

Senate Bill 962:
Adding transparency and consistency to U Visa Certifications

Background¹:

Federal U Nonimmigrant Visa Program:

The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. *The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.*

Law enforcement does not determine who is eligible for a U visa; however, law enforcement collects information so that USCIS can determine if the person: is a victim of a qualifying crime or criminal activity; has information about the crime or criminal activity; and is, was, or is likely to be helpful in the detection or investigation of the qualifying crime or criminal activity, or the prosecution, conviction, or sentencing of the perpetrator of the qualifying crime or criminal activity.

One may be eligible for a U nonimmigrant visa if:

- They are the victim of qualifying criminal activity:

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| • Abduction | • Felonious Assault | • Manslaughter | • Sexual Exploitation |
| • Abusive Sexual Contact | • Female Genital Mutilation | • Murder | • Slave Trade |
| • Being Held Hostage | • Fraud in Foreign Labor Contracting | • Obstruction of Justice | • Stalking |
| • Blackmail | • Incest | • Peonage | • Torture |
| • Domestic Violence | • Involuntary Servitude | • Perjury | • Trafficking |
| • Extortion | • Kidnapping | • Prostitution | • Witness Tampering |
| • False Imprisonment | | • Rape | • Unlawful Criminal Restraint |
| | | • Sexual Assault | |

*Includes any similar activity where the elements of the crime are substantially similar.

†Also includes attempt, conspiracy, or solicitation to commit any of the above and other related crimes.

- They have suffered substantial physical or mental abuse as a result of having been a victim of criminal activity.
- They have information about the criminal activity. If you are under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may possess the information about the crime on your behalf.
- They were helpful, are helpful, or are likely to be helpful to law enforcement in the investigation or prosecution of the crime. If the individual is under the age of 16 or unable to provide information due to a disability, a parent, guardian, or next friend may assist law enforcement on their behalf.
- The crime occurred in the United States or violated U.S. laws.
- They are admissible to the United States. If they are not admissible, they may apply for a waiver on a Form I-192, Application for Advance Permission to Enter as a Nonimmigrant.

Local Law Enforcement Role in U Nonimmigrant Visa application:

To qualify for a U nonimmigrant visa, a victim must submit a signed certification from a law enforcement official. This certification (known as USCIS Form 1-918, Supplement B, U Nonimmigrant Status Certification) supplies USCIS basic information about the criminal activity perpetrated against the victim and the victim's willingness to assist in the detection, investigation, prosecution, conviction, or sentencing of that criminal activity. In order to be eligible, the victim must submit a U nonimmigrant visa certification **completed by a certifying agency or official**, those certifying officials include a federal, state, local, tribal, or territorial law enforcement agency, prosecutor, judge, or other government official.

Current Inconsistencies in U Nonimmigrant Visa Process:

Across Oregon, victims of these serious crimes who seek information about a U nonimmigrant visa, or who request a U visa certification, encounter differing responses depending on the individual law enforcement agency they interact with. If a law enforcement agency does not have a process to handle U visa certification requests, the victim is unable to even apply for a U nonimmigrant visa while they may have been able to if the crime occurred across a city or county line. Anecdotally, lawyers, legal assistants, and crime victims' advocates report varying responses across law enforcement agencies; in addition to sometimes arbitrary denials of certifications, or refusal to review the request altogether. It is clear, that across Oregon individuals encounter inconsistent processes and consideration, depending on the jurisdiction within which the victim lives, or the crime took place.

Senate Bill 962:

The goal of Senate Bill 962 is to ensure that across Oregon, should a crime victim contact local law enforcement in order to seek a U nonimmigrant visa certification, that law enforcement agency will have a process by which to receive and respond to that request.

SB 962 states that if a law enforcement entity interacts with an individual who is the victim of a qualifying crime, and the law enforcement entity has jurisdiction over the case, it is a rebuttable presumption that a victim is helpful, has been, or is likely to be helpful in the detection, investigation, or prosecution of that crime.

In SB 962, law enforcement officials shall complete and sign the certification form within 90 days of the date of the request, or 14 days if the victim making the request is in removal proceedings, unless there is good cause for delay. Should a certifying agency deny the certification, they will supply the applicant with a notification which includes an internal case number, the date of denial, and the reason for denial. An appropriate reason for denial includes:

- The applicant was not a victim of a qualifying criminal activity;
- A lack of helpfulness in the detection, investigation, or prosecution of the crime;
- Or other circumstances for which a certifying official or agency may lawfully deny the certification.

If an applicant is denied, they may provide supplemental information to the certifying agency and also may apply for a certification from another certifying agency which has jurisdiction over the case.

The certifying agency must keep a copy of the denial notification, and per current Oregon statute, may not disclose immigration status of the victim unless required by federal law or expressly authorized by the applicant. Certifying agencies will report to the Oregon Criminal Justice Commission information, including the total number of requests received in the past year, as well as the total number of requests that have been granted, denied, or are pending. The report will also include the date of the request, and if denied, the reason for denial (listed above). Committee Counsel for the interim Judiciary Committees will receive that information and share the information from the Criminal Justice Commission in order to report to the Legislature. This report will quantify U nonimmigrant visa certifications applications, approvals, and denials in order to inform future policies to improve the process and outcomes across jurisdictions in Oregon.

1. U.S. Citizen and Immigration Services, *Victims of Criminal Activity: U Nonimmigrant Status* (2018, June 12) Retrieved from <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

https://www.dhs.gov/sites/default/files/publications/U-and-T-Visa-Law-Enforcement-Resource%20Guide_1.4.16.pdf

<https://www.dhs.gov/sites/default/files/publications/U-Visa-Immigration-Relief-for-Victims-of-Certain-Crimes.pdf>

<https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>