement's obligations to disclose information and evidence to defendants under *Brady v. Maryland*, 373 U.S. 83 (1963), or *Kyles v. Whitley*, 514 U.S. 419 (1995), or any related Washington case law, statutes, or court rules.

Certifying agencies are required to designate an agent to perform certain responsibilities with respect to certifications. Certifying agencies must develop language access protocols for limited English proficient victims and deaf or hard of hearing victims. Certifying agencies are required to annually report certain data on victim certifications to the Office of Crime Victims Advocacy (OCVA) (instead of the Legislature and the Governor).

The substitute bill creates the Crime Victim Certification Steering Committee (Committee) in the OCVA to monitor compliance with the bill and fulfill other prescribed responsibilities. The substitute bill requires the Criminal Justice Training Commission, in collaboration with the OCVA and the Committee, to develop and adopt minimum standards for a course of study on U and T visas and other immigration issues.

A severability clause is added. Sections and subsections are reorganized.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 8, 2016.

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

Staff Summary of Public Testimony:

(In support) A person who is in this country, regardless of their immigration status, should not fear speaking with law enforcement when he or she has been a victim of a crime.

Immigrants should not fear deportation or other legal repercussions just for reporting crimes to law enforcement. The bill is about victims' rights. Both this bill and House Bill 2912 address this issue through a current federal program for immigrant victims.

(Opposed) The policy is laudable, but the language contained within House Bill 2912 is preferred over this bill.

Persons Testifying: (In support) Representative MacEwen, prime sponsor.

(Opposed) James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.