

ASSEMBLY BILL NO. 336—ASSEMBLYMAN FLORES

MARCH 18, 2019

Referred to Committee on Judiciary

SUMMARY—Establishes provisions relating to certain victims of crime. (BDR 16-46)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to victims of crime; establishing provisions relating to certain victims of crime who petition for certain temporary federal immigration benefits; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing federal law establishes the U nonimmigrant status, or U visa, to
2 provide temporary immigration benefits for victims of certain crimes who have
3 suffered mental or physical abuse and who are helpful to law enforcement in the
4 investigation or prosecution of criminal activity. Existing federal law requires the
5 petitioner of a U visa to submit several documents, including a Form I-918,
6 Supplement B, U Nonimmigrant Status Certification. Existing federal law
7 authorizes a certifying official to complete and sign the petitioner’s Form I-918,
8 Supplement B, if the official determines that the petitioner was the victim of certain
9 criminal activity and that the victim was helpful, is being helpful or is likely to be
10 helpful to the investigation or prosecution of criminal activity. (8 U.S.C. §§
11 1101(a)(15)(U), 1184(p))

12 **Section 8** of this bill authorizes the petitioner of a U visa to request, from a
13 certifying agency, the certification of his or her Form I-918, Supplement B. If a
14 certifying agency receives such a request, **section 8** requires the certifying agency
15 to determine whether the petitioner was the victim of applicable criminal activity
16 and was helpful, is being helpful or is likely to be helpful to the investigation or
17 prosecution of that criminal activity. **Section 8** then requires a certifying official
18 from the certifying agency to: (1) complete and sign the Form I-918, Supplement
19 B; and (2) include specific details concerning the nature of the criminal activity and
20 the helpfulness of the petitioner.

21 **Section 8** also provides a rebuttable presumption of the petitioner’s helpfulness,
22 unless the petitioner refused or failed to aid law enforcement in the investigation or
23 prosecution of the criminal activity. Further, when determining whether the
24 petitioner meets the requirements of the Form I-918, Supplement B, **section 8**
25 prohibits a certifying agency from considering the period of time between when the



26 petitioner was victimized by the criminal activity and when the petitioner requested
27 certification or whether there is an active criminal investigation, the filing of
28 charges or a prosecution or conviction of the criminal activity.

29 **Section 9** of this bill requires a certifying agency to process the certification of
30 the Form I-918, Supplement B, within 90 days of the date of the petitioner's
31 request, unless the petitioner is in the process of being deported, in which case the
32 request must be processed within 14 days.

33 **Section 10** of this bill prohibits a certifying agency from withdrawing the
34 certification of the Form I-918, Supplement B, unless the petitioner refuses or fails
35 to assist a law enforcement agency in the prosecution or investigation of the
36 criminal activity. **Section 10** also prohibits a certifying agency from disclosing the
37 immigration status of a petitioner unless the certifying agency is required to do so
38 because of federal law or a court order or the petitioner consents, in writing, to such
39 a disclosure. **Section 10** does not relieve a prosecutor or law enforcement officer
40 from his or her duty to disclose exculpatory evidence to a defendant in a criminal
41 case.

42 **Section 10** also requires certifying agencies to develop a protocol to help
43 petitioners who have a limited proficiency in the English language or who are deaf,
44 hard of hearing or speech impaired in the certification process. **Section 10** also
45 requires each certifying agency that receives a request for certification to submit an
46 annual report to the Legislature concerning certain statistics related to the
47 certification process.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** Chapter 217 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 10, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 10, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 7, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 3.** *“Certification” means the certification of a Form I-*
9 *918, Supplement B, U Nonimmigrant Status Certification, as*
10 *required by 8 U.S.C. § 1184(p) regarding a Form I-918, Petition*
11 *for U Nonimmigrant Status by a certifying agency.*

12 **Sec. 4.** *“Certifying agency” means:*

- 13 1. *A state or local law enforcement agency;*
- 14 2. *A prosecutor;*
- 15 3. *A judge; or*
- 16 4. *Any other governmental agency that has criminal, civil or*
17 *administrative investigative or prosecutorial authority.*

18 **Sec. 5.** *“Certifying official” means:*

- 19 1. *The head of a certifying agency; or*
- 20 2. *A person who has been designated by the head of a*
21 *certifying agency to complete a certification.*



1 **Sec. 6.** *“Criminal activity” means an offense for which the*
2 *elements are substantially similar to an offense described in 8*
3 *U.S.C. § 1101(a)(15)(U)(iii) or the attempt, solicitation or*
4 *conspiracy to commit such an offense.*

5 **Sec. 7.** *“Petitioner” means a person who requests a*
6 *certification.*

7 **Sec. 8.** 1. *Upon the request of a petitioner for a*
8 *certification, a certifying agency shall determine whether the*
9 *petitioner:*

10 (i) *Was the victim of criminal activity; and*

11 (ii) *Has been helpful, is being helpful or is likely to be helpful*
12 *to the investigation or prosecution of the criminal activity.*

13 2. *If a certifying agency determines that a petitioner satisfies*
14 *the requirements of subsection 1, the certifying official shall*
15 *complete and sign the certification. A completed certification must*
16 *include, without limitation, a detailed description of:*

17 (i) *The nature of the criminal activity described in subsection*
18 *1; and*

19 (ii) *The helpfulness of a petitioner or the likeliness that a*
20 *petitioner will be helpful in the investigation or prosecution of that*
21 *criminal activity.*

22 3. *For the purpose of determining whether the petitioner*
23 *meets the requirements of subsection 1, the certifying agency shall*
24 *not consider:*

25 (i) *The period of time between when the petitioner was*
26 *victimized by the criminal activity and when the petitioner*
27 *submitted his or her request for certification;*

28 (ii) *Whether there is an active investigation of the criminal*
29 *activity;*

30 (iii) *Whether a formal statement of charges has been filed*
31 *regarding the alleged criminal activity; or*

32 (iv) *Whether there was a prosecution or conviction of the*
33 *criminal activity.*

34 4. *For the purpose of determining helpfulness pursuant to*
35 *subsection 1, there is a rebuttable presumption that a petitioner*
36 *has been helpful, is being helpful or is likely to be helpful to the*
37 *investigation or prosecution of the criminal activity, unless the*
38 *petitioner refused or failed to provide assistance that was*
39 *reasonably requested by a law enforcement agency in the*
40 *investigation or prosecution of that criminal activity.*

41 **Sec. 9.** *A certifying agency shall process a request for a*
42 *certification within 90 days of the date of the request pursuant to*
43 *section 8 of this act, unless the petitioner is a party to a federal*
44 *immigration proceeding for his or her removal, in which case the*



1 *certifying agency shall process the certification within 14 days of*
2 *the date of the request.*

3 **Sec. 10.** *1. A certifying agency shall not:*

4 *(a) Disclose the immigration status of a petitioner unless such*
5 *a disclosure is mandated by federal law or court order or the*
6 *petitioner consents, in writing, to such a disclosure.*

7 *(b) Withdraw a certification unless the petitioner refuses to*
8 *provide assistance that was reasonably requested by a law*
9 *enforcement agency in the investigation or prosecution of the*
10 *criminal activity described in section 8 of this act.*

11 **2.** *A certifying agency shall develop a protocol to assist*
12 *petitioners:*

13 *(a) Who have a limited proficiency in the English language.*

14 *(b) Who are deaf, hard of hearing or speech impaired.*

15 **3.** *On or before January 1 of each year, each certifying*
16 *agency that receives a request for a certification pursuant to*
17 *section 8 of this act shall submit a report to the Director of the*
18 *Legislative Counsel Bureau for transmittal to the Legislature that*
19 *sets forth:*

20 *(a) The number of such requests received by the certifying*
21 *agency;*

22 *(b) The number of certifications completed by the certifying*
23 *agency; and*

24 *(c) The number of certifications denied by the certifying*
25 *agency.*

26 **4.** *Nothing in this section shall be construed to relieve any*
27 *obligation placed upon a prosecuting attorney or law enforcement*
28 *official by the Nevada Constitution or the United States*
29 *Constitution to disclose exculpatory evidence to a defendant.*

30 **Sec. 11.** *The provisions of subsection 1 of NRS 218D.380 do*
31 *not apply to any provision of this act which adds or revises a*
32 *requirement to submit a report to the Legislature.*

33 **Sec. 12.** *This act becomes effective on July 1, 2019.*

