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AB-1261 Crime: witnesses and informants. (2023-2024)

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Date Published: 10/12/2023 02:00 PM

Assembly Bill No. 1261

CHAPTER 679

An act to amend Sections 679.10 and 679.11 of, and to add Section 679.13 to, the Penal Code, relating to crime.

[Approved by Governor October 10, 2023. Filed with Secretary of State October 10, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1261, Santiago. Crime: witnesses and informants.

Existing state law requires, upon request by specified persons, that a certifying official from a certifying entity, as defined, certify "victim helpfulness" or "victim cooperation" on specified federal supplemental forms relating to immigration when the person was a victim of a qualifying criminal activity or human trafficking, and has, is, or is likely to be helpful or cooperative regarding the investigation or prosecution of that qualifying criminal activity, as specified.

This bill would specify that a person submitting those forms does not have to be present in the United States at the time of filing, and would require the certifying entity to forward the form to the victim or other specified individuals without requiring the victim to provide government-issued identification. The bill would require a certifying entity that does not certify the form regarding "victim helpfulness" to provide a written explanation for the denial of the certification. The bill would require a certifying entity to certify that form for direct victims, indirect victims, and bystander or witness victims, as specified. The bill would prohibit a certifying entity from refusing to complete either of those forms for specified reasons, including, among others, the informant's criminal history information or immigration history. The bill would require the certifying entities to process those forms within 7 days if the victim asserts a qualifying family member of the victim will lose eligibility for specified immigration statuses within 60 days. By imposing additional duties on local law enforcement, this bill would impose a state-mandated local program.

Existing federal law provides a petition form to request temporary immigration benefits for a person who is a witness or informant, as specified.

This bill would authorize a certifying official from a certifying entity, as defined, to certify that a person is a witness or informant on that federal petition form when the person is an informant with reliable information about an important aspect of a crime or pending commission of a crime, the person is willing to share that information with law enforcement officials or become a witness in court, and the person's presence in the United States is important and leads to the successful investigation or prosecution of that crime.

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.

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

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

SECTION 1. Section 679.10 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, including, without limitation, the police department of the University of California, a California State University campus, or the police department of a school district, established pursuant to Section 38000 of the Education Code.
- (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 Civil Rights Department, 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” has the same meaning as 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) (1) 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. The certifying entity shall forward completed Form I-918 Supplemental B certification to 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 without requiring the victim to provide government-issued identification.

(2) A victim who submits a Form I-918 Supplement B certification to a certifying entity does not have to be present in the United States at time of submitting the certification request or filing the petition with the government and may apply for certification while outside of the United States.

(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. If the victim reasonably asserts they were unaware of a request for cooperation, their failure to cooperate does not rebut the presumption of helpfulness.

(i) (1) 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.

(2) If a certifying entity does not certify a Form I-918 Supplement B certification, they shall provide a written explanation for the denial of the Form I-918 Supplement B certification. The written denial shall include specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate.

(j) (1) 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.

(2) A certifying agency shall process a Form I-918 Supplement B certification within 7 days of the first business day following the day the request was received if the victim asserts a qualifying family member of the victim will lose eligibility for U nonimmigrant status in 60 days or fewer because the victim's noncitizen sibling will turn 18 years of age, the victim's noncitizen child will turn 21 years of age, or the victim will turn 21 years of age.

(k) (1) A current investigation, the filing of charges, an apprehension of the suspect who committed the qualifying crime, 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.

(2) A certifying official shall not refuse to complete the Form I-918 Supplement B certification or to otherwise certify that a victim has been helpful, solely because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

(3) A certifying entity shall not refuse to complete the Form I-918 Supplement B certification and provide it to the victim, the 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 for any of the following reasons:

(A) The victim's criminal history information.

(B) The victim's immigration history.

(C) The victim's gang membership or gang affiliation.

(D) The certifying entity's belief that the Form I-918 Supplement B petition will not be approved by United States Citizenship and Immigration Services.

(E) The victim has an open case with another certifying entity.

(F) The extent of the harm the victim suffered.

(G) The victim's inability to produce a crime report from a law enforcement agency.

(H) The victim's cooperation or refusal to cooperate in a separate case.

(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.

(o) (1) A certifying entity may certify a Form I-918 Supplement B certification for direct victims, indirect victims, and bystander or witness victims.

(2) A direct victim is any person who has suffered direct harm or who is directly and proximately harmed as a result of the criminal activity.

(3) (A) An indirect victim is a qualifying family member of a direct victim if the direct victim is incompetent, incapacitated, or deceased, including spouses, unmarried children under the age of 21, parents if the direct victim was under the age of 21, and siblings under the age of 18 if the direct victim was under 21 years of age. Indirect victims shall cooperate in the investigation or prosecution but are not required to possess information about the crime itself.

(B) Indirect victim cooperation includes parents who make their children available to communicate with the certifying entity.

(4) A bystander or witness victim is any individual who was not the direct target of a crime, but who nevertheless suffered unusually direct injury as a result of the qualifying crime.

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, including, without limitation, the police department of the University of California, a California State University campus, or the police department of a school district, established pursuant to Section 38000 of the Education Code.

(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" has the same meaning as "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) (1) 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. The certifying entity shall forward completed Form I-914 Supplemental B certification to 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 without requiring the victim to provide government-issued identification.

(2) A victim who submits a Form I-914 Supplement B declaration to a certifying entity does not have to be present in the United States at time of submitting the certification request or filing the petition with the government and may apply for certification while outside of the United States.

(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. If the victim reasonably asserts they were unaware of a request for cooperation, their failure to cooperate does not rebut the presumption of helpfulness.

(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) (1) 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.

(2) A certifying agency shall process a Form I-918 Supplement B certification within 7 days of the first business day following the day the request was received if the victim asserts a qualifying family member of the victim will lose eligibility for T nonimmigrant status in 60 days or fewer because the victim's noncitizen sibling will turn 18 years of age, the victim's noncitizen child will turn 21 years of age, or the victim will turn 21 years of age.

(j) (1) A current investigation, an apprehension of the suspect who committed the qualifying crime, 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.

(2) A certifying official shall not refuse to complete the Form I-914 Supplement B declaration and provide it to the victim, the 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 or to otherwise certify that a victim has been helpful, solely because a case has already been prosecuted or otherwise closed, or because the time for commencing a criminal action has expired.

(3) A certifying entity shall not refuse to complete the Form I-914 Supplement B declaration for any of the following reasons:

(A) The victim's criminal history information.

(B) The victim's immigration history.

(C) The victim's gang membership or gang affiliation.

(D) The certifying entity's belief that the Form I-914 Supplement B petition will not be approved by United States Citizenship and Immigration Services.

(E) The victim has an open case with another certifying entity.

(F) The certifying entity's belief that the victim is eligible for relief or protection under Section 679.10 or any other provision of law.

(G) The victim's inability to produce a crime report from a law enforcement agency.

(H) The victim's cooperation or refusal to cooperate in a separate case.

(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. Section 679.13 is added to the Penal Code, to read:

679.13. (a) For purposes of this section, a "certifying entity" is any of the following:

(1) A state or local law enforcement agency, including, without limitation, the police department of the University of California, a California State University campus, or the police department of a school district, established pursuant to Section 38000 of the Education Code.

(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 Civil Rights Department, 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-854A 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) "Qualified criminal informant" is an individual who meets the following requirements:

(1) The informant must have reliable information about an important aspect of a crime or pending commission of a crime.

(2) The informant must be willing to share that information with United States law enforcement officials or become a witness in court.

(3) The informant's presence in the United States is important and leads to the successful investigation or prosecution of that crime.

(d) A certifying entity may apply for and may certify a Form I-854A certification for a qualified criminal informant. A qualified informant does not have to be present in the United States for certification pursuant to this section.

(e) The certifying official shall fully complete and sign the Form I-854A certification and, regarding the qualified criminal informant's helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the qualified criminal informant's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.

(f) A certifying official may only withdraw the certification if the qualified criminal informant refuses to provide information and assistance when reasonably requested.

(g) A certifying entity is prohibited from disclosing the immigration status of the qualified criminal informant for whom Form I-854A certification has been completed, except to comply with federal law or legal process, or if authorized by the qualified criminal informant.

SEC. 4. 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.