

## CONCURRENCE IN SENATE AMENDMENTS

AB 2321 (Jones-Sawyer)

As Amended August 19, 2020

Majority vote

**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.

**The Senate Amendments:**

Double joint this bill with SB 1126 (Jones) of the current legislative session to avoid chaptering issues.

**COMMENTS:**

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 allows 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

**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."

**Arguments 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 Code of Federal Regulations Section 214.14, subds. (a)(2), (a)(3); Section 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."

**Arguments in Opposition:**

None

**FISCAL COMMENTS:**

Likely minor costs to county district attorneys and courts in increased workload to access otherwise confidential juvenile records to determine helpfulness for purposes U-Visa and T-Visa applications.

**VOTES:****ASM PUBLIC SAFETY: 8-0-0**

**YES:** Jones-Sawyer, Lackey, Bauer-Kahan, Diep, Kamlager, Carrillo, Santiago, Wicks

**ASM APPROPRIATIONS: 18-0-0**

**YES:** Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

**ASSEMBLY FLOOR: 76-0-3**

**YES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Nazarian, O'Donnell, Obernolte, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon  
**ABS, ABST OR NV:** Low, Muratsuchi, Quirk

**SENATE FLOOR: 30-0-10**

**YES:** Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener  
**ABS, ABST OR NV:** Bates, Borgeas, Chang, Dahle, Grove, Jones, Melendez, Moorlach, Morrell, Wilk

**UPDATED:**

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