HOUSE BILL 20-1088

A BILL FOR AN ACT

Concerning the certification process for the purpose of application for U nonimmigrant status.

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 the federal form I-918 supplement B, "U Nonimmigrant Status Certification", or any successor form, required under 8 U.S.C. sec. 1184 (p)(1) and 8 CFR 214.14 (c)(2)(i) and as defined under 8 CFR 214.14 (a)(12), which confirms that the petitioner is a victim of qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the qualifying criminal activity of which he or she is a victim.

(2) "Certifying agency" or "agency" has the same meaning as defined in 8 CFR 214.14 (a)(2) and includes but is not limited to:

(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 agency 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 a county department of human or social services,
the Colorado civil rights commission, and the department of
labour and employment.

(3) "Certifying official" has the same meaning as defined
in 8 CFR 214.14 (a)(3) and includes but is not limited to:

(a) The head of the certifying agency;

(b) A person in a supervisory role who has been
specifically designated by the head of a certifying agency to
issue certifications on behalf of that agency; or

(c) A judge or magistrate.

(4) "Qualifying criminal activity" has the same meaning as
defined in 8 CFR 214.14 (a)(9), including any activity that
constitutes a crime as defined pursuant to Colorado law,
regardless of the statutory language or title used pursuant 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), or any other
similar criminal activities, and the attempt, conspiracy, or
solicitation to commit any of those offenses.

(5) "Victim of qualifying criminal activity" or "victim" has
the same meaning as defined in 8 CFR 214.14 (a)(14) and includes
an individual who has suffered direct and proximate harm as a

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

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

(a) The requestor provides documentation that he or she is in federal immigration removal proceedings; or

(b) The requestor provides documentation that the children, parents, or siblings of the requestor would become ineligible for 
nonimmigrant status by virtue of age within sixty 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 AGENCY 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) (a) For purposes of determining helpfulness pursuant to subsection (1)(b) of this section, 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.

(b) A certifying agency’s inability to communicate with a victim due to the victim’s language shall not be considered a refusal or failure to provide assistance.

(3) The certifying agency shall not consider any other factors in deciding whether to sign the certification form, except the factors listed in subsection (1) of this section.

(4) If a certifying official or agency signs the certification form, the official or agency shall return the signed certification form to the requestor, along with, free of charge, offense reports related to the criminal activity subject to release by law. The timing of release of such reports for open cases is subject to the certifying agency’s discretion.

(5) The certifying agency is neither a sponsor nor a decision-maker of the U visa. A certifying official’s completion of a certification form is not sufficient evidence that an applicant for a U visa has met all eligibility requirements and does not guarantee that the victim will receive a U visa. It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a U visa. Completion of a certification form by a certifying official merely verifies
FACTUAL INFORMATION RELEVANT FOR FEDERAL IMMIGRATION OFFICIALS TO DETERMINE ELIGIBILITY FOR A U 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.

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

(7) IF A CERTIFYING OFFICIAL OR AGENCY DECLARES TO SIGN THE CERTIFICATION FORM, THE OFFICIAL OR AGENCY 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 ASSISTANCE; OR

(c) LACK OF JURISDICTION OVER THE CERTIFICATION FORM REQUEST DUE TO THE CERTIFYING AGENCY NOT HAVING BEEN INVOLVED IN THE DETECTION, INVESTIGATION, OR PROSECUTION OF THE QUALIFYING CRIMINAL ACTIVITY.

(8) 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 AGENCY AND REQUEST THAT THE CERTIFICATION FORM DENIAL BE REVIEWED BY THE CERTIFYING AGENCY. A REQUESTOR MAY ALSO SEEK A CERTIFICATION FORM FROM MULTIPLE CERTIFYING AGENCIES.
24-4.1-404. Prohibition on disclosure of victim's immigration status. A certifying agency 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 process.

24-4.1-405. Duty to inform victims. Certifying agencies shall provide information regarding the U visa and the agency's procedures for certification to victims.

24-4.1-406. Reports. On or before September 1, 2021, and on or before each March 1 thereafter, a certifying agency 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 total number that were denied, the number denied for each reason supporting the denial, and the number of decisions that fell outside the prescribed completion deadlines. The division shall make the reports available to the public upon request.

SECTION 2. Act subject to petition - effective date - applicability. (1) This act takes effect September 1, 2020; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.
(2) This act applies to requests and resubmitted requests for certifications made on or after the applicable effective date of this act.