

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 214
Judiciary

(Delegate Pena-Melnyk, *et al.*)

Judicial Proceedings

Victims and Witnesses - U Nonimmigrant Status - Certification of Victim
Helpfulness

This bill establishes provisions by which a victim or a victim’s parent, guardian, or next friend may request specified entities to certify victim helpfulness for purposes of obtaining U Nonimmigrant Status with the U.S. Citizenship and Immigration Services (USCIS). The victim must have been a victim of a qualifying criminal activity and demonstrated helpfulness, as specified, in the detection, investigation, or prosecution of the criminal activity. If the victim satisfies the criteria, the certifying official must fully complete and sign the relevant certification form.

Fiscal Summary

State Effect: The bill’s requirements can be handled with existing resources.

Local Effect: The bill is not anticipated to significantly impact local finances.

Small Business Effect: None.

Analysis

Bill Summary:

Definitions

A “certifying entity” means (1) a State or local law enforcement agency; (2) a State’s Attorney or deputy or assistant State’s Attorney; (3) any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity; or (4) an agency that has criminal detection or investigative jurisdiction

in its respective areas of expertise, including child protective services; the Commission on Civil Rights; and the Department of Labor, Licensing, and Regulation.

A “certifying official” means (1) the head of a certifying entity; (2) an individual in a supervisory role who has been specifically designated by the head of a certifying entity to provide U Nonimmigrant Status certifications on behalf of that entity; or (3) any other certifying official, as specified in federal regulations.

The bill also specifies offenses that are included in the definition of “qualifying criminal activity” and indicates that the attempt, conspiracy, or solicitation to commit the offenses is also a “qualifying crime.”

Certification of Victim Helpfulness

For purposes of filing a petition with USCIS for U Nonimmigrant Status, a victim or the victim’s parent, guardian, or next friend may request a certifying official to certify victim helpfulness if the victim (1) was a victim of a qualifying criminal activity and has been helpful to the certifying entity in the detection, investigation, or prosecution of that qualifying criminal activity; (2) was under the age of 16 years on the date that an act that constitutes an element of a qualifying criminal activity first occurred and the victim’s parent, guardian, or next friend has been helpful to the certifying entity; or (3) is incapacitated or incompetent and the victim’s parent, guardian, or next friend has been helpful to the certifying entity in the detection, investigation, or prosecution of that qualifying criminal activity.

If the victim or the victim’s parent, guardian, or next friend satisfies the criteria, the certifying official must fully complete and sign the specified certification form and, with respect to victim helpfulness, include (1) specific details about the nature of the crime investigated or prosecuted; (2) a detailed description of the victim’s helpfulness or likely helpfulness; and (3) copies of any documents in the possession of the certifying official that demonstrate the harm endured by the victim due to the criminal activity.

The certifying entity must certify or decline certification of the form within 90 days after receiving a request. If the noncitizen victim is the subject of removal, exclusion, or deportation proceedings or subject to a final order of those proceedings, the certifying entity must certify or decline certification of the form within 14 days after receiving a request. A current investigation, the filing of charges, a prosecution, or a conviction is not required for a victim or the victim’s parent, guardian, or next friend to request and obtain the certification.

A certifying official may withdraw the certification only when the victim or the victim’s parent, guardian, or next friend (if the victim was under the age of 16 on the date that an

act that constitutes an element of a qualifying criminal activity first occurred) refuses to provide information and assistance when reasonably requested.

A certifying entity may disclose information relating to a victim who is seeking or has obtained U Nonimmigrant Status only (1) in order to comply with federal law, a court order, or a discovery obligation in the prosecution of a criminal offense; or (2) after adult petitioners or holders of U Nonimmigrant Status have provided written consent for the disclosure of such information.

A certifying entity or certifying official who acts or fails to act in good faith in compliance with the bill's provisions will be immune from civil or criminal liability that may otherwise occur as a result of the act or failure to act. A person who brings an action seeking enforcement of the bill may not be awarded attorney's fees or costs unless that action demonstrates willful or wanton misconduct by a certifying entity or certifying official.

Current Law/Background: Individuals without legal status in the United States who are victims of criminal activity may file for U Nonimmigrant Status, which is status set aside for victims of crimes who have suffered substantial mental or physical abuse due to the criminal activity and who are willing to assist law enforcement agencies or government officials in the investigation of that activity. In order to file for the status, the individual must provide a certification from a federal, state, or local law enforcement official that certifies the information as specified above. In determining whether to grant the status, USCIS will give the certification "significant weight" during adjudication. However, it alone is not sole evidence that a petitioner meets eligibility requirements, as USCIS will look at the totality of the circumstances surrounding the petition before rendering a decision.

Certifying agencies are under no legal obligation to complete the certification; however, without one, the individual will be ineligible for U Nonimmigrant Status.

State/Local Fiscal Effect: It is anticipated that any increase in expenditures for State agencies and local jurisdictions to comply with the bill's provisions will not significantly affect State or local finances. Maryland State Police (MSP) noted the bill would not result in an operational or fiscal impact as the bill codifies existing practice for MSP. Maryland Department of Transportation anticipates both the Maryland Transportation Authority police and Maryland Transit Administration police can fulfill the bill's requirements with existing resources. Both Frederick County and Montgomery County do not anticipate a fiscal impact.

Additional Information

Prior Introductions: SB 581 of 2018, a similar bill, received a favorable with amendments report from the Judicial Proceedings Committee, passed second reading, but no further action was taken. HB 1208 of 2017, a similar bill, passed the House and, as amended, passed second reading in the Senate, but was recommitted to the Judicial Proceedings Committee. Its cross file, SB 616, received a favorable with amendments report from the Judicial Proceedings Committee, but no further action was taken. SB 1023 of 2016, a similar bill, received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken.

Cross File: SB 144 (Senator Augustine, *et al.*) - Judicial Proceedings.

Information Source(s): Maryland State Police; Maryland Department of Transportation; Baltimore Frederick, and Montgomery counties; Department of Public Safety and Correctional Services; Department of Natural Resources; Department of General Services; Comptroller's Office; State's Attorneys' Association; University System of Maryland; St. Mary's College of Maryland; U.S. Citizenship and Immigration Services; Department of Legislative Services

Fiscal Note History: First Reader - January 29, 2019
mag/hlb Third Reader - March 28, 2019
Revised - Amendment(s) - March 28, 2019
Enrolled - April 17, 2019
Revised - Amendment(s) - April 17, 2019

Analysis by: Thomas S. Elder

Direct Inquiries to:
(410) 946-5510
(301) 970-5510