

**Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 20-0602.01 Jerry Barry x4341

HOUSE BILL 20-1088

HOUSE SPONSORSHIP

Gonzales-Gutierrez,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CERTIFICATION OF VICTIM HELPFULNESS.**

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

immigration authorities and requires law enforcement to provide crime victims with information about the U visa.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 4 to article
3 4.1 of title 24 as follows:

4 **PART 4**
5 **CERTIFICATION OF CERTAIN FEDERAL**
6 **IMMIGRATION FORMS**

7 **24-4.1-401. Definitions.** AS USED IN THIS PART 4, UNLESS THE
8 CONTEXT OTHERWISE REQUIRES:

9 (1) "CERTIFICATION FORM" OR "CERTIFICATION" MEANS A LAW
10 ENFORCEMENT CERTIFICATION FORM OR STATEMENT REQUIRED BY
11 FEDERAL IMMIGRATION LAW CERTIFYING THAT A PERSON IS A VICTIM OF
12 QUALIFYING CRIMINAL ACTIVITY INCLUDING, BUT NOT LIMITED TO, THE
13 INFORMATION REQUIRED BY 8 U.S.C. SEC. 1184 (p)(1), INCLUDING
14 CURRENT UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES FORM
15 I-918, SUPPLEMENT B, OR ANY SUCCESSOR FORM FOR PURPOSES OF
16 OBTAINING U IMMIGRANT STATUS OR A U VISA.

17 (2) "CERTIFYING ENTITY" OR "ENTITY" IS ANY OF THE FOLLOWING:

- 18 (a) A STATE OR LOCAL LAW ENFORCEMENT AGENCY;
- 19 (b) THE OFFICE OF A DISTRICT, COUNTY, OR CITY ATTORNEY;
- 20 (c) A COURT;
- 21 (d) THE OFFICE OF THE ATTORNEY GENERAL;
- 22 (e) ANY OTHER ENTITY THAT HAS RESPONSIBILITY FOR THE
23 DETECTION, INVESTIGATION, OR PROSECUTION OF A QUALIFYING CRIME OR
24 CRIMINAL ACTIVITY; OR
- 25 (f) ENTITIES THAT HAVE CRIMINAL DETECTION OR INVESTIGATIVE

1 JURISDICTION IN THEIR RESPECTIVE AREAS OF EXPERTISE, INCLUDING, BUT
2 NOT LIMITED TO, THE DEPARTMENT OF HUMAN SERVICES, THE EQUAL
3 EMPLOYMENT OPPORTUNITY COMMISSION, AND THE DEPARTMENT OF
4 REGULATORY AGENCIES.

5 (3) "CERTIFYING OFFICIAL" MEANS ANY OF THE FOLLOWING:

6 (a) THE HEAD OF THE CERTIFYING ENTITY;

7 (b) A PERSON IN A SUPERVISORY ROLE WHO HAS BEEN
8 SPECIFICALLY DESIGNATED BY THE HEAD OF A CERTIFYING ENTITY TO
9 ISSUE CERTIFICATIONS ON BEHALF OF THAT ENTITY;

10 (c) A JUDGE OR MAGISTRATE;

11 (d) ANY OTHER CERTIFYING OFFICIAL AS DEFINED IN 8 U.S.C. SEC.
12 214.14 (a)(3).

13 (4) "QUALIFYING CRIMINAL ACTIVITY" MEANS ANY ACTIVITY THAT
14 CONSTITUTES A CRIME AS DEFINED PURSUANT TO COLORADO LAW,
15 REGARDLESS OF THE STATUTORY LANGUAGE OR TITLE USED PURSUANT TO
16 COLORADO LAW, FOR WHICH THE NATURE AND ELEMENTS OF THE
17 OFFENSES ARE SUBSTANTIALLY SIMILAR TO THE GENERAL CATEGORIES OF
18 OFFENSES ENUMERATED IN 8 U.S.C. SEC. 1101 (a)(15)(U), AND THE
19 ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT ANY OF THOSE
20 OFFENSES, INCLUDING, BUT NOT LIMITED TO:

21 (a) RAPE;

22 (b) TORTURE;

23 (c) HUMAN TRAFFICKING;

24 (d) INCEST;

25 (e) DOMESTIC VIOLENCE;

26 (f) SEXUAL ASSAULT;

27 (g) ABUSIVE SEXUAL CONDUCT;

- 1 (h) PROSTITUTION;
- 2 (i) SEXUAL EXPLOITATION;
- 3 (j) FEMALE GENITAL MUTILATION;
- 4 (k) HOLDING A PERSON HOSTAGE;
- 5 (l) PEONAGE;
- 6 (m) PERJURY;
- 7 (n) INVOLUNTARY SERVITUDE;
- 8 (o) SLAVERY;
- 9 (p) KIDNAPPING;
- 10 (q) ABDUCTION;
- 11 (r) UNLAWFUL CRIMINAL RESTRAINT;
- 12 (s) FALSE IMPRISONMENT;
- 13 (t) BLACKMAIL;
- 14 (u) EXTORTION;
- 15 (v) MANSLAUGHTER;
- 16 (w) MURDER;
- 17 (x) FELONIOUS ASSAULT;
- 18 (y) WITNESS TAMPERING;
- 19 (z) OBSTRUCTION OF JUSTICE;
- 20 (aa) FRAUD IN FOREIGN LABOR CONTRACTING;
- 21 (bb) STALKING; OR
- 22 (cc) ANY OTHER SIMILAR CRIMINAL ACTIVITY.

23 (5) (a) "VICTIM OF QUALIFYING CRIMINAL ACTIVITY" OR "VICTIM"
24 MEANS ANY PERSON WHO HAS SUFFERED DIRECT OR PROXIMATE HARM AS
25 A RESULT OF THE COMMISSION OF ANY QUALIFYING CRIMINAL ACTIVITY
26 AND MAY INCLUDE, BUT IS NOT LIMITED TO, DIRECT VICTIMS, BYSTANDER
27 VICTIMS, OR INDIRECT VICTIMS, REGARDLESS OF THE DIRECT VICTIM'S

1 IMMIGRATION OR CITIZENSHIP STATUS. WHEN THE DIRECT VICTIM IS
2 INCOMPETENT OR INCAPACITATED, INDIRECT VICTIMS MAY INCLUDE THE
3 SPOUSE, CHILDREN UNDER TWENTY-ONE YEARS OF AGE, AND IF THE DIRECT
4 VICTIM IS UNDER TWENTY-ONE YEARS OF AGE AT THE TIME OF THE CRIME,
5 THE PARENTS AND UNMARRIED SIBLINGS UNDER EIGHTEEN YEARS OF AGE.

6 (b) FOR PURPOSES OF THIS SUBSECTION (5), "INCAPACITATED"
7 MEANS UNABLE TO INTERACT WITH CERTIFYING ENTITY PERSONNEL AS A
8 RESULT OF DEATH, A COGNITIVE IMPAIRMENT, OR OTHER PHYSICAL
9 LIMITATION OR BECAUSE OF PHYSICAL RESTRAINT OR DISABILITY OR AGE,
10 SUCH AS A MINOR.

11 (c) MORE THAN ONE VICTIM MAY BE IDENTIFIED AND PROVIDED
12 WITH CERTIFICATION DEPENDING UPON THE CIRCUMSTANCES.

13 **24-4.1-402. Immigration certification forms - completion**
14 **deadlines.** (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION,
15 A CERTIFYING ENTITY SHALL PROCESS AND EITHER SIGN OR DECLINE TO
16 SIGN A CERTIFICATION FORM WITHIN THIRTY DAYS AFTER RECEIPT OF A
17 REQUEST.

18 (2) A CERTIFYING ENTITY SHALL PROCESS AND EITHER SIGN OR
19 DECLINE TO SIGN A CERTIFICATION FORM WITHIN FOURTEEN DAYS AFTER
20 RECEIPT OF A REQUEST IF:

21 (a) THE REQUESTOR PROVIDES DOCUMENTATION THAT HE OR SHE
22 IS IN DETENTION IN THE CUSTODY OF UNITED STATES IMMIGRATION AND
23 CUSTOMS ENFORCEMENT; OR

24 (b) THE REQUESTOR PROVIDES DOCUMENTATION THAT THE
25 CHILDREN, PARENTS, OR SIBLINGS OF THE REQUESTOR WOULD BECOME
26 INELIGIBLE FOR U NONIMMIGRANT STATUS BY VIRTUE OF AGE WITHIN
27 THIRTY BUSINESS DAYS AFTER THE DATE THAT THE CERTIFYING OFFICIAL

1 RECEIVES THE CERTIFICATION FORM REQUEST.

2 **24-4.1-403. Certification forms - signature requirement -**
3 **limitation on factors for consideration.** (1) UPON REQUEST, A
4 CERTIFYING OFFICIAL FROM A CERTIFYING ENTITY SHALL EXECUTE AND
5 SIGN THE CERTIFICATION FORM WHEN IT IS DETERMINED THAT THE VICTIM:

6 (a) WAS A VICTIM OF QUALIFYING CRIMINAL ACTIVITY; AND

7 (b) HAS BEEN HELPFUL, IS BEING HELPFUL, OR IS LIKELY TO BE
8 HELPFUL TO THE DETECTION, INVESTIGATION, OR PROSECUTION OF THAT
9 QUALIFYING CRIMINAL ACTIVITY.

10 (2) FOR PURPOSES OF DETERMINING HELPFULNESS PURSUANT TO
11 THIS SECTION, THERE IS A REBUTTABLE PRESUMPTION THAT A VICTIM IS
12 HELPFUL, HAS BEEN HELPFUL, OR IS LIKELY TO BE HELPFUL TO THE
13 DETECTION, INVESTIGATION, OR PROSECUTION OF THAT QUALIFYING
14 CRIMINAL ACTIVITY IF THERE IS NO DOCUMENTATION THAT THE VICTIM
15 REFUSED OR FAILED TO PROVIDE ASSISTANCE REASONABLY REQUESTED BY
16 LAW ENFORCEMENT.

17 (3) THE CERTIFYING ENTITY SHALL NOT CONSIDER ANY OTHER
18 FACTORS, INCLUDING, BUT NOT LIMITED TO:

19 (a) THE PERIOD OF TIME BETWEEN THE QUALIFYING CRIMINAL
20 ACTIVITY AND THE REQUEST FOR CERTIFICATION;

21 (b) THE LEVEL OF HARM OR ABUSE SUFFERED BY THE VICTIM;

22 (c) THE STATUS OF THE CRIMINAL INVESTIGATION OR
23 PROSECUTION;

24 (d) WHETHER THE ALLEGED PERPETRATOR WAS IDENTIFIED OR
25 APPREHENDED, CHARGED, OR PROSECUTED;

26 (e) WHETHER THERE IS AN ACTIVE INVESTIGATION OR
27 PROSECUTION OR WHETHER THE CASE RESULTED IN A CONVICTION;

1 (f) THE VICTIM'S OWN CRIMINAL HISTORY OR WHETHER THE
2 CERTIFYING OFFICIAL OR ENTITY BELIEVES THE VICTIM MERITS U
3 NONIMMIGRANT STATUS; OR

4 (g) ANY DISCRETIONARY POLICIES IN PLACE PRIOR TO THE
5 EFFECTIVE DATE OF THIS SECTION.

6 (4) IF A CERTIFYING OFFICIAL OR ENTITY SIGNS THE CERTIFICATION
7 FORM, THE OFFICIAL OR ENTITY SHALL RETURN THE SIGNED CERTIFICATION
8 FORM TO THE REQUESTOR, ALONG WITH, FREE OF CHARGE, COPIES OF ANY
9 RELEVANT DOCUMENTS REGARDING VICTIMIZATION, HELPFULNESS, AND
10 HARM TO THE VICTIM RELEASABLE PURSUANT TO LAW, INCLUDING, BUT
11 NOT LIMITED TO, ANY UNREDACTED OFFENSE REPORT, STATEMENTS, OR
12 PHOTOGRAPHS.

13 (5) IF A CERTIFYING OFFICIAL OR ENTITY DECLINES TO SIGN THE
14 CERTIFICATION FORM, THE OFFICIAL OR ENTITY SHALL IN WRITING NOTIFY
15 THE REQUESTOR OF THE REASON FOR THE DENIAL. THE DENIAL
16 NOTIFICATION MUST CONTAIN A DETAILED EXPLANATION OF THE REASON
17 FOR THE DENIAL CONSISTING OF ONE OF THE FOLLOWING:

18 (a) THE REQUESTOR WAS NOT A VICTIM OF A QUALIFYING
19 CRIMINAL ACTIVITY;

20 (b) LACK OF HELPFULNESS, INCLUDING DOCUMENTED INSTANCES
21 OF FAILURE OR REFUSAL TO COMPLY WITH REASONABLE REQUESTS FOR
22 COOPERATION SUFFICIENT TO REBUT THE PRESUMPTION OF HELPFULNESS;
23 OR

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

1 (6) UPON RECEIVING NOTICE THAT A REQUEST FOR A
2 CERTIFICATION FORM PURSUANT TO THIS SECTION IS DENIED, A REQUESTOR
3 MAY PROVIDE SUPPLEMENTAL INFORMATION TO THE CERTIFYING ENTITY
4 AND REQUEST THAT THE CERTIFICATION FORM DENIAL BE REVIEWED BY
5 THE CERTIFYING ENTITY. A REQUESTOR MAY ALSO SEEK A CERTIFICATION
6 FORM FROM MULTIPLE CERTIFYING ENTITIES.

7 (7) A CERTIFYING ENTITY MAY ONLY WITHDRAW THE
8 CERTIFICATION IF THE VICTIM UNREASONABLY REFUSES TO PROVIDE
9 ASSISTANCE RELATED TO THE INVESTIGATION OR PROSECUTION OF THE
10 ASSOCIATED CRIMINAL ACTIVITY WHEN REASONABLY REQUESTED BY THE
11 CERTIFYING ENTITY.

12 **24-4.1-404. Prohibition on disclosure of victim's immigration**
13 **status.** A CERTIFYING ENTITY IS PROHIBITED FROM DISCLOSING THE
14 PERSONAL IDENTIFYING INFORMATION OR IMMIGRATION STATUS OF A
15 VICTIM OR PERSON REQUESTING THE CERTIFICATION, EXCEPT TO COMPLY
16 WITH FEDERAL LAW OR LEGAL PROCESS, OR IF AUTHORIZED IN WRITING BY
17 THE VICTIM.

18 **24-4.1-405. Duty to inform victims.** CERTIFYING ENTITIES SHALL
19 PROVIDE INFORMATION REGARDING THE U VISA AND THE ENTITY'S
20 PROCEDURES FOR CERTIFICATION TO VICTIMS OF QUALIFYING CRIMINAL
21 ACTIVITY AND INCLUDE REFERRALS TO LEGAL SERVICES PROVIDERS OR
22 THE COLORADO OFFICE FOR VICTIMS PROGRAMS IN THE DIVISION OF
23 CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY FOR MORE
24 INFORMATION IN ALL LANGUAGES THAT OTHER VICTIM NOTIFICATIONS
25 PROVIDE.

26 **24-4.1-406. Reports.** A CERTIFYING ENTITY THAT RECEIVES A
27 REQUEST FOR A CERTIFICATION SHALL REPORT TO THE DIVISION OF

1 CRIMINAL JUSTICE IN THE DEPARTMENT OF PUBLIC SAFETY ON AN ANNUAL
2 BASIS THE NUMBER OF REQUESTS FOR CERTIFICATION RECEIVED, THE
3 NUMBER OF CERTIFICATIONS THAT WERE SIGNED, THE NUMBER THAT WERE
4 DENIED WITH THE REASONS SUPPORTING THE DENIAL, AND ANY DECISIONS
5 THAT FELL OUTSIDE THE PRESCRIBED COMPLETION DEADLINES.

6 **SECTION 2. Safety clause.** The general assembly hereby finds,
7 determines, and declares that this act is necessary for the immediate
8 preservation of the public peace, health, or safety.