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AB-2027 Victims of crime: nonimmigrant status. (2015-2016)

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Assembly Bill No. 2027

CHAPTER 749

An act to add Section 679.11 to the Penal Code, relating to victims of crime.

[Approved by Governor September 28, 2016. Filed with Secretary of State September 28, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2027, Quirk. Victims of crime: nonimmigrant status.

Existing federal law provides a Form I-914, Petition for T Nonimmigrant Status (Form I-914) to request temporary immigration benefits for a person who is a victim of certain qualifying criminal activity. Existing federal law also provides a form for certifying that a person submitting a Form I-914 is a victim of human trafficking and a declaration as to cooperation by the person regarding investigating or prosecuting trafficking (Form I-914 Supplement B).

Existing state law establishes certain rights of victims and witnesses of crimes, including, among others, to be notified and to appear at all sentencing proceedings, upon request, to be notified and to appear at parole eligibility hearings, and, for certain offenses, to be notified when a convicted defendant had been ordered placed on probation.

This bill would require, upon request, that an official from a state or local entity certify "victim cooperation" on the Form I-914 Supplement B declaration, when the requester was a victim of human trafficking and has been cooperative, is being cooperative, or is likely to be cooperative regarding the investigation or prosecution of human trafficking. The bill would establish a rebuttable presumption that a victim is cooperative, has been cooperative, or is likely to be cooperative if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. The bill would require the certifying entity to process a Form I-914 Supplement B declaration within 90 days of request, unless the noncitizen is in removal proceedings, in which case the declaration is required to be processed within 14 days of request. The bill would require a certifying entity that receives a request for a Form I-914 Supplement B declaration to report to the Legislature, on or before January 1, 2018, and annually thereafter, the number of victims who requested Form I-914 Supplement B declarations from the entity, the number of those declaration forms that were signed, and the number that were denied.

By imposing additional duties on local government agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 679.11 is added to the Penal Code, to read:

679.11. (a) For purposes of this section, a “certifying entity” is any of the following:

- (1) A state or local law enforcement agency.
- (2) A prosecutor.
- (3) A judge.
- (4) The Department of Industrial Relations.
- (5) Any other state or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority relating to human trafficking.

(b) For purposes of this section, a “certifying official” is any of the following:

- (1) The head of the certifying entity.
- (2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-914 Supplement B declarations on behalf of that agency.
- (3) A judge.
- (4) Any other certifying official defined under Section 214.14(a)(2) of Title 8 of the Code of Federal Regulations.

(c) “Human trafficking” means “severe forms of trafficking in persons” pursuant to Section 7102 of Title 22 of the United States Code and includes either of the following:

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(d) “Human trafficking” also includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in subdivision (c), and the attempt, conspiracy, or solicitation to commit any of those offenses.

(e) Upon the request of the victim or victim’s family member, a certifying official from a certifying entity shall certify victim cooperation on the Form I-914 Supplement B declaration, when the victim was a victim of human trafficking and has been cooperative, is being cooperative, or is likely to be cooperative to the investigation or prosecution of human trafficking.

(f) For purposes of determining cooperation pursuant to subdivision (e), there is a rebuttable presumption that a victim is cooperative, has been cooperative, or is likely to be cooperative to the investigation or prosecution of human trafficking, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

(g) The certifying official shall fully complete and sign the Form I-914 Supplement B declaration and, regarding victim cooperation, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim’s cooperation or likely cooperation to the detection, investigation, or prosecution of the criminal activity.

(h) A certifying entity shall process a Form I-914 Supplement B declaration within 90 days of request, unless the noncitizen is in removal proceedings, in which case the declaration shall be processed within 14 days of request.

(i) A current investigation, the filing of charges, or a prosecution or conviction is not required for the victim to request and obtain the Form I-914 Supplement B declaration from a certifying official.

(j) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

(k) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-914 Supplement B declaration, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-914 Supplement B declaration.

(l) A certifying entity that receives a request for a Form I-914 Supplement B declaration shall report to the Legislature, on or before January 1, 2018, and annually thereafter, the number of victims who requested Form I-914 Supplement B declarations

from the entity, the number of those declaration forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.