FISCAL IMPACT REPORT

SPONSOR	Sens. Sedillo Lopez and Jaramillo/Reps. Rubio and Gurrola	**LAST UPDATED**	
		ORIGINAL DATE	2/24/25
SHORT TITLE	U Visa Certification Act	**BILL NUMBER**	Senate Bill 177
		ANALYST	Chavez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*
(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal	Recurring	General Fund

Parentheses ( ) indicate expenditure decreases.
*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
Administrative Office of the Courts (AOC)
Administrative Office of the District Attorneys (AODA)
New Mexico Attorney General (NMAG)
Department of Public Safety (DPS)
Homeland Security and Emergency Management Department (DHSEM)

SUMMARY

Synopsis of Senate Bill 177

Senate Bill 177 (SB177) would enact a new section of Chapter 31 NMSA 1978, the criminal procedure statute, to require state law enforcement agencies to act on applications for U Visa certifications and create an enforcement mechanism.

Section 2 of SB177 defines various terms including "U Visa", a federal classification for a visa that is for victims of certain crimes who have suffered substantial mental or physical abuse and are helpful to law enforcement or government officials in investigating or prosecuting the crime (8 U.S.C. Section 1101(a)(15)(U)). The section identifies which agencies could certify eligibility for a U Visa, including law enforcement agencies, district attorneys, a variety of courts, and other agencies with jurisdiction to detect, investigate or prosecute (including the New Mexico Attorney General (NMAG), the Children, Youth and Families Department, the Workforce Solutions Department, and the Health Care Authority).

Section 3 of SB177 outlines than an individual is eligible for U Visa certification if they possess credible and reliable information about qualifying criminal activity, have assisted or is likely to assist the actions related to the qualifying criminal activity, and will continue to provide

information and assistance if needed. If the victim is subject to removal from the US, the bill allows the victim to request an expedited U Visa certification from a district attorney's office or NMAG.
This section also provides the means from which a certifying official may deny or withdraw a U Visa certification and outlines circumstances from which a certifying official cannot deny a U Visa certification.

Section 4 of SB177 defines procedures for U Visa certification. A certifying official or agency would have to process requests within 30 days or 14 days for expedited requests if the victim is subject to removal proceedings. If approved, the victim receives a completed certification form and relevant documents free of charge. If denied, the official must provide a written explanation, appeal information, and retain documentation for potential appeals or court petitions. Agencies must offer an internal appeal process with a final decision within 30 days, reviewed by a supervisory official if needed. If the denial is upheld, victims can request an NMAG review, which must issue a final decision within 14 days. If a victim's request was originally denied by NMAG, a victim may file a district court petition for further review.

Section 5 of SB177 requires a certifying agency to publish their procedures for obtaining a U Visa certification on their website. It also requires them to record information relating to U Visa certification applications and make that information available, upon request, to NMAG and the Legislature.

Section 6 of SB117 permits victims to petition district courts where a victim resides or the first judicial district for relief if their request was denied and upheld on review or if NMAG denied their request. If the court finds that the petitioner is a victim, qualifies, and is eligible for a certification, the court shall complete the certification. The court may also award reasonable costs, attorney fees, and equitable relief.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

SB177 would likely impose some operating costs because of the maintenance of data and documentation as well as costs associated with the nuances of the appellate process.

The Administrative Office of the Courts (AOC) points out, for the courts specifically, that the provision that a certifying official must process a U Visa request in 30 days is likely unattainable because it is highly unlikely that the court record alone will provide the judge sufficient information to decide on the U Visa certification request, and an evidentiary hearing will need to be set. This possible evidentiary hearing would require additional resources. AOC also points out that SB177 allows for a private right of action for individuals seeking U Visa certification. This private right of action will result in an increase in the caseload of district courts, with potential for significant increased caseloads in the first judicial district court should individuals elect to file actions there instead of in their county of residence.

The Administrative Office of the District Attorneys (AODA) explains that SB177 would require new procedures and record keeping which could mean the need for more resources. The certifying agency would also have to establish a database and personnel to manage the new

procedures, thus additional operating cost. What AODA points out would broadly affect the agencies listed as certifying agencies as all are under the same regulations and thus, the same administrative burden.

NMAG mentions that the volume of U Visa denials to be processed is unclear and, as such, the associated workload is unknown. NMAG would have to establish procedures for reviewing U Visa certification requests that were denied by other agencies. U Visa denials could be a large administrative burden on NMAG if denials are high or if there are fluctuations in denials activity.

The U Visa is meant for victims of specific crimes willing to cooperate with U.S. authorities while residing in the U.S. without documentation, a very small subset of the population. This small size means that the potential fiscal impacts discussed by agencies in this section, while real, are likely small. This analysis therefore assumes these costs to be indeterminate but minimal.

SIGNIFICANT ISSUES

AOC provides the following:

SB 177 creates a new process for U Visa certifications. There are significant issues with the new provisions in this legislation:

1. Creates a new private right of action in district courts. Section 6A in SB177 creates a private right of action for individuals seeking U Visa certification to bring an action in either the district court located in their county of residence or the First Judicial District Court. This new private right of action requires "the district court shall make findings of fact and conclusions of law…" that the "victim is eligible for U Visa certification." According to the U.S. Citizenship and Immigration Services (USCIS) Resource Guide, "Certifying agencies play a key role in the U Visa program. They are often in the best position to provide information about the reported qualifying crime(s) and the victim's helpfulness, as they are frequently the first to encounter victims. Form I-918B is a required piece of evidence victims submit to USCIS to establish eligibility for U nonimmigrant status." This legislation places the judge in an unusual position of re-examining a certifying agency's denial for U Visa certification and using substituted judgement versus first-hand knowledge of the victim's role and cooperation in separate case.

   In addition, this legislation allows judges to award "reasonable costs and attorney fees" to petitioners who challenge a denial of U Visa certifications. Since this bill only includes state agencies as "certifying agencies,", this necessarily means that the bill permits recovery of costs and attorney fees against the state, which has a fiscal impact.

2. Removes judicial discretion. Form I-918, Supplement B requires certifying officials (or judges, under the judicial review process) to make several certifications under penalty of perjury: (1) that a crime or crimes occurred; (2) that the petitioner was the victim of the crime or crimes; (3) when the crime or crimes occurred; (4) where the crime or crimes occurred; (5) whether the crime or crimes violated a federal extraterritorial jurisdiction statute; (6) the

specific criminal activity that occurred; (7) the involvement of the petitioner in the criminal activity; (8) any injuries to the petitioner as a result of the crime or crimes; (9) whether the petitioner has information concerning the crime or crimes; (10) whether the petitioner is, was, or will be helpful in the investigation or prosecution of the crime or crimes; (11) whether the petitioner has refused or failed to assist in the investigation or prosecution of the crime or crimes; (12) whether any of the petitioner's family members are culpable in the crime or crimes; and (13) that the certifying official will notify U.S. Citizenship and Immigrations Services (USCIS) if the petitioner becomes uncooperative with the investigation or prosecution subsequent to signing the certification.

SB177 mandates that a certifying official or agency may deny a U Visa certification "only if a victim refuses to provide information or assistance after reasonable requests." Under federal law, there are multiple grounds upon which a certifying official must be permitted to deny a certification beyond a petitioner's refusal to provide information or assistance. The certifications required by Form I-918B necessitate personal knowledge or a detailed investigation of facts, neither of which are accounted for in the bill's mandate to certify except under limited circumstances. Furthermore, this legislation appears to place the judiciary in the primary role of completing U Visa requests, rather than having the responsibility on the arresting law enforcement agency or prosecutor's office, who would have better first-hand knowledge of the victim's role in the "investigation or prosecution of the qualifying criminal activity of which they were a victim."

3. Conflict between records retention requirements and confidentiality provisions. Section 4 in SB 177 requires certifying officials or agencies to maintain records and compile data regarding U Visa certifications. The bill also requires certifying officials or agencies to transfer these records to NMAG for review on appeal. SB 177 § (4)(E). These records could become part of a court record through the judicial review process set out in Section 6 of this bill. However, federal statute and regulations prohibit the disclosure of information relating to the beneficiary of a pending or approved U Visa petition. 8 U.S.C. § 1367(a)(2); 8 C.F.R. § 214.14(e)…The federal statute contains limited exceptions, two of which could apply to state courts. 8 U.S.C. § 1367(b)(3) permits "disclosure of information in connection with judicial review of a determination in a manner that protects the confidentiality of such information." This could be read to permit sealing of subject materials in the judicial review process of SB177, although the bill itself does not contain a sealing provision. However, this does not appear to cover the transfer of confidential records from a certifying official or agency to NMAG. 8 U.S.C. § 1367(b)(4) allows for waiver of confidentiality if all affected individuals are adults and execute a waiver. This exception necessarily is outside the control of certifying officials and agencies.

4. Federal law controls U Visa application process. To the extent SB177 attempts to expand or alter the requirements for U Visa applications, this could cause a conflict between state and federal law. Federal law on

immigration issues would likely preempt state law. See Arizona v. United States, 567 U.S. 387, 395 (2012) ("The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens."); id. at 399 (recognizing that (1) states are precluded from regulating conduct in a field that Congress has determined must be regulated by its exclusive governance, and (2) state laws are preempted when they conflict with federal law). SB177 includes provisions where the federal law directly controls. For example, Section 2 provides definitions of certifying agency, certifying official, and qualifying criminal activity, and Section 3 provides eligibility criteria for U Visa certification. The definitions and eligibility criteria of a U Visa application would be covered by federal law. This could lead to conflicts if federal law changes.

Further, SB 177 has requirements that go beyond requirements under federal law…These provisions could create constitutional challenges and issues in executing the intent of this legislation.

AODA provides the following:

Under the definitions a "certifying agency" includes section (B)(3) a district court, children's court, family court, metropolitan court, magistrate court or municipal court. Under federal law U Visa defines "certifying agency" that "detects, investigates, and/or prosecutes allegations of qualifying crimes, including the conviction, or sentencing of the perpetrator." A U Visa will be rejected by federal government if a judge tries to claim to be a "certifying agency." [A judge is not a certifying official under federal law.]

The requirements of Section (B) (5) [would apply] a tribal or pueblo law enforcement agency. New Mexico does not have jurisdiction to impose law or requirement on tribes or pueblos. Tribe and pueblo are sovereign nations. The private enforcement section will also not apply to tribes or pueblos since they have sovereign immunity.

The appeal process is faulty. NMAG has no authority to overrule another "certifying agency". State district courts under federal law are not a "certifying official".

Section (4) (B) would require a certifying official to provide a victim who filed a report of a crime with an agency to provide the victim with an "unredacted" copy of the police or incident report pertaining to the same within seven days of the victim's request. Requiring district attorney's offices to provide an "unredacted" copy of a report could put district attorney offices at odds with the requirement under the Inspection of Public Records Act not to provide personally identifying information of individuals identified in the report as well as the requirement not to identify individuals suspected of but not charged with a crime…AODA believes a redacted copy should be sufficient for the victim's purposes.

NMAG notes:

Congress has "broad, undoubted power over the subject of immigration and the status of aliens." Arizona v. United States, 567 U.S. 387, 394 (2012). When Congress enacts a detailed framework governing a particular area of immigration law, it "occupie[s] the field" and "foreclose[s] any state regulation in the area, even if it is parallel to federal

standards." Id. at 401. The federal government has enacted detailed standards governing the eligibility and application process for U Visas. See 8 C.F.R. § 214.14. Accordingly, federal regulation may have preempted SB177, even if the bill's provisions are not inconsistent with federal law.

Certain terms defined by SB177 do not match their definitions under 8 C.F.R. § 214.14. For example, "victim" under SB177 means "a person directly and proximately harmed as a result of qualifying criminal activity and includes a spouse, a child under age twenty-one, a parent or a sibling under age eighteen of a person who is deceased due to murder or manslaughter or a person directly and proximately harmed as a result of qualifying criminal activity who is incompetent or incapacitated." Although this generally tracks the definition of victim under § 214.14(14), it does not include the requirement that the incompetent or incapacitated person be "unable to provide information concerning the criminal activity or be helpful in the investigation or prosecution of the criminal activity," id. (14)(i), and does not include the additional language under (14)(ii) governing victims of "witness tampering, obstruction of justice, or perjury, including any attempt, solicitation, or conspiracy." These inconsistencies could lead to greater preemption problems, and could create a situation where a person would be entitled to a certification under state law but would not qualify for a visa under federal law.

The enforcement mechanism under Section 6 is unclear. The enforcement action is described as a petition, but it is unclear whether it is intended to function as an appeal of agency action or a civil action. Accordingly, the procedural and substantive law that would apply is unclear. The burden and standard of proof are both undefined. It is unclear if the proceeding is intended to be adversarial, although this is suggested by the fact that a court may award attorneys fees.

TECHNICAL ISSUES

NMAG points out that there is a spelling error on page 8 line 2 of SB177, "calender" should read "calendar".

OTHER SUBSTANTIVE ISSUES

Department of Public Safety (DPS) provides the following:

Page 9, lines 16 through 21: Although the bill allows the district court to award "...reasonable costs and attorney fees and other equitable relief that the court deems just and proper.", it does not specify who would be responsible for the payment of those costs, attorney fees, and other equitable relief. Furthermore, there is no guideline as to what may be considered "reasonable", rather it leaves that decision solely to the determination of the individual judge, whose opinions may vary widely as to "reasonableness".

AOC provides the following:

Section 4(E) of SB177 allows a victim to "seek review from NMAG" if a certifying agency upholds a denial after an internal appeal process. The bill defines a "certifying agency" as including "a district court, children's court, family court, metropolitan court, magistrate court or municipal court". Article III, Section 1 of New Mexico's constitution

states, "The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, an no person . . . shall exercise any powers properly belonging to either of the others." As written, SB177 would violate Article III of New Mexico's Constitution by allowing the executive branch (NMAG) to review and overturn a decision made by a separate branch of government (judiciary).

NMAG provides an amendment to SB177:

To avoid definitional mismatches, SB177 could define terms like "victim" and "qualifying crime" to have the meaning given by 8 C.F.R. § 214.14

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