

UTAH STATE IMMIGRATION LEGISLATION

Tips for Law Enforcement and Advocates Working With Immigrant Crime Victims

HB 497, "Illegal Immigration Enforcement Act"

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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 this legislation have 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		
<u>Utah Coal. of La Raza v. Herbert</u> , 2:11-CV-401 CW, 2011 WL 7143098 (D. Utah May 11, 2011)		
Summary of Provision	Court Reasoning	Current Status
Section 3(1) → Requires that law enforcement officers verify the immigration status of individuals where (1) arrested for felonies or class A misdemeanors, (2) the individual is unable to provide a qualifying document, and (3) the officer is unable to verify the identity of the person. Any stops based on suspected B or C misdemeanors the law authorizes officers to verify status. 76-9-1003(1) Utah Code Ann.	Court found the provisions of this section were unconstitutional and caused harm to the public interest	Enjoined
Section 3(3) → Immigration status verification is required when an individual is arrested or booked into jail, juvenile detention facility, or correctional facility for a class A,	Court found the provisions of this section were unconstitutional and caused harm to the public interest	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

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B, or C misdemeanor or felony. 76-9-1003(3) Utah code Ann.		
Section 3(2)→ Requires that law enforcement officer must detain all occupants of the vehicle while their immigrations status is verified any time the officers develops “reasonable suspicion” that any occupant in that vehicle is violating the Utah state immigration law provision making it a crime to transport or smuggle undocumented immigrants. 76-9-1003(2) Utah Code Ann.	Court found the provisions of this section were unconstitutional and caused harm to the public interest	Enjoined
Section 4→ Allows an officer to deny the presumption of legal residency to persons who provide one of the only four types of identification documents the Utah immigration law recognizes as valid if the law enforcement officer has a reasonable suspicion that the document is false or identifies a person other than the person providing the document. 76-9-1004 Utah Code Ann.	Court found the provisions of this section were unconstitutional and caused harm to the public interest	Enjoined
Section 6→ Prohibits any state or local governmental agency, or any representative from implementing any policy limiting or restricting the authority of any law enforcement agency to investigate or enforce violations of the federal misdemeanor offenses of willful failure to register as an immigrant or willful failure to personally possess an immigrant registration document, under 8 U.S.C. 1304(e) and 1304(a). 76-9-1006(2) Utah code Ann.	Court found the provisions of this section were unconstitutional and caused harm to the public interest	Enjoined
Section 10 → Makes it a state criminal offense to encourage or induce a non-citizen to enter or reside in the state knowing that the person is an undocumented immigrant. 76-10-2901(2)(c) Utah code Ann	Court found the provisions of this section were unconstitutional and caused harm to the public interest	Enjoined
Section 11 → Allows state or local law enforcement officials to make warrantless arrests when the officer has “reasonable cause” to believe the individual is an immigrant who is (1) subject to removal order by an immigration judge; (2) subject to an immigration detainer request; or (3) charged or convicted in another state with one or more “aggravated felonies” as defined by federal immigration law. 77-7-2 Utah Code Ann.	Court found the provisions of this section were unconstitutional and caused harm to the public interest	Enjoined

PROVISIONS IMPLEMENTED

This information is a summary of the bill developed from the statute and the Federal District Court Complaint Challenging the Utah State Immigration Statute available at

https://www.aclu.org/files/assets/UCLR_v_Herbert_complaint.pdf, and <http://le.utah.gov/~2011/bills/hbillenr/hb0497.htm>

Provision	Advice/Tips:
Section 5→ A state or local law enforcement agency may securely transport an immigrant who has been verified to be unlawfully in the country to a federal detention facility. 76-9-1005	For Law Enforcement: <ul style="list-style-type: none"> • Police should be trained what “verified to be unlawfully in the country” means • Law enforcement should implement U Visa certification and T Visa

<p>Utah code Ann.</p>	<p>declaration practices</p> <ul style="list-style-type: none"> • Law enforcement should receive training on DHS policies designed to promote safety and prevent immigration enforcement against immigrant crime victims, who are potential witnesses.³ • Cooperate with DHS in notifying them when an immigrant detained by local law enforcement is a crime victim or witness⁴ • Train state and local law enforcement on victim protections under immigration law using DHS roll call videos and other DHS and DOJ funded training materials⁵ <p>For Advocates:</p> <ul style="list-style-type: none"> • Screen crime victims early to determine eligibility for immigration relief.⁶ • Assist immigrant crime victims in applying for VAWA, T or U visa immigration relief • File victim's immigration case as early, preferably prior, to seeking
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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 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>

⁵ 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>

⁶ 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>

	<p>assistance from family courts⁷</p> <ul style="list-style-type: none"> • 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 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 broadcast⁸ • 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.⁹.
<p>Section 7 → Except as limited by federal law, it allows state local government agencies to send, receive, or maintain information related to the</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

⁷ Safety planning flow chart <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/tools/dhs-policies-safety-planning-flow-chart.pdf/view>

⁸ <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>

⁹ 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>lawful or unlawful immigration status of any person by communicating with any state or local government entities. 76-9-1007 Utah code Ann.</p>	<ul style="list-style-type: none"> • Early filing leads to earlier access to work authorization • Early filing for also provides VAWA self-petitioners and their children with access to TANF and TANF funded child care once the VAWA self-petitioner receives a prima facie determination usually within 3 months of filing)¹⁰ • 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.¹¹ • Advocates should argue that VAWA self-petitioners, T and U visa applicants with pending applications are do not have cease to have unlawful immigration status under Utah law since they become persons residing under color of law (PRUCOL) and DHS has policies against detention and removal of crime victims and witnesses.¹²
<p>Section 8 → An agency that provides state or local public benefits shall verify a person's lawful presence in the U.S. by requiring that the applicant sign a certificate. If the agency</p>	<p>For Advocates:</p> <ul style="list-style-type: none"> • Under federal law inquires about immigration status can only be made about the person who will be receiving public benefits.¹³ States are not authorized to require information regarding the

¹⁰ VAWA Public Benefits Eligibility Process: VAWA Self-petitioners, VAWA Cancellation of Removal, and VAWA Suspension of Deportation available at <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/VAWA-Benefits-Eligibility-Process.pdf/view>

¹¹ Id.; U-Visa Victim Benefits Eligibility Process available at <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/U-Visa-Victim-Benefits-Eligibility-Process.pdf/view>; Trafficking Victim Benefits Eligibility Process available at <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/Trafficking-Victims-Benefits-Eligibility-Process.pdf/view>

¹² See, <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/immigration-detainer-form%20Dec%202012.pdf/view>; and <http://iwp.legalmomentum.org/reference/additionalmaterials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-CertainVictimsWitnessesandPlaintiffs-Memo-06-17-2011.pdf/view>

¹³ 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>

receives verification that a person making an application for any benefit is not a qualified immigrant, the agency will provide the information to local law enforcement, unless it is prohibited by federal law. 76-9-1008 Utah code Ann.

immigration status or social security number of victim applying for benefits on behalf of their citizen or qualified immigrant child.¹⁴

- Advocates and attorneys should accompany all immigrant victim clients applying for benefits on their own or their child's behalf ¹⁵
- Screen early for VAWA, T or U visa immigration relief eligibility and assist clients in filing applications

¹⁴ 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 (CHIP), 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>

¹⁵ 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