

VICTIM GUIDELINES FOR PROSECUTORS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: Todd Weiler

LONG TITLE**General Description:**

This bill enacts guidelines for prosecutors and other relevant entities interactions and protocols related to a victim cooperating with an investigation or prosecution.

Highlighted Provisions:

This bill:

- ▶ enacts the "Victims Guidelines for Prosecutors Act";
- ▶ defines terms;
- ▶ provides uniform guidelines for prosecutors and other entities regarding proper protocol related to immigration status forms of a crime victim when receiving the assistance of the crime victim;
- ▶ provides a timeline for completion of certain forms; and
- ▶ requires reports to the Judiciary Interim Committee.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

77-38-501, Utah Code Annotated 1953

77-38-502, Utah Code Annotated 1953



28 77-38-503, Utah Code Annotated 1953

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **77-38-501** is enacted to read:

32 **Part 5. Victims Guidelines for Prosecutors Act**

33 **77-38-501. Title.**

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

35 Section 2. Section **77-38-502** is enacted to read:

36 **77-38-502. Definitions.**

37 As used in this part:

38 (1) "Certifying entity" means any of the following:

39 (a) a law enforcement agency, as defined in Section 77-7a-103;

40 (b) a prosecutor, as defined in Section 77-22-4.5;

41 (c) a court, as defined in Section 78A-1-101;

42 (d) any other authority that has responsibility for the detection, investigation, or
43 prosecution of a qualifying crime or criminal activity; and

44 (e) an agency that has criminal detection or investigative jurisdiction in the agency's
45 respective areas of expertise, including:

46 (i) the Division of Child and Family Services; and

47 (ii) the ~~H~~→ **[Department of Workforce Services]** **Labor Commission** ←~~H~~ .

48 (2) "Certifying official" means:

49 (a) the head of the certifying entity;

50 (b) a person in a supervisory role who has been specifically designated by the head of
51 the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency;

52 (c) a judge; or

53 (d) any other certifying official defined under 8 C.F.R. Sec. 214.14.

54 (3) (a) "Qualifying criminal activity" means the same as that term is defined in 8 C.F.R.
55 Sec. 214.14.

56 (b) "Qualifying criminal activity" includes criminal offenses for which the nature and
57 elements of the offenses are substantially similar to the criminal activity described in
58 Subsection (3)(a), and the attempt, conspiracy, or solicitation to commit any of those offenses.

Section 3. Section **77-38-503** is enacted to read:

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, when 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) For purposes of determining helpfulness described in Subsection (1), there is a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.

(3) The certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection, investigation, or prosecution of the criminal activity.

(4) 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.

(5) A current investigation, the filing of charges, a prosecution, or a conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.

(6) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

(7) 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.

(8) (a) Each certifying entity that receives a request for a Form I-918 Supplement B certification shall report to the ~~Ĥ~~→ **[Office of the Attorney General]** **Commission on Criminal and Juvenile Justice** ~~←Ĥ~~ before June 30 of each year:

(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) The ~~H~~→ ~~[Office of the Attorney General]~~ **Commission on Criminal and Juvenile Justice** ←~~H~~ shall report to the Judiciary Interim Committee of the Legislature, on or before November 30, 2020, and annually thereafter:

(i) the number of victims that requested Form I-918 Supplement B certifications from the certifying entities in this state;

(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.

(9) (a) A certifying entity shall 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 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 (9)(a) does not modify legal obligations of a prosecutor or law enforcement to disclose information and evidence to a defendant.