
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 2321 **Hearing Date:** July 31, 2020
Author: Jones-Sawyer
Version: May 21, 2020
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Juvenile Court Records: Access*

HISTORY

Source: Los Angeles County District Attorney's Office

Prior Legislation: AB 917 (Reyes), Ch. 576, Stats. 2019
AB 1537 (Cunningham), Ch. 50, Stats. 2019
AB 2952 (Stone), Ch. 1002, Stats. 2018
AB 2659 (Cooley), held in Assembly Appropriations in 2018
AB 529 (Stone), Ch. 685, Stats. 2017
SB 312 (Skinner), Ch. 679, Stats. 2017
AB 1945 (Stone), Ch. 858, Stats. 2016
AB 666 (Stone), Ch. 368, Stats. 2015
SB 1038 (Leno), Ch. 249, Stats. 2014

Support: Alameda County District Attorney's Office; California Attorneys for Criminal Justice; California District Attorneys Association; California Judges Association; Juvenile Court Judges of California; National Association of Social Workers, California Chapter; San Diego District Attorney's Association

Opposition: None known

Assembly Floor Vote: 76 - 0

PURPOSE

The purpose of this bill is to authorize a judge or prosecutor to access specified sealed juvenile records for the limited purpose of certifying victim helpfulness on specified forms required in order to apply for a U- or T-Visa.

Existing federal law establishes the U-Visa. Provides that a person who has been the victim of a crime is eligible to receive a U-Visa if the Secretary of Homeland Security determines the following:

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

- 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, or to other federal, state, or local authorities investigating or prosecuting criminal activity, as described;
- The criminal activity violated the laws of the U.S. or occurred in the U.S. (including in Indian country and military installations) or the territories and possessions of the U.S.; and,
- 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).)

Existing federal law establishes the T-Visa. Provides that a person is eligible to receive a T-Visa if the Secretary of Homeland Security determines the following:

- The person is or was a victim of a severe form of trafficking in persons, as defined by federal law;
- The person is physically present in the U.S., American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry due to trafficking;
- The person has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and,
- The person would suffer extreme hardship involving unusual and severe harm if removed from the U.S. (8 U.S.C. § 1101 (a)(15)(T).)

Existing law requires a certifying entity, upon the request of a victim of crime, victim's family member, or licensed attorney representing the victim, to certify victim helpfulness on the applicable form 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. (Pen. Code, § 679.10, subd. (g).)

Existing law defines "certifying entity" as a state or local law enforcement agency, a prosecutor, a judge, any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity. (Pen. Code, § 679.10, subd. (a).)

Existing law defines "qualifying criminal activity" as qualifying criminal activity pursuant to federal law, as specified, which includes, but is not limited to, the following crimes: 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. Provides that "qualifying crime" includes criminal offenses for which the nature and elements of the offense are substantially similar to the

criminal activity described above, and the attempt, conspiracy, or solicitation to commit any of those offenses. (Pen. Code, § 679.10, subs. (c) & (d).)

Existing law establishes a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection, 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. (Pen. Code, § 679.10, subd. (h).)

Existing law requires the certifying official to complete and sign the specified form 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. (Pen. Code, § 679.10, subd. (i).)

Existing law requires certifying entities to complete the certification within 30 days of the request, unless the noncitizen is in removal proceedings, in which case the certification must be completed within 7 days of the request. (Pen. Code, § 679.10, subd. (j).)

Existing law requires a certifying entity, upon the request of a human trafficking victim, the victim's family member, or licensed attorney representing the victim, to certify victim cooperation on the applicable form, when the victim was a victim of human trafficking and has been cooperative, or is likely to be cooperative to the investigation or prosecution of human trafficking so that they may apply for a T-Visa. (Pen. Code, § 679.11, subd. (f).)

Existing law defines "certifying entity" as a state or local law enforcement agency, a prosecutor, a judge, the Department of Industrial Relations, or any other state or local government agencies that have criminal, civil, or administrative investigative or prosecutorial authority related to human trafficking. (Pen. Code, § 679.11, subd. (a).)

Existing law defines "human trafficking" as "severe forms of trafficking in persons" pursuant to federal law, as specified, and includes either of the following: 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; or 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. (Pen. Code, § 679.11, subd. (c).)

Existing law provides that human trafficking includes criminal offenses for which the nature and elements of the offense are substantially similar to the criminal activity described above, and the attempt, conspiracy, or solicitation to commit any of those offenses. (Pen. Code, § 679.11, subd. (d).)

Existing law establishes a rebuttable presumption that a human trafficking 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. (Pen. Code, § 679.11, subd. (g).)

Existing law requires certifying entities to complete the certification within 30 days of the request, unless the noncitizen is in removal proceedings, in which case the certification must be completed within 7 days of the request. (Pen. Code, § 679.11, subd. (i).)

Existing law 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).)

Existing law permits a person to petition the juvenile court to seal the person's record relating to specified serious or violent felonies that were committed after attaining 14 years of age only in the following circumstances:

- The person was committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained 21 years of age, and has completed their period of supervision after released; or
- The person was not committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, has attained 18 years of age, and has completed any period of probation supervision related to that offense imposed by the court. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(i).)

Existing law specifies the circumstances under which a sealed juvenile record relating to a serious or violent felony that was committed after the person attained 14 years of age may be accessed, inspected, or utilized in a subsequent proceeding against the person. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(ii).)

Existing law authorizes a prosecutor to access, inspect, or utilize a sealed juvenile record relating to a serious or violent felony that was committed after the person attained 14 years of age in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecutor has reason to believe that access to the record is necessary to meet the disclosure obligation. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iii).)

Existing law provides that the access, inspection, or utilization of a sealed record shall not be deemed an unsealing of the record and shall not require notice to any other entity. (Welf. & Inst. Code, § 781, subd. (a)(1)(D)(iv).)

Existing law provides that if a person who has been alleged or found to be a ward of the juvenile court satisfactorily completes an informal program of supervision, non-wardship probation, 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).)

Existing law provides that upon the court's order of dismissal of the petition, the arrest and other proceedings in the case shall 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).)

Existing law prohibits automatic sealing if the petition was sustained on the basis of the commission of a specified serious or violent felony when the person was 14 years of age or older, unless the finding on that offense was dismissed or reduced to a misdemeanor or a lesser non-serious and non-violent felony. (Welf. & Inst. Code, § 786, subd. (d).)

Existing law specifies the circumstances under which a juvenile record that was sealed by the court-initiated sealing process may be accessed, inspected, or utilized. (Welf. & Inst. Code, § 786, subd. (g).)

Existing law authorizes a prosecutor to access, inspect, or utilize a sealed juvenile record in order to meet a statutory or constitutional obligation to disclose favorable or exculpatory evidence to a defendant in a criminal case in which the prosecutor has reason to believe that access to the record is necessary to meet the disclosure obligation. (Welf. & Inst. Code, § 786, subd. (g)(1)(K).)

Existing law provides that access to or inspection of a sealed juvenile record shall not be deemed an unsealing of the record. (Welf. & Inst. Code, § 786, subd. (g)(3).)

This bill authorizes a judge or prosecutor to access a sealed juvenile record for the limited purpose of processing the request of a victim or victim's family member to certify victim helpfulness on specified federal forms in order to apply for a U- or T-Visa, when that record was generated in connection with the investigation, prosecution, or adjudication of a qualifying offense.

This bill prohibits the dissemination of the information obtained to other agencies or individuals, except as necessary to certify victim helpfulness on the appropriate federal forms, and under no circumstances shall it be used to support the imposition of penalties, detention, or other sanctions upon an individual.

COMMENTS

1. Need for This Bill

According to the author:

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 with another tool to assist in the prosecution of a crime. Specifically, U & T Visas are meant to provide undocumented individuals with 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 or T Visa, a victim must prove to the U.S. Citizenship and Immigration Services (U.S.C.I.S.) 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 in which 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.

AB 2321 will assist 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 or T Visa certification form.

2. U-Visa and T-Visa Programs

U-Visa

In 2000, as part of the reauthorization of the Violence Against Women Act, Congress created the U-Visa. The U-Visa provides undocumented crime victims with a way to obtain lawful immigration status, encouraging their cooperation with law enforcement. 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 criminal activity, must possess information concerning such criminal activity, 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 U.S.

In order to apply for a U-Visa, the crime victim must obtain a certification of helpfulness—the Form I-918—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.

T-Visa

In 2000, Congress enacted the Victims of Trafficking and Violence Prevention Act. The legislation created the T-Visa which offers victims of human trafficking various protections without the immediate threat of removal from the country. Similar to the U-Visa, the T-Visa was created out of recognition that victims without legal status may otherwise be reluctant to aid the investigation or prosecution of the criminal activity of which they are a victim.

To be eligible for a T-Visa, the victim must meet four statutory requirements: the person is or was a victim of a severe form of trafficking in person, as defined by federal law; the person is in the U.S. or at a port of entry due to trafficking; the person has complied with any reasonable request from law enforcement for assistance in the investigation or prosecution of the crime; and the person would suffer extreme hardship if removed from the U.S.

Although certification of helpfulness or cooperation is not required for the T-Visa application, the U.S. Citizenship and Immigration Services gives significant weight to the declaration when considering the application.

3. Juvenile Record Sealing

Existing law provides two mechanisms for an individual to seal his or her juvenile records related to an offense for which a petition was sustained. (Welf. & Inst. Code §§ 781, 786.) If a minor has been found to have satisfactorily completed an informal program of supervision or probation, the juvenile court will dismiss the petition and order sealed all records. (Welf. & Inst. Code, § 786.) Welfare and Institutions Code section 707(b) offenses—serious and violent

felonies—are excluded from sealing unless the finding has been dismissed or reduced to a lesser included offense not on the 707(b) list.

Juvenile records that are ineligible for automatic record sealing via Welfare and Institutions Code section 786, may be sealed via Welfare and Institutions Code section 781. Under section 781, a person may petition the court to seal records related to a non-707(b) offense if the person is at least 18 years old, or it has been at least 5 years since the case was closed or there person's last contact with probation, and the court finds that the person has been rehabilitated. (Welf. & Inst. Code, § 781, subd. (a)(1)(A).) In the case of sealing records pertaining to a 707(b) offense, the petitioner must either be 21 years of age and have completed supervision by the Division of Juvenile Justice, or 18 years of age and have completed your probation supervision. (Welf. & Inst. Code, § 781, subd. (a)(1)(D).) Records related to a 707(b) offense that was committed after the petitioner attained 14 years of age and for which the person is required to register as a sex offender pursuant to Penal Code section 290.008 are prohibited from being sealed. (Welf. & Inst. Code, § 781, subd. (a)(1)(F).)

When the juvenile court hears a petition to seal the juvenile record for a serious or violent felony offense, it considers several 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 juvenile record is sealed, it may only be accessed, inspected, or utilized under specified circumstances enumerated in statute. The sponsor of this bill contends that the record sealing statutes need to be narrowly expanded to allow a judge or prosecutor to access and inspect a sealed juvenile record when a U- or T-Visa applicant was the victim of a crime perpetrated by the person with the sealed record for the limited purpose of certifying the victim's helpfulness.

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