

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 579
Judiciary

(Delegate Embry, *et al.*)

Criminal Procedure – U Nonimmigrant Status Petitions

This bill makes numerous changes to the U Nonimmigrant Status Petition process as set forth in Maryland statute. Among other provisions, the bill (1) includes the attorney, victim advocate, or other representative of the victim as an individual who may request certification of the victim helpfulness; (2) establishes there is no statute of limitations for when a qualifying criminal activity occurred relative to the request for certification of victim helpfulness; and (3) if applicable, requires a certifying official to provide a written explanation to the victim (or other requester) that sets forth reasons why the available evidence does not support issuance of the certification.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: None.

Analysis

Bill Summary/Current Law: Under current law, 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 specified information, as discussed below.

Definitions

Under current law, 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 Maryland Department of Labor. The bill expands the definition to include an agency that has criminal, *civil, family, or administrative* detection, investigative, or *prosecutorial* jurisdiction in the agency’s area of expertise; the bill also incorporates adult protective services.

Under current law, 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.

Under current law, “qualifying criminal activity” means criminal activity under a specified provision of the U.S. Code. The bill includes criminal activity described in federal U visa guidelines.

Certification of Victim Helpfulness

Under current law, for purposes of filing a petition 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 younger than age 16 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.

The bill expands the parties who may request a certifying official to certify victim helpfulness to include the victim’s attorney, victim advocate, or other representative. The bill repeals provisions specifying the victim or other specified party *has been* helpful specifically to the certifying entity and expands the helpfulness qualifications to include

when the individual *is being* helpful or *is likely to be* helpful. The bill also incorporates references to the individual's helpfulness during sentencing.

Under the bill, a victim of a qualifying crime or a qualifying criminal activity is eligible for certification. If a victim is applying for certification as a result of being a victim of more than one qualifying crime or qualifying criminal activity, each qualifying crime and criminal activity must be listed on the certification. For purposes of determining helpfulness for a request for certification, an individual must be considered helpful if, since the initiation of helpfulness, the individual has not unreasonably refused to cooperate or failed to provide information and assistance reasonably requested by a certifying agency.

Under current law, 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* (the bill includes detected or sentenced); (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 bill makes conforming changes to these provisions.

Timeliness of Certification and Written Explanation

Under current law, 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.

The bill establishes that if the certifying official cannot determine whether the applicant is a victim of a qualifying criminal activity or determines that the applicant does not qualify for certification, the certifying official must provide a written explanation to the victim or the victim's parent, guardian, next friend, attorney, victim advocate, or other representative setting forth the reasons why the available evidence does not support issuance of the certification.

Withdrawal or Denial of Certification

Under current law, a certifying official may withdraw the certification only when the victim or the victim's parent, guardian, or next friend (if applicable) refuses to provide information and assistance when reasonably requested. The bill repeals these provisions.

Instead, under the bill, a certifying official may deny or withdraw the certification only if, after considering the totality of the circumstances, the person providing the helpfulness unreasonably refused to cooperate or failed to provide information or assistance reasonably requested by a certifying official.

Completion of Certification

Notwithstanding any other provision, a certifying official's completion of a certification form may not be considered sufficient evidence that an applicant for a U or a T visa has met all eligibility requirements for that visa, and completion of a certification form by a certifying official may not be construed to guarantee that the victim will receive immigration relief under federal law. Completion of a certification form by a certifying official only serves as verification of the factual information relevant for a federal immigration official to determine eligibility for a U or T visa. By completing a certification form, the certifying official attests that the information is true and correct to the best of the certifying official's knowledge. These provisions do not limit the manner in which a certifying official or agency may (1) describe whether the person has been helpful to the certifying entity or (2) provide any additional information the certifying official or entity believes may be relevant to the adjudication of a U or T visa. (A T visa is specifically for victims of human trafficking with separate requirements from the U visa, as otherwise specified in federal statute.)

Information Disclosures

Under current law, 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 official who acts or fails to act in good faith in compliance with statute 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 may not be awarded attorney's fees or costs unless that action demonstrates willful or wanton misconduct by a certifying entity or official. The bill repeals these provisions.

Under the bill, a certifying entity or official may disclose information relating to a victim who is seeking certification, or who is seeking or has obtained U nonimmigrant Status only (1) to comply with federal law, a court order, or a discovery obligation in the prosecution of a criminal offense or (2) if applicable, after the victim has waived confidentiality protections under the Violence Against Women Act. The bill may not be construed to alter or diminish the duties and requirements of a law enforcement officer, a State's Attorney,

or the Attorney General from disclosing exculpatory information to a defendant in a criminal case.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 608 (Senators Augustine and Smith) - Judicial Proceedings.

Information Source(s): Charles and Garrett counties; Maryland Association of Counties; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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