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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair  
2019 - 2020 Regular

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**Bill No:** AB 2426                      **Hearing Date:** July 31, 2020  
**Author:** Reyes  
**Version:** May 4, 2020  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Victims of Crime*

## HISTORY

**Source:** Coalition for Humane Immigrant Rights (CHIRLA)

**Prior Legislation:** AB 917 (Reyes) Chapter 976, Stats. 2019 -  
AB 2027 (Quirk) Chapter 749, Stats. 2016  
SB 674 (De Leon) Chapter 721, Stats 2015

**Support:** California Attorneys for Criminal Justice; California Immigrant Policy Center;  
California Public Defenders Association; Coalition for Humane Immigrant Rights  
of Los Angeles; Los Angeles County District Attorney's Office; San Francisco  
Public Defender's Office

**Opposition:** California State Sheriffs' Association

**Assembly Floor Vote:** 70 - 0

## PURPOSE

*This bill clarifies the law enforcement agencies that are required to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas include law enforcement at the University of California, California State Universities, California Community Colleges or public school police departments.*

*Existing federal law* allows an immigrant who has been a victim of a crime to receive a U-visa if the Secretary of Homeland Security determines the following:

- 1) The petitioner has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity as described;
- 2) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, possesses information concerning the criminal activity;
- 3) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting

criminal activity as described;

- 4) The criminal activity violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States; and,
- 5) The criminal activity is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting; or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes. (8 U.S.C. § 1011(a)(15)(U).)

*Existing federal law* allows an immigrant to receive a T-visa if the Secretary of Homeland Security determines the following:

- 1) The person is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law;
- 2) The person is in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
- 3) The person has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and,
- 4) The person would suffer extreme hardship involving unusual and severe harm if removed from the United States. (8 U.S.C. § 1101 (a)(15)(T).)

*Existing law* requires certifying agencies, upon the request of an immigrant victim of crime or his or her family member, to certify victim helpfulness on the applicable form so that he or she may apply for a U-visa. (Penal Code § 679.10 (e).)

*Existing law* creates a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. (Penal Code § 679.10 (f).)

*Existing law* mandates certifying entities to complete the certification within 90 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 14 days of the request. (Penal Code § 679.10 (h).)

*Existing law* requires certifying agencies, upon the request of an immigrant human-trafficking victim or his or her family member, to certify victim helpfulness on the applicable form so that he or she may apply for a T-visa. (Penal Code § 679.11 (e).)

*Existing law* creates a rebuttable presumption that an immigrant human-trafficking victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to

provide information and assistance reasonably requested by law enforcement. (Penal Code § 679.11 (f).)

*Existing law* mandates certifying entities to complete the certification within 90 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 14 days of the request. (Penal Code § 679.11 (h).)

*This bill* defines a state or local law enforcement agency to include the police department of the University of California, a California State University campus or a California Community College, or the police department of a school district.

*This bill* provides that a certifying official shall not refuse to complete the Form I-918 Supplement B certification or to certify helpfulness because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

*This bill* provides that a certifying official shall not refuse to complete the Form I-914 Supplement B certification or to certify helpfulness because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

## COMMENTS

### 1. Need for This Bill

According to the author:

Congress created the U and T Visa to build stronger relationships between immigrant communities and law enforcement while providing protection to crime victims who are undocumented immigrants from deportation and removal proceedings. The federal statute is clear that the role of law enforcement is to validate when victims of qualifying crimes have been helpful and corporative with investigative authorities.

In 2015 California provided law enforcement with a framework that further clarified their role in the U-Visa process and at which times they shall validate that an eligible victim has been helpful and corporative. It is no longer acceptable for law enforcement agencies to take it upon themselves to act as adjudicators within our legal immigration system, especially in times when relationships between law enforcement and immigrant communities have furthered due to rhetoric and the political theater that we have witnessed during the Trump Administration.

Last year, Governor Newsom enacted AB 917 (Reyes), which ensures U-Visa applicants receive certification from local law enforcement in a timely manner, as well as when they have been helpful and cooperative with an investigation. However, immigration practitioners and their clients continue to face barriers in obtaining U-Visa certification.

Many certifying agencies lack clear guidance to fully implement the federal U-Visa statute which has often times resulted in denial of certification or turning away the applicant due to the certifying agency's interpretation of the U-Visa federal statute.

This has caused tremendous delays for immigrant victims who are seeking to protect themselves from deportation. The inconsistency of certifications from law enforcement across the state has contributed to the distrust between the immigrant community and law enforcement, misreporting of crimes, and confusion across California. The state has a responsibility to fully implement the Victims of Trafficking and Violence Prevention Act of 2000 and create a uniformed state statute to ensure certifying agencies complete their responsibilities

This year, I have introduced AB 2426 to enhance the overall public safety of Californians to ensure that immigrants who are victims of crimes and cooperate with local law enforcement in good faith, local agencies will provide the needed documentation that protects them from deportation. It is crucial that the government keeps the promises for immigrant victims. Furthermore, as a state we must do everything within our means to assist in those efforts and mitigate federal policies that seek to hinder that promise. Due to current tactics used by federal law enforcement, many immigrants are unwilling to come forward, but will be given greater assurance in working with law enforcement. This keeps not only our immigrant communities safe, but makes all communities safer.

Specifically, AB 2426 clarifies that police departments governed by local school boards are certifying agencies. In addition, certifying agencies must certify a form if the victim meets all the requirements regardless of when the prosecution may have been.

## **2. U-Visas**

In October 2000, Congress, as part of the reauthorization of the Violence Against Women Act, created the U-Visa to provide immigrant crime victims an avenue to obtain lawful immigration status and thus encourage cooperation with law enforcement by undocumented victims of crime. In order to qualify for a U-Visa: the applicant must have suffered substantial physical or mental abuse as a result of having been a victim of certain qualifying activity; the applicant must possess information concerning such criminal activity; the applicant must be helpful, have been helpful, or likely to be helpful in the investigation or prosecution of a crime; and the criminal activity must have occurred in the U.S. or violated the state or federal law of the United States.

In order to apply for a U-Visa, the qualified immigrant victim must obtain a certification of a helpfulness from a law enforcement official, prosecutor, judge or federal or state agency authorized to detect investigate or prosecute any of the criminal activities listed in the U-Visa statute. This certification form is called a Form I-918.

## **3. T-Visas**

"The Victims of Trafficking and Violence Prevention Act (VTVPA) of 2000 was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking in persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Congress, in the VTVPA, created the T nonimmigrant status ("T-visa") program out of recognition that human trafficking victims without legal status may otherwise be reluctant to help in the investigation or prosecution of this type of criminal activity. Human trafficking, also known as trafficking in persons, is a form of modern-day slavery, in which traffickers lure individuals with false promises of employment and

a better life. Immigrants can be particularly vulnerable to human trafficking due to a variety of factors, including but not limited to: language barriers, separation from family and friends, lack of understanding of U.S. laws, fear of deportation, and cultural differences. Accordingly, under this law, Congress sought not only to prosecute perpetrators of crimes committed against immigrants, but also to strengthen relations between law enforcement and immigrant communities." (See *U and T Visa Law Enforcement Resource Guide*, Department of Homeland Security, p. 9, < [https://www.dhs.gov/sites/default/files/publications/PM\\_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf](https://www.dhs.gov/sites/default/files/publications/PM_15-4344%20U%20and%20T%20Visa%20Law%20Enforcement%20Resource%20Guide%2011.pdf) >.)

"The T-visa allows eligible victims to temporarily remain and work in the U.S., generally for four years. While in T nonimmigrant status, the victim has an ongoing duty to cooperate with law enforcement's reasonable requests for assistance in the investigation or prosecution of human trafficking. If certain conditions are met, an individual with T nonimmigrant status may apply for adjustment to lawful permanent resident status (i.e., apply for a green card in the United States) after three years in the United States or upon completion of the investigation or prosecution, whichever occurs earlier." (*Id.* at pp. 9-10.)

To be eligible for a T-Visa, the immigrant victim must meet four statutory requirements: (1) he or she is or was a victim of a severe form of trafficking in person, as defined by federal law; (2) is in the United States or at a port of entry due to trafficking; (3) has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and (4) would suffer extreme hardship if removed from the United States. (*Id.* at p. 9.)

Although declaration is not required for the application (contrast U-visa where a certification of cooperation is required), the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the T-visa application. (*Id.* at pp. 10-11.)

#### **4. School police officers included in definition of peace officers to certify U-Visas and T-Visas**

This bill clarifies that a certifying entity includes the police department of the University of California, a California State University campus, a California Community College, or a school district. It further clarifies that a certifying entity shall not refuse to certify the described form because the criminal case involved has already been prosecuted or otherwise closed, or because the time to commence criminal action has expired.

#### **5. Argument in Support**

The Coalition for Human Immigrant Rights, the sponsor of this bill states:

AB 2426 enhances the overall public safety of Californians to ensure that undocumented immigrants who are victims of crimes and cooperate with local law enforcement in good faith are provided the needed protection from deportation. It is crucial that local jurisdictions keep the promises that had been made by congress. Furthermore, as a state we must do everything within our means to assist in those efforts and mitigate federal policies that seek to hinder that promise. In the enactment of the Victims of Trafficking and Violence Protection Act in 2000 congress explicitly stated that the intent of the law was to ensure immigrants were

protected from deportation if they cooperated with law enforcement and to build trust with the immigrant community and law enforcement.

Specifically, AB 2426 further clarifies the role of police departments governed by local school boards, police departments at public universities, and that a certifying agency must a form if a victim meets all eligibility.

## **6. Argument in Opposition**

The California State Sheriffs' Association opposes this bill stating:

On behalf of the California State Sheriffs' Association (CSSA), I regret to inform you that we remain respectfully opposed to your measure, Assembly Bill 2426, which would prohibit a certifying official from refusing to complete the Form I-918 Supplement B certification or to certify helpfulness for the purposes of considering a T- or U-Visa because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

Victim cooperation can be extremely valuable when investigating criminal offenses. That said, existing law on this matter requires specified officials to sign these requests and contains a rebuttable presumption that effectively states that a victim is being cooperative or is likely to be cooperative unless and until he or she is not cooperative, limiting law enforcement discretion. If the case is closed or the statute of limitations has run, the need for an official to make a certification about victim cooperation seems moot.

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