

VIRGINIA ACTS OF ASSEMBLY -- 2021 SPECIAL SESSION I

CHAPTER 468

An Act to amend the Code of Virginia by adding in Title 9.1 a chapter numbered 15, consisting of sections numbered 9.1-1500, 9.1-1501, and 9.1-1502, relating to certifications for victims of qualifying criminal activity.

[S 1468]

Approved March 31, 2021

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 9.1 a chapter numbered 15, consisting of sections numbered 9.1-1500, 9.1-1501, and 9.1-1502, as follows:

CHAPTER 15.

CERTIFICATIONS FOR VICTIMS OF QUALIFYING CRIMINAL ACTIVITY.

§ 9.1-1500. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Certification form" means a certification form or declaration completed by a certifying agency that is required by federal immigration law certifying that a person is a victim of qualifying criminal activity. Such form or declaration may include any information required (i) by 8 U.S.C. § 1184(p), including the current United States Citizenship and Immigration Services Form I-918, Supplement B, or any successor form for purposes of obtaining a U visa, or (ii) by 8 U.S.C. § 1184(o), including the current United States Citizenship and Immigration Services Form I-914, Supplement B, or any successor form for purposes of obtaining a T visa.

"Certifying agency" means a state or local law-enforcement agency, an attorney for the Commonwealth, the Attorney General, or any other agency or department employing law-enforcement officers as defined in § 9.1-101 that has responsibility for the investigation or prosecution of a qualifying criminal activity.

"Certifying official" means the head of the certifying agency, a law-enforcement officer as defined in § 9.1-101, or any person employed by a certifying agency in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency. A certifying official may act on behalf of his employing certifying agency or on behalf of another certifying agency through an agreement with the other certifying agency. Each certifying agency shall designate at least one certifying official for its agency.

"Qualifying criminal activity" means any activity, regardless of the stage of detection, investigation, or prosecution, designated in 8 U.S.C. § 1101(a)(15)(U)(iii), or in any implementing federal regulations, supplementary information, guidance, and instructions.

"Victim of qualifying criminal activity" means a person described in 8 U.S.C. § 1101(a)(15)(U)(i)(III), in the definition of "victim of a severe form of trafficking" in 22 U.S.C. § 7102(11), or in any implementing federal regulations, supplementary information, guidance, and instructions.

§ 9.1-1501. Certifications for victims of qualifying criminal activity.

A. A certifying official shall (i) respond to requests for completion of certification forms received by the agency, as required by this section, and (ii) make information regarding the agency's procedures for certification requests publicly available for victims of qualifying criminal activity and their representatives.

B. Any person seeking completion of a certification form shall first submit a request for completion of the certification form to any certifying official for the certifying agency that detected, investigated, or prosecuted the criminal activity upon which the request is based.

C. A request for completion of a certification form under this section may be submitted by the victim of qualifying criminal activity or a representative of the person seeking the certification form. Such representative of the person may include an attorney, a licensed clinical social worker, a guardian ad litem, or an employee of a crime victim and witness assistance program or a domestic violence or sexual assault services provider.

D. Upon receiving a request for completion of a certification form, a certifying official shall provide a response to the request within 120 days. Within such time, the certifying official shall complete the certification except (i) if the person making the request for completion of the certification form is in federal immigration removal proceedings or detained, the certifying official shall complete and provide the certification form to the person no later than 21 business days after the request is received by the certifying agency; (ii) if the twenty-first birthdate of the applicant's children or the eighteenth birthdate of the applicant's sibling is within 120 days of the date of the request, the certifying official shall respond within 30 days; (iii) if the person's children, parents, or siblings under clause (ii) would

become ineligible for benefits under 8 U.S.C. § 1184(p) and 1184(o) in less than 21 business days of receipt of the certification request, the certifying official shall complete and provide a certification form to the person within seven days; or (iv) a certifying official may extend the time period by which it must complete and provide the certification form to the person as required under this subsection upon written agreement with the person or person's representative. If the certifying official cannot determine whether the applicant is a victim of qualifying criminal activity or determines that the applicant does not qualify, the certifying official shall provide a written explanation to the person or the person's representative setting forth reasons why the available evidence does not support a finding that the person is a victim of qualifying criminal activity.

Requests for expedited completion of a certification form under clause (i), (ii), or (iii) shall be affirmatively raised by the person or that person's representative in writing to the certifying agency and shall establish that the person is eligible for expedited review.

E. A certifying official who issued an initial certification form shall complete and reissue a certification form within 90 business days of receiving a request from a victim to reissue the certification form. If the victim seeking recertification has a deadline to respond to a request for evidence from United States Citizenship and Immigration Services, the certifying official shall complete and issue the form no later than 21 business days after the request is received by the certifying official. Requests for expedited recertification shall be affirmatively raised by the victim or victim's representative in writing and shall establish that the victim is eligible for expedited review. A certifying official may extend the deadline by which he will complete and reissue the certification form only upon written agreement with the victim or victim's representative.

F. Notwithstanding any other provision of this section, a certifying official's completion of a certification form shall not be considered sufficient evidence that an applicant for a U or T visa has met all eligibility requirements for that visa, and completion of a certification form by a certifying official shall not be construed to guarantee that the victim will receive federal immigration relief. It is the exclusive responsibility of federal immigration officials to determine whether a person is eligible for a U or T visa. Completion of a certification form by a certifying official merely verifies factual information relevant to the federal immigration benefit sought, including information relevant for federal immigration officials to determine eligibility for a U or T visa. By completing a certification form, the certifying official attests that the information is true and correct to the best of the certifying official's knowledge. No provision in this chapter limits the manner in which a certifying official or certifying agency may describe whether the person has cooperated or been helpful to the agency or provide any additional information the certifying official or certifying agency believes might be relevant to a federal immigration officer's adjudication of a U or T visa application. If, after completion of a certification form, the certifying official later determines that the person was not the victim of qualifying criminal activity or the victim unreasonably refuses to assist in the investigation or prosecution of the qualifying criminal activity of which he is a victim, the certifying official may notify United States Citizenship and Immigration Services in writing.

G. A certifying official or agency receiving requests for completion of certification forms shall not disclose the immigration status of a victim or person requesting the certification form, except to comply with federal or state law or a legal process or if authorized by the victim or person requesting the certification form.

§ 9.1-1502. Proceedings for Enforcement of Chapter.

A. A certifying agency or certifying official acting or failing to act in good faith in compliance with this chapter shall have immunity from civil or criminal liability that may otherwise occur as a result of so acting or failing to act, except for gross negligence or willful or wanton misconduct.

B. If a certifying agency fails to respond within the statutory timeframes or refuses to certify that an applicant was a victim of qualifying criminal activity, the applicant may petition a circuit court to review the determination of the certifying agency within 30 days of such determination or within 30 days of the expiration of the statutory timeframe in subsection D. The circuit court shall conduct an evidentiary hearing on such petition within 30 days of the filing of the petition. Upon conducting a hearing and the circuit court being satisfied that the applicant having proven their eligibility for completion of a certification form by a preponderance of the evidence and the circuit court having found that the certifying agency's refusal to sign was unreasonable, a circuit court judge may execute the certification form. In assessing the reasonableness of the certifying agency's decision or failure to respond, the circuit court may consider whether the applicant has complied with the terms of this section and whether circumstances exist that would justify a deferral of a decision including whether a certification would jeopardize an ongoing criminal investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, result in the destruction of evidence, or the applicant's cooperation is not complete.

Upon finding that the certifying agency denied the application without a factual or legal justification, or failed to respond to the applicant, the circuit court shall make an award of reasonable costs and attorney fees to a prevailing applicant. Such determination shall be without prejudice to any future proceeding premised upon a material change in circumstances.

C. Any petition filed pursuant to subsection B, along with the record of all hearings and all other pleadings and papers filed, and orders entered in connection with such petition shall be kept under seal by the clerk unless otherwise ordered by the court.

D. Nothing in this chapter shall be construed to alter or diminish the duties and requirements of a law-enforcement officer, as defined in § 9.1-101, the attorney for the Commonwealth, or the Attorney General from disclosing exculpatory information to a defendant in a criminal case.