



SB 674: Immigrant Victims of Crime Equity Act¹ January 2016

What is SB 674?²

SB 674 is a new California law that took effect on January 1, 2016. The goal of this law is to ensure that all immigrant crime victims in California have equal access to an important form of immigration status called the U visa.³

Why was SB 674 passed?

The U visa, created to protect immigrant victims 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 B⁴ – from a federal, state or local law enforcement authority certifying the noncitizen crime victim'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 victim of a qualifying crime⁵ 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.

What is the U Visa?

The U visa was created by federal law in 2000 to protect certain noncitizen crime victims and encourage cooperation with law enforcement. By providing cooperating victims 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 victims of serious crimes. To be eligible, the person must:

- have been the victim of a qualifying crime or similar activity in the U.S. (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 his or her helpfulness; and
- be admissible to the U.S. or be eligible for a waiver of inadmissibility.

¹ For the latest version of this fact sheet, please visit www.ilrc.org. For questions regarding the content of this advisory, please contact Alison Kamhi at akamhi@ilrc.org.

² SB 674 is codified at Cal. Penal Code § 679.10.

³ 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, *U Visa: Immigration Relief for Survivors of Domestic Violence and Other Crimes*, <http://www.ilrc.org/info-on-immigration-law/u-visas>; see also USCIS, *Victims of Criminal Activity: U Nonimmigrant Status*, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>.

⁴ Form I-918 Supplement B can be found at <http://www.uscis.gov/i-918>.

⁵ For a list of qualifying crimes, see Cal. Penal Code § 679.10(c)-(d); INA § 101(a)(15)(U)(iii).

What does SB 674 do?

SB 674 imposes several requirements on law enforcement agencies in California when responding to U visa certification requests:⁶

Victim Helpfulness:

1. SB 674 requires certifying entities throughout California to certify victim helpfulness when the crime victim requests a certification, 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. The law creates a “**rebuttable presumption**” that a victim meets the helpfulness requirement if there is no evidence that the victim refused or failed to provide information and assistance reasonably requested by law enforcement; and
3. The law requires the certifying official to fully complete and sign the certification and to include specific details about the crime and the victim’s helpfulness.

Certification Requests:

1. SB 674 mandates that agencies process certification requests within **90 days**, or within **14 days** if the person is in removal proceedings;
2. The law also provides that a victim can request and obtain a certification even if no charges were ever filed, no conviction resulted, or the investigation is over;
3. It also specifies that the certifying official can only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested; and
4. SB 674 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.⁷

Data collection:

1. SB 674 requires law enforcement agencies to report back to the legislature annually regarding the number of certification requests received, signed and denied.
2. Because there is no separate enforcement mechanism created by SB 674, advocates are encouraged to track law enforcement agencies’ compliance with the law, such as the application of the rebuttable presumption of helpfulness and the 90-day and 14-day time limits.⁸

In addition to creating affirmative responsibilities for California law enforcement agencies with respect to the U visa, SB 674 also provides for reimbursement of actual costs associated with compliance with SB 674. Under California law, a law enforcement agency may file a claim with the

⁶ See Cal. Penal Code § 679.10(e)-(l).

⁷ It is the ILRC’s position that this provision does not change existing law with regards to the disclosure or nondisclosure of U visa materials in criminal proceedings.

⁸ To report issues with law enforcement agencies’ compliance with SB 674, visit the Immigration Center for Women and Children’s U Visa Certifiers database at <http://icwclaw.org/services-available/icwc-u-travel-and-certifier-database/>.

Commission on State Mandates within one year of SB 674 taking effect or the agency incurring increased costs due to SB 674.⁹

Which law enforcement agencies does SB 674 apply to?

The new law applies to all California certifiers, including the following California state and local entities and officials:¹⁰

- State and local law enforcement agencies;
- 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 or investigation or prosecution of a qualifying crime or criminal activity.

Has the Attorney General issued any guidance on SB 674?

Yes, on October 28, 2015, Attorney General Kamala Harris issued Information Bulletin No. DLE-2015-04, which provides background on the federal law governing U visas and explains law enforcement agencies' responsibilities under SB 674.¹¹ In addition, the 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.¹² Importantly, the Attorney General's Bulletin also makes clear that there is no statute of limitations that bars immigrant crime victims from applying for a U visa: "Law enforcement can sign a certification at any time, and it can be submitted for a victim in an investigation or case that is already closed."¹³

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

SB 674 provides an important opportunity for crime victims who requested a U visa certification in the past, and who believe that they were erroneously denied, to request certification anew. With the new 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 created by this law, crime victims will be 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 Immigrant Legal Resource Center is a national, nonprofit resource center that provides legal trainings, educational materials, and advocacy to advance immigrant rights. The mission of the 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.

⁹ See Cal. Gov't Code § 17551. For additional information on how to request reimbursement, see Commission on State Mandates, *Frequently Asked Questions Related to Mandated Cost Programs: Local Agencies, School Districts, and Community College: Responses to questions frequently asked of the State Controller's Office (SCO) regarding local government (local agencies, school districts, and community colleges)*, available at http://www.sco.ca.gov/Files-ARD-Local/mancost_faqsmandates.pdf. Should the Commission on State Mandates issue any guidance specific to SB 674, it will be available on its website at http://www.sco.ca.gov/ard_mancost.html.

¹⁰ Cal. Penal Code § 679.10(a).

¹¹ 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/system/files/attachments/press_releases/dle-2015-04.pdf?

¹² *Id.*, at 1, 4.

¹³ *Id.*, at 4.