



REPORT TO THE LEGISLATURE

SENATE BILL 674

VICTIMS OF CRIME: U NONIMMIGRANT STATUS

**California Highway Patrol
December 2017**

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**EDMUND G. BROWN JR.
GOVERNOR
STATE OF CALIFORNIA**

**BRIAN P. KELLY
SECRETARY
CALIFORNIA STATE TRANSPORTATION AGENCY**

**W. A. STANLEY
ACTING COMMISSIONER
CALIFORNIA HIGHWAY PATROL**

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EXECUTIVE SUMMARY

On October 9, 2015, Governor Brown signed Senate Bill (SB) 674 (Senator De León). This law, which went into effect January 1, 2016, requires specified certifying entities, including state law enforcement agencies, to review and certify I-918, Petition for U Nonimmigrant Status, forms for noncitizen victims of specified crimes pursuant to Section 679.10 of the California Penal Code (PC). These requests are commonly referred to as U-Visa requests.

Senate Bill 674 requires certifying entities which receive U-Visa requests to submit a report to the Legislature on or before January 1, 2017, and annually thereafter.

Between January 1, 2017, and December 5, 2017, the California Highway Patrol (CHP) received 36 U-Visa requests, of which 15 were certified, and 21 were denied.

The CHP will continue to review all U-Visa requests submitted and provide certifications as outlined in Section 679.10 PC.

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Introduction

The federal Victims of Trafficking and Violence Prevention Act of 2000 created the Victims of Crime Visa, otherwise known as a U-Visa. A U-Visa grants relief from deportation and permission to work in the United States (U.S.) to noncitizen victims of specified crimes.

Petitioners filing U-Visa requests with U.S. Citizenship and Immigration Services must obtain a certification from a specified certifying entity using the I-918, Petition for U Nonimmigrant Status, form.

Senate Bill 674 (Senator De León), signed by Governor Brown on October 9, 2015, requires specified certifying entities, including state law enforcement agencies, to review and certify U-Visa requests pursuant to Section 679.10 of the California Penal Code (PC). Senate Bill 674 went into effect January 1, 2016.

In order to qualify for a U-Visa, Section 679.10 PC specifies petitioners must be a victim or indirect victim of any of the following crimes:

- Rape
- Torture
- Human Trafficking
- Incest
- Domestic violence
- Sexual assault
- Abusive sexual conduct
- Prostitution
- Sexual exploitation
- Female genital mutilation
- Being held hostage
- Peonage
- Perjury
- Involuntary servitude
- Slavery
- Kidnapping
- Abduction
- Unlawful criminal restraint
- False imprisonment
- Blackmail
- Extortion

- Manslaughter
- Murder
- Felonious assault
- Witness tampering
- Obstruction of justice
- Fraud in foreign labor contracting
- Stalking
- Any crime which is substantially similar to the criminal activity described above

Section 679.10 PC requires a victim to have been helpful, is currently being helpful, or is likely to be helpful in the future, regarding the investigation into the criminal activity to which they were subjected. Helpfulness is a rebuttable presumption. Additionally, the filing of charges or the successful prosecution of a suspect in a criminal matter is not required.

Due to the decentralized nature of the California Highway Patrol (CHP), local CHP commanders are designated to review U-Visa applications for incidents occurring within their immediate jurisdiction where the CHP is the primary law enforcement agency involved, and provide certification when a U-Visa application meets the criteria set forth in Section 679.10 PC.

Section 679.10 PC requires a certifying entity report to the Legislature on or before January 1, 2017, and annually thereafter, the number of U-Visa requests the agency received, the number certified, and the number denied.

The CHP’s Research and Planning Section (RPS) was designated as the Office of Primary Interest for U-Visa policy and data collection. In addition to providing guidance to CHP field commands, RPS collects the information submitted by field commands to ensure accurate reporting to the Legislature.

Statistical Data

The following 2017 data reflects information submitted to the CHP from January 1, 2017, through December 5, 2017.

Requests Received	Requests Certified	Requests Denied
36	15	21*

* *Requests not certified did not meet statutory requirements set forth in Section 679.10 PC*

Conclusion

The U-Visa process provides another method of protecting the diverse communities served by the CHP, while maintaining our commitment to providing a high level of service and safety to the people of the great State of California in a fair and professional manner. As such, the CHP will continue to review all U-Visa requests submitted and provide certifications as outlined in Section 679.10 PC.

ANNEX A

SENATE BILL 674 – VICTIMS OF CRIME: U NONIMMIGRANT STATUS

Senate Bill No. 674

CHAPTER 721

An act to add Section 679.10 to the Penal Code, relating to victims of crime.

[Approved by Governor October 9, 2015. Filed with
Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 674, De León. Victims of crime: nonimmigrant status.

Existing federal law provides a Form I-918, Petition for U Nonimmigrant Status (Form I-918) to request temporary immigration benefits for a person who is a victim of certain qualifying criminal activity. Existing federal law also provides a form for certifying that a person submitting a Form I-918 is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that criminal activity (Form I-918 Supplement B).

Existing state law establishes certain rights of victims and witnesses of crimes, including, among others, to be notified and to appear at all sentencing proceedings, upon request, to be notified and to appear at parole eligibility hearings, and, for certain offenses, to be notified when a convicted defendant had been ordered placed on probation.

This bill would require, upon request, that a certifying official from a certifying entity certify, as specified, "victim helpfulness" on the Form I-918 Supplement B, when the requester 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. The bill would define "certifying entity," "certifying official," and the qualifying criminal activity for those purposes. A "certifying entity" would include, among others, local law enforcement agencies and child protective services agencies. The bill would establish for purposes of determining helpfulness, a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection, 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. The bill would require the certifying entity to 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 is required to be processed within 14 days of request. The bill would require a certifying entity that receives a request for a Form I-918 Supplement B certification to report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918

Supplement B certifications from the entity, the number of those certification forms that were signed, and the number that were denied.

By imposing additional duties on local government agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 679.10 is added to the Penal Code, to read:

679.10. (a) For purposes of this section, a “certifying entity” is any of the following:

- (1) A state or local law enforcement agency.
- (2) A prosecutor.
- (3) A judge.
- (4) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity.
- (5) Agencies that have criminal detection or investigative jurisdiction in their respective areas of expertise, including, but not limited to, child protective services, the Department of Fair Employment and Housing, and the Department of Industrial Relations.

(b) For purposes of this section, a “certifying official” is any of the following:

- (1) The head of the certifying entity.
- (2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency.
- (3) A judge.
- (4) Any other certifying official defined under Section 214.14 (a)(2) of Title 8 of the Code of Federal Regulations.

(c) “Qualifying criminal activity” means qualifying criminal activity pursuant to Section 101(a)(15)(U)(iii) of the Immigration and Nationality Act which includes, but is not limited to, the following crimes:

- (1) Rape.
- (2) Torture.
- (3) Human trafficking.
- (4) Incest.
- (5) Domestic violence.
- (6) Sexual assault.
- (7) Abusive sexual conduct.
- (8) Prostitution.
- (9) Sexual exploitation.

- (10) Female genital mutilation.
- (11) Being held hostage.
- (12) Peonage.
- (13) Perjury.
- (14) Involuntary servitude.
- (15) Slavery.
- (16) Kidnaping.
- (17) Abduction.
- (18) Unlawful criminal restraint.
- (19) False imprisonment.
- (20) Blackmail.
- (21) Extortion.
- (22) Manslaughter.
- (23) Murder.
- (24) Felonious assault.
- (25) Witness tampering.
- (26) Obstruction of justice.
- (27) Fraud in foreign labor contracting.
- (28) Stalking.

(d) A “qualifying crime” includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in subdivision (c), and the attempt, conspiracy, or solicitation to commit any of those offenses.

(e) 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 or investigation or prosecution of that qualifying criminal activity.

(f) For purposes of determining helpfulness pursuant to subdivision (e), 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.

(g) 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 or investigation or prosecution of the criminal activity.

(h) A certifying entity shall process an 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.

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

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

(k) 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 legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.

(l) A certifying entity that receives a request for a Form I-918 Supplemental B certification shall report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918 Form B certifications from the entity, the number of those certification forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.