



# CALIFORNIA STATE LAWS ON THE U VISA

By ILRC Attorneys

## I. What California laws are there on the U visa<sup>1</sup>?

California has passed four bills in recent years concerning access to an important form of immigration status called the U visa.<sup>2</sup> Although the federal government decides who receives a U visa, the state can increase access to the U visa by creating certain processes for U visa petitioners to obtain a U visa certification from law enforcement. All of the bills address the U visa certification process, discussed below, and can be important tools for immigrant advocates.

### What is the U visa?

The U visa was created by federal law in 2000 to protect certain noncitizen crime survivors and encourage cooperation with law enforcement. By providing cooperating survivors protection from deportation and a pathway to a green card, the U visa enhances law enforcement's ability to investigate and prosecute crimes and furthers humanitarian interests by protecting survivors of serious crimes. To be eligible, the person must:

- Have been the victim of a qualifying crime or similar activity in the United States (or that violated U.S. laws);
- Have suffered substantial physical or mental abuse as a result;
- Have information about the crime and have been helpful, be helpful, or be likely to be helpful to law enforcement in the investigation or prosecution of the crime;
- Have a certification from a federal, state, or local law enforcement authority certifying their helpfulness; and
- Be admissible to the United States or be eligible for a waiver of inadmissibility.

## II. Why were these laws passed?

The U visa, created to protect immigrant survivors of crimes, is a unique form of federal immigration status. The process of applying for a U visa implicates law enforcement officials, in that one of the eligibility requirements is having a certification – provided on Form I-918 Supplement B<sup>3</sup> – from a federal, state, or local law enforcement authority certifying the noncitizen crime survivor’s helpfulness in the investigation or prosecution of the crime. Law enforcement agencies in California have been responding to requests for U visa certifications for many years; however, until **SB 674** there was no statewide standard or protocol for certifications. As a result, some law enforcement agencies imposed their own standards for certifications, refusing to sign them in certain circumstances even though the immigrant was a survivor of a qualifying crime<sup>4</sup> and was helpful to law enforcement. Because the certification is required for federal U visa eligibility, these inconsistent practices meant that some crime victims were unable to apply for the U visa despite otherwise meeting the eligibility requirements, simply because of where the crime took place. While a U visa certification does not guarantee that the individual will obtain immigration status, it is necessary to have a certification before applying. Without a completed U visa certification, victims are not eligible for the U visa.

Subsequent bills, AB 917 and AB 2426, modified SB 674 to strengthen survivor access to the U visa program by streamlining the process through which survivors request and secure U visa certification from law enforcement authorities and clarifying aspects of the certification process, including who may request a certification, what crimes qualify for U visa status,<sup>5</sup> who proper certifying officials are,<sup>6</sup> requirements for certification, and circumstances under which a certifying official cannot refuse to certify a prospective U visa case. **AB 2321** clarifies that judges and prosecutors, who are prospective certifiers, may access certain sealed juvenile records for the purpose of processing U visa certification requests.

## III. What do these laws do?

**SB 674**, **AB 917**, and **AB 2426** impose several requirements on certifying agencies in California when responding to U visa certification requests:<sup>7</sup>

*Evidence Gathering (AB 917, codified at Cal. P.C. § 679.10(f)):*

1. California law requires the state or local law enforcement agency with whom the survivor filed a police report to provide a copy of the police report to the survivor or their attorney or representative within 7 days of the survivor’s or their attorney or representative’s request.

*Victim Helpfulness (SB 674, codified at Cal. P.C. §§ 679.10(g)-(i)):*

1. Certifying officials in California are required to certify victim helpfulness when the crime survivor, the survivor's family member, or the survivor's attorney or representative requests a certification, when the victim is a victim of a qualifying crime (or similar 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;
2. There is a "**rebuttable presumption**" that a survivor meets the helpfulness requirement if there is no evidence that the survivor refused or failed to provide information and assistance reasonably requested by law enforcement; and
3. The certifying official must fully complete and sign the certification, including specific details about the crime and the survivor's helpfulness.

*Certification Requests (SB 674, AB 917, and AB 2426, codified at Cal. P.C. §§ 679.10(j)-(l)):*

1. California law mandates that agencies process certification requests within **30 days**, or within **7 days** of the first business day following the day the request was received if the survivor is in removal proceedings;
2. California law clarifies that a survivor can request and obtain a certification even if no charges were ever filed, no prosecution or conviction resulted, the investigation is over, or the case is closed;
3. The certifying official may not refuse to complete a certification or otherwise certify that a survivor has been helpful, solely because a case has already been prosecuted or closed, or because the time for commencing a criminal action has expired; and
4. Under California law, the certifying official can only withdraw the certification if the survivor refuses to provide information and assistance when reasonably requested.

*Data Collection (SB 674, codified at Cal. P.C. § 679.10(n)):*

1. California law requires all certifying agencies to report to the legislature annually regarding the number of certification requests received, signed, and denied.
2. Because there is no separate enforcement mechanism created by these laws, advocates are encouraged to track law enforcement agencies' compliance with the laws, such as the application of the rebuttable presumption of helpfulness and the 30-day and 7-day time limits.

*Confidentiality (SB 674, codified at Cal. P.C. § 679.10(m); AB 2321, codified at Cal. Wel. & Inst. Code §§ 781(a)(1)(D)(iii)(II), 786(g)(1)(M)):*

1. California law prohibits the certifying entity from disclosing the immigration status of the person requesting a certification, except to comply with federal law or legal process, or if authorized by the person requesting the certification.<sup>8</sup>
2. Judges and prosecutors may access certain sealed juvenile court records generated in connection with the investigation, prosecution, or adjudication of a qualifying crime to process U certification requests. The law also prohibits such information from being shared with other agencies or individuals except as necessary to certify a U visa case and affirms that under no circumstances can the information be used to impose penalties, detention, or other sanctions on an individual.

*Reimbursement (SB 674 and AB 917):*

California law provides for reimbursement of actual costs associated with compliance with them.<sup>9</sup> Under California law, eligible claimants can submit claims for reimbursement associated with U visa certification requests to the State Controller's Office in accordance with specific instructions and forms.<sup>10</sup>

## IV. Which agencies do these laws apply to?

The laws apply to all California certifiers, including the following state and local entities and officials:<sup>11</sup>

- State and local law enforcement agencies, including the police departments of the University of California, California State University campuses, and school districts;<sup>12</sup>
- Prosecutors;
- Judges;
- 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; and
- Any other authority responsible for the detection, investigation, or prosecution of a qualifying crime or criminal activity.

## V. Has the Attorney General issued any guidance on these laws?

Yes. On October 28, 2015, former Attorney General Kamala Harris issued Information Bulletin No. DLE-2015-04, which provided background on the federal law governing U visas and explained law enforcement agencies' responsibilities under SB 674.<sup>13</sup> On April 1, 2020, former Attorney General Xavier Becerra issued Information Bulletin No. 2020-DLE-01, which updated the previous Information Bulletin by providing guidance on AB 917.<sup>14</sup> These Bulletins contain helpful information for immigration advocates emphasizing the strength of California's U visa laws and the breadth of their reach in enabling access to U visa certifications for immigrant survivors of crime. For example, the 2020 Bulletin encourages state and local law enforcement agencies and officials to be "vigilant in identifying and supporting immigrant crime victims who may be eligible for U visas," and to "immediately establish and implement a U visa certification policy and protocol" that is consistent with California law and the guidance provided in the Bulletin.<sup>15</sup> The Bulletin suggests that such a policy and protocol "[e]nsur[es] decisions are made as soon as possible within the 30-day or 7-day windows" and includes an appeals process for certification denials.<sup>16</sup> Importantly, the Attorney General's Bulletin underscores that there is no statute of limitations that bars immigrant crime victims from applying for a U visa: "Law enforcement agencies' duty to sign a certification is not time-limited, even if the investigation or case is already closed."<sup>17</sup>

To date, current Attorney General Rob Bonta has not issued a subsequent Information Bulletin covering new 2021 U visa bills AB 2321 and AB 2426.

## VI. What can advocates do for clients who were erroneously denied a U visa certification in the past?

California state law SB 674 and its successor laws AB 917 and AB 2426 provide an important opportunity for crime survivors who requested a U visa certification in the past, and who believe that they were erroneously denied, to request certification anew. With the mandate from the state legislature and Attorney General to provide a certification when certain conditions are met, as well as the "rebuttable presumption" of helpfulness established by SB 674, crime survivors are on solid footing to return to the law enforcement agency where they previously requested certification, or to approach a different law enforcement agency, and present their request again.

*The mission of the Immigrant Legal Resource Center (ILRC) is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people.*

## End Notes

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<sup>1</sup> For questions regarding the content of this advisory, please contact Alison Kamhi at [akamhi@ilrc.org](mailto:akamhi@ilrc.org).

<sup>2</sup> The U visa was created by the Victims of Trafficking and Violence Prevention Act, enacted in October 2000. Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000). It has been amended multiple times since its creation by the Violence Against Women and Department of Justice Reauthorization Act of 2005, the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and the Violence Against Women Reauthorization Act of 2013, combined with the Trafficking Victims Protection Reauthorization Act of 2013. For additional information on U visas, see ILRC, *The U Visa: Obtaining Status for Immigrant Victims of Crime* (2019). See also USCIS, Victims of Criminal Activity: U Nonimmigrant Status, <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status>.

<sup>3</sup> Form I-918 Supplement B can be found at <http://www.uscis.gov/i-918>.

<sup>4</sup> For a list of qualifying crimes, see Cal. Penal Code § 679.10(c)–(d); INA § 101(a)(15)(U)(iii); 8 C.F.R. § 214.14(a)(9).

<sup>5</sup> AB 917 added “kidnapping” to the list of qualifying crimes at Cal. Penal Code § 679.10(c). This crime was already included in the federal U visa statute at INA § 101(a)(15)(u)(iii).

<sup>6</sup> For a list of certifying officials, see Cal. Penal Code § 679.10(a)–(b); 8 C.F.R. § 214.14(a)(2)–(3).

<sup>7</sup> See Cal. Penal Code § 679.10(f)–(n).

<sup>8</sup> It is the ILRC’s position that Cal. Penal Code § 679.10(m) does not change existing law with regards to the disclosure or nondisclosure of U visa materials in criminal proceedings. For more information on U visa certifications and discovery, see CEB, *California Judges Benchbook: Domestic Violence Cases in Criminal Court* (2020).

<sup>9</sup> See Cal. Gov’t Code §§ 17560–61.

<sup>10</sup> See SB 674, 2015 Leg., 2015–2016 Reg. Sess. (Ca. 2015); AB 917, 2019 Leg., 2019–2020 Reg. Sess. (Ca. 2019); Office of the State Controller, *State-Mandated Costs Claiming Instructions No. 2019-01, U Visa 918 Form, Victims of Crime: Nonimmigrant Status – Program No. 372, April 29, 2019, Revised Sept. 1, 2020*, available at [https://www.sco.ca.gov/Files-ARD-Local/Manuals/la\\_1920\\_uvisa372.pdf](https://www.sco.ca.gov/Files-ARD-Local/Manuals/la_1920_uvisa372.pdf).

<sup>11</sup> Cal. Penal Code § 679.10(a)–(b).

<sup>12</sup> AB 2426, codified at Cal. Penal Code § 679.10(a)(1), named “police department[s] of the University of California, a California State University campus, or the police department of a school district” as among the state and local law enforcement agencies that qualify as “certifying entit[ies]” for the U visa.

<sup>13</sup> ATTORNEY GENERAL KAMALA HARRIS, INFORMATION BULLETIN, NEW AND EXISTING STATE AND FEDERAL LAWS PROTECTING IMMIGRANT VICTIMS OF CRIME, DLE-2015-04 (Oct. 28, 2015), available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/info\\_bulletins/dle-2015-04.pdf?](https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/dle-2015-04.pdf?)

<sup>14</sup> ATTORNEY GENERAL XAVIER BECERRA, INFORMATION BULLETIN, UPDATE TO INFORMATION BULLETIN NO. 2015-DLE-04: NEW AND EXISTING STATE AND FEDERAL LAWS PROTECTING IMMIGRANT VICTIMS OF CRIME, 2020-DLE-01 (Apr. 1, 2020), available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/info\\_bulletins/2020-dle-01.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/info_bulletins/2020-dle-01.pdf).

<sup>15</sup> *Id.* at 1, 5.

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Id.* at 4.



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**About the Immigrant Legal Resource Center**

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.