



A GUIDE TO OBTAINING U VISA CERTIFICATIONS

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I. Introduction¹

In order for an immigrant survivor of crime to qualify for U nonimmigrant status (often referred to simply as a “U visa”), she must obtain certification of her helpfulness by having a law enforcement agency complete Form I-918 Supplement B, “U Nonimmigrant Status Certification.”² This law enforcement certification is essential to the U nonimmigrant status application and is required by statute.³ Without the law enforcement certification, an application for U nonimmigrant status cannot be granted.

Although U applicants are required to submit a Form I-918 Supplement B certification, law enforcement agencies are not mandated or required to complete or sign the form on behalf of victims (unless otherwise instructed by state law) even if the applicants are assisting in the investigation and/or prosecution of the case and qualify for U nonimmigrant status. Some agencies or individuals are resistant to certifying victim helpfulness, sometimes due to a lack of understanding about the U nonimmigrant process, a lack of resources, or other reasons.

This practice advisory outlines some suggestions and resources for immigration advocates working with law enforcement agencies to obtain the law enforcement certification.

II. Practice Tips

A. Check the U Visa Database

The Immigration Center for Women and Children (ICWC) in California created and maintains a detailed database to help shortcut efforts to contact law enforcement agencies with a U certification request. ICWC’s **U Visa Zoho Database** contains crowd-sourced information that pools the field’s collective knowledge on who the certifying officers are at the various law enforcement agencies around the country, where to send requests, and updated policies and practices nationwide. More information about this database, including who can join and rules for participation, is on ICWC’s website at www.icwclaw.org/services-available/icwc-u-travel-and-certifier-database/.

B. Provide the Law Enforcement Agency with Certification Resources

The Department of Homeland Security (DHS), created a two-page FAQ and guidance for law enforcement regarding the U certification process. It is online at www.dhs.gov/xlibrary/assets/dhs_u visa certification guide.pdf. Advocates can distribute this guidance broadly to:

- Convince law enforcement agencies that provide certifications in a narrow range of cases to expand the scope and number of certifications;
- Educate new law enforcement agencies about the value and scope of U nonimmigrant status certifications;
- Convince law enforcement agencies that have refused to provide certifications of the value and scope of U nonimmigrant status certifications;
- Provide support for law enforcement agencies that already certify helpfulness as broadly as the statute permits, so that they can justify the time needed to administer the certification process and advocate that other partner agencies adopt a broad U nonimmigrant status certification policy; and
- Educate elected officials and the media about the value and scope of U nonimmigrant status certifications so they can support local efforts to encourage law enforcement to certify victim helpfulness for U status applications.

There are several other great resources as well. For example, Asista and the American Immigration Lawyers Association (AILA) issued a report, *Resource List: Working More Effectively with Law Enforcement to Obtain U visa Certifications*, which compiles resources state-by-state.⁴ The National Immigrant Women’s Advocacy Project also issued a helpful report, *The Importance of the U-visa as a Crime-Fighting Tool for Law Enforcement Officials—Views from Around the Country*, which includes statements by law enforcement officials about how U nonimmigrant status helps law enforcement.⁵

C. Inform Law Enforcement Agencies that USCIS Can Be a Resource

United States Citizenship and Immigration Services (USCIS), the federal agency that adjudicates U nonimmigrant status applications, has made a number of efforts to train law enforcement personnel on the eligibility requirements and process for U nonimmigrant status. USCIS accepts requests for trainings from law enforcement and seems to be very willing to do them when its travel budget allows. Let law enforcement agencies know they can receive such training by sending an email request to [t: uvawatraining@dhs.gov](mailto:uvawatraining@dhs.gov).

D. Build Relationships

Meet with your local law enforcement agencies early—perhaps even before you have a potential U applicant to bring to them—to educate them about U nonimmigrant status and to find out how to approach them with cases. Be prepared to listen honestly and openly to their concerns and to try to understand any resistance from their perspective. It is critical to approach and educate law enforcement about this issue in partnership with organizations and individuals they may already work with and trust, such as domestic violence agencies and victim advocacy groups.

E. Build Trust

Ensure that you and your clients are responsive to contact with law enforcement agencies. Be open in your communication and willing to answer questions to build trust. If you or any of your clients appear evasive about the process, the law enforcement agency may be less likely to trust you or want to help.

F. Focus on Areas of Mutual Concern

Many immigration attorneys and advocates do not have much experience working in partnership with law enforcement on cases. We may even harbor biases or stereotypes about law enforcement that need to be put in check. It is important for immigration advocates to try to perceive certification requests from the perspective of law enforcement agencies who may not trust immigration advocates in their interpretation of the law or may not believe that victims of crime can (or should) qualify for immigration status. Try to find the areas in which the U nonimmigrant status is mutually beneficial to U applicants as well as law enforcement agencies. Many law enforcement agencies recognize that working with immigrants is a public safety issue because they want and need witnesses and victims to cooperate in criminal investigations and prosecutions. They also may welcome the opportunity to work more closely with the immigrant community and see assisting U applicants as a way to enhance officer and public safety.

G. Make the Certification Process Easy

Here are some possible ways to make the certification process easier on law enforcement, depending on what your law enforcement agency needs and is open to:

- Write a letter to the agency, explaining your client's eligibility, to accompany a certification request.
- If welcomed, work with the law enforcement agency to create a protocol to streamline the process.
- Take cases referred to you by law enforcement and be a resource for their questions and referrals.
- Many law enforcement agencies also find it helpful for the advocate—rather than law enforcement staff—to fill out the Form I-918 Supplement B, so that they need only review and sign it.
- Educate the community about U nonimmigrant status eligibility requirements and encourage community members to work with a good attorney or representative before approaching law enforcement about the certification.

H. Protect the Integrity of U Nonimmigrant Status

Be prepared to answer questions the law enforcement official may have about the process. Work to eliminate fraudulent cases submitted to law enforcement by educating the immigrant community about possible scams perpetrated by unscrupulous lawyers, *notarios*, and other immigration representatives.

I. Show Law Enforcement the Benefits of the U Visa in Criminal Investigations

Ensure that your clients are responsive to inquiries from law enforcement and cooperative in requests to provide assistance, unless the request is unreasonable. When available, provide testimony, examples, and media reports of compelling stories where immigrant crime victims were crucial to a successful investigation or prosecution.

J. Consider State Law Options to Advocate for U Certifications

Several states have enacted U visa certification legislation in order to assist eligible immigrants in obtaining law enforcement certifications. These laws sometimes mandate that law enforcement agencies sign a certification if the person is eligible, provide time limits for responding to the certification request, establish procedures for responding to certification requests, provide reimbursement for the agencies, clarify law enforcement agencies' role in the process, among other provisions.

III. State Laws Regarding U Certifications

As mentioned in the previous section, state laws can be a tremendous resource, where feasible, to aid survivors of crime in obtaining the certifications for which they are eligible. This section provides a summary of the current and pending state statutes regarding certifications. Although no one law is perfect, these statutes can provide guidance for advocates seeking to enact or improve U visa policies in their jurisdictions.

A. State Laws in Effect

As of July 2017, the state laws with U certification statutes include:

- **Arkansas** (SB 1012).⁶ This law requires law enforcement agencies to adopt a policy for completing and signing T and U nonimmigrant status certification requests for human trafficking victims. The policy must “include a requirement” to complete the certification within 30 days.
- **California** (SB 674).⁷ This law requires certifiers to respond to a U nonimmigrant status certification request within 90 days (or 14 if the requester is in removal proceedings); creates a rebuttable presumption of helpfulness; makes it clear that the Supplement B can be signed even if no charges were ever filed, the investigation is over, or no conviction resulted; creates an opportunity for state reimbursement for certifiers; and requires annual reporting for each certifier on the number of requests received, granted, and denied.⁸
- **Connecticut** (CGA Sec. 46b-38b).⁹ This law requires that law enforcement agencies designate at least one person with supervisory duties to “expeditiously process” Supplement B certifications upon request.
- **Delaware** (SB 197).¹⁰ This law establishes a law enforcement protocol for certification requests: When a prospective U (or T) applicant approaches a police officer or prosecutor (and the official “reasonably believe[s]” the person is a victim such as would qualify for T or U nonimmigrant status), the officer or prosecutor will ask the certifying official “as soon as

practicable” after receiving the request to complete the Supplement B. If the law enforcement agency determines that an individual does not meet the requirements, that agency shall inform the individual of the reason and that the individual may make another request with additional evidence to satisfy the requirements.

- **Louisiana** (SB 88).¹¹ This law only pertains to survivors of human trafficking, stating that once identified, the agency or office will provide the survivor with a completed and signed certification request for a U visa, T visa, or both, depending which form of relief the victim chooses.
- **Montana** (HB 89).¹² This law mirrors the Delaware statute by establishing a law enforcement protocol for certification requests: When a prospective U (or T) applicant approaches a police officer or prosecutor (and the official “reasonably believe[s]” the person is a victim such as would qualify for T or U nonimmigrant status), the officer or prosecutor will ask the certifying official “as soon as practicable” after receiving the request to complete the Supplement B. If the law enforcement agency determines that an individual does not meet the requirements, that agency shall inform the individual of the reason and that the individual may make another request with additional evidence to satisfy the requirements.
- **North Dakota** (SB 2107).¹³ This law mirrors the Delaware statute by establishing a law enforcement protocol for certification requests: When a prospective U (or T) applicant approaches a police officer or prosecutor (and the official “reasonably believe[s]” the person is a victim such as would qualify for T or U nonimmigrant status), the officer or prosecutor will ask the certifying official “as soon as practicable” after receiving the request to complete the Supplement B. If the law enforcement agency determines that an individual does not meet the requirements, that agency shall inform the individual of the reason and that the individual may make another request with additional evidence to satisfy the requirements.

A. State Laws Pending

As of July 2017, states with pending U certification state bills include:

- **Washington** (SHB/Substitute House Bill 1022).¹⁴ This law would require certifiers to respond to a certification request within 90 days (or 14 if the requestor is in removal proceedings). It would also contain an age-out provision if a child involved is about to turn 21 (“In any case in which the victim or the victim’s children would lose any benefits . . . by virtue of having reached the age of twenty-one years within ninety days after the certifying agency receives the certification request, the certifying agency shall execute the certification no later than fourteen days before the date on which the victim or child would reach the age of twenty-one years or ninety days from the date of the request, whichever is earlier.”). The law additionally clarifies that a current investigation or conviction is not required in order to sign a Supplement B; requires that a designated person keep track of the number of certification requests received, signed, denied, or withdrawn and report those numbers annually; mandates development of a language access protocol for requestors with limited English proficiency as well as deaf requestors; creates confidentiality provisions (the law enforcement agency “shall not disclose personal identifying information, or information regarding the citizenship or immigration status of any victim of criminal activity or trafficking

who is requesting a certification unless required to do so by applicable federal law or court order, or unless the certifying agency has written authorization from the victim or, if the victim is a minor or is otherwise not legally competent, by the victim's parent or guardian"); and requires the appointment of a steering committee to monitor compliance, disseminate information, do trainings, establish a mechanism for the public to make complaints, and monitor implementation.

- **Maryland** (SB 616/HB 1208).¹⁵ This law would create a presumption of helpfulness: "If a victim has not refused or failed to provide information and assistance reasonably requested . . . the victim shall be considered to be helpful, to have been helpful, or likely to be helpful . . ." The law also directs the certifying official to attach to a completed Supplement B other helpful documents regarding the U crime victimization, including "copies of any documents in the possession of the certifying official that evince the harm endured by the victim due to the criminal activity." The law additionally requires the certifiers to respond to certification requests within 90 days (or 14 days if the requestor is in removal proceedings); clarifies that a current investigation is not required; and limits disclosure of the immigration status of the victim (disclosure is permitted only if required by federal law or legal process, or if authorized by the person requesting the Supplement B).
- **Illinois** (SB 32/HB 3099).¹⁶ There are two bills pending in Illinois. They would require the certifier to sign the Supplement B unless the certifier cannot determine after a good faith inquiry that the requester was the victim of qualifying activity ("the certifying official may decline, by written notice to the requesting victim or the victim's representative, to complete the certification form requested under this subsection *only if, after a good faith inquiry, the agency cannot determine that the applicant is a victim of qualifying criminal activity*" (emphasis added)). The law additionally requires the certifiers to respond to certification requests within 90 days (or 14 days if the requestor is in removal proceedings) and contains an age out protection: "if the victim's children, parents, or siblings would become ineligible . . . by virtue of the victim's children having reached the age of 21 years, the victim having reached the age of 21 years, or the victim's sibling having reached the age of 18 years within 90 business days from the date that the certifying agency receives the certification request, the certifying official shall complete the certification form no later than 14 business days after the request is received by the agency, or if the loss of the benefit would occur less than 14 business days from receipt of the certification request, the certifying official shall complete a certification form within 5 business days." The law also includes a 14-day response time if the requester has received a Request for Evidence (RFE) from USCIS; requires the certifying official to make the agency's procedures for Supplement B requests known to the public; and provides recourse if a certifying agency fails to comply within the required timeframes. The requestor could bring action in state circuit court to seek or amend the certification, and costs and attorneys' fees would be awarded if the requestor prevails. The law would create requirements for agencies to maintain certification records and submit annual reporting; it also clarifies the "exclusive responsibility" of federal immigration officials to determine eligibility for U or T nonimmigrant status.

Not all of the pending bills would increase access to certifications for eligible survivors of crimes. Unlike the other bills mentioned, the following pending state bill is NOT a model, as it does not seek to facilitate access to immigration relief but instead creates further obstacles by requiring a fee.

- **North Carolina** (SB 492).¹⁷ This law seeks to clarify that filling out U and T certifications is discretionary (“except as otherwise provided by federal law, nothing shall limit a certifying agency’s discretion to complete a law enforcement certification for an applicant for a T or U visa”) and proposes charging a \$5 fee to U and T Supplement B requesters.

End Notes

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² Form I-918 Supplement B is available for free on the USCIS website at <https://www.uscis.gov/i-918>.

³ INA § 214(p)(1).

⁴ Asista, AILA, *Resource List: Working More Effectively with Law Enforcement to Obtain U visa*

Certifications (Mar. 2015), available at www.asistahelp.org/documents/resources/LEAs_and_U_visas_Resource_List_Mar_0D3F1275EDAC4.pdf.

⁵ NIWAP, *The Importance of the U-visa as a Crime-Fighting Tool for Law Enforcement Officials—Views from Around the Country* (Dec. 3, 2012), available at <http://niwaplibrary.wcl.american.edu/pubs/uvisa-crime-fighting-tool/>.

⁶ ARK. CODE ANN. § 12-19-104 (West 2015) (The bill was approved on April 6, 2015, and the law became effective on July 22, 2015).

⁷ CAL. PENAL CODE § 679.10 (West 2017) (The bill was passed in 2015 and became effective on January 1, 2016).

⁸ To report violations of SB 674, such as a failure to respect the “rebuttable presumption” imposed by the law, or to abide by the time limits it creates, advocates can enter this information into the **U Visa Zoho Database** at www.icwclaw.org/services-available/icwc-u-travel-and-certifier-database/ discussed above, or input their answers into the ILRC survey directly, at: <https://docs.google.com/forms/d/1IJTYEi-ms5prTjDYR96K69YXIT8uMuTGHgwI2kVn454/viewform?c=0&w=1>. For more information about SB 674, or for advocacy strategy assistance relating to state measures affecting U visas, contact Alison Kamhi at akamhi@ilrc.org.

⁹ CONN. GEN. STAT. ANN. § 46b-38b(e)(5) (West 2013) (This provision became effective on July 1, 2010).

¹⁰ DEL. CODE ANN. tit. 11, § 787(n) (West 2015) (SB 197 was approved on June 30, 2014, and the relevant provision became effective on June 30, 2014).

¹¹ LA. STAT. ANN. § 46:2162(B) (2013) (The bill was approved on June 24, 2013, and the law became effective on June 24, 2013).

¹² MONT. CODE ANN. § 44-4-1503 (West 2015) (The bill was approved on April 24, 2015, and the law became effective on July 1, 2015).

¹³ N.D. CENT. CODE ANN. § 12.1-41-18 (West 2015) (The bill was approved on April 23, 2015, and the law became effective August 1, 2015).

¹⁴ The text of this bill is available at <http://lawfilesexxt.leg.wa.gov/biennium/2017-18/Pdf/Bills/House%20Bills/1022-S.pdf>.

¹⁵ The text of SB 616 is available at <http://mgaleg.maryland.gov/2017RS/bills/sb/sb0616f.pdf>. The text of HB 1208 is available at <http://mgaleg.maryland.gov/2017RS/bills/hb/hb1208t.pdf>.

¹⁶ The text of SB 32 is available at

<http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=91&GA=100&DocTypeId=SB&DocNum=32&GAID=14&LegID=98875&SpecSess=&Session=>. The text of HB 3099 is available at <http://www.ilga.gov/legislation/fulltext.asp?DocName=10000HB3099lv&SessionID=91&GA=100&DocTypeID=HB&DocNum=3099&print=true>

¹⁷ The text of this bill is available at <http://www.ncga.state.nc.us/Sessions/2017/Bills/Senate/HTML/S492v2.html>.



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