

Chapter 422

(House Bill 214)

AN ACT concerning

Victims and Witnesses – U Nonimmigrant Status – Certification of Victim Helpfulness

FOR the purpose of authorizing, for purposes of filing a certain petition for certain immigration status, a certain victim or victim's ~~family member~~ parent, guardian, or next friend to request a certain certifying official to certify victim helpfulness on a Form I-918, Supplement B certification under certain circumstances; providing that, for the purposes of this Act, a victim or the victim's parent, guardian, or next friend shall be considered to be helpful, to have been helpful, or likely to be helpful under certain circumstances; requiring the certifying official to sign and complete the certification in a certain manner and within a certain period of time under certain circumstances; providing that certain conditions are not required to request or obtain the certification; authorizing the certifying official to withdraw the certification only under certain circumstances; authorizing a certifying entity to disclose ~~the immigration status of a victim or person requesting the certification~~ information relating to a victim who is seeking or has obtained U Nonimmigrant Status only under certain circumstances; providing that a certifying entity or certifying official is immune from ~~certain criminal or civil~~ *civil or criminal* liability for a certain action or failure to act, except under certain circumstances; ~~clarifying that a certain provision of law does not limit a court's authority to grant injunctive relief;~~ prohibiting a certain award of attorney's fees or costs in a certain action seeking enforcement of this Act, except under certain circumstances; defining certain terms; and generally relating to certain certifications of victim helpfulness for U Nonimmigrant Status certification.

BY adding toArticle – Courts and Judicial ProceedingsSection 5-643Annotated Code of Maryland(2013 Replacement Volume and 2018 Supplement)BY adding toArticle – Criminal ProcedureSection 11-930 and 11-931 to be under the new part "Part IV. Petition for U Nonimmigrant Status"Annotated Code of Maryland(2018 Replacement Volume)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Courts and Judicial Proceedings

5-643.

~~(A) EXCEPT IN CASES OF WILLFUL OR WANTON MISCONDUCT, A CERTIFYING ENTITY OR CERTIFYING OFFICIAL WHO, IN GOOD FAITH, ACTS OR FAILS TO ACT IN GOOD FAITH IN COMPLIANCE WITH § 11-931 OF THE CRIMINAL PROCEDURE ARTICLE SHALL BE IMMUNE FROM CRIMINAL LIABILITY OR CIVIL OR CRIMINAL LIABILITY FOR MONETARY DAMAGES THAT MIGHT OTHERWISE OCCUR AS A RESULT OF THE ACT OR FAILURE TO ACT.~~

~~(B) SUBSECTION (A) OF THIS SECTION DOES NOT LIMIT A COURT'S AUTHORITY TO GRANT INJUNCTIVE RELIEF.~~

Article – Criminal Procedure

11-928. RESERVED.

11-929. RESERVED.

PART IV. PETITION FOR U NONIMMIGRANT STATUS.

11-930.

(A) IN THIS PART THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “CERTIFYING ENTITY” MEANS:

(1) A STATE OR LOCAL LAW ENFORCEMENT AGENCY;

(2) A STATE’S ATTORNEY OR DEPUTY OR ASSISTANT STATE’S ATTORNEY;

(3) ANY OTHER AUTHORITY THAT HAS RESPONSIBILITY FOR THE DETECTION, INVESTIGATION, OR PROSECUTION OF A QUALIFYING CRIME OR CRIMINAL ACTIVITY; OR

(4) AN AGENCY THAT HAS CRIMINAL DETECTION OR INVESTIGATIVE JURISDICTION IN THE AGENCY’S RESPECTIVE AREAS OF EXPERTISE, INCLUDING CHILD PROTECTIVE SERVICES, THE COMMISSION ON CIVIL RIGHTS, AND THE DEPARTMENT OF LABOR, LICENSING, AND REGULATION.

(C) “CERTIFYING OFFICIAL” MEANS:

(1) THE HEAD OF A CERTIFYING ENTITY;

(2) AN INDIVIDUAL IN A SUPERVISORY ROLE WHO HAS BEEN SPECIFICALLY DESIGNATED BY THE HEAD OF A CERTIFYING ENTITY TO ~~ISSUE FORM I-918, SUPPLEMENT B CERTIFICATIONS~~ PROVIDE U NONIMMIGRANT STATUS CERTIFICATIONS ON BEHALF OF THAT ENTITY; OR

(3) ANY OTHER CERTIFYING OFFICIAL DEFINED UNDER TITLE 8, § ~~214.14(A)(2)~~ ~~214.14(A)(3)~~ 214.14(A)(3)(I) OF THE CODE OF FEDERAL REGULATIONS.

(D) “QUALIFYING CRIME” INCLUDES A CRIMINAL OFFENSE FOR WHICH THE NATURE AND ELEMENTS OF THE OFFENSE ARE SUBSTANTIALLY SIMILAR TO THE CRIMINAL ACTIVITY DESCRIBED IN SUBSECTION (E) OF THIS SECTION AND THE ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT THE OFFENSE.

(E) “QUALIFYING CRIMINAL ACTIVITY” MEANS ~~QUALIFYING~~ CRIMINAL ACTIVITY UNDER ~~TITLE 8, § 101(A)(15)(U)(III)~~ § 1101(A)(15)(U)(III) OF THE ~~FEDERAL IMMIGRATION AND NATIONALITY ACT~~ UNITED STATES CODE.

11-931.

(A) FOR PURPOSES OF FILING A PETITION WITH THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES FOR U NONIMMIGRANT STATUS, A VICTIM OR THE VICTIM’S ~~FAMILY MEMBER~~ PARENT, GUARDIAN, OR NEXT FRIEND MAY REQUEST A CERTIFYING OFFICIAL OF A CERTIFYING ENTITY TO CERTIFY VICTIM HELPFULNESS ON A FORM I-918, SUPPLEMENT B CERTIFICATION IF THE VICTIM:

(1) WAS A VICTIM OF A QUALIFYING CRIMINAL ACTIVITY AND HAS BEEN HELPFUL TO THE CERTIFYING ENTITY IN THE DETECTION, INVESTIGATION, OR PROSECUTION OF THAT QUALIFYING CRIMINAL ACTIVITY; AND

~~(2) HAS BEEN HELPFUL, IS BEING HELPFUL, OR IS LIKELY TO BE HELPFUL TO THE CERTIFYING ENTITY IN THE DETECTION, INVESTIGATION, OR PROSECUTION OF THAT QUALIFYING CRIMINAL ACTIVITY.~~

(2) WAS UNDER THE AGE OF 16 YEARS ON THE DATE THAT AN ACT THAT CONSTITUTES AN ELEMENT OF QUALIFYING CRIMINAL ACTIVITY FIRST OCCURRED AND THE VICTIM’S PARENT, GUARDIAN, OR NEXT FRIEND HAS BEEN HELPFUL TO THE CERTIFYING ENTITY IN THE DETECTION, INVESTIGATION, OR PROSECUTION OF THAT QUALIFYING CRIMINAL ACTIVITY; OR

(3) IS INCAPACITATED OR INCOMPETENT AND THE VICTIM'S PARENT, GUARDIAN, OR NEXT FRIEND HAS BEEN HELPFUL TO THE CERTIFYING ENTITY IN THE DETECTION, INVESTIGATION, OR PROSECUTION OF THAT QUALIFYING CRIMINAL ACTIVITY.

(B) FOR PURPOSES OF DETERMINING HELPFULNESS UNDER SUBSECTION (A) OF THIS SECTION, IF THE VICTIM OR THE VICTIM'S PARENT, GUARDIAN, OR NEXT FRIEND IS ASSISTING, HAS ASSISTED, OR IS LIKELY TO ASSIST LAW ENFORCEMENT AUTHORITIES IN THE DETECTION, INVESTIGATION, OR PROSECUTION OF QUALIFYING CRIMINAL ACTIVITY, THE VICTIM OR THE VICTIM'S PARENT, GUARDIAN, OR NEXT FRIEND SHALL BE CONSIDERED TO BE HELPFUL, TO HAVE BEEN HELPFUL, OR LIKELY TO BE HELPFUL.

(C) IF THE VICTIM OR THE VICTIM'S PARENT, GUARDIAN, OR NEXT FRIEND SATISFIES THE CRITERIA SPECIFIED UNDER SUBSECTION (A) OF THIS SECTION, THE CERTIFYING OFFICIAL SHALL FULLY COMPLETE AND SIGN THE FORM I-918, SUPPLEMENT B CERTIFICATION AND, WITH RESPECT TO VICTIM HELPFULNESS, INCLUDE:

(1) SPECIFIC DETAILS ABOUT THE NATURE OF THE CRIME INVESTIGATED OR PROSECUTED;

(2) A DETAILED DESCRIPTION OF THE VICTIM'S ~~OR THE VICTIM'S PARENT'S, GUARDIAN'S, OR NEXT FRIEND'S~~ HELPFULNESS OR LIKELY HELPFULNESS TO THE DETECTION, INVESTIGATION, OR PROSECUTION OF THE CRIMINAL ACTIVITY; AND

(3) COPIES OF ANY DOCUMENTS IN THE POSSESSION OF THE CERTIFYING OFFICIAL THAT EVINCE THE HARM ENDURED BY THE VICTIM DUE TO THE CRIMINAL ACTIVITY.

(D) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE CERTIFYING ENTITY SHALL CERTIFY OR DECLINE CERTIFICATION OF THE FORM I-918, SUPPLEMENT B CERTIFICATION WITHIN 90 DAYS AFTER RECEIVING A REQUEST UNDER SUBSECTION (A) OF THIS SECTION.

(2) IF A NONCITIZEN VICTIM IS THE SUBJECT OF REMOVAL, EXCLUSION, OR DEPORTATION PROCEEDINGS OR SUBJECT TO A FINAL ORDER OF REMOVAL, EXCLUSION, OR DEPORTATION, THE CERTIFYING ENTITY SHALL CERTIFY OR DECLINE CERTIFICATION OF THE FORM I-918, SUPPLEMENT B CERTIFICATION WITHIN 14 DAYS AFTER RECEIVING A REQUEST UNDER SUBSECTION (A) OF THIS SECTION.

(E) ~~A CURRENT INVESTIGATION, THE FILING OF CHARGES, A PROSECUTION, OR A CONVICTION IS NOT REQUIRED FOR A VICTIM OR THE VICTIM'S FAMILY MEMBER PARENT, GUARDIAN, OR NEXT FRIEND TO REQUEST AND OBTAIN THE FORM I-918, SUPPLEMENT B CERTIFICATION UNDER THIS SECTION.~~

(F) ~~A CERTIFYING OFFICIAL MAY WITHDRAW THE CERTIFICATION PROVIDED UNDER THIS SECTION ONLY IF THE VICTIM REFUSES TO PROVIDE INFORMATION AND ASSISTANCE WHEN REASONABLY REQUESTED~~ ON REFUSAL TO PROVIDE INFORMATION AND ASSISTANCE WHEN REASONABLY REQUESTED OF:

(1) THE VICTIM; OR

(2) THE VICTIM'S PARENT, GUARDIAN, OR NEXT FRIEND IF THE VICTIM WAS UNDER THE AGE OF 16 YEARS ON THE DATE THAT AN ACT THAT CONSTITUTES AN ELEMENT OF QUALIFYING CRIMINAL ACTIVITY FIRST OCCURRED OR IF THE VICTIM IS INCAPACITATED OR INCOMPETENT.

(G) ~~A CERTIFYING ENTITY MAY DISCLOSE THE IMMIGRATION STATUS OF THE VICTIM OR PERSON REQUESTING THE FORM I-918, SUPPLEMENT B CERTIFICATION ONLY~~ INFORMATION RELATING TO A VICTIM WHO IS SEEKING OR HAS OBTAINED U NONIMMIGRANT STATUS ONLY:

(1) IN ORDER TO COMPLY WITH FEDERAL LAW OR LEGAL PROCESS, A COURT ORDER, OR A DISCOVERY OBLIGATION IN THE PROSECUTION OF A CRIMINAL OFFENSE; OR

~~(2) IF AUTHORIZED BY THE VICTIM OR PERSON REQUESTING THE CERTIFICATION.~~

(2) AFTER ADULT PETITIONERS FOR U NONIMMIGRANT STATUS OR ADULT U NONIMMIGRANT STATUS HOLDERS HAVE PROVIDED WRITTEN CONSENT FOR THE DISCLOSURE OF THE INFORMATION.

(H) (1) EXCEPT IN CASES OF WILLFUL OR WANTON MISCONDUCT, A CERTIFYING ENTITY OR CERTIFYING OFFICIAL WHO, ~~IN GOOD FAITH,~~ ACTS OR FAILS TO ACT *IN GOOD FAITH* IN COMPLIANCE WITH THIS SECTION HAS THE IMMUNITY FROM LIABILITY DESCRIBED ~~IN~~ UNDER § 5-643 OF THE COURTS ARTICLE.

(2) A PERSON ~~MAY BRING~~ WHO BRINGS AN ACTION TO SEEK ENFORCEMENT OF THIS SECTION ~~BUT~~ MAY NOT BE AWARDED ATTORNEY'S FEES OR COSTS UNLESS THE ACTION DEMONSTRATES WILLFUL OR WANTON MISCONDUCT BY A CERTIFYING ENTITY OR CERTIFYING OFFICIAL.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2019.

Approved by the Governor, May 13, 2019.