HOUSE BILL 20-1088

CONCERNING CERTIFICATION OF VICTIM HELPFULNESS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

To be eligible for U nonimmigrant status (U visa) from the federal government, a requestor must receive a certification form from a certifying official attesting that the person has been the victim of certain criminal activity and has been, is being, or is likely to be helpful to the detection, investigation, or prosecution of the criminal activity. The bill sets a required time frame for completion or denial of the certification request and sets forth the factors that may and may not be considered in the certification process. The bill also prohibits certain disclosures to
immigration authorities and requires law enforcement to provide crime victims with information about the U visa.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, add part 4 to article 4.1 of title 24 as follows:

PART 4

CERTIFICATION OF CERTAIN FEDERAL IMMIGRATION FORMS

24-4.1-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Certification form" or "certification" means a law enforcement certification form or statement required by federal immigration law certifying that a person is a victim of qualifying criminal activity including, but not limited to, the information required by 8 U.S.C. Sec. 1184 (p)(1), including current United States citizenship and immigration services form I-918, supplement B, or any successor form for purposes of obtaining U immigrant status or a U visa.

(2) "Certifying entity" or "entity" is any of the following:

(a) A state or local law enforcement agency;

(b) The office of a district, county, or city attorney;

(c) A court;

(d) The office of the attorney general;

(e) Any other entity that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity; or

(f) Entities that have criminal detection or investigative
JURISDICTION IN THEIR RESPECTIVE AREAS OF EXPERTISE, INCLUDING, BUT
NOT LIMITED TO, THE DEPARTMENT OF HUMAN SERVICES, THE EQUAL
EMPLOYMENT OPPORTUNITY COMMISSION, AND THE DEPARTMENT OF
REGULATORY AGENCIES.

(3) "CERTIFYING OFFICIAL" MEANS ANY OF THE FOLLOWING:
(a) THE HEAD OF THE CERTIFYING ENTITY;
(b) A PERSON IN A SUPERVISORY ROLE WHO HAS BEEN SPECIFICALLY DESIGNATED BY THE HEAD OF A CERTIFYING ENTITY TO ISSUE CERTIFICATIONS ON BEHALF OF THAT ENTITY;
(c) A JUDGE OR MAGISTRATE;

(4) "QUALIFYING CRIMINAL ACTIVITY" MEANS ANY ACTIVITY THAT CONSTITUTES A CRIME AS DEFINED PERSUANT TO COLORADO LAW, REGARDLESS OF THE STATUTORY LANGUAGE OR TITLE USED PERSUANT TO COLORADO LAW, FOR WHICH THE NATURE AND ELEMENTS OF THE OFFENSES ARE SUBSTANTIALLY SIMILAR TO THE GENERAL CATEGORIES OF OFFENSES ENUMERATED IN 8 U.S.C. SEC. 1101 (a)(15)(U), AND THE ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT ANY OF THOSE OFFENSES, INCLUDING, BUT NOT LIMITED TO:
(a) RAPE;
(b) TORTURE;
(c) HUMAN TRAFFICKING;
(d) INCEST;
(e) DOMESTIC VIOLENCE;
(f) SEXUAL ASSAULT;
(g) ABUSIVE SEXUAL CONDUCT;
(h) PROSTITUTION;

(i) SEXUAL EXPLOITATION;

(j) FEMALE GENITAL MUTILATION;

(k) HOLDING A PERSON HOSTAGE;

(l) PEONAGE;

(m) PERJURY;

(n) INVOLUNTARY SERVITUDE;

(o) SLAVERY;

(p) KIDNAPPING;

(q) ABDUCTION;

(r) UNLAWFUL CRIMINAL RESTRAINT;

(s) FALSE IMPRISONMENT;

(t) BLACKMAIL;

(u) EXTORTION;

(v) MANSLAUGHTER;

(w) MURDER;

(x) FELONIOUS ASSAULT;

(y) WITNESS TAMPERING;

(z) OBSTRUCTION OF JUSTICE;

(aa) FRAUD IN FOREIGN LABOR CONTRACTING;

(bb) STALKING; OR

(cc) ANY OTHER SIMILAR CRIMINAL ACTIVITY.

(5) (a) "VICTIM OF QUALIFYING CRIMINAL ACTIVITY" OR "VICTIM" MEANS ANY PERSON WHO HAS SUFFERED DIRECT OR PROXIMATE HARM AS A RESULT OF THE COMMISSION OF ANY QUALIFYING CRIMINAL ACTIVITY AND MAY INCLUDE, BUT IS NOT LIMITED TO, DIRECT VICTIMS, BYSTANDER VICTIMS, OR INDIRECT VICTIMS, REGARDLESS OF THE DIRECT VICTIM'S
IMMIGRATION OR CITIZENSHIP STATUS. WHEN THE DIRECT VICTIM IS
INCOMPETENT OR INCAPACITATED, INDIRECT VICTIMS MAY INCLUDE THE
SPOUSE, CHILDREN UNDER TWENTY-ONE YEARS OF AGE, AND IF THE DIRECT
VICTIM IS UNDER TWENTY-ONE YEARS OF AGE AT THE TIME OF THE CRIME,
THE PARENTS AND UNMARRIED SIBLINGS UNDER EIGHTEEN YEARS OF AGE.

(b) FOR PURPOSES OF THIS SUBSECTION (5), "INCAPACITATED"
MEANS UNABLE TO INTERACT WITH CERTIFYING ENTITY PERSONNEL AS A
RESULT OF DEATH, A COGNITIVE IMPAIRMENT, OR OTHER PHYSICAL
LIMITATION OR BECAUSE OF PHYSICAL RESTRAINT OR DISABILITY OR AGE,
SUCH AS A MINOR.

(c) MORE THAN ONE VICTIM MAY BE IDENTIFIED AND PROVIDED
WITH CERTIFICATION DEPENDING UPON THE CIRCUMSTANCES.

24-4.1-402. Immigration certification forms - completion
deadlines. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION,
A CERTIFYING ENTITY SHALL PROCESS AND EITHER SIGN OR DECLINE TO
SIGN A CERTIFICATION FORM WITHIN THIRTY DAYS AFTER RECEIPT OF A
REQUEST.

(2) A CERTIFYING ENTITY SHALL PROCESS AND EITHER SIGN OR
DECLINE TO SIGN A CERTIFICATION FORM WITHIN FOURTEEN DAYS AFTER
RECEIPT OF A REQUEST IF:

(a) THE REQUESTOR PROVIDES DOCUMENTATION THAT HE OR SHE
IS IN DETENTION IN THE CUSTODY OF UNITED STATES IMMIGRATION AND
CUSTOMS ENFORCEMENT; OR

(b) THE REQUESTOR PROVIDES DOCUMENTATION THAT THE
CHILDREN, PARENTS, OR SIBLINGS OF THE REQUESTOR WOULD BECOME
INELIGIBLE FOR U NONIMMIGRANT STATUS BY VIRTUE OF AGE WITHIN
THIRTY BUSINESS DAYS AFTER THE DATE THAT THE CERTIFYING OFFICIAL
RECEIVES THE CERTIFICATION FORM REQUEST.

24-4.1-403. Certification forms - signature requirement - limitation on factors for consideration. (1) Upon request, a certifying official from a certifying entity shall execute and sign the certification form when it is determined that the victim:

(a) Was a victim of qualifying criminal activity; and

(b) Has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity.

(2) For purposes of determining helpfulness pursuant to this section, there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity if there is no documentation that the victim refused or failed to provide assistance reasonably requested by law enforcement.

(3) The certifying entity shall not consider any other factors, including, but not limited to:

(a) The period of time between the qualifying criminal activity and the request for certification;

(b) The level of harm or abuse suffered by the victim;

(c) The status of the criminal investigation or prosecution;

(d) Whether the alleged perpetrator was identified or apprehended, charged, or prosecuted;

(e) Whether there is an active investigation or prosecution or whether the case resulted in a conviction;
(f) The victim's own criminal history or whether the certifying official or entity believes the victim merits U nonimmigrant status; or

(g) Any discretionary policies in place prior to the effective date of this section.

(4) If a certifying official or entity signs the certification form, the official or entity shall return the signed certification form to the requestor, along with, free of charge, copies of any relevant documents regarding victimization, helpfulness, and harm to the victim releasable pursuant to law, including, but not limited to, any unredacted offense report, statements, or photographs.

(5) If a certifying official or entity declines to sign the certification form, the official or entity shall in writing notify the requestor of the reason for the denial. The denial notification must contain a detailed explanation of the reason for the denial consisting of one of the following:

(a) The requestor was not a victim of a qualifying criminal activity;

(b) Lack of helpfulness, including documented instances of failure or refusal to comply with reasonable requests for cooperation sufficient to rebut the presumption of helpfulness; or

(c) Lack of jurisdiction over the certification form request due to the certifying entity not having been involved in the detection, investigation, or prosecution of the qualifying criminal activity.
(6) UPON RECEIVING NOTICE THAT A REQUEST FOR A CERTIFICATION FORM PURSUANT TO THIS SECTION IS DENIED, A REQUESTOR MAY PROVIDE SUPPLEMENTAL INFORMATION TO THE CERTIFYING ENTITY AND REQUEST THAT THE CERTIFICATION FORM DENIAL BE REVIEWED BY THE CERTIFYING ENTITY. A REQUESTOR MAY ALSO SEEK A CERTIFICATION FORM FROM MULTIPLE CERTIFYING ENTITIES.

(7) A CERTIFYING ENTITY MAY ONLY WITHDRAW THE CERTIFICATION IF THE VICTIM UNREASONABLY REFUSES TO PROVIDE ASSISTANCE RELATED TO THE INVESTIGATION OR PROSECUTION OF THE ASSOCIATED CRIMINAL ACTIVITY WHEN REASONABLY REQUESTED BY THE CERTIFYING ENTITY.

24-4.1-404. Prohibition on disclosure of victim's immigration status. A CERTIFYING ENTITY IS PROHIBITED FROM DISCLOSING THE PERSONAL IDENTIFYING INFORMATION OR IMMIGRATION STATUS OF A VICTIM OR PERSON REQUESTING THE CERTIFICATION, EXCEPT TO COMPLY WITH FEDERAL LAW OR LEGAL PROCESS, OR IF AUTHORIZED IN WRITING BY THE VICTIM.

24-4.1-405. Duty to inform victims. CERTIFYING ENTITIES SHALL PROVIDE INFORMATION REGARDING THE U VISA AND THE ENTITY’S PROCEDURES FOR CERTIFICATION TO VICTIMS OF QUALIFYING CRIMINAL ACTIVITY AND INCLUDE REFERRALS TO LEGAL SERVICES PROVIDERS OR THE COLORADO OFFICE FOR VICTIMS PROGRAMS IN THE DIVISION OF CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY FOR MORE INFORMATION IN ALL LANGUAGES THAT OTHER VICTIM NOTIFICATIONS PROVIDE.

24-4.1-406. Reports. A CERTIFYING ENTITY THAT RECEIVES A REQUEST FOR A CERTIFICATION SHALL REPORT TO THE DIVISION OF
CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY ON AN ANNUAL BASIS THE NUMBER OF REQUESTS FOR CERTIFICATION RECEIVED, THE NUMBER OF CERTIFICATIONS THAT WERE SIGNED, THE NUMBER THAT WERE DENIED WITH THE REASONS SUPPORTING THE DENIAL, AND ANY DECISIONS THAT FELL OUTSIDE THE PRESCRIBED COMPLETION DEADLINES.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.