



TEACHING, INTERPRETING,
& CHANGING LAW SINCE 1979



Los Angeles
Center for
Law and Justice

CALIFORNIA U VISA LAW UPDATE

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I. What Is a 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 for a U visa, 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. How Does the U Visa Affect Law Enforcement Officials?

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 B¹—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 2016 there was no statewide standard or protocol for certifications. Several bills have passed in the meantime to further streamline the process; most recently, AB 1261 was signed into law in October 2023 and will go into effect on 01/01/2024.

¹ Form I-918 Supplement B can be found at <http://www.uscis.gov/i-918>.

III. What Do California's State U Visa Laws Do?

SB 674 (effective 2016), **AB 917** (effective 2020), **AB 2321** (effective 2021), **AB 2426** (effective 2021), and **AB 1261** (effective 2024) impose several requirements on certifying agencies in California when responding to U visa certification requests.²

The newest amendments are highlighted in green:

A. Evidence Gathering (AB 918, codified at Cal. P.C. § 679.10(f)):

1. The law enforcement agency with whom the survivor filed a police report must provide a copy of the police report within 7 days of the survivor's or their representative's request.³

B. Victim Categories (AB 1261, codified at Cal. P.C. §§ 679.10 (o)(1)-(4))

2. A certification can be signed for direct victims,⁴ indirect victims, and bystander or witness victims. A direct victim is any person who has suffered direct harm or who is directly and proximately harmed as a result of the criminal activity.
3. An indirect victim is a qualifying family member of a direct victim who is incompetent, incapacitated, or deceased, including spouses, unmarried children under the age of 21, and if the direct victim was under the age of 21, parents and siblings under the age of 18.
4. A bystander or witness victim is any individual who was not the direct target of a crime, but who nevertheless suffered unusually direct injury as a result of the qualifying crime.

² See Cal. Penal Code § 679.10(f)–(n). This law covers certification requirements for T nonimmigrant status and S nonimmigrant status, both of which are beyond the scope of this advisory.

³ Note that Cal. Fam. Code § 6228 provides an even faster turnaround requirement of 48 hours for police reports requested by survivors of certain criminal activity including domestic violence, sexual assault, staking, human trafficking, or elder abuse.

⁴ Please note that the ILRC often uses the terms “victim” and “survivor” interchangeably. Because a “victim” is typically defined by harm done to them, many advocates choose to instead use the word “survivor” to refer to clients. “Survivors” are defined by their lives *after* the harm, allowing them to reclaim control of their lives and their recovery. While our goal as advocates is to help community members survive and thrive despite harms they have suffered, we sometimes use the term “victim” when referring to a particular aspect of the criminal legal system, penal code, or immigration law; when describing someone recently affected by crime; when talking about the actions of a perpetrator; or when discussing the harm inflicted on those who did not survive.

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

1. Certifying officials are required to certify victim helpfulness when the crime survivor, their family member, or representative requests a certification; when they were a victim of a qualifying crime (or similar activity); and when they have been helpful, are being helpful, or are likely to be helpful to the detection, investigation, or prosecution of that crime;
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;
3. If the victim reasonably asserts they were unaware of a request for cooperation, their failure to cooperate does not rebut the presumption of helpfulness.
4. Indirect victim cooperation includes parents who make their children available to communicate with the certifying entity; and
5. The certifying official must fully complete and sign the certification and include specific details about the crime and the survivor’s helpfulness;

D. Certification Requests (SB 674, AB 917, and AB 2426 codified at Cal. P.C. §§ 679.10(g), (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 or if the survivor asserts their qualifying family member will lose eligibility within 60 days (such as if the victim’s noncitizen sibling will turn 18, the victim’s noncitizen child will turn 21, or the victim will turn 21).
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. A survivor does not have to be present in the United States at the time of submitting the certification request or filing the petition nor have a government-issued identification;
4. The certifying official may not refuse to complete a certification or otherwise certify that a survivor has been helpful because of the victim’s criminal history, victim’s immigration history, victim’s gang membership or affiliation, certifier’s belief that the U visa will not be approved, extent of the harm suffered, victim’s open case with another certifying agency, victim’s inability to produce a crime report, victim’s cooperation or refusal to cooperate in a separate case, completed prosecution or other resolution in the victim’s case, or the fact that the time for commencing a criminal action has expired; and
5. Under California law, the certifying official can only withdraw the certification if the survivor refuses to provide information and assistance when reasonably requested.

6. If a certifier does not certify, they must provide a written explanation for the denial, including specific details of any reasonable requests for cooperation and a detailed description of how the victim refused to cooperate.
7. The certifier shall return the completed certification without requiring the victim, their family member, or representative to provide government-issued identification or come in person.

E. Data Collection & Reimbursement (SB 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. California law provides for reimbursement of actual costs associated with compliance with them. Under California law, eligible claimants can submit claims for reimbursement to the State Controller's Office in accordance with specific instructions and forms.⁵

F. 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.⁶
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.

⁵ See Cal. Gov't Code §§ 17560–61; 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.

⁶ ILRC's position is 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).



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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.