

ALABAMA STATE IMMIGRATION LEGISLATION

Tips for Law Enforcement and Advocates Working With Immigrant Crime Victims

H.B. 56, Beason-Hammon Alabama Taxpayer and Citizen Protection, Act No. 2011-535
September 23, 2013

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Introduction:

The following chart summarizes the status of each provision. For the provisions of the legislation that remain in effect, this chart provides implementation suggestions for law enforcement and safety planning strategies for victim advocates and attorneys working with immigrant victims of domestic violence, sexual assault, human trafficking and other immigrant crime victims. The goal is to identify measures that help ensure that immigrant victims of criminal activity continue to have access to assistance from the justice, health care, and social services systems that are to be open as a matter of federal law² and state domestic violence, sexual assault and anti-human trafficking laws to all victims without regard to their immigration status.

Status:

Several provisions of state legislations have been overturned and their implementation has been enjoined to an extent based on the Supreme Court Decision on *Arizona v. United States* 132 S. Ct. 2492, 2495 (2012) and other preemption grounds. Other provisions of this legislation remain in effect.

PROVISIONS ENJOINED ON PREEMPTION OR EQUAL PROTECTION GROUNDS <i>United States v. Alabama</i> , 691 F.3d 1269, 1282 (11th Cir. 2012)		
Provision	Reasoning	Current Status
Section 10 → Criminalizes an unlawfully present immigrant's willful failure to complete or carry registration documents. Ala. Code § 31-13-10(a) and (f).	As with section 3 of Arizona's state immigration law which was preempted due to intrusion into the field of exclusively federal immigration field, Congress foreclosed any state regulation in this area, even if the state regulation purports to be parallel to federal	Enjoined based on Preemption.

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² Examples include: The Violence Against Women Act, the Trafficking Victims Protection Act, The Family Violence Protection and Services Act, The Victims of Crime Act, The Elder Justice Act and The Child Abuse Prevention and Treatment Act

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	standards.	
Section 11(a) → Criminalizes the knowing application for work, solicitation of work, or performance of work by an immigrant who is not authorized to work in the United States. Ala. Code § 31-13-11(a).	This section of Alabama’s immigration law is subject to federal preemption for the same reasons as section 5(c) of Arizona state immigration law was preempted. Congress enacted the Immigration Reform and Control Act to combat the employment of undocumented immigrants and preempts state laws.	Enjoined based on Preemption.
Section 13 → Creates state crimes for (1) concealing, harboring, or shielding an unlawfully present immigrants from detection, or attempting to do so; (2) encouraging or inducing an unlawfully present immigrant to “come to or reside in” Alabama; (3) transporting, attempting to transport, or conspiring to transport an unlawfully present immigrant; and (4) harboring an unlawfully present immigrant by entering into a rental agreement with that immigrant. Ala. Code § 31-13-13(a)(1)-(3).	Federal District court enjoined operation of section 13 -- <ul style="list-style-type: none"> • On the grounds that it was conflict preempted by the largely analogous provisions of the Immigration and Nationality Act. • Finding that the federal law provides a comprehensive framework to penalize the transportation, concealment and inducement of unlawfully present immigrants and summarized the relevant provisions of the Immigration and Nationality Act thus this provision preempted. • Based upon similar sections in Georgia’s immigration law were preempted by the Federal Court based upon the Supreme Court’s preemption of Section 3 of Arizona’s state immigration law <u>Arizona v. United States</u>, 132 S. Ct. 2492, 2495 (2012) • Undermines the intent of Congress to confer discretion on the Executive Branch in matters concerning immigration. • Each of the provisions mandates enforcement of additional or auxiliary regulations that the Immigration and Nationality Act does not contemplate. 	Enjoined based on Preemption.
Section 16 → Prohibits employers from deducting as a business expense on their state tax filings any compensation paid to unauthorized immigrants. Imposes monetary penalty for violation of this provision equal to ten times the deduction, payable to the Alabama Department of Revenue. Ala. Code § 31-13-16(a).	Expressly preempted based upon the Immigration Reform and Control Act (IRCA), which regulates the employment of immigrants unauthorized to work in the United States. By expressly exempting “licensing and similar laws” from its reach, Congress in IRCA implicitly recognized that the statutory term “sanction” was broad enough to cover a range of non-punitive measures. Section 16 further denies employers an otherwise available tax deduction on account of an employee’s immigration status. This provision is indistinguishable from a monetary sanction imposed on persons who employ unauthorized immigrants, and that IRCA purposefully sought to avoid.	Enjoined based on Preemption.

<p>Section 17 → Declares that it is a “discriminatory practice” for an employer to either fire or fail to hire an individual authorized to work in the United States while simultaneously employing an unauthorized immigrant employee. Ala. Code § 31-13-17(a) & (b).</p>	<p>Section 17 is also expressly preempted because it fits well within the ordinary understanding of a sanction. Although section 17 conditions liability on a prerequisite act—firing or refusing to hire an authorized worker—that requirement does not obviate a finding that this section functions as a sanction. State sanctions on employers in addition to those imposed by the federal government under the Immigration Reform and Control Act are impermissible.</p>	<p>Enjoined based on Preemption.</p>
<p>Section 27 → Prohibits Alabama courts from enforcing or recognizing contracts between a party and an unlawfully present immigrant, provided the party knew or constructively knew that the immigrant was in the United States unlawfully. Ala. Code § 31-13-26.</p>	<p>A state’s decision to impose “distinct, unusual and extraordinary burdens and obligations upon immigrants may constitute an impermissible intrusion into the federal domain.” Court deems this section a policy of expulsion, and Congress intends to the Executive Branch to retain discretion over expulsion decisions and applications for relief. This section constitutes a thinly veiled attempt to regulate immigration under the guise of contract law.</p>	<p>Enjoined based on Preemption.</p>
<p>Section 28 → Requires Alabama’s public elementary and secondary schools to request certain documentation from enrolling children in order to classify them as either lawfully or unlawfully present within the United States. Ala. Code § 31-13-27(a).</p>	<p>Violates the Equal Protection Clause as interpreted in <u>Plyler v. Doe</u>, 457 U.S. 202 (1982).</p>	<p>Enjoined. Violated Equal Protection Rights. No need to make preemption analysis. Reversed the district court’s disposition in the private plaintiff’s case, and dismissed the U.S. appeal as moot.</p>

PROVISIONS UPHELD AND THAT MAY BE OVERTURNED BASED ON IMPLEMENTATION

Provision	Reasoning	Current Status
<p>Section 12(a) → Obligates a state law enforcement officer to investigate the immigration status of lawfully seized individuals whom the officer has reasonable suspicion to believe is unlawfully present in the United States. Ala. Code § 31-13-12(a).</p>	<p>Based on <i>Arizona's</i> section 2(b) provision upheld by the Supreme Court. Tips for Law Enforcement:</p> <ul style="list-style-type: none"> • Police should be trained that “Lawfully seized” under <i>Arizona v. U.S.</i> means they stop, detain or arrest on some <i>legitimate basis</i> unrelated to immigration status • Implementing U Visa certification and T Visa declaration practices will help mitigate impact of provision on immigrant crime victims • Become knowledgeable about DHS policies designed to promote safety and prevent immigration enforcement against immigrant crime victims, who are potential witnesses.³ 	<p>Upheld</p>
<p>Section 18 → Requires that reasonable effort must be made within forty-eight hours to determine a driver's citizenship and, if an immigrant, whether the individual is permissibly present in the country, when a driver does not display a driver's license upon the request of a proper state official. Ala. Code § 32-6-9.</p>	<p>Holds that detentions under this section would be consistent with the Supreme Court's rejection of a similar challenge in <i>Arizona v. United States</i>, 132 S. Ct. at 2507–10. The court further stated that they must give the state an opportunity to clarify the extent to which detentions are permissible under section 18. Could hold that although this provision could be construed to allow a detention, the Court at this time would not do not rule out the possibility that the state could interpret and implement this provision differently. Tips for Working With Victims: Early screening and filing for VAWA, T or U visa protections can bring earlier access to employment authorization documentation that may help a victim obtain a driver's license. Advocates working with immigrant crime victims detained under this provision should advocate for the victim's release from detention using the information on the DHS detainer form regarding crime victims⁴ and DHS crime victim memo.⁵</p>	<p>Upheld. Eleventh Circuit upheld Section 18 on the grounds that a pre-enforcement challenge is inappropriate at this time. The court left open the possibility of future challenge to this provision if states implement them in a manner that involves racial profiling.</p>
<p>Section 30 → Provided that an</p>	<p>Through the REAL ID Act of 2005 Congress</p>	<p>Upheld. Not facially</p>

³ For an overview of DHS enforcement priorities and victim protection memos go to:
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/tools/DHS%20Enforcement%20Priorities%20Memos.pdf/view> and
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts-on-immigration-relief-for-immigrant-crime-victims-and-other-immigrants/DHS%20Enforcement%20Priorities%20Information%20for%20State%20Court%20Judges%207.29.13%20FINAL.pdf/view>

⁴ DEP'T OF HOMELAND SEC. Immigration Detainer – Notice of Action, available at,
<http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/immigration-detainer-form%20Dec%202012.pdf/view>

⁵ John Morton, U.S. Immigration and Customs Enforcement, *Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiff Memo* (2011), available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-CertainVictimsWitnessesandPlaintiffs-Memo-06-17-2011.pdf/view>

<p>unlawfully present immigrant “shall not enter into or attempt to enter into a business transaction with the state or a political subdivision” thereof. Cannot issue vehicle license plates, driver’s licenses, identification cards, business licenses, commercial licenses, and professional licenses. Punishable as a class C Felony. Ala. Code § 31-13-29(b).</p>	<p>encouraged individual states to require evidence of lawful status as a prerequisite to issuing a driver’s license or identification card to an applicant, so the state can withhold license plates. The U.S. emphasizes the complete absence of federal criminal penalties attached to licensing applications. Tips for Working With Victims: Early screening and filing for VAWA, T or U visa protections promotes earlier access to employment authorizing documentation the victim can use to obtain a driver’s license.</p>	<p>preempted with the federal immigration scheme, and at this stage the U.S. has not shown that the criminal provisions are preempted.</p>
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STATE LAW PROVISIONS IMPLEMENTED

Bill Text: <http://www.ago.state.al.us/Page-Immigration-Act-No-2011-535-Text>

Provision	Advise/Tips:
<p>Section 21 → Provides for a stay of the provisions of this act when an immigrant unlawfully present is a victim, child of a victim or critical witness of a crime under certain conditions.</p>	<p>For Law Enforcement:</p> <ul style="list-style-type: none"> • Implement U visa certification and T visa declaration policies and procedures • Handout to potential victims and witnesses who may be immigrants DHS brochure of victims based immigration relief⁶ <p>For Advocates:</p> <ul style="list-style-type: none"> • Document abuse • Screen for immigration relief early • File victim's immigration case as soon as possible • Develop a card that the victim can carry with her informing law enforcement about her victimization and requesting exemption under this provision from Alabama state immigration laws that remain in effect • Advocate for this exception using documentation from law enforcement of victim's helpfulness (e.g. police reports, U visa certifications, T visa declarations), protection orders, medical records, photos and other evidence
<p>Section 14 → Creates the crime of dealing in false identification documents and the crime of vital records identity fraud and provides penalties.</p>	<p>For Advocates:</p> <ul style="list-style-type: none"> • Inform immigrant crime victims not to buy or use false identification documents which can preclude or complicate access to victim related immigration protections. • Applying early for VAWA related immigration relief will bring earlier access to work authorization and documentation of deferred action or legal immigration status. Immigrant crime victims gain access to legal work authorization and legal identification documents through VAWA, T or U visa immigration relief. • Advocate for Section 21 exception for your immigrant victim client
<p>Section 15 → Implements penalties on a business entity, employer, or public employer from knowingly employing an unauthorized immigrant.</p>	<p>For Law Enforcement:</p> <ul style="list-style-type: none"> • U visa certification policies and practices promote earlier access to legal work authorization for immigrant crime victims who are helpful in the detection, investigation, prosecution, conviction or sentencing of criminal activity <p>For Advocates:</p> <ul style="list-style-type: none"> • Immigrant crime victims gain access to legal work authorization and legal identification documents through VAWA, T or U visa immigration relief. Applying early will bring earlier access to lawful

⁶ Immigration Options for Victims of Crime, available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/immigration-status-options-comparison-and-screening-tools/immigration-options-for-victims-of-crime>

	<p>work authorization which can take up to a year or 18 months following application.</p> <ul style="list-style-type: none"> Some younger victims who arrived in the U.S. as children should also be screened for eligibility for Deferred Action for Childhood Arrivals (DACA) which can provide access to legal work authorization while the victims VAWA, T or U case is pending.⁷ Advocate for Section 21 exception for your immigrant victim client
<p>Section 19(a) → Requires the verification of legal status of every immigrant charged with a crime for which bail is required. Section 19(b) → Requires law enforcement to detain any immigrant whose lawful immigration status cannot. Such a person shall be considered a flight risk and shall be detained until prosecution or until handed over to federal immigration authorities.</p>	<p>For law Enforcement:</p> <ul style="list-style-type: none"> Police should be trained that “Lawfully seized” under Arizona v. U.S. means they stop, detain or arrest on some <i>legitimate basis</i> unrelated to immigration status Implementing U Visa certification and T Visa declaration practices will help mitigate impact of provision on immigrant crime victims Become knowledgeable about DHS policies designed to promote safety and prevent immigration enforcement against immigrant crime victims, who are potential witnesses.⁸ Cooperate with DHS in notifying them when an immigrant detained by local law enforcement is a crime victim or witness⁹ Train state and local law enforcement on victim protections under immigration law using DHS roll call videos and other DHS and DOJ funded training materials¹⁰ <p>For Advocates:</p> <ul style="list-style-type: none"> Advise clients not to get involved in illegal activities, stay away from situations where someone is committing an illegal act, and offer help to police as a witness File early applications for VAWA, T or U visa immigration protections so the victim will receive earlier access to legal work authorization and a driver’s license If your client has filed for VAWA, T or U visa relief tell the victim to memorize her case number “A: number and if safe to do so carry a copy of a form she received from DHS in connection with her case. The

⁷ Deferred Action for Childhood Arrivals (DREAMERS), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/deferred-action-for-childhood-arrivals-dreamers-can-also-help-immigrant-survivors>

⁸ For an overview of DHS enforcement priorities and victim protection memos go to: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/tools/DHS%20Enforcement%20Priorities%20Memos.pdf/view> and <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts-on-immigration-relief-for-immigrant-crime-victims-and-other-immigrants/DHS%20Enforcement%20Priorities%20Information%20for%20State%20Court%20Judges%207.29.13%20FINAL.pdf/view>

⁹ For information on cooperation with DHS in identifying immigrant crime victims see <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/immigration-detainer-form%20Dec%202012.pdf/view>

¹⁰ DHS roll call videos are available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/building-capacity/copy_of_dhs-roll-call-videos; DHS and DOJ produced and funded U and T visa training materials are available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/building-capacity>

	<p>victim should call you if she is stopped so that you can provide law enforcement with a evidence of her immigration case along with a copy of the DHS broadcast¹¹</p> <ul style="list-style-type: none"> Advocate for Section 21 exception for your immigrant victim client
<p>Section 20 → Requires notification to ICE and the Alabama Department of Homeland Security when an unlawfully present immigrant is convicted of state law.</p>	<p>For Law Enforcement</p> <ul style="list-style-type: none"> Implement U visa certification and T visa declaration policies and practices <p>For Advocates:</p> <ul style="list-style-type: none"> Advise clients not to get involved in illegal activities, to stay away from situations in which someone is committing illegal acts, and to offer help to police as a witness Develop a safety plan with your client that involves fleeing abuse, rather than fighting back in self –defense Tell victims to memorize their case “A” number as and if safe to do so carry a copy of their VAWA, T or U visa receipt or approval notice. Advocate with local law enforcement that your client qualifies for the victims exception under Section 21 of the Alabama law and provide law enforcement copies of DHS policies against reporting and detention of immigrant crime victims and witnesses.¹² Connect the immigrant crime victim’s defense attorney with an expert on immigrant victim’s legal rights and laws governing immigrants and crimes¹³ Advocate for Section 21 exception for your immigrant victim client
<p>Sections 22, 25 → Authorizes the Alabama Department of Homeland Security to hire state police officers and give the department enforcement power under certain conditions; to provide penalties for solicitation, attempt, or conspiracy to violate this act. Ala. Code § 31-9A-9. § 13A-4-1. § 13A-4-5.</p>	<p>For Law Enforcement</p> <ul style="list-style-type: none"> Require that officers hired under this provision be trained on DHS victims protections, DHS enforcement priorities and DHS policies of not initiating enforcement actions against immigrant crime victims and witnesses Training must include information and VAWA, T and U visa immigration relief and the DHS produced roll call videos and DOJ funded U visa toolkit All training must also include training on immigrant crime victim screening, identification of victims that qualify for exceptions under, Section 21 of the Alabama statute development of collaborations with programs that assist immigrant crime victims in the state.
<p>Section 24 → Requires the Alabama Department of Homeland Security to file a quarterly report with the</p>	<p>For Advocates:</p> <ul style="list-style-type: none"> Conduct social science research and collect stories illustrating the extent to which Alabama law enforcement agencies are or are not

¹¹ DHS Broadcast Message on New 384 Class of Admission Code (2010), available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message-to-DHS-384-COA-Final-12.21.10.pdf/view>

¹² *Id.*; John Morton, U.S. Immigration and Customs Enforcement, *Prosecutorial Discretion: Certain Victims, Witnesses and Plaintiff Memo* (2011), available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-CertainVictimsWitnessesandPlaintiffs-Memo-06-17-2011.pdf/view>

¹³ Directory of Programs with Experience Serving Immigrant Victims, available at, <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

<p>Legislature under certain conditions.</p>	<p>implementing the provisions of Section 21 of the Alabama immigration law</p>
<p>Section 26 → Requires the Alabama Department of Homeland Security to establish and maintain and E-Verify employer agent service under the following conditions:</p> <ul style="list-style-type: none"> - With 25 or fewer employees. - In place after 90 days of the implementation of law. 	<p>For Law Enforcement:</p> <ul style="list-style-type: none"> • Adopt U visa certification and T visa declaration policies and practices that result in issuing certifications as early as possible following the filing of a police report. This will facilitate earlier access to work authorization for the victim improving her ability safely cooperating in the investigation, prosecution, conviction and sentencing of the perpetrator. <p>For Advocates:</p> <ul style="list-style-type: none"> • Screen early to determine whether a crime victim qualifies for immigration relief • Immigrant crime victims gain access to legal work authorization and legal identification documents through VAWA, T or U visa immigration relief. Applying early will bring earlier access to lawful work authorization which can take up to a year or 18 months following application.
<p>Section 29(l)-(m)(7) → Establishes a state election board and provides duties of the board.</p>	<p>For Advocates:</p> <ul style="list-style-type: none"> • Keep track of when immigrant crime victims applying for VAWA, T or U visa immigration relief qualify to apply for lawful permanent residency. Help them apply as soon as possible • Keep track of and help immigrant crime victim clients who have received lawful permanent residency apply to become naturalized citizens • Connect clients with pro bono or low bono legal assistance to apply for lawful permanent residency and naturalization¹⁴
<p>Section 29(n)(1) → For purposes of voter eligibility, provides that a person may obtain a certified copy of a birth certificate from the Department of Public Health free of charge under the following conditions.</p>	<p>For Advocates</p> <ul style="list-style-type: none"> • Assist immigrant crime victims in obtaining certified copies of birth certificates for each of their U.S. born children

¹⁴ Id.