



California
LEGISLATIVE INFORMATION

SB-674 Victims of crime: nonimmigrant status. (2015-2016)

Senate Bill No. 674

CHAPTER 721

An act to add Section 679.10 to the Penal Code, relating to victims of crime.

[Approved by Governor October 09, 2015. Filed with Secretary of State
October 09, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 674, De León. Victims of crime: nonimmigrant status.

Existing federal law provides a Form I-918, Petition for U Nonimmigrant Status (Form I-918) to request temporary immigration benefits for a person who is a victim of certain qualifying criminal activity. Existing federal law also provides a form for certifying that a person submitting a Form I-918 is a victim of certain qualifying criminal activity and is, has been, or is likely to be helpful in the investigation or prosecution of that criminal activity (Form I-918 Supplement B).

Existing state law establishes certain rights of victims and witnesses of crimes, including, among others, to be notified and to appear at all sentencing proceedings, upon request, to be notified and to appear at parole eligibility hearings, and, for certain offenses, to be notified when a convicted defendant had been ordered placed on probation.

This bill would require, upon request, that a certifying official from a certifying entity certify, as specified, "victim helpfulness" on the Form I-918 Supplement B, when the requester was a victim of a qualifying criminal 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. The bill would define "certifying entity," "certifying official," and the qualifying criminal activity for those purposes. A "certifying entity" would include, among others, local law enforcement agencies and child protective services agencies. The bill would establish for purposes of determining helpfulness, a rebuttable presumption that a victim is helpful, has been helpful, or is likely to be helpful to the detection, investigation, or prosecution of that qualifying criminal activity, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement. The bill would require the certifying entity to process a Form I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification is required to be processed within 14 days of request. The bill would require a certifying entity that receives a request for a Form I-918 Supplement B certification to report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918 Supplement B certifications from the entity, the number of those certification forms that were signed, and the number that were denied.

By imposing additional duties on local government agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 679.10 is added to the Penal Code, to read:

679.10. (a) For purposes of this section, a "certifying entity" is any of the following:

- (1) A state or local law enforcement agency.
- (2) A prosecutor.
- (3) A judge.
- (4) Any other authority that has responsibility for the detection or investigation or prosecution of a qualifying crime or criminal activity.
- (5) 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.

(b) For purposes of this section, a "certifying official" is any of the following:

- (1) The head of the certifying entity.
- (2) A person in a supervisory role who has been specifically designated by the head of the certifying entity to issue Form I-918 Supplement B certifications on behalf of that agency.
- (3) A judge.
- (4) Any other certifying official defined under Section 214.14 (a)(2) of Title 8 of the Code of Federal Regulations.

(c) "Qualifying criminal activity" means qualifying criminal activity pursuant to Section 101(a)(15)(U)(iii) of the Immigration and Nationality Act which includes, but is not limited to, the following crimes:

- (1) Rape.
- (2) Torture.
- (3) Human trafficking.
- (4) Incest.
- (5) Domestic violence.
- (6) Sexual assault.
- (7) Abusive sexual conduct.
- (8) Prostitution.
- (9) Sexual exploitation.
- (10) Female genital mutilation.
- (11) Being held hostage.
- (12) Peonage.
- (13) Perjury.
- (14) Involuntary servitude.
- (15) Slavery.
- (16) Kidnaping.
- (17) Abduction.
- (18) Unlawful criminal restraint.
- (19) False imprisonment.
- (20) Blackmail.
- (21) Extortion.
- (22) Manslaughter.
- (23) Murder.

(24) Felonious assault.

(25) Witness tampering.

(26) Obstruction of justice.

(27) Fraud in foreign labor contracting.

(28) Stalking.

(d) A "qualifying crime" includes criminal offenses for which the nature and elements of the offenses are substantially similar to the criminal activity described in subdivision (c), and the attempt, conspiracy, or solicitation to commit any of those offenses.

(e) Upon the request of the victim or victim's family member, a certifying official from a certifying entity shall certify victim helpfulness on the Form I-918 Supplement B certification, when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity.

(f) For purposes of determining helpfulness pursuant to subdivision (e), there is a 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 has not refused or failed to provide information and assistance reasonably requested by law enforcement.

(g) The certifying official shall fully complete and sign the Form I-918 Supplement B certification and, regarding victim helpfulness, include specific details about the nature of the crime investigated or prosecuted and a detailed description of the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.

(h) A certifying entity shall process an I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request.

(i) A current investigation, the filing of charges, and a prosecution or conviction are not required for the victim to request and obtain the Form I-918 Supplement B certification from a certifying official.

(j) A certifying official may only withdraw the certification if the victim refuses to provide information and assistance when reasonably requested.

(k) 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 victim or person requesting the Form I-918 Supplement B certification.

(l) A certifying entity that receives a request for a Form I-918 Supplemental B certification shall report to the Legislature, on or before January 1, 2017, and annually thereafter, the number of victims that requested Form I-918 Form B certifications from the entity, the number of those certification forms that were signed, and the number that were denied. A report pursuant to this subdivision shall comply with Section 9795 of the Government Code.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.