
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 674 **Hearing Date:** April 21, 2015
Author: De León
Version: February 27, 2015
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Victims of Crime: Nonimmigrant Status*

HISTORY

Source: Author

Prior Legislation: None

Support: Los Angeles Center for Law and Justice; American Civil Liberties Union; California Attorneys for Criminal Justice; California Immigrant Policy Center; The Immigrant Legal Resource Center; The Central American Resource Center; American Federation of State, County and Municipal; YWCA of Glendale; California Partnership to End Domestic Violence

Opposition: None known

PURPOSE

The purpose of this bill is to create a rebuttable presumption that when certain factors are met a victim or victim's family member shall have their Form I-918 supplement B certified so that he or she can apply for a U Visa to stay in the United States.

Existing federal law allows an immigrant who has been a victim of a crime to apply for a U Visa when he or she has been helpful to the investigation or prosecution of the criminal activity.

This bill provides that upon the request of the victim or the victim's family member a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 supplement B when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful or is likely to be helpful in the detection or investigation or prosecution of that qualifying criminal activity.

This bill provides that for the purposes of determining helpfulness there is 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 was not refused or failed to provide information and assistance reasonably requested by the law enforcement.

This bill provides that a certifying entity shall process a Form I-918 Supplement B certification within 90 days of the request unless the noncitizen is in removal proceedings in which case the certification shall be processed within 14 days of request.

This bill provides that a current investigation, filing of charges and a prosecution or conviction are not required for the victim to request and obtain a Form I-918 Supplement B certification from a certifying official.

This bill provides that a certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

This bill provides that 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 person requesting the certification.

This bill provides for a certifying entity that receives a request for a Form I-918 Supplement B certification to report to the Legislature annually beginning on January 1, 2017, the number of victims that requested Form I-918 Supplement B certifications from the entity, the number of those that were signed and the number that were denied.

This bill defines certifying entity as:

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

This bill defines certifying official as any of the following:

- The head of the certifying entity;
- A person in a supervisory role who has been designated to issue Form I-918 Supplement B certification;
- A judge; and,
- Any other certifying official as defined under federal law.

This bill defines qualifying criminal activity as including, but not limited to, specified crimes.

This bill defines qualifying crimes as criminal offenses for which the nature and elements are substantially similar to the listed crimes and the attempt, conspiracy or solicitation to commit any of those offenses.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of

health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as “of February 11, 2015, 112,993 inmates were housed in the State’s 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

The goal of SB 674, The Immigrant Victims of Crime Equity Act is to ensure the maximum amount of immigrant victims of crime in California have the opportunity to apply for the federal U-Visa when the immigrant was a victim of a qualifying crime and has been helpful or is likely to be helpful in the investigation or prosecution of that crime.

SB 674 creates equity in the granting of the certifications of victim helpfulness that are essential to the crime victim's U-Visa application filed with the USCIS. The Immigrant Victim of Crimes Equity Act requires certifying entities to certify victim helpfulness on the Form I-918 Supplement B certification, upon the request of the victim or victim's family member, when: (1) the victim was a victim of a qualifying criminal activity and (2) has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity. Under the bill, the certifying entity must also process the certification within a time limit and include details about victim helpfulness.

2. U Visa

In October 2000, Congress, as part of the reauthorization of the Violence Against Women Act, created the U Visa to provide immigrant crime victims an avenue to obtain lawful immigration status and thus encourage cooperation with law enforcement by undocumented victims of crime. In order to qualify for a U Visa: the applicant must have suffered substantial physical or mental abuse as a result of having been a victim of certain qualifying activity; the applicant must possess information concerning such criminal activity; the applicant must be helpful, have been helpful, or likely to be helpful in the investigation or prosecution of a crime; and the criminal activity must have occurred in the U.S. or violated the state or federal law of the United States.

3. Certification

In order to apply for a U Visa, the qualified immigrant victim must obtain a certification of a helpfulness from a law enforcement official, prosecutor, judge or federal or state agency authorized to detect investigate or prosecute any of the criminal activities listed in the U Visa statute. This certification form is called a Form I-918. While in some jurisdictions the appropriate agencies have been supportive of immigrant victims and have readily signed Form I-918 when the immigrant victims have been helpful, other jurisdictions have shown a reluctance to sign these certification forms.

In some cities, police and prosecutors readily verify that an undocumented crime victim cooperated; in others, they stonewall. From 2009 through May 2014, law enforcement in New York City verified 1,151 crime victims, according to figures provided by federal immigration authorities in response to public records requests by Reuters. Meanwhile, police and prosecutors verified 4,585 crime victims in Los Angeles, a city with less than half of New York's population.

Oakland, California, has less than 5 percent of New York's population, yet law enforcement there verified 2,992 immigrants during the same period - more than twice as many. Sacramento, California, has a slightly higher population than Oakland, but verified just 300 crime victims.

The federal data do not include the number of immigrants whose requests for verification are ignored or denied by the police. Nor is it possible to determine how many of those would have ultimately been rejected anyway because the applicant would not qualify under the program. Victims of misdemeanor assault, for instance, do not qualify.

But wide variations in the numbers of certifications among jurisdictions of similar size suggest that thousands of victims of violent crimes who have embraced the offer of a U Visa haven't got one. (Levine and Cooke, *Special Report: U.S. visa program for crime victims is hit—or-miss prospect* Reuters October 21, 2014)

This bill provides that when a victim, or victim's family member, requests a certifying official to certify the Form I-918 there is a rebuttable presumption that the victim is helpful, has been helpful or is likely to be helpful in the investigation if the victim has not refused to provide information and assistance as requested by law enforcement. The bill would also require the form be filled out completely and within 90 days of the request, unless the victim is in removal proceedings in which case the form must be filled out within 14 days.

The supporters of this bill state that this rebuttable presumption is necessary to bring fairness and equity to victims of crime who should not be treated differently just because they were victimized in a county where officials are reluctant to help non-citizen victims.

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