

Date of Hearing: May 19, 2020

Counsel: Nikki Moore

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 2321 (Jones-Sawyer) – As Amended May 11, 2020

As Proposed to be Amended in Committee

SUMMARY: Permits a prosecutor or a court to access sealed juvenile records for the limited purpose of certifying victim helpfulness in an application for a U-Visa or a T-Visa. **Specifically,** this bill:

- 1) Allows for access, inspection, or utilization of a record related to an offense, listed in Section 679.10 of the Penal Code, that has been sealed pursuant by a prosecutor or court for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration.
- 2) States that the information obtained shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.
- 3) Allows for access, inspection, or utilization of a record related to an offense, listed in Section 679.10 of the Penal Code, that has been sealed pursuant by a prosecutor or court for the limited purpose of processing a request of a victim or victim's family member to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration.
- 4) States that the information obtained pursuant to this subparagraph shall not be disseminated to other agencies or individuals, except as necessary to certify victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

EXISTING STATE LAW:

- 1) Requires certifying agencies, upon the request of an immigrant victim of crime or their family member, to certify victim helpfulness on the applicable form so that they may apply for a U-Visa. (Pen. Code, § 679.10, subd. (g).)
- 2) Defines "qualifying criminal activity" to include: rape, torture, human trafficking, incest, domestic violence, sexual assault, abusive sexual conduct, prostitution, sexual exploitation, female genital mutilation, being held hostage, peonage, perjury, involuntary servitude, slavery, kidnapping, abduction, unlawful criminal restraint, false imprisonment, blackmail,

extortion, manslaughter, murder, felonious assault, witness tampering, obstruction of justice, fraud in foreign labor contracting, and stalking. (Pen. Code, § 679.10, subd. (c).)

- 3) 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. (Pen. Code, § 679.10, subd. (h).)
- 4) Mandates certifying entities to complete the certification within 30 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 7 days of the request. (Pen. Code, § 679.10, subd. (j).)
- 5) Requires certifying agencies, upon the request of an immigrant human-trafficking victim or their family member, to certify victim helpfulness on the applicable form so that they may apply for a T-Visa. (Pen. Code, § 679.11, subd. (f).)
- 6) 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. (Pen. Code, § 679.11, subd. (g).)
- 7) Mandates certifying entities to complete the certification within 30 days of the request, except in cases where the applicant is in immigration removal proceedings, in which case the certification must be completed within 7 days of the request. (Pen. Code, § 679.11, subd. (i).)
- 8) Provides that five years or more after the jurisdiction of the juvenile court has terminated over a person adjudged a ward of the court or after a minor appeared before a probation officer, or, in any case, at any time after the person has reached the age of 18, the person or county probation officer, with specified exceptions, may petition the juvenile court for sealing of the records, including arrest records, relating to the person's case, in the custody of the juvenile court, the probation officer, or any other agency or public official. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).)
- 9) Allows a minor to petition the juvenile court to seal their record relating to an offense that is considered serious or violent and was committed after the minor attained 14 years of age only in the following circumstances:
 - a) The person was committed to the Department of Corrections and Rehabilitation, has attained 21 years of age, and has completed their probation after being released from the Department of Corrections and Rehabilitation; or
 - b) The person was not committed to the Department of Corrections and Rehabilitation, has attained 18 years of age and has completed any period of probation imposed by the court. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(i)(I) – (II).)
- 10) Allows a prosecutor to access the juvenile record relating to an offense that is serious or violent and was committed after the minor attained 14 years of age if the prosecutor believes that the records are necessary to fulfill a disclosure obligation to a defendant in a criminal

case. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iii).)

- 11) Provides that, if a minor satisfactorily completes an informal program of supervision, probation as specified, or a term of probation, then the court shall order the petition dismissed and shall order sealed all records pertaining to the dismissed petition in the custody of the juvenile court, and in the custody of law enforcement agencies, the probation department, or the Department of Justice. (Welf. & Inst. Code, § 786, subd. (a).)
- 12) States that upon the order of dismissal under the court-initiated sealing process, the arrest and other proceedings in the case must be deemed not to have occurred and the person who was the subject of the petition may reply accordingly to an inquiry by employers, educational institutions, or other persons or entities regarding the arrest and proceedings in the case. (Welf. & Inst. Code, § 786, subd. (b).)
- 13) Prohibits automatic sealing upon probation completion if the petition was sustained on the basis of a specified serious or violent offense committed when the individual was 14 years of age or older, unless the finding on the offense was dismissed or reduced to a lesser non-serious and non-violent offense. (Welf. & Inst. Code, § 786, subd. (d).)
- 14) Allows the court, the prosecuting attorney, the probation department, the person whose record has been sealed, and a child welfare agency to access a record that was sealed by the court-initiated process for limited purposes, as specified. (Welf. & Inst. Code, § 786, subd. (f) – (g).)
- 15) Allows a prosecutor to access, inspect, or utilize a juvenile records because the juvenile completed an informal supervision program or a term of probation if the prosecutor believes that the records are necessary to fulfill a disclosure obligation to a defendant in a criminal case. (Welf. & Inst. Code, § 786, subd. (g)(1)(K).)
- 16) Specifies that “access” shall not be deemed an unsealing of the record and shall not require notice to any other agency. (Welf. & Inst. Code, § 786, subd. (g)(3); Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iv).)

EXISTING FEDERAL LAW:

- 1) 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:
 - a) The petitioner has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity as described;
 - b) The petitioner, or if the petitioner is under 16 years of age, the petitioner's parent, possesses information concerning the criminal activity;
 - c) 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;

- d) 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,
 - e) 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).)
- 2) Allows an immigrant to receive a T-Visa if the Secretary of Homeland Security determines the following:
- a) 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;
 - b) 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;
 - c) The person has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and,
 - d) 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).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "Undocumented Californians are amongst our most vulnerable residents. This vulnerability can be exploited by individuals wishing to commit a crime, as undocumented individuals may be too fearful of the both the perpetrator and law enforcement to report any crime. Federal law allows undocumented individuals to receive U- and T-Visas to stay in the United States legally, if they cooperate with law enforcement, but undocumented individuals that are the victims of a crime committed by a juvenile are unable to receive a U- or T-Visa.

"AB 2321 allows law enforcement the tools they need to process U&T visas for undocumented individuals that have been the victim of a crime. This bill alleviates the fear of deportation for vulnerable families, and gives them greater comfort in cooperating with law enforcement to solve crimes."

- 2) **Background:** In 2000 the federal government passed the Victims of Trafficking and Violence Prevention Act (VTVPA) which established both a U-Visa and a T Visa (U&T

Visa) to provide law enforcement another tool to assist in the prosecution of a crime. Specifically, U-Visas and T-Visas are meant to provide undocumented individuals a legal way to remain in the United States, without fear of deportation, if they cooperate with law enforcement in the prosecution of a crime.

To acquire a U-Visa or T-Visa, a victim must prove to the U.S. Citizenship and Immigration Services (USCIS) that they are cooperating with law enforcement. On behalf of a victim, law enforcement submits a Form I-918B (for a U-Visa) or Form I-914B (for a T-Visa). However, in California in cases where the perpetrator is a juvenile, law enforcement is unable to certify the helpfulness of an undocumented individual because those juvenile records, including case files, are sealed.

This bill would assist juvenile crime victims in obtaining temporary immigration benefits from the USCIS by providing law enforcement agencies access to sealed juvenile case files for the limited purpose of certifying a U&T-Visa certification form.

In 2018, in Los Angeles County alone, approximately 126 U-Visa petitions were certified out of the 330 petitions received. In 2017, 137 petitions were certified out of 526 applications petition. The bill's sponsor reports that a portion of those uncertified petitions over the past two years were for individuals that were victims of juvenile crimes.

- 3) **Sealing Procedures in Juvenile Court:** The statutes for sealing juvenile records in California are fairly complicated. In general, most juvenile records of arrests and adjudications are eligible to be sealed and treated as though they never occurred. For less serious offenses, the juvenile court will often seal the record automatically. This is especially true for arrests that did not result in determination of guilt, or if the juvenile satisfactorily completed a probation term or a deferred entry of judgment program. For more serious cases, or when a juvenile does not satisfactorily complete probation or a deferred entry of judgment, they can still petition the court in order to have their records sealed.

When a juvenile court hears a petition to seal a serious juvenile offense, it looks to a number of factors in order to determine whether or not sealing is appropriate. Among them is whether the juvenile has subsequently been convicted of a felony or of any misdemeanor involving moral turpitude, and whether rehabilitation has been attained to the satisfaction of the court.

Once a record is sealed, access to the record is so tightly controlled that only under specified exceptions to the law will a party be permitted to access the records. For example, a bill last year expanded a prosecutor's ability to request to access, inspect, or use specified sealed juvenile records if the prosecutor has reason to believe that the record may be necessary to meet a legal obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case. This ensures that a prosecutor is able to fulfill their duties to a criminal defendant.

- 4) **Need for this Bill:** Prosecutors must sign under penalty of perjury that a victim was helpful in a qualifying case. Without access to the files for review, prosecutors are unable to refresh their recollection or make an initial determination regarding helpfulness. This bill should allow for limited access to a sealed file by a prosecutor or judge that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity "for the

limited purpose” of certifying victim helpfulness on the Form I-918 Supplement B certification or Form I-914 Supplement B declaration if the victim was a victim of a qualifying criminal activity.

Concerns regarding the misuse of these records is mitigated by the fact that attorneys and judges, who would be subject to professional discipline for the misuse of records, are the only parties given the right to access these records

- 5) **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. While in some jurisdictions the appropriate agencies have been supportive of immigrant victims and have readily signed Form I-918 when the immigrant victims have been helpful, other jurisdictions have shown a reluctance to sign these certification forms.

- 6) **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%202011.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) they 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 (in contrast with a 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.)

- 7) **Argument in Support:** According to the *Los Angeles District Attorney's Office*, "Foreign nationals who are victims of specified criminal activity and who assist in the detection, investigation or prosecution of that criminal activity may apply for and receive temporary immigration benefits through the issuance of a U visa or T visa. In order to receive a U visa/T visa, a victim must demonstrate to the United States Citizenship and Immigration Services (USCIS) that the applicant has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of qualifying criminal activity.

"The federal application process requires the victim to provide to the USCIS a completed petition for a U visa (Form I-918) along with a signed U visa certification form (Form I-918B) or for a T visa (Form I-914) along with a signed T visa certification form (Form I-914B). U visa certification forms are regularly provided by our office and are required to be signed under penalty of perjury by the designated Bureau Director supervising the office responsible for the prosecution of the relevant criminal case. (8 C.F.R. § 214.14, subds. (a)(2), (a)(3); § 679.10, subds. (a), (b)). Prior to the signing the U visa certification form, the case file and other records must be reviewed to verify that the victim has been helpful, is being helpful, or is likely to be helpful to the detection, investigation, or prosecution of qualifying criminal activity. Absent this verification, the Bureau Director is unable to sign the certification forms under penalty of perjury and the U visa certification request must be denied.

"Victims of crime committed by minors in cases adjudicated by one of the seven locations that comprise our Juvenile Division are eligible to apply for U visa benefits. Unfortunately, this office regularly denies certification requests from juvenile crime victims simply because we are prevented from accessing our case files and other records to confirm that that victim satisfies the certification criteria. This is because Welfare and Institutions Code (WIC) sections 781, 786, 786.5 and 793 authorize the sealing of the minor's "juvenile case file," as defined in WIC section 827, subdivision (e), which includes all police reports, records, papers, and exhibits in a juvenile case in the custody of the juvenile court and any other records relating to the case in the custody of the other agencies, entities, and officials. When the juvenile court has ordered that these records be sealed pursuant to one of these four WIC code sections, the records can only be accessed, inspected, or utilized by this office for

statutorily enumerated purposes, and a U visa /T visa certification request is not one the enumerated purposes.

“AB 2321 would amend the juvenile record sealing provisions of the Welfare and Institutions Code to include judicial and prosecutorial access to sealed juvenile records for the limited purpose of completing a Form I-918B or Form I-914B to certify a victim’s helpfulness in the detection, investigation, or prosecution of a qualifying crime.

“AB 2321 will only impact a small number of the hundreds of U and T visa certification requests that our office receive each year. However, each of the affected cases represents a helpful victim/witness of a very serious crime who, but for the sealing of the juvenile file, would likely be entitled to receive the benefits of the U and T visa certification law.

“AB 2321 was inspired by the denial of a U visa certification request made by the family of a child molestation victim. The juvenile court ordered the file sealed and we were prevented from accessing our records to verify the applicant was a helpful victim of qualifying criminal conduct. By all appearances this applicant would likely have received certification, however, we were unable to obtain the information needed to sign the Form I-918 Supplement B certification under penalty of perjury. Without the reform proposed by AB 2321 more of these unnecessary denials will occur.”

8) **Related Legislation:**

- a) AB 2425 (Stone), would provide for the sealing of juvenile police records and service provider records of youth who are referred to diversion programs directly by police and who avoid contact with the juvenile delinquency court system. AB 2425 is pending before this committee.
- b) SB 1126 (Jones), would allow the probation department, the prosecuting attorney, counsel for a minor, and the court to access sealed juvenile records for the purpose of assessing competency, and not for any other purpose. This bill is currently pending before the Senate Public Safety Committee.

9) **Prior Legislation:**

- a) AB 917 (Reyes), Chapter 576, Statutes of 2019, reduced the timelines for a certifying entity to process a victim certification for an immigrant victim of a crime for the purposes of obtaining U-Visas and T-Visas.
- b) AB 1537 (Cunningham), Chapter 50, Statutes of 2019, expanded a prosecutor’s ability to request to access, inspect, or use specified sealed juvenile records if the prosecutor has reason to believe that the record may be necessary to meet a legal obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case.
- c) AB 2952 (Stone), Chapter 1002, Statutes of 2018, provided that a prosecutor may access, inspect, or use certain juvenile records that have been sealed by the court if the prosecutor believes that it is necessary to meet a legal obligation to provide evidence to a defendant in a criminal case.

- d) AB 529 (Stone), Chapter 685, Statutes of 2017, required the sealing of records relating to dismissed or unsustained juvenile court petitions and relating to diversion and supervision programs, as specified.
- e) SB 312 (Skinner), Chapter 679, Statutes of 2017, authorized a sealing procedure for juveniles convicted of a serious or violent felony and allowed for access by the prosecutor in order to determine whether they have a disclosure obligation.
- f) AB 1945 (Stone), Chapter 858, Statutes of 2016, authorized a child welfare agency to access sealed juvenile records for limited purposes.
- g) AB 666 (Stone), Chapter 368, Statutes of 2015, among other things, specified that the prohibition against automatic sealing of a record or dismissing a petition if the petition was sustained based on the commission of a specified serious or violent offense that was committed when the individual was 14 years of age or older does not apply if the finding on that offense was dismissed or was reduced to a lesser offense.
- h) SB 1038 (Leno), Chapter 249, Statutes of 2014, provides for the automatic dismissal of juvenile petitions and sealing of records in cases where a juvenile offender successfully completes probation for any offense other than a specified violent or serious offense.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County District Attorney's Office (Sponsor)
Alameda County District Attorney's Office
California Attorneys for Criminal Justice
California District Attorneys Association

Other

Pacific Juvenile Defender Center

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