

HOUSE BILL REPORT

SHB 1022

As Passed House:
January 18, 2018

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

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

Sponsors: House Committee on Public Safety (originally sponsored by Representatives MacEwen, Pettigrew and Haler).

Brief History:

Committee Activity:

Public Safety: 1/30/17, 2/9/17 [DPS].

Floor Activity:

Passed House: 2/27/17, 95-1.

Floor Activity:

Passed House: 1/18/18, 95-1.

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 11 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Orwall, Pettigrew and Van Werven.

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.

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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 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 recertified. 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.

Upon a determination, 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 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.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The bill is important to protect victims of crime and assist law enforcement. The bill does not change immigration law. In fact, the bill brings Washington in line with most other states and the federal government.

Perpetrators attempt to instill fear into undocumented crime victims by saying that if they report crimes to the police, they will be deported. In one particular instance, a young woman was raped, and the perpetrator told her family they would be deported if they went to the police. The victim chose not to report the crime for several months. If she had known about the protections of the U and T visa programs, she would have reported the crime earlier. Perpetrators should not go unpunished because of the immigration status of their victims. All victims deserve justice.

There is a lot of misunderstanding amongst law enforcement about U and T visas. Many requests for certification are simply ignored. Others may take several months for a response. Some are denied due to a misunderstanding of federal law, and some are denied due to an officer's opinion of a victim. Victims and their attorneys send requests on a hope and prayer that law enforcement will respond. In effect, whether a victim receives a response and a certification depends on the jurisdiction where the crime occurred. Failure to respond to requests can trap victims in dangerous situations with abusers and perpetrators. The bill will eliminate inconsistent practices with respect to requests for certification, and it will ultimately provide victims with justice and advance the interests of public safety.

The 90-day and 14-day deadlines in the bill are reasonable timelines. The bill also requires agencies to designate someone to respond to the requests. This will improve communications and response times. Law enforcement agencies with processes already in place estimate that each application takes about 45 minutes, and a midsize county receives about three to five requests a month.

This bill fosters trust and cooperation with law enforcement. Reporting a crime requires courage, and the state should encourage victims to report crimes to make everyone safer.

(Opposed) None.

(Other) The policies in the bill are good insofar as they protect victims and law enforcement. The committee should make a couple of technical fixes to the bill.

Persons Testifying: (In support) Representative MacEwen, prime sponsor; Miguel Rivas Perez and Georgina Olazcon Mozo, Northwest Immigrant Rights Project; Victoria Mena, Colectiva Legal del Pueblo; Rocio Chavez de Alvarado, Tacoma Community House; Steffani Powell, Law Offices of Steffani K. Powell; Tamaso Johnson, Washington State Coalition Advocates of Domestic Violence; and Tom McBride, Washington Association of Prosecuting Attorneys.

(Other) Rick Torrance, Department of Commerce; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.