

SENATE BILL REPORT

SHB 1022

As of February 23, 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: Passed House: 2/27/17, 95-1; 1/18/18, 95-1.

Committee Activity: Law & Justice: 3/28/17, 3/29/17; 2/07/18, 2/15/18 [DP-WM].

Ways & Means: 2/24/18.

Brief Summary of Bill

- Establishes the Safety and Access for Immigrant Victims Act, requiring certifying agencies to make a determination and complete certifications for U or T nonimmigrant visa requests from immigrant crime victims.
- Requires the Criminal Justice Training Commission to develop minimum standards for a course of study on U and T nonimmigrant visas and other legal protections for immigrant survivors of criminal activity.
- Creates the Crime Victim Certification Steering Committee to monitor implementation, develop training, and disseminate information to the public consistent with this act.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Padden, Ranking Member; Angel, Assistant Ranking Member; Darneille, Frockt and Wilson.

Staff: Shani Bauer (786-7468)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Travis Sugarman (786-7446)

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.

Background: The federal government has jurisdiction over the terms and conditions for immigrants to reside in the 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 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 the person:

- 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 the person 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 the person:

- 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 the person 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 Bill: Upon the request of a victim or the victim's representative, a certifying agency must make a determination as to:

- whether the victim is a victim of criminal activity and has been helpful or is likely to be helpful in the investigation or prosecution of that criminal activity; or
- whether the victim is a victim of trafficking and unless the victim is under the age of eighteen, has complied with any reasonable request from law enforcement related to the investigation or prosecution of the crime of trafficking.

If the certifying agency makes one of the above determinations, the agency must complete the relevant certification form related to the crime victim's U or T nonimmigrant visa request. Certifications must be processed within 90 days of the request. If the victim is in federal immigration removal proceedings or if the victim or victim's children are in danger of turning age 21 during the review process, the request must be completed within 14 days.

Each certifying agency must designate an agent to perform the responsibilities of responding to certification requests, providing outreach to victims of criminal activity, and keeping written documentation regarding the numbers of requests and certifications completed. Agencies must develop a language access protocol for victims who do not speak English or have a hearing disability. An agency may not disclose personal identifying information regarding the citizenship or immigration status of any victim requesting certification unless required to do so by federal law or court order.

The Washington State Criminal Justice Training Commission is required to 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.

Terms are Defined. Certifying agency means a state or local law enforcement agency, prosecutor, administrative judge, hearing officer, or other authority with responsibility for the investigation or prosecution of criminal activity. Certifying agency also includes an agency with investigative jurisdiction in its respective area of expertise including the Washington State Patrol, the Washington Department of Labor and Industries, and the Washington Department of Social and Health Services.

The Office of Crime Victims Advocacy (OCVA) is required to convene a Crime Victim Certification Steering Committee within 90 days of the effective date. Membership is specified and OCVA must provide administrative support for the committee. The committee is charged with the following duties:

- monitoring compliance of certifying agencies with the certification process;
- developing and implementing training of certifying agencies;
- disseminating information regarding 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 chapter; and

- identifying implementation issues and other trends and making recommendations to the Governor and the Legislature.

The provisions of the act constitute a new chapter and are to be known as the Safety and Access for Immigrant Victims Act.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on First Substitute House Bill (Law & Justice): *Testimony from 2017 Regular Session.* PRO: This bill does not address immigration, but at its core, addresses the basic human right to adjudicate a crime. The U and T visa process is a tool passed by Congress in 2000 and available under federal law. The bill simply allows facilitation of a safe harbor for victims to pursue their perpetrator without the fear of deportation. The bill does two main things, one, it requires agencies to designate a person to receive and complete certification requests and two, requires certifications to be completed within required timeframes.

When an immigrant victim experiences a crime, the person and the person's family may avoid reporting the crime because they are in fear of deportation. This allows the perpetrator to continue to victimize the person. Obtaining a certification is not an easy process in many areas of the state. Law enforcement can refuse to fill out the certification for any reason. This bill will help all victims of crime equitably across the state to utilize this process and will improve relations between the immigrant community and law enforcement.

Persons Testifying (Law & Justice): PRO: Representative Drew MacEwen; Tamaso Johnson, Washington State Coalition Against Domestic Violence; Miguel Rivas Perez, NW Immigrant Rights Project; Tom McBride, Washington Association of Prosecuting Attorneys

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.

Staff Summary of Public Testimony (Law & Justice): PRO: This bill is an access to justice issue to ensure immigrant victims can obtain protections they are entitled to under federal law. For the victim of a crime, it is a basic human right to participate in getting that crime adjudicated. This bill ensures that crime victims are able to participate with law enforcement. Addressing the lack of consistent process around the state in responding to U and T visa forms would increase community safety. All victims deserve to be able to hold perpetrators accountable. The biggest impediment to helping undocumented immigrants involved in crime is the reluctance and delay in completing certifications in U and T visa forms. Outside of King County, it is next to impossible to get the required certification. The Attorney General's Office receives frequent complaints regarding inconsistent processes around the state. This bill removes discretion for law enforcement as to whether to complete the certification.

The U visa was created in 2000 at the specific request of law enforcement. The main thrust of this bill is to require a response to a request within 90 days. It does not decide whether a person actually gets a visa. It is one piece of information that is needed to forward the application to the federal agency, who will also determine whether the harm was sufficient enough in order to constitute a visa. Mid-size counties get about three to five requests a month so this is a workload that prosecuting offices can handle. Sometimes a prosecutor will not address a certification before the case is closed because they do not want to be viewed as incentivizing testimony.

Persons Testifying (Law & Justice): PRO: Representative Drew MacEwen, Prime Sponsor; Tamaso Johnson, Washington State Coalition Against Domestic Violence; Vicente Omar Barraza, Barraza Law, PLLC.; Tom McBride, Washington Association of Pros Attorneys; Brittany Gregory, Attorney General's Office.

Persons Signed In To Testify But Not Testifying (Law & Justice): No one.