

GEORGIA STATE IMMIGRATION LEGISLATION

Tips for Law Enforcement and Advocates Working With Immigrant Crime Victims

HB 87, the Illegal Immigration Reform and Enforcement Act of 2011, 13-10-90.

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By: Leslye E. Orloff and Andrea Carcamo-Cavazos
The National Immigrant Women's Advocacy Project
American University, Washington College of Law¹

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 this legislation have been overturned and their implementation has been enjoined 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 BASED ON PREEMPTION		
<i>Georgia Latino Alliance for Human Rights v. Governor of Georgia</i> , 691 F.3d 1250 (11th Cir. 2012)		
Provision	Reasoning	Result
Section 7→ codified three separate crimes for interactions with an of undocumented immigrant in the State of Georgia (1) the crime of transporting or moving an undocumented immigrant which applies to a person who, while committing another criminal offense, knowingly and intentionally transports or	The Immigration and Nationality Act provides a comprehensive framework to penalize the transportation, concealment, and inducement of unlawfully present immigrants. The federal government has expressed more than a “peripheral concern” with the	Enjoined

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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

<p>moves an undocumented immigrant in a vehicle for the purpose of furthering the illegal presence of the immigrant in the U.S. (2) the crime of concealing or harboring an undocumented immigrant which applies to a person who is acting in violation of another criminal offense and who knowingly conceals, harbors, or shields an undocumented immigrant from detection in any place in Georgia, including any building or means of transportation, when such person knows that the person being concealed is an illegal alien. (3) the crime of inducing an undocumented immigrant to enter into Georgia – applies to a person who acts in violation of another criminal offense and who knowingly induces an undocumented immigrant to enter into Georgia, when the person knows that the person being induced is an undocumented immigrant. Victims of Crime are exempted. O.C.G.A §§ 16-11-200(a)(1), 16-11-201(a)(2), 16-11-202.</p>	<p>entry, movement, and residence of aliens within the United States. Section 7(1) of the Georgia law is analogous to Section 3 of the <i>Arizona</i> law which the U.S. Supreme Court struck down in <i>Arizona v U.S.</i> because these laws create a “state law penalty for conduct proscribed by federal law.” Federal immigration law occupies the field and state laws are subject to federal preemption. These Georgia state immigration law provisions threaten the uniform application of the federal Immigration and Nationality Act. The 11th Circuit also struck down these state criminal laws based upon <i>Pennsylvania v. Nelson</i>, 350 U.S. 497 (1956), in which Pennsylvania’s seditious act, which proscribed the same conduct as the federal seditious statute, was preempted by federal law.</p>	
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PROVISIONS THAT MAY BE OVERTURNED DEPENDING ON HOW THEY ARE IMPLEMENTED

Provision	Reasoning	Current Status
<p>Section 8→ Authorizes Georgia Law enforcement officers to investigate the immigration status of an individual if the officer has probable cause to believe the individual has committed another crime and the individual cannot provide one of the forms of identification specifically listed in the Georgia state statute as an acceptable form of identification. The statute prohibits consideration of race or color. Victims of crimes are exempted. O.C.G.A. § 17-5-100.</p>	<p><i>Similar to Arizona 2(b), which the Supreme Court upheld but is open to future review depending on how the law is implemented.</i> Georgia’s §8 may be less problematic than the Arizona law because it <i>authorizes</i> and does not mandate that state officials to conduct an inquiry into immigration status. Tips for Working With Victims: Early screening and filing for VAWA, T or U visa protections promotes earlier access to employment authorizing documentation upon which a victim can 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</p>	<p>Implementation allowed. It is too early to determine whether as implemented it is discriminatory.</p>

	DHS detainer form regarding crime victims ³ and DHS crime victim memo ⁴	
<p>STATE LAW PROVISIONS IMPLEMENTED http://www.legis.ga.gov/Legislation/20112012/116631.pdf</p>		
Provision	Advice/Tips:	
<p>Section 3→ Requires every public employer to register and participate in the federal work authorization program to verify employment eligibility of all newly hired employees. Contractors, subcontractors, and sub-subcontractors are also required to register and participate in the federal work authorization program. O.C.G.A. § 13-10-91.</p>	<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 4→ Makes it an aggravated offense of identity fraud under state law when an individual uses any counterfeit or fictitious identifying information concerning a real, fictitious, or deceased person with the intent of obtaining employment. O.C.G.A. § 16-9-121.1.</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 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. • 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.⁵ <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, 	

³ <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/immigration-detainer-form%20Dec%202012.pdf/view>

⁴ 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>

⁵ 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>

<p>Section 9→ (a) and (b) Encourage law enforcement officials to cooperate with federal immigration authorities to aid in the enforcement of immigration laws. Including sending, receiving, and maintaining information of any individual as allowable under federal law; (c) if a state or local law enforcement officer has verification that a person in an undocumented immigrant, the officer is authorized to securely transport the immigrant to a federal facility in the state and to detain the immigrant once authorized by federal law; (d) can arrest an undocumented immigrant if authorized by federal law; (e) if law enforcement officer is acting in good faith, then he/she is free from liability. O.C.G.A. Section 35-1-16.</p>	<p>conviction and sentencing of the perpetrator.</p> <p>For Law Enforcement:</p> <ul style="list-style-type: none"> • Learn to screen immigrants for VAWA, T or U visa crime victim immigration relief eligibility using tools developed by DHS or funded by BJA⁶ and provide victims information about immigration options that may be eligible for along with referrals to local agencies who can assist them.⁷ • Become knowledgeable about and cooperate with DHS in implementing 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 witness so that an immigration detainer will not be issued for that victim⁹ <p>For Advocates:</p> <ul style="list-style-type: none"> • Screen crime victims early to determine eligibility for immigration relief.¹⁰ • Assist immigrant crime victims in applying for VAWA, T or U visa immigration relief • 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 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 that you can use to advocate that
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⁶ Useful tools for screening crime victims for immigration relief can be found at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/february-15-2013-collaborating-with-le/Blue-Card-Screening-for-Eligibility.pdf/view> and <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/immigration-status-options-comparison-and-screening-tools/immigration-options-for-victims-of-crime>

⁷ <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

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 Screening tool for law enforcement and victims services <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/february-15-2013-collaborating-with-le/Blue-Card-Screening-for-Eligibility.pdf/view> ; Protection from deportation for immigrant survivors who have filed immigration cases <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>

¹¹ Id.

	<p>your client should not be subject to this provision under Georgia law because DHS has no interest in initiating immigration enforcement actions against crime victims and witnesses.</p>
<p>Section 11 → Establishes an incentive program for the provision of funds to local law enforcement agencies to use the Secure Communities initiative and optimizing the enforcement of immigration law through technical assistance, and state-wide campaigns. O.C.G.A. § 35-6A-10.</p>	<p>For Law Enforcement</p> <ul style="list-style-type: none"> • Implement U visa certification and T visa declaration policies and procedures and train state and local law enforcement on victim protections under immigration law using DHS roll call videos and other DHS and DOJ funded training materials¹² <p>For Advocates:</p> <ul style="list-style-type: none"> • Train local law enforcement on the importance of predominant perpetrator determinations and avoiding dual arrests. Failure to obtain qualified interpreters can lead to dual arrests or arrests of battered immigrants rather than perpetrators. • Develop relationships with local law enforcement officials to promote language access for your clients if law enforcement is called to the scene of a domestic violence incident¹³ • Develop a safety plan with your client that involves fleeing abuse, rather than fighting back in self-defense • Collaborate with local law enforcement in the development of U visa certification and T visa declaration practices and policies¹⁴ • 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 victims¹⁵ and DHS crime victim memo¹⁶
<p>Section 12 → Requires that every private employer with more than ten employees to register with and utilize the federal work authorization program. Makes it a</p>	<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

¹² 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>

¹³ Natalie Lee et al., *National Survey of Service Providers on Police Response to Immigrant Crime Victims, U Visa Certification and Language Access* (2013), available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/research-reports-and-data/Police%20Response%20U%20Visas%20Language%20Access%20Report%20NIWAP%20%204%2016%2013%20FINAL-bja.pdf/view>

¹⁴ Giselle Hass et al., *U-Visa Legal Advocacy: Overview of Effective Policies and Practice* (2012), available at, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/research-reports-and-data/Practice-and-Policy-Brief.doc/view>

¹⁵ 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>

¹⁶ 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>misdemeanor for any person presenting false or misleading evidence of licensure. O.C.G.A § 36-60-6.</p>	<p>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> <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>Section 13 → When an individual is confined by law enforcement, officers shall make reasonable efforts to verify the lawful status of a foreign national at the moment he/she entered the country and present lawful status. O.C.G.A. § 42-4-14.</p>	<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 • 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 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 broadcast¹⁷. • Advocate with local law enforcement that your client not be charged or detained in jail provide law enforcement copies of DHS policies against reporting and detention of immigrant crime victims and witnesses.¹⁸ • Connect the immigrant crime victim’s defense attorney with an expert on immigrant victim’s legal rights and laws governing immigrants and crimes¹⁹ <p>For Law Enforcement</p> <ul style="list-style-type: none"> • Implement U visa certification and T visa declaration policies and practices
<p>Section 17→ (e) Requires that an agency or political subdivision providing a public benefit to require every applicant to: (1) provide at least one secure and verifiable document, and (2) execute a signed</p>	<p>For Advocates:</p> <ul style="list-style-type: none"> • Screen early for VAWA, T or U visa immigration relief eligibility and assist clients in filing applications • Early filing leads to earlier access to work authorization

¹⁷ 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>

¹⁸ *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>

¹⁹ <http://niwaplibrary.wcl.american.edu/reference/service-providers-directory>

affidavit verifying the applicant's lawful presence in the United States.
O.C.G.A. § 50-36-1.

- Children included in VAWA self-petitions become eligible for federal food stamps once they receive prima facie determinations
- Children and pregnant women who have prima facie determinations as VAWA self-petitioners, who receive continued presence as trafficking victims, or who received approvals in U or T visa cases are eligible for health care benefits as lawfully present immigrants.²⁰
- Under federal law inquires about immigration status can only be made about the person who will be receiving public benefits.²¹ States are not authorized to require information regarding the immigration status or social security number of victim applying for benefits on behalf of their citizen or qualified immigrant child.²²
- Advocates and attorneys should accompany all immigrant victim clients applying for benefits on their own or their child's behalf²³

²⁰ DEP'T OF HOMELAND SEC. U Visa Law Enforcement Certification Enforcement Guide (2012), available at, http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view and http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view

²¹ U. S. Department of Health and Human Service, Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits (2003) available at <http://niwaplibrary.wcl.american.edu/public-benefits/policy-guidance-regarding-inquiries-into-citizenship-immigration-status-and-social-security-numbers-in-state-applications-for-medicaid-schip-temporary-assistance-for-needy-families-tanf-food-stamp-benefits/Policy%20Guidance%20Regarding%20Inquiries.pdf/view>

²² U. S. Department of Health and Human Service, Questions and Answers: Policy Guidance Regarding Inquiries into Citizenship, Immigration Status and Social Security Numbers in State Applications for Medicaid, State Children's Health Insurance Program (SCHIP), Temporary Assistance for Needy Families (TANF), and Food Stamp Benefits (2003) available at <http://niwaplibrary.wcl.american.edu/public-benefits/policy-guidance-regarding-inquiries-into-citizenship-immigration-status-and-social-security-numbers-in-state-applications-for-medicaid-schip-temporary-assistance-for-needy-families-tanf-food-stamp-benefits/Citizenship%20Policy%20Guidance%20Q%20and%20As.pdf/view>

²³ For information on steps to take when accompanying an immigrant crime victims applying for public benefits for the victims children and the victim see http://niwaplibrary.wcl.american.edu/public-benefits/benefits-for-qualified-immigrants/4.3_PB_BB-Accompanying_Immigrants_Applying_for_Benefits-MANUAL-BB.pdf/view