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AB-917 Victims of crime: nonimmigrant status. (2019-2020)

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Assembly Bill No. 917

CHAPTER 576

An act to amend Sections 679.10 and 679.11 of the Penal Code, relating to victims of crime.

[Approved by Governor October 08, 2019. Filed with Secretary of State October 08, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 917, Reyes. Victims of crime: nonimmigrant status.

Existing federal law provides a petition form to request temporary immigration benefits for a person who is a victim of certain qualifying criminal activity. Existing federal law also provides a supplemental form for certifying that a person submitting a petition for immigration benefits is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that criminal activity. Existing federal law provides a separate petition form to request temporary immigration benefits for a person who is a victim of human trafficking. Existing federal law provides a supplemental form for certifying that a person submitting this latter petition is a victim of human trafficking and a declaration as to the person's cooperation regarding an investigation or prosecution of human trafficking.

Existing law requires, upon request of the victim or the victim's family member, that a certifying official from a certifying entity, as defined, certify "victim helpfulness" or "victim cooperation" on those supplemental forms, respectively, when the requester was a victim of a qualifying criminal activity and has, is, or is likely to be helpful or cooperative regarding the investigation or prosecution of that qualifying criminal activity, as specified. Existing law requires the certifying entity to process those supplemental forms within 90 days of the request, unless the noncitizen is in removal proceedings, in which case the certification is required to be processed within 14 days of the request.

This bill would additionally require a certifying official from a certifying entity to certify "victim helpfulness" or "victim cooperation," respectively, when requested by a licensed attorney representing the victim or a representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings. The bill would also require the certifying entity to process those forms within 30 days of the request, or within 7 days of the first business day following the day the request was received if the noncitizen is in removal proceedings. The bill would require a state or local law enforcement agency with whom a victim had filed a police report to provide a copy of that report upon request of the victim, licensed attorney representing the victim, or a representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings. By increasing the duties of local governmental agencies, the bill would create 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 the statutory provisions noted above.

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

SECTION 1. Section 679.10 of the Penal Code is amended to read:

679.10. (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) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity.
- (5) Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations.

(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-918 Supplement B certifications 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) "Qualifying criminal activity" means qualifying criminal activity pursuant to Section 101(a)(15)(U)(iii) of the federal Immigration and Nationality Act which includes, but is not limited to, the following crimes:

- (1) Rape.
- (2) Torture.
- (3) Human trafficking.
- (4) Incest.
- (5) Domestic violence.
- (6) Sexual assault.
- (7) Abusive sexual conduct.
- (8) Prostitution.
- (9) Sexual exploitation.
- (10) Female genital mutilation.
- (11) Being held hostage.
- (12) Peonage.
- (13) Perjury.
- (14) Involuntary servitude.
- (15) Slavery.
- (16) Kidnapping.
- (17) Abduction.

(18) Unlawful criminal restraint.

(19) False imprisonment.

(20) Blackmail.

(21) Extortion.

(22) Manslaughter.

(23) Murder.

(24) Felonious assault.

(25) Witness tampering.

(26) Obstruction of justice.

(27) Fraud in foreign labor contracting.

(28) Stalking.

(d) A "qualifying crime" 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) A "representative fully accredited by the United States Department of Justice" is a person who is approved by the United States Department of Justice to represent individuals before the Board of Immigration Appeals, the immigration courts, or the Department of Homeland Security. The representative shall be a person who works for a specific nonprofit, religious, charitable, social service, or similar organization that has been recognized by the United States Department of Justice to represent those individuals and whose accreditation is in good standing.

(f) Upon the request of a victim, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings, a state or local law enforcement agency with whom the victim had filed a police report shall provide a copy of the police report within seven days of the request.

(g) Upon the request of the victim, victim's family member, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.

(h) For purposes of determining helpfulness pursuant to subdivision (g), there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

(i) The certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.

(j) A certifying entity shall process a Form I-918 Supplement B certification within 30 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 7 days of the first business day following the day the request was received.

(k) A current investigation, the filing of charges, closing of a case, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.

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

(m) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.

(n) A certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918 Supplement B certifications

from the entity, the number of those certification 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. Section 679.11 of the Penal Code is amended 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) A "representative fully accredited by the United States Department of Justice" is a person who is approved by the United States Department of Justice to represent individuals before the Board of Immigration Appeals, the immigration courts, or the Department of Homeland Security. The representative shall be a person who works for a specific nonprofit, religious, charitable, social service, or similar organization that has been recognized by the United States Department of Justice to represent those individuals and whose accreditation is in good standing.

(f) Upon the request of the victim, victim's family member, licensed attorney representing the victim, or representative fully accredited by the United States Department of Justice authorized to represent the victim in immigration proceedings, 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.

(g) For purposes of determining cooperation pursuant to subdivision (f), 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.

(h) 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.

(i) A certifying entity shall process a Form I-914 Supplement B declaration within 30 days of request, unless the noncitizen is in removal proceedings, in which case the declaration shall be processed within 7 days of the first business day following the day the request was received.

(j) A current investigation, the filing of charges, closing of a case, 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.

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

(l) 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.

(m) 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. 3. 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.