

Effective 5/12/2020

Part 5
Victims Guidelines for Prosecutors Act

77-38-501 Title.

This part is known as the "Victims Guidelines for Prosecutors Act."

Enacted by Chapter 112, 2020 General Session

77-38-502 Definitions.

As used in this part:

- (1) "Certifying entity" means any of the following:
 - (a) a law enforcement agency, as defined in Section 77-7a-103;
 - (b) a prosecutor, as defined in Section 77-22-4.5;
 - (c) a court, as defined in Section 78A-1-101;
 - (d) any other authority that has responsibility for the detection, investigation, or prosecution of a qualifying crime or criminal activity; and
 - (e) an agency that has criminal detection or investigative jurisdiction in the agency's respective areas of expertise, including:
 - (i) the Division of Child and Family Services; and
 - (ii) the Labor Commission.
- (2) "Certifying official" means:
 - (a) the head of the certifying entity;
 - (b) a person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency;
 - (c) a judge; or
 - (d) any other certifying official defined under 8 C.F.R. Sec. 214.14.
- (3) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.
- (4)
 - (a) "Qualifying criminal activity" means the same as that term is defined in 8 C.F.R. Sec. 214.14.
 - (b) "Qualifying criminal activity" includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in Subsection (4)(a), and the attempt, conspiracy, or solicitation to commit any of those offenses.

Enacted by Chapter 112, 2020 General Session

77-38-503 Guidelines for prosecutors.

- (1) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, if the certifying entity determines 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, investigation, or prosecution of that qualifying criminal activity.
- (2) A certifying entity shall determine helpfulness as described in Subsection (1) in a manner consistent with federal guidelines.

- (3) A certifying entity shall process a Form I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.
- (4) A current investigation, the filing of charges, a prosecution, or a conviction are not required for the victim to request the Form I-918 Supplement B certification from a certifying official.
- (5) A certifying official may withdraw a Form I-918 Supplement B certification if:
 - (a) the victim refuses to provide information and assistance when reasonably requested; or
 - (b) the certifying entity determines that the individual is not a victim of a qualifying criminal activity.
- (6) A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.
- (7)
 - (a) Each certifying entity shall maintain records of the following information related to each request for a Form I-918 Supplement B certification:
 - (i) the number of victims that requested Form I-918 Supplement B certifications from the entity;
 - (ii) the number of those Form I-918 Supplement B certifications that were signed; and
 - (iii) the number of Form I-918 Supplement B certifications that were denied.
 - (b) Each certifying entity shall report the information described in Subsection (7)(a) to the commission before June 30, 2021, and each year thereafter.
 - (c) The commission shall report the information received pursuant to Subsection (7)(b) to the Judiciary Interim Committee of the Legislature on or before November 30 of each year.
- (8)
 - (a) A certifying entity may not disclose personal identifying information, or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking who is requesting a certification unless:
 - (i) required to do so by applicable state or federal law or court order; or
 - (ii) the certifying agency has written authorization from:
 - (A) the victim; or
 - (B) if the victim is a minor or is otherwise not legally competent, from the victim's parent or guardian.
 - (b) Subsection (8)(a) does not modify legal obligations of a prosecutor or law enforcement to disclose information and evidence to a defendant.

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