

UNEQUAL PROTECTION:
DISPARATE TREATMENT OF
IMMIGRANT CRIME VICTIMS
IN COOK, THE COLLAR COUNTIES &
BEYOND
2017 Update

Updated Summer 2017 by
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Illinois Coalition for Immigrant and Refugee Rights

ICIRR is dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society.

In partnership with our member organizations, the Coalition educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and, informs the general public about the contributions of immigrants and refugees.

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EXECUTIVE SUMMARY

The U visa was created under the Victims of Trafficking and Violence Prevention Act of 2000 in order to aid law enforcement agencies in detecting, investigating, and prosecuting certain criminal activities and to protect undocumented immigrant victims of those criminal activities.¹ The U visa was intended to address the under-reporting of crimes among undocumented immigrant victims. In order to be eligible to apply for a U visa, these victims must submit USCIS Form I-918B, a form completed and signed by local, state, or federal law enforcement officials to attest to the victim's participation in the detection, investigation, and/or prosecution of the criminal activity.² The current federal statutory scheme gives law enforcement agencies discretion in how and when to certify USCIS Form I-918B.

However, disparities in law enforcement policies and practices related to U visa certifications results in the jurisdiction of the crime playing a major role in the ability of victims to achieve justice. These disparities undermine the purpose of the federal U visa scheme. A 2014 report from DePaul University College of Law Asylum & Immigration Law Clinic outlined the lack of uniformity in law enforcement U visa certification policies and practices.³

In response to the initial report from DePaul and other concerns expressed in the community, groups began advocating for the TRUST Act. The bill initially included multiple provisions, but in its final form, the TRUST Act focused on limiting law enforcement cooperation with immigration enforcement. The bill would prevent law enforcement from detaining individuals based solely on an immigration detainer or

¹ Victims of Trafficking and Violence Prevention Act of 2000, Pub. L. 86-106, § 1502, 114 Stat. 1462, 1518 (codified at 8 U.S.C. § 1101 (2000)) (“Congress finds that... there are several groups of battered women and children who do not have access to the immigration protections of the Violence Against Women Act of 1994 which means that their abusers are virtually immune from prosecution because their victims can be deported as a result of actions by their abusers and the Immigration and Naturalization Service cannot offer them protection no matter how compelling their case under existing law.”); § 1512, 114 Stat. at 1533-34 (“The purpose of this section is to create a new nonimmigrant Visa classification that will strengthen the ability of law enforcement agencies to detect, investigate, and prosecute cases... while offering protection to victims of such offenses in keeping with the humanitarian interests of the United States.”). See also Memorandum of Director, Vermont Service Center William R. Yates, Associate Director of Operations, Centralization of Interim Relief for U Nonimmigrant Status Applicants (Oct. 8, 2003), available online at <http://www.uscis.gov/files/presentation/UCntrl100803.pdf>.

² 8 U.S.C. § 1184(p)(1) (“The petition filed by an alien under section 1101(a)(15)(U)(i) of this title shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien “has been helpful, is being helpful, or is likely to be helpful” in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.”).

³Arruela, Geraldine et al., “UNEQUAL PROTECTION: DISPARATE TREATMENT OF IMMIGRANT CRIME VICTIMS IN COOK, THE COLLAR COUNTIES & BEYOND” (DePaul University College of Law Asylum and Immigration Law Clinic), <https://law.depaul.edu/about/news/Documents/unequal-protection---disparate-treatment-of-immigrant-crime-victims-in-cook-the-collar-counties-and-beyond-pdf.pdf>

administrative warrant not supported by a judicial warrant.⁴ The bill had also included language setting state standards for law enforcement agencies in responding to U visa certification requests. However, that language was removed from the final bill.

This report is meant to describe changes and continuities in U visa certification policies and practices in Illinois since the initial 2014 DePaul report was published. This updated report finds:

- positive and negative changes among police departments and state's attorneys' offices since the publication of the initial report,
- lack of oversight of U visa certification continues to lead to limited record keeping and limited accountability,
- lack of documented policy of U visa certification continues to lead to changes in practice without cause or notice and undermines victim reliance on law enforcement agencies,
- lack of directives around U visa certification continues to lead to state and local practices that conflict with the federal U visa statute, and
- lack of uniformity in policy and practice of U visa certification continues to undermine trust in law enforcement and threatens public safety.

In order to address the disparities described above, this report makes the following recommendations to bring Illinois certification policies and practices in line with the intent of the federal U visa scheme:

- creation and implementation of state and local law enforcement training sessions with the U.S. Department of Homeland Security (DHS) and community-based organizations,
- creation of statewide model of U visa certification policy and practice, and
- enactment of state legislation moving toward uniform certification policy and practice.

The findings and recommendations in this report are intended to highlight disparities in how undocumented victims of crime are treated based on jurisdiction. These recommendations seek to increase community trust in law enforcement and ensure Illinois U visa certification policies and practices comport with the federal statutory scheme.

⁴Illinois General Assembly, "Bill Status of SB31," <http://www.ilga.gov/legislation/billstatus.asp?DocNum=31&GAID=14&GA=100&DocTypeID=SB&LegID=98874&SessionID=91>

INTRODUCTION

The Victims of Trafficking and Violence Prevention Act of 2000 created the U visa program with the goal of aiding law enforcement agencies in detecting, investigating, and prosecuting certain criminal activities that victimize undocumented immigrants. The U visa was meant to address the under-reporting of crimes among undocumented immigrant victims. Eligible victims who receive U visas have U nonimmigrant status, which allows them to temporarily remain in the United States.⁵ In some cases, victims with U visas may adjust to lawful permanent resident (“green card”) status.⁶

To be eligible for a U visa, an individual must be a victim of a qualifying crime, have suffered physical or mental abuse as a result of the crime, have information about the crime, and be helpful to law enforcement.⁷ Qualifying crimes include crimes involving domestic violence, felonious assault, rape, sexual assault, and attempts to commit a qualifying crime.⁸ In cases where victims are children or have disabilities which prevent them from cooperating with the police, the victim’s parent, guardian, or “next friend” may provide information to law enforcement. These individuals are sometimes referred to as indirect victims.⁹ Applicants must submit:

- 1) Form I-918, Petition for U Nonimmigrant Status,
- 2) Form I-918 Supplement B (Form I-918B), U Nonimmigrant Status Certification,
- 3) Form I-192, Application for Advance Permission to Enter as a Nonimmigrant, if needed,
- 4) a personal statement which describes the criminal activity, and
- 5) evidence supporting each eligibility requirement.¹⁰

As part of the application process described above, victims must request Form I-918B to be signed by local, state, or federal law enforcement agency head, or their designee(s) in order to attest to the victim’s participation in the detection, investigation, and/or prosecution of the qualifying criminal activity. This is also known as requesting a U visa certification.¹¹ According to the current federal statutory scheme, law enforcement agencies have discretion in how and when to certify Form I-918B. However, the exercise of this discretion has led to disparities in law enforcement policies and practices regarding U visa certification. As a result, the jurisdiction of the crime plays a major role in the ability of victims to receive a U visa certification and achieve justice. These disparities contradict the intention of the federal U visa scheme.

⁵ 8 U.S.C. § 1184(p)(6); U.S. Department of Homeland Security, “U and T Visa Law Enforcement Resource Guide,” March 9, 2017 (cited below as “DHS Resource Guide” and available at <https://www.dhs.gov/publication/u-visa-law-enforcement-certification-resource-guide>), pages 4-5.

⁶ 8 U.S.C. § 1255(m).

⁷ 8 U.S.C. § 1101(a)(15)(U);

⁸ 8 U.S.C. § 1101(a)(15)(U)(iii).

⁹ 8 U.S.C. § 1101(a)(15)(U)(i)(I)&(II).

¹⁰ 8 C.F.R. § 214.14(c); U.S. Citizenship and Immigration Services, “Victims of Criminal Activity: U Nonimmigrant Status,” <https://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-criminal-activity-u-nonimmigrant-status/victims-criminal-activity-u-nonimmigrant-status>

¹¹ 8 U.S.C. § 1184(p)(1).

The 2014 report from DePaul University Asylum & Immigration Law Clinic outlines the lack of uniformity in law enforcement U visa certification policies and practices across Illinois.¹²

In response to the initial report from DePaul and concerns expressed in the community, groups began advocating for the Illinois TRUST Act. The initial version of TRUST filed by Senate President John Cullerton included several protections, such as barring federal immigrant enforcement agents from entering school and health facilities without warrants, creating state standards for responding to U visa certification requests, and barring local participation in federal registry programs based on national origin or religion. This version of the bill passed the Illinois Senate Executive Committee on April 17, 2017, with 11 members voting in favor, five voting present, and nobody voting in opposition.¹³ In its final form passed by the General Assembly and signed by Governor Bruce Rauner, the TRUST Act focused on preventing law enforcement from detaining individuals based solely on an immigration detainer or administrative warrant.¹⁴

U visas are important for immigrant victims seeking a sense of security, justice, and healing. U visa recipients are eligible for employment authorization. The ability to work legally can provide victims the opportunity to achieve financial independence, which is especially important for sexual assault and domestic violence victims. These victims need financial independence in order to leave abusive situations. Victims who receive U visas also have fewer fears regarding deportation, which provides stability for mixed-status families.

Fear regarding deportation often prevents undocumented immigrant victims from reporting crimes to the police or pursuing court proceedings after the initial report. According to one organization located in Chicago serving immigrant crime victims, the number of undocumented victims willing to pursue orders of protection has dropped 25% since the 2017 presidential inauguration. This organization reports that some clients still request emergency orders of protection, but fewer are willing to move forward with the process of requesting a plenary order of protection. Victims can obtain emergency orders of protection based on only their testimony to the judge without prior notice to the alleged abuser. However, victims can only obtain a plenary order of

¹²Arruela, Geraldine et al., "UNEQUAL PROTECTION: DISPARATE TREATMENT OF IMMIGRANT CRIME VICTIMS IN COOK, THE COLLAR COUNTIES & BEYOND" (DePaul University Asylum & Immigration Law Clinic), <https://law.depaul.edu/about/news/Documents/unequal-protection---disparate-treatment-of-immigrant-crime-victims-in-cook-the-collar-counties-and-beyond-pdf.pdf>

¹³ Vodvarka, Sophie, "Victory for Immigrant, Refugee, and Domestic Violence Leaders as TRUST Act Passes Senate Executive Committee," *Campaign for a Welcoming IL*, April 17, 2017, http://www.trustinil.org/victory_for_immigrant_refugee_and_domestic_violence_leaders_as_trust_act_passes_senate_executive_committee

¹⁴Illinois General Assembly, "Public Act 100-0463" (full text), <http://www.ilga.gov/legislation/publicacts/fulltext.asp?name=100-0463&GA=100&SessionId=91&DocTypeId=SB&DocNum=31&GAID=14&Session=>

protection after a court hearing where both the victim and alleged abuser can present evidence.¹⁵

Many domestic violence survivors mention fear of deportation as explanation for why they do not want to move forward with court proceedings required for a plenary order of protection. According to one advocate, some victims explicitly cited the case of a woman detained by Immigration and Customs Enforcement officers at a Texas courthouse. The woman was at the courthouse to seek a protective order against her partner, who had allegedly abused her.¹⁶ Specific incidents such as this, and the general political climate, have a chilling effect on the willingness of undocumented immigrant victims to report crimes. Another advocate echoes this sentiment, explaining that since the 2016 presidential election, immigrants are even less willing to report any crime or accept aid from the police during emergencies. A lack of trust in law enforcement agencies among immigrant communities harms the public safety of all.

METHODOLOGY

The law enforcement agencies studied in this report were chosen after interviewing stakeholders, including legal service providers and employees of domestic violence prevention organizations. Surveys were distributed to legal service providers specializing in U visas. (The questions from the survey can be found in the addendum.) The data from stakeholders was gathered during several meetings. Information about the Chicago Police Department and about county sheriff's departments and state's attorney's offices will generally not be kept anonymous. However, information about all other police departments will be kept anonymous unless their U visa policy is publicly available or in the news.

Below is a list of all the counties and municipalities the authors surveyed for this report, based on the methodology described above. The terms "township" and "municipality" are used interchangeably throughout the report and are designed to broadly capture the cities (regardless of incorporation) listed below. Municipalities are only listed when more than one has been studied in a particular county in order to maintain the anonymity of particular police departments. The data and findings herein are qualitative in nature and do not purport to reflect a quantitative approach to research.

Boone County

Cass County

¹⁵ "Orders of Protection," *WomensLaw.org*, updated April 13, 2017, accessed August 20, 2017, http://www.womenslaw.org/laws_state_type.php?id=509&state_code=IL

¹⁶ Katie Mettler, "'This is really unprecedented': ICE detains woman seeking domestic abuse protection at Texas courthouse," *The Washington Post*, February 16, 2017, accessed August 2, 2017, https://www.washingtonpost.com/news/morning-mix/wp/2017/02/16/this-is-really-unprecedented-ice-detains-woman-seeking-domestic-abuse-protection-at-texas-courthouse/?utm_term=.87dfede7eb17

Champaign County: Champaign, Rantoul

Cook County: Arlington Heights, Berkeley, Berwyn, Buffalo Grove*, Chicago, Cicero, Des Plaines, Dixmoor, Elgin*, Elk Grove Village*, Evanston, Evergreen, Hanover Park*, Harvey, Hickory Hills, Hoffman Estates*, Lincolnwood, Melrose Park, Mount Prospect, Norridge, Palatine, River Grove, Rolling Meadows, Schiller, Skokie, Stone Park, Wilmette, Woodridge*

DeKalb County

DuPage County: Addison, Aurora*, Bensenville, Bloomingdale, Carol Stream, Glendale Heights, Lisle, Lombard, Naperville, Saint Charles*, Warrenville, Westmont, Wheaton, Wood Dale

Effingham County

Jackson County

Kane County

Kankakee County

Kendall County: Joliet*, Yorkville

Lake County: Highland Park, Lake Forest, Lake Zurich, Libertyville, Mundelein, Round Lake, Zion

Macon County

Madison County: Collinsville, Granite City, Fairmont City*

Marshall County

McHenry County: Crystal Lake, McHenry, Lake in the Hills, Woodstock

McLean County: Bloomington, Normal

Ogle County

Peoria County

Rock Island County: East Moline, Moline

Sangamon County

Stephenson County

Whiteside County

Will County: Bolingbrook and Crest Hill

Winn County

Winnebago County: Cherry Valley, Rockford, South Beloit

*Municipalities located in more than one county are marked with an asterisk. These municipalities are only listed once; the county under which they are listed was determined by alphabetical order.

DATA

The data below describe the informal U visa certification policies and practices of law enforcement agencies as experienced by advocates at the time of this writing. As the information was gathered from conversations with stakeholders who have experiences in specific geographic areas, the data do not purport to be representative of all municipalities and law enforcement agencies in Illinois. The graphs below group the informal policies and practices of police departments, county sheriff's offices, and state's attorney's offices into four categories: generally certify when all requirements are met; only certify in certain circumstances and/or for certain types of victims, generally refer to state's attorney's office, and generally refuse to certify. Not all municipalities studied were categorized, as the authors did not gather enough data about law enforcement agencies in those municipalities.

The informal policies and practices of law enforcement in signing I-918B certifications vary greatly based on jurisdiction. Some law enforcement agencies complete U visa certifications for almost all eligible victims. Other law enforcement agencies only complete Form I-918B under certain circumstances, such as only signing for criminal incidents which occurred within the past few years or for victims without criminal histories. Additionally, some police departments and county sheriff's offices do not respond to U visa certification requests internally, but refer the applicant to the state's attorney's office. The state's attorney's office may deny the request, especially in cases where the state's attorney's office did not participate in investigation begun by the sheriff's office. In addition, when one municipality is located in more than one county, referrals to state's attorney's offices that have different policies and practices regarding U visa certifications can produce very different outcomes for residents of the same municipality. According to the experiences of the advocates surveyed for this report, some law enforcement agencies rarely, or never, complete U visa certifications. Graphs 1 through 3 demonstrate the informal policies and practices of police departments, county sheriff's offices, and state's attorney's offices throughout the state of Illinois.

Graphs 4, 5, and 7 illustrate the informal policies and practices of police departments in Cook, DuPage, and Lake Counties. Individual graphs were created for these counties because the authors received the most information about police

departments in these counties. Graph 6 compares the informal policies and practices of police departments in Cook and DuPage Counties. Notably, based on this sample, police departments in DuPage County are much more likely to refer applicants to the state's attorney's office than to respond internally.

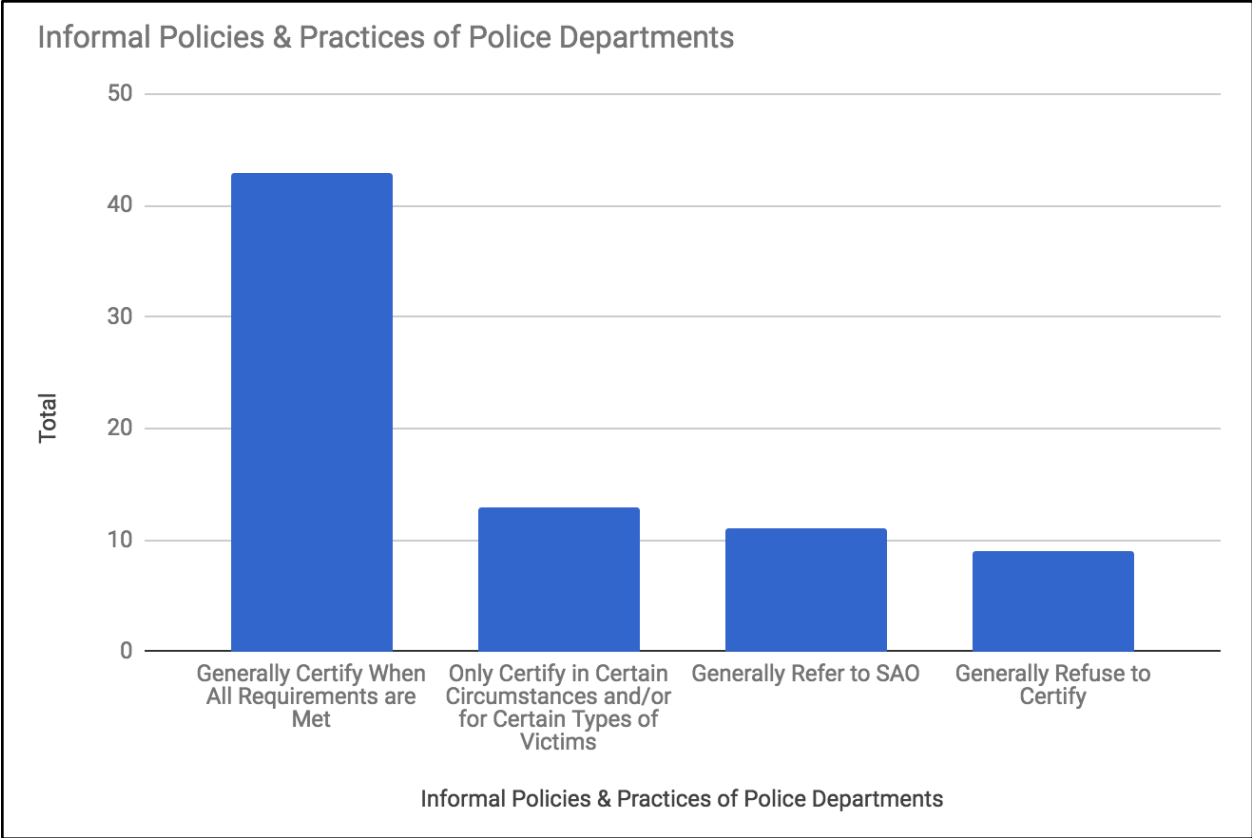
The authors of this report relied on statements from legal advocates and stakeholders when creating these graphs because many law enforcement agencies do not document U visa certification requests and responses. For instance, the DuPage County State's Attorney's Office does not maintain records regarding U visa certification requests, according to a recent report by Chicago public radio station WBEZ.¹⁷ WBEZ collected data from state's attorney's offices in six counties that maintain records about U visa certifications:

In 2015, the Cook County State's Attorney office received 422 requests for U-visa certification. Records show the office approved 322. That means Cook County approved 76 percent of the requests it received. In Kane County, the state's attorney's office approved 81 percent of certification requests in 2015. The office received 70 requests and approved 57. But similar offices for other counties approved requests at a much lower rate. In 2015, McHenry County received 13 requests and certified 7, a rate at less than 54 percent. In Lake County, 43 requests were received in 2015 and only 26 were approved, a rate of about 60 percent.¹⁸

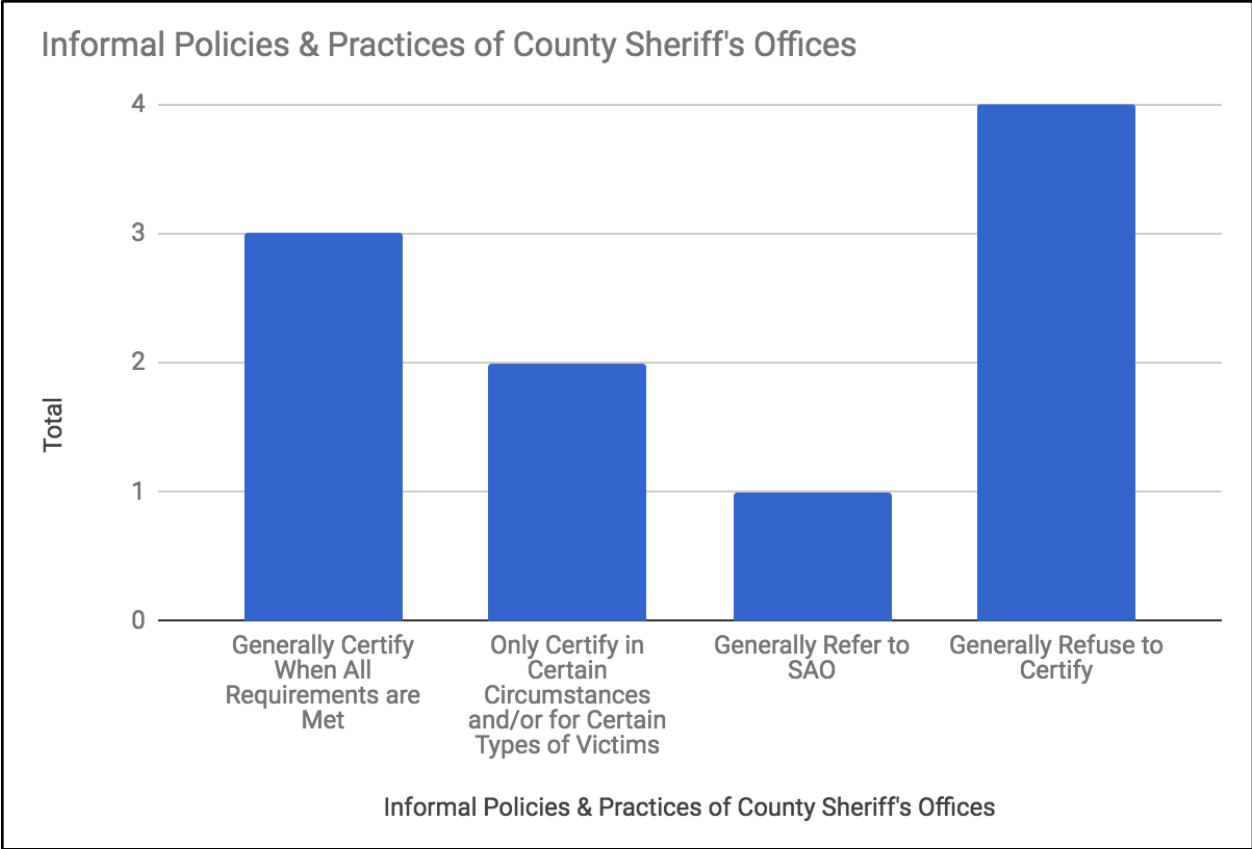
The available data demonstrate large disparities in U visa certification rates according to geographic locales. As a result, the ability of immigrant victims of crime to access justice is determined by where the criminal activity occurred.

¹⁷ Odette Yousef, "Undocumented And A Victim Of A Violent Crime: Looking At Problems With Obtaining U-Visas in Illinois," *WBEZ News*, April 20, 2017, <https://www.wbez.org/shows/wbez-news/undocumented-and-a-victim-of-a-violent-crime-looking-at-problems-with-obtaining-uvisas-in-illinois/e4f46186-deb7-4605-9704-940fcfc503a6>

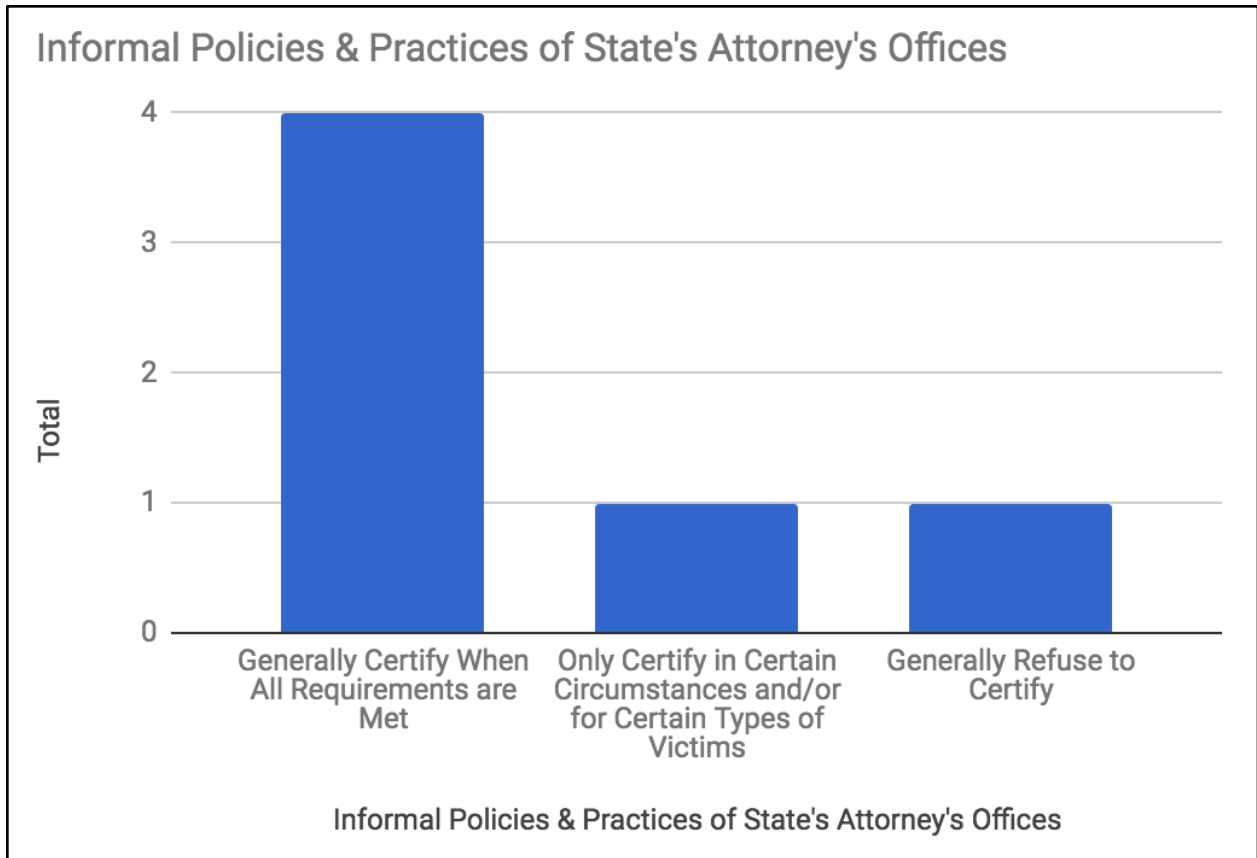
¹⁸ *Ibid.*



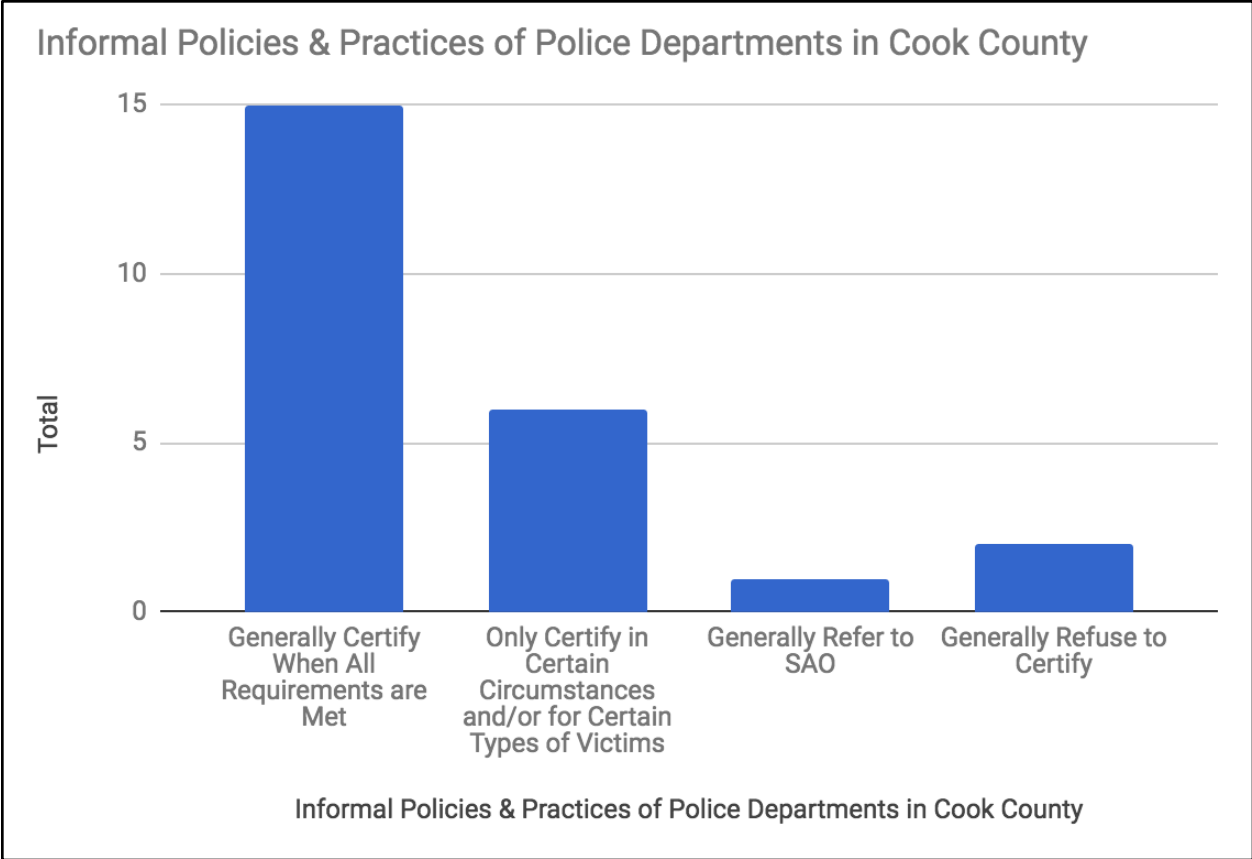
Graph 1: Based on the experiences of the advocates surveyed for this report, 43 police departments in Illinois generally certify when all statutory requirements are met, 13 only certify in certain circumstances and/or for certain types of victims, 11 generally refer applicants to the state’s attorney’s office, and 9 generally refuse to certify. Not all municipalities in Illinois were studied for this report.



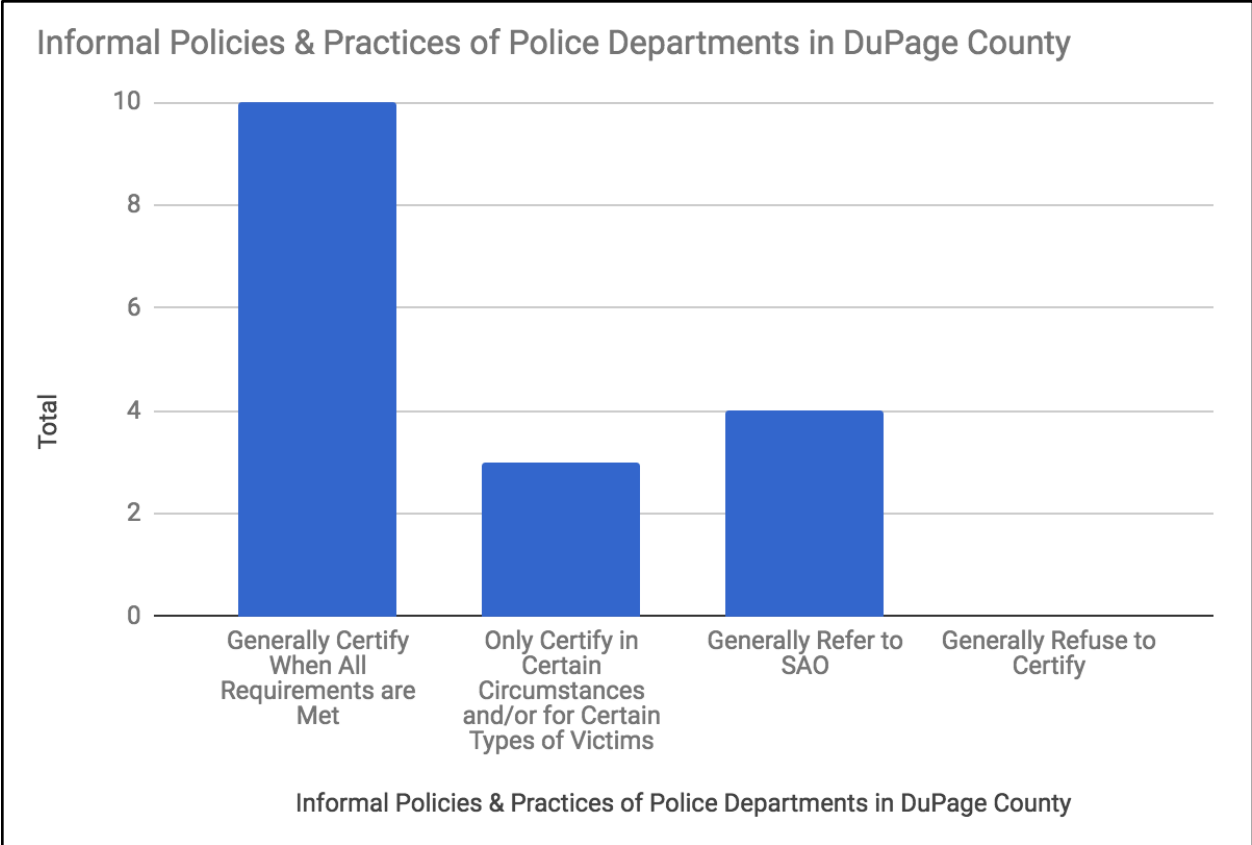
Graph 2: Based on the experiences of the advocates surveyed for this report, 3 county sheriff's offices in Illinois generally certify when all statutory requirements are met, 2 only certify in certain circumstances and/or for certain types of victims, 1 generally refers applicants to the state's attorney's office, and 4 generally refuse to certify. Not all county sheriff's offices in Illinois were studied for this report.



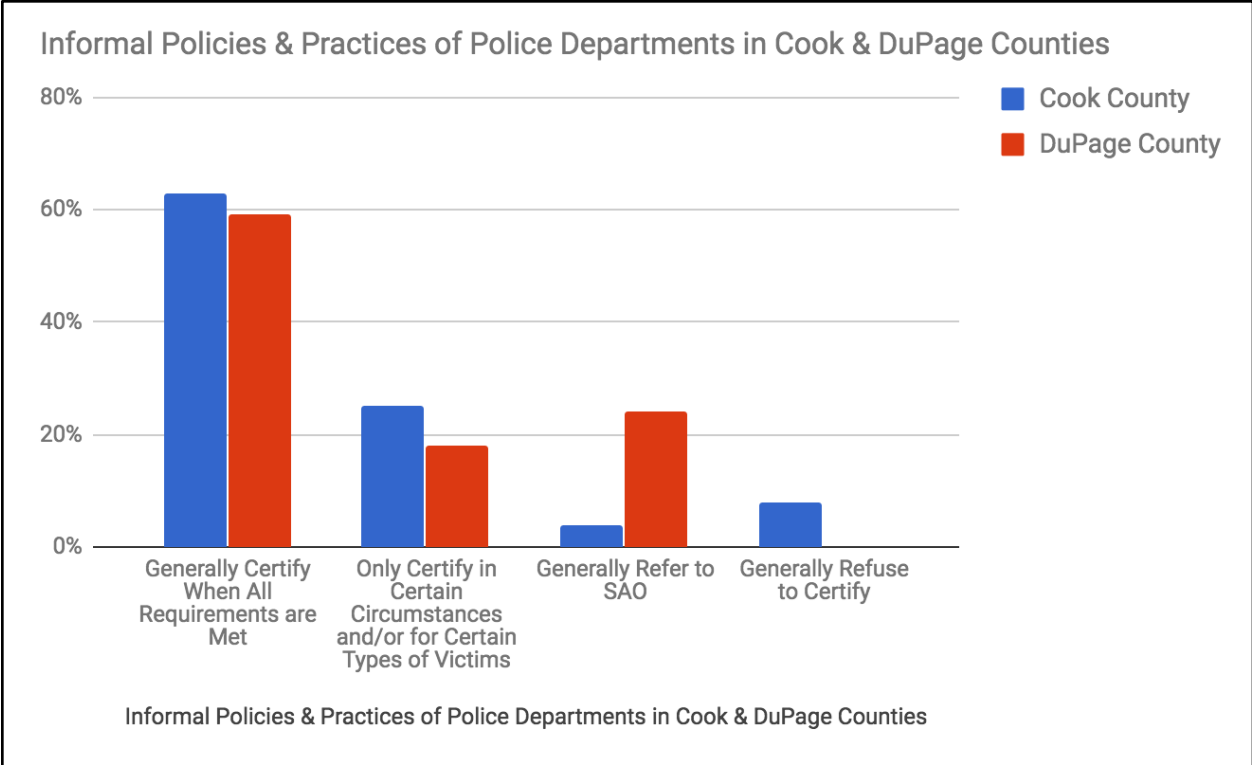
Graph 3: Based on the experiences of the advocates surveyed for this report, 4 state's attorney's offices in Illinois generally certify when all statutory requirements are met, 1 only certifies in certain circumstances and/or for certain types of victims, and 1 generally refuses to certify. Not all state's attorney's offices in Illinois were studied for this report.



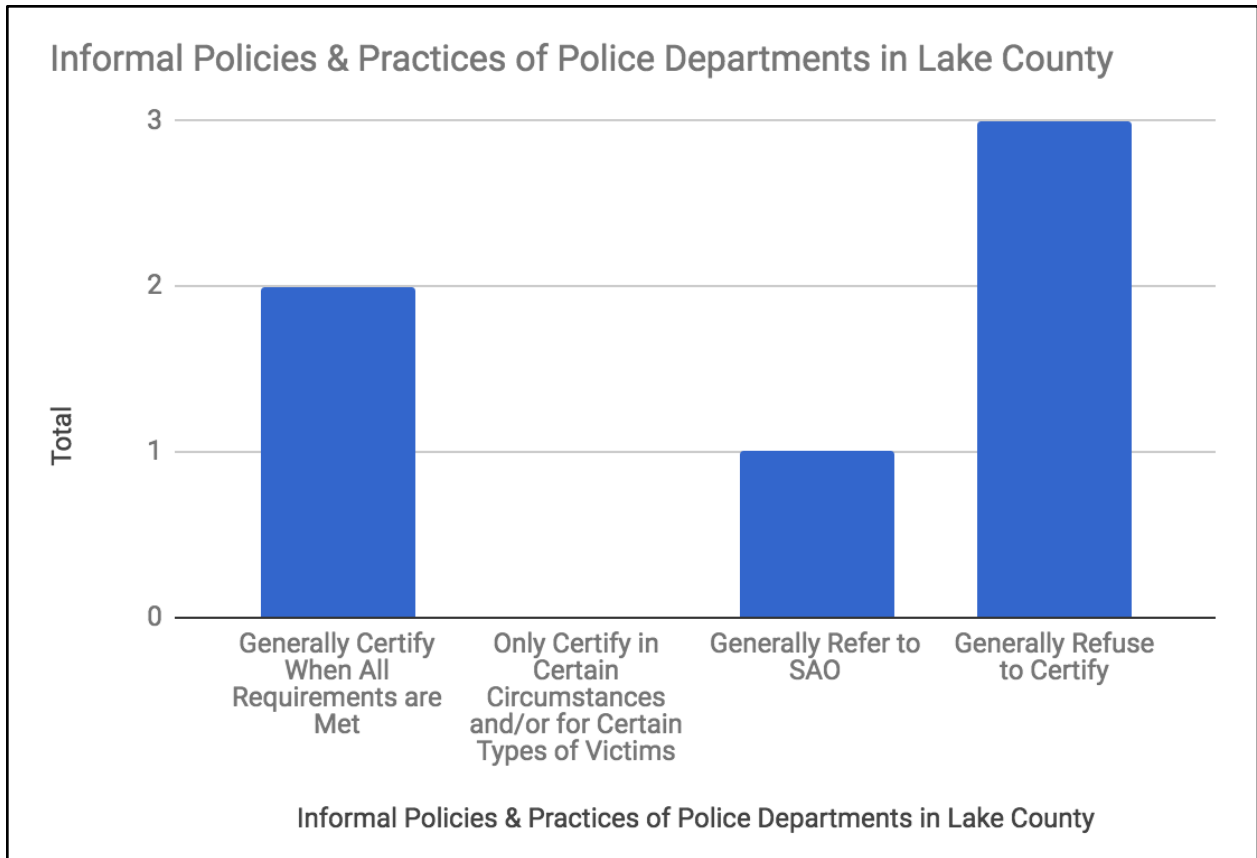
Graph 4: Based on the experiences of the advocates surveyed for this report, 15 police departments in Cook County generally certify when all statutory requirements are met, 6 only certify in certain circumstances and/or for certain types of victims, 1 generally refers applicants to the state’s attorney’s office, and 2 generally refuse to certify. Not all municipalities in Cook County were studied for this report. Municipalities located in DuPage County and another county are included in totals for each county in which the municipality is located.



Graph 5: Based on the experiences of the advocates surveyed for this report, 10 police departments in DuPage County generally certify when all statutory requirements are met, 3 only certify in certain circumstances and/or for certain types of victims, 4 generally refer applicants to the state’s attorney’s office, and 0 generally refuse to certify. Not all municipalities in DuPage County were studied for this report. Municipalities located in DuPage County and another county are included in totals for each county in which the municipality is located.



Graph 6: This graph compares the informal policies and practices of police departments in Cook and DuPage Counties. Notably, based on this sample, police departments in DuPage County are much more likely to refer applicants to the state’s attorney’s office than police departments in Cook County.



Graph 7: Based on the experiences of the advocates surveyed for this report, 3 police departments in Lake County generally certify when all statutory requirements are met, 1 generally refers applicants to the state’s attorney’s office, and 3 generally refuse to certify. Not all municipalities in Lake County were studied for this report.

FINDINGS

Positive and Negative Changes Among Police Departments and State’s Attorney’s Offices Since the Publication of the Initial Report

Stakeholders and other service providers have noted primarily positive changes among police departments and state’s attorney’s offices since the 2014 DePaul report. These changes included increased awareness of U visas, faster processing times in response to U visa certification requests, and a willingness to certify in a broader range of circumstances. For instance, one police department in Cook County that had been unfamiliar with the U visa process in 2015 now responds quickly to U visa requests and generally signs certifications. According to one group of stakeholders, at the time of this writing, the Chicago Police Department has improved its processing time in response to U visa certification requests from 6-8 months down to 1.5 months. A police department in Stephenson County that had previously only signed U visa certifications if the request was sent within 4 years of the crime occurring now no longer imposes such a restriction. A service provider in McHenry County noted that its clients now generally receive U visa certifications when they contact the police or the McHenry County State’s Attorney’s

Office, though this was not the case in the past. Historically, requests were denied because the police could not locate the offender or the case had occurred several years ago. These improvements occurred thanks to the advocacy of service providers and educational trainings.

Not all law enforcement agencies have become more open to signing U visa certifications. For example, the former Winnebago County Sheriff generally responded positively to U visa certification requests. However, under new leadership, the sheriff's office has denied almost all U visa certification requests. The disparate ways law enforcement agencies respond to U visa certification requests are linked to a lack of oversight, limited record keeping and accountability, a lack of documented policy, and a lack of uniform directives.

Lack of Oversight of U Visa Certification Continues to Lead to Limited Record Keeping and Limited Accountability

The lack of oversight of U visa certification has led to limited accountability even for police departments that normally complete certifications. This lack of accountability has resulted in increased difficulties for members of vulnerable populations seeking U visa certifications, such as victims who are LGBT or are victimized by law enforcement officers. A lack of publicly accessible record-keeping has made the disparate treatment of these victims harder to document and address. The two examples below demonstrate the effects of this lack of oversight.

One police department refused to complete a U visa certification for a victim whose alleged abuser was a police officer within the same department that had jurisdiction over the investigation of the alleged criminal activity. The advocate explained that based on past experiences with the department and the victim's level of cooperation, she would have expected the police department to sign the U visa certification. Though the police department never explicitly stated it, the advocate believes this disparate treatment occurred because of the perpetrator's status as a police officer. This suggests that the lack of accountability led to the denial of the U visa certification request and disparate treatment of this undocumented immigrant victim.

This same police department also refused to sign a U visa certification form for an LGBT client who was attacked while on a public street. The client reported the crime to the police, but the police considered the incident a "simple battery." The police would not complete the U visa certification form because they did not believe it was a qualifying crime. Advocates argued that the incident should have been considered "felonious assault" as the incident occurred on a public way and was a hate crime (which are both felony offenses under Illinois criminal law). The client eventually received a U visa certification, but advocates believe the difficulties throughout the process were due to anti-LGBT bias of the police department. This suspected anti-LGBT bias conflicts with the Illinois Human Rights Act, which prevents discrimination

based on sexual orientation, among other identities.¹⁹ Without effective accountability and recordkeeping, it is difficult to ensure LGBT victims are treated fairly compared to other victims.

Lack of Documented Policy of U Visa Certification Continues to Lead to Changes in Practice without Cause or Notice and Undermines Victim Reliance on Law Enforcement Agencies

Few law enforcement agencies have public and documented policies regarding U visa certification practices. Based on research of law enforcement agencies mentioned in the original DePaul report, the authors only found three agencies with policies or general orders regarding U visas on their websites. The Cook County State's Attorney's Office and the Cook County Sheriff's Office have policies on their website, while the Winfield Police Department (in DuPage County) has General Orders. The Cook County State's Attorney's Office lists U visa certifications as an immigration service provided by the office and provides contact information for the Victim Witness Unit.²⁰ The Cook County Sheriff's Office website has more detailed information, describing the information required to be submitted with the U visa certification request.²¹ The Winfield Police Department's General Orders includes internal instructions for how officers should respond after receiving certification requests.²²

Other law enforcement agencies do not have publicly documented policies, which creates a hardship for advocates and victims when trying to prepare a U visa certification request to the specifications of the individual agency. For example, some legal representatives will submit written letters explaining the merits of the case, but

¹⁹ "(775 ILCS 5/) Illinois Human Rights Act," Illinois General Assembly, Illinois Compiled Statutes, <http://www.ilga.gov/legislation/ilcs/ilcs5.asp?ActID=2266&ChapterID=64>

(775 ILCS 5/1-102) (from Ch. 68, par. 1-102)

Sec. 1-102. Declaration of Policy. It is the public policy of this State:

(A) Freedom from Unlawful Discrimination. **To secure for all individuals within Illinois the freedom from discrimination against any individual because of his or her race, color, religion, sex, national origin, ancestry, age, order of protection status, marital status, physical or mental disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service in connection with employment, real estate transactions, access to financial credit, and the availability of public accommodations.** (emphasis added)

(775 ILCS 5/1-103) (from Ch. 68, par. 1-103)

Sec. 1-103. General Definitions. When used in this Act, unless the context requires otherwise, the term:

(O) Sex. "Sex" means the status of being male or female.

(O-1) **Sexual orientation. "Sexual orientation" means actual or perceived heterosexuality, homosexuality, bisexuality, or gender-related identity, whether or not traditionally associated with the person's designated sex at birth.** "Sexual orientation" does not include a physical or sexual attraction to a minor by an adult. (emphasis added)

²⁰ "Immigration Services," Cook County State's Attorney, <https://www.cookcountystatesattorney.org/resources/immigration-services>

²¹ "U Visa Information," Cook County Sheriff's Office, http://www.cookcountysheriff.com/sheriffs_police/ccspd_U-Visa.html

²² "General Orders, 428.4.1 U-VISA/T-VISA NONIMMIGRANT STATUS" Winfield Police Department, <http://www.villageofwinfield.com/documentcenter/view/8973>

only basic information about the victim and case is required by the department. Other departments expect the victim to come to the office in person. According to one stakeholder, this ambiguity requires more time and effort from advocates, which prevents them from working on other vulnerable cases.

The Chicago Sun-Times described the experiences of a victim who tried to receive a U visa certification from the Wheeling Police Department in Cook County. Maria del Socorro Ocampo Andraca assisted the police after she was fondled as a child. According to Wheeling Police Chief James J. Dunne, Ocampo fully cooperated but she did not request a U visa certification in a timely manner so his department denied her request.²³ However, the Wheeling Police Department does not have a written policy or official deadline for requesting U visa certifications. When the Sun-Times asked Dunne why the Wheeling Police Department denies most U visa certification requests, Dunne said that many were older cases and that his department “automatically rejects any request from ‘victims of assaults who were engaged in gang activity,’ as well as victims of domestic violence who ‘still have relationships’ with their assailants.”²⁴ The lack of documented policy at the Wheeling Police Department meant that Ocampo was held to a deadline she had no way of knowing about in advance.

The Daily Herald also ran a profile on a young woman who had been raped as a minor in DuPage County. The perpetrator was arrested, prosecuted, and ultimately pled guilty to two felony counts of predatory criminal sexual assault of a child. Although the DuPage County State’s Attorney’s Office received a conviction for the crime, the office refused to provide a certification for the victim.²⁵ While the victim was later able to receive a U Certification from the police department that investigated the crime, the lack of a uniform policy for issuing Form I-918B for victims is likely to have a chilling effect on reporting crimes and lack of cooperation in future prosecutions according to one legal advocate.

Several stakeholders shared stories about the effects of the lack of documented policy, including changes to U visa certification practices without notice. For example, as mentioned above, the Winnebago County Sheriff’s Office generally stopped signing Form I-918B after a change in leadership. In another case, an advocate reported that an officer at a police department in Madison County agreed to certify Form I-918B for a victim, but the chief of police told the officer to forward the request to the state’s attorney’s office instead. This advocate had similar experiences in other counties as well. She believes formal agreements between police departments and state’s attorney’s offices about how U visa certification requests will be handled would help legal representatives know who to contact, which would save time and effort.

²³ Dan Mihalopoulos and Mick Dumke, “For immigrant crime victims, police block path to win special visas,” *Chicago Sun-Times*, June 6, 2017, <http://chicago.suntimes.com/politics/chicago-suburban-police-routinely-block-immigrant-crime-victims-efforts-to-obtain-u-visas-the-watchdogs/>

²⁴ Ibid.

²⁵ Burt Constable, “Can Rape Victim Stay in U.S.?” *The Daily Herald*, April 4, 2017, <http://www.dailyherald.com/article/20170404/news/170409694/>

Some discrepancies in U visa certification practices seem tied to training and education within individual departments. For example, a police department in DuPage that normally signs Form I-918B designated a new signer who seemed unfamiliar with certain concepts like indirect victims. As a result of these differences in training, crime victims may be treated differently based on changes in leadership within a law enforcement agency, and victims of substantially similar crimes in different law enforcement jurisdictions may receive disparate treatment due to varying certification practices and policies. Lack of documented practices and of standardized policies and training leads to changes in U visa certification policies without notice and inconsistent practices across jurisdictions. Such inconsistencies fundamentally undermines the ability of victims to rely on law enforcement, and thus undermines Congress' intent in establishing the U visa, namely, encouraging immigrants to cooperate with law enforcement.

Lack of Directives around U Visa Certification Continues to Lead to State and Local Practices that Conflict with the Federal U Visa Statute

Based on our research, law enforcement agencies seem to have misperceptions about the role and purpose of U visa certification. As a result, local practices conflict with the intentions of the federal U visa statute. These conflicts often arise from misunderstanding the purpose of U visas, and definitions and other language in the U visa statute, including qualifying crimes, statute of limitations, the requirement for the victim to have experienced “substantial physical or mental abuse,” and helpfulness.

According to one stakeholder, police departments in Lake County are reticent about completing Form I-918B because they think they are granting citizenship to the applicant. Eligible victims who receive U visas have U nonimmigrant status and are allowed to temporarily remain in the United States.²⁶ U nonimmigrant status is not the same as permanent resident status or citizenship. Additionally, Form I-918B alone does not ensure the applicant will receive U nonimmigrant status.²⁷ The victim's complete application will be adjudicated by USCIS.²⁸ Form I-918B asks law enforcement agencies to certify facts known to them, and does not require them to make determinations about the applicant's immigration status.

Law enforcement agencies also sometimes misunderstand certain aspects of the U visa statute. For instance, based on the experiences of advocates, two different police departments in Cook County incorrectly believed that the parent of a child sex abuse victim was not an indirect victim. However, the U visa regulations, clearly state that undocumented parents can apply as indirect victims in certain cases.²⁹ This policy is further affirmed in the U.S. Department of Homeland Security's “U & T Visa Law

²⁶DHS Resource Guide, p, 4-5.

²⁷ Ibid., p. 16.

²⁸ Ibid., p. 5.

²⁹ 8 CFR 214.14(a)(14)(i).

Enforcement Resource Guide” (“DHS Resource Guide”).³⁰ This same police department in Cook County also did not consider attempted sexual assault a qualifying crime, according to one legal representative, even though attempts to commit qualifying crimes are expressly listed as qualifying criminal activities in the federal statute.³¹ However, advocacy from the victim’s legal representative convinced the department to reconsider its prior denial and the U visa certification was eventually signed. This misinformation around indirect victims and qualifying crimes prevent eligible undocumented immigrant victims from receiving U visa certifications, which prevents them from being able to apply for U visas.

Misunderstandings among law enforcement agencies regarding the statute of limitations and the requirement for the victim to have experienced “substantial physical or mental abuse” have led to local practices that conflict with the intentions of the federal U visa program. For example, a law enforcement agency in Kane County has a practice of denying U visa certification requests for cases that are more than five years old. However, federal guidance is clear that there is no statute of limitations for U visa certifications and that the legislation was intended to include victims of qualifying crimes who were helpful in the past.³² According to the experiences of stakeholders, another law enforcement agency denies many U visa certification requests after considering the “severity of physical injuries.” This policy also contradicts the federal guidance, which states that USCIS will determine if the victim has experienced “substantial physical or mental abuse” and that the certifying agencies should not make this determination.³³ In other words, law enforcement agencies should provide relevant information about the victim’s injuries on Form I-918B, but not render their decision on whether or not to issue a certification based on the perceived severity of injuries of the victim. According to the federal statutory scheme, determinations of what qualifies as the “physical or mental

³⁰ DHS Resource Guide, 23-24. (“In many cases where a child is the victim of a crime, the child may not be able to provide law enforcement with adequate assistance. This may be due to the child’s age or trauma suffered, among various other reasons. Parents of a child victim play a crucial role in detecting and reporting crimes, providing information and assisting law enforcement in the investigation or prosecution of the crime committed against the child. Recognizing this, an alien parent can apply to be recognized as an “indirect victim” if the principal victim is a child under 21 years of age and is incompetent or incapacitated to provide assistance to law enforcement in the investigation or prosecution of the crime committed against the child or if the child is deceased due to murder or manslaughter. The immigration status of the child victim is not relevant to this determination; Form I-918B can be submitted for an alien parent whether or not the child is a U.S. citizen or a non-citizen.”)

³¹ 8 U.S.C. § 1101(a)(15)(U)(iii).

³² DHS Resource Guide, 19. (“There is no statute of limitations regarding the time frame in which the crime must have occurred. Federal legislation specifically provides that a victim may be eligible for a U visa based on having been helpful *in the past* to the detection, investigation, prosecution, conviction, or sentencing of criminal activity.”)

³³ *Ibid.*, 24-25. (“USCIS will make the determination as to whether the victim has met the ‘substantial physical or mental’ standard on a case-by-case basis during its adjudication of the U visa petition. Certifying agencies and officials do not make this determination. Certifying agencies may, however, provide any information the agency deems relevant regarding injuries or abuse on Form I-918B. The Form I-918B asks the certifying official to provide information about any injuries any injuries the agency or official knows about, has documented, or has made findings about. . . . While USCIS will consider any evidence of substantial physical or mental abuse provided by law enforcement, the U visa petitioner has the burden of proving the substantial physical or emotional abuse.”)

abuse” for the purposes of the U visa is left solely to USCIS, and no law enforcement agency should deny a certification based on the severity of a victim’s injuries.³⁴

Additionally, law enforcement practices for U visa certification indicate that agencies may not fully understand the helpfulness requirement for applicants. By federal regulation, a victim seeking a U visa must show that they have been, are being, or are “likely to be helpful in the detection, investigation, prosecution, conviction, or sentencing of the criminal activity.”³⁵ Applicants also “cannot unreasonably refuse to cooperate with law enforcement,” and the “duty to remain helpful to law enforcement exists even after a U visa has been granted.”³⁶ Furthermore, the regulations and DHS Resource Guide are clear that prosecution is not a requirement for applicants to be considered helpful.³⁷

As demonstrated by the experiences of advocates described below, some law enforcement agencies may not understand the nuances of the helpfulness requirement. The federal U visa statute does not require an arrest or prosecution for an applicant to receive a U visa certification.³⁸ In implementing this statute, DHS has understood that that many criminal cases go unprosecuted through no fault of the victim, such as when a suspect cannot be extradited.³⁹ However, law enforcement policies do not always comport with this guidance. For example, according to one advocate, a law enforcement agency in Peoria County refuses to sign U visa certifications if a prosecution did not occur. Another advocate shared that in her experience, the Lake County State’s Attorney’s Office often refuses U visa certification requests if there is an active warrant for the suspect or if the case is not resolved. Most starkly, the Chicago Sun-Times reported on the case of Cynthia Salazar, who assisted the Calumet City Police Department and the FBI after being the victim of a bank robbery. Assistant Chief of Police Thomas Di Fiori denied Salazar’s certification request since there was no arrest or prosecution, writing, “Unfortunately, anyone can say they were willing. I am sorry, but if we did that, we’d have to sign them all.”⁴⁰

In each of these cases, the law enforcement agency’s practice clearly undermines the intention of the federal U visa statute, which specifically provides that a

³⁴ Ibid.

³⁵ 8 C.F.R. § 214.14(b)(3); DHS Resource Guide, pp. 7 & 18.

³⁶ Ibid..

³⁷ 8 C.F.R. § 214.14(b); DHS Resource Guide, p. 21. (“There is no statutory or regulatory requirement that an arrest, prosecution, or conviction occur for someone to be eligible to apply for a U or T visa. Instances may occur where the perpetrator has fled the jurisdiction, left the United States, or been arrested for unrelated offenses by another agency in another jurisdiction. An arrest, prosecution, or conviction may not be possible in these situations. A U visa petitioner will still have to meet the helpfulness requirement by reasonably assisting the certifying law enforcement agency, and will also have to meet all other eligibility requirements in order to qualify for a U visa.”)

³⁸ 8 U.S.C. § 1184(p)(1).

³⁹ US Department of Homeland Security, “New Classification for Victims of Criminal Activity; Eligibility for ‘U’ Nonimmigrant Status,” interim rule published September 17, 2007, 72 Fed. Reg. 53014, 53020.

⁴⁰ Dan Mihalopoulos and Mick Dumke, “For immigrant crime victims, police block path to win special visas,” *Chicago Sun-Times*, June 6, 2017, <http://chicago.suntimes.com/politics/chicago-suburban-police-routinely-block-immigrant-crime-victims-efforts-to-obtain-u-visas-the-watchdogs/>

U visa is available to victims who have been helpful, are helpful, or likely to be helpful in the “investigation or prosecution” of criminal activity.⁴¹ In addition, DHS Resource Guide notes that law enforcement agencies may issue certifications even if a prosecutor or grand jury declines to bring charges, a case is dismissed or settles, or a defendant takes a plea or is found not guilty.⁴² The guide further notes that prosecutions or arrests may not always be possible, such as in cases where the suspect has fled the jurisdiction.⁴³ The lack of prosecution or arrest should not prevent law enforcement agencies from certifying Form I-918B. Agencies can provide all facts they consider relevant to USCIS without having to wait for a case to be resolved. Policies that prevent certification in such circumstances undermine the intentions of the federal U visa statute.

Some law enforcement agencies refuse to certify if they believe that the applicant is not responding to a reasonable request for assistance. One advocate reports that the Winnebago County State’s Attorney’s Office has refused to complete Form I-918B for domestic violence victims who report the abuse but refuse to press charges. The U visa regulations require that applicants must not have “refused or failed to provide information and assistance reasonably requested.”⁴⁴ In certain cases, an applicant may refuse to provide assistance after receiving a request they consider unreasonable, in which case the applicant must establish to DHS’ satisfaction that the refusal was not unreasonable.⁴⁵ In this context, law enforcement agencies should not determine if refusal to cooperate was unreasonable when deciding whether to certify. Law enforcement agencies can state on the certification form whether they believe a request is reasonable. USCIS, however, makes the final determination regarding the reasonableness of the request.

Additionally, based on the experiences of stakeholders interviewed for this report, some law enforcement agencies do not understand the relationship between a victim’s eligibility for the U visa and the victim’s criminal history. As DHS states in its Resource Guide,

The fact that a victim has a criminal history does not automatically preclude approval of U or T status. Each petition or application is evaluated on a case-by-case basis, and USCIS takes into account whether any criminal behavior was related to the victimization. If the certifying official believes USCIS should know something particular about a victim’s criminal history, that information can be cited on the certification or with an attached report or statement detailing the victim’s criminal history with that law enforcement agency or his or her involvement in the crime.⁴⁶

Therefore, law enforcement agencies should sign U visa certifications regardless of a victim’s criminal history. However, the practices of some law enforcement agencies

⁴¹ 8 U.S.C. § 1184(p)(1).

⁴² DHS Resource Guide, p. 19.

⁴³ Ibid.

⁴⁴ 8 CFR 214.14(b)(3); DHS Resource Guide, pp. 7 & 18.

⁴⁵ Ibid., p. 26.

⁴⁶ Ibid., p. 26.

conflict with federal guidance. For instance, the Winnebago County State's Attorney's Office and Lake County State's Attorney's Office have both refused to certify based on the criminal history of the applicant. Similarly, a police department in Kane County typically only signs U visa certifications if the victim does not have a "significant criminal offense conviction," according to one advocate. Form I-918B only requires law enforcement agencies to certify facts as they know them, not to make determinations about the applicant's moral character. It is up to USCIS to adjudicate each application on a case-by-case basis, taking into account the applicant's criminal history.⁴⁷

One advocate reports that a law enforcement agency in Will County will not certify Form I-918B if the applicant has a suspected gang affiliation or if they are listed in a gang database. Similar to refusing to complete Form I-918B based on the applicant's criminal history, refusing to complete because of an applicant's suspected gang affiliation conflicts with the intention of the federal U visa statute that USCIS make decisions on applications on a case-by-case basis, rather than categorically disqualifying applicants.⁴⁸ The use of gang databases is concerning, considering the existing litigation involving the Chicago Police Department's gang database. As of July 11, 2017, two lawsuits have been filed regarding the CPD gang database.⁴⁹ In the first case, Luis Vicente Pedrote-Salinas says he was erroneously identified as a gang member because of his "race, ethnicity, age and neighborhood."⁵⁰ Pedrote-Salinas was arrested after an ICE raid on his home which was part of an operation targeting individuals affiliated with gangs. Pedrote-Salinas' lawyer says he was incorrectly targeted because his name was in the CPD gang database, alleging that Pedrote-Salinas' right to due process had been violated and that CPD process for gathering and distributing information about gang affiliation violated the Illinois Civil Rights Act.

In the second lawsuit, Wilmer Catalan-Ramirez's lawyers claimed their client's incorrect inclusion in the CPD gang database deprived him of privacy protections. Like Pedrote-Salinas, Catalan-Ramirez was the target of an ICE enforcement action. Catalan-Ramirez's lawsuit claims authorities "used excessive force and unlawful search and seizure... [and] authorities violated his right to due process in his removal proceedings by characterizing him as a gang member."⁵¹ In light of these allegations, the use of gang databases in immigration proceedings is questionable, especially when determining whether or not to issue a U visa certification. Form I-918B is only asking law enforcement agencies to certify facts as they know them related to a victimization, not to make determinations about the applicant's moral character, as USCIS will make the final decision, which takes into account the applicant's criminal history and gang affiliation if applicable.⁵²

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Nereida Moreno, "Immigrant sues Chicago, police for placing his name in gang database," *Chicago Tribune*, July 11, 2017. Accessed August 14, 2017, <http://www.chicagotribune.com/news/local/breaking/ct-chicago-gang-database-immigrant-met-20170711-story.html>

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² DHS Resource Guide, p. 26.

Lack of Uniformity in Policy and Practice of U Visa Certification Continues to Undermine Trust in Law Enforcement and Threatens Public Safety

Poor accountability and the lack of documented and consistent U visa certification policies lead to disparities in U visa certification practices. This lack of uniformity undermines immigrant communities' trust in law enforcement, which harms public safety. In some cases, advocates are even advising clients not to go in person to a certain law enforcement agency with a blank Form I-918B because of the agency's practice of frequent referrals to ICE. In Winnebago County, the State's Attorney's Office often preempts U visa certification requests from local police departments, which has created a backlog for processing. Unclear U visa certification policies have added to this backlog, which forces immigrant victims to wait in uncertainty for even longer periods of time.

The lack of uniformity in policy and practice of law enforcement in issuing U visa certifications also has a chilling effect on advocacy. For instance, one legal representative in Champaign County explained that she no longer contacts the sheriff's office for U visa certification requests. The Champaign Sheriff's Office seemed uninterested in learning about the role of the U visa and frequently refused to complete Form I-918B. As a result, she often chooses to work with the State's Attorney's Office instead. The sheriff's disinterest has discouraged legal advocates from working with his office, even though that office is in many cases the primary investigative agency. Additionally, as not all cases handled by the Sheriff's Office are referred to the State's Attorney's Office, legal advocates have no one to contact to ask for a re-consideration. Another legal representative echoed these sentiments, explaining that nonprofits must make decisions based on available resources. As a result, nonprofit organizations must prioritize and they often choose to work with the most cooperative law enforcement agencies. In her case, her organization rarely contacts the DuPage County State's Attorney's Office based on that office's record of refusing certifications.

RECOMMENDATIONS

Creation and Implementation of State and Local Law Enforcement Training Sessions with the U.S. Department of Homeland Security (DHS) and Community Based Organizations

The information collected demonstrates that local law enforcement agencies often do not understand the nuances of the U visa or the role of Form I-918B and U visa certification. Uniform training for law enforcement agencies could help these agencies better understand the purpose of the U visa and the role of the certification process. Standardized training could prevent disparate practices between geographic areas. Ultimately, this could ensure access to justice is not determined by jurisdiction.

DHS provides training opportunities to law enforcement about the U visa and the certification process. Standardized training statewide could ensure that law enforcement

agencies understand the purpose of the U visa program. Including community-based organizations in this training process would increase transparency and augment information sharing between law enforcement and immigrant communities about U visas and best practices.

Creation of Statewide Model of U Visa Certification Policy and Practice

Illinois could also create a model U visa certification policy. This model policy directed at law enforcement agencies could describe the requirements of the U visa statute. The policy could also describe a standard process for responding to U visa certification requests. This model policy could help local law enforcement agencies avoid practices which undermine the federal U visa statutory scheme.

Enactment of State Legislation Moving Toward Uniform Certification Policy and Practice

Illinois should enact legislation to prevent conflicts with the federal statutory scheme and create a uniform policy and practice for U visa certification. Such legislation would limit disparities in access to justice based on geographic areas. This legislation could also include training and record keeping to guarantee accountability from government actors. This legislation would also improve relationships between immigrant communities and law enforcement agencies.

Such a bill has already passed in the Illinois Senate during the 100th General Assembly. The bill would require designated certifying officials to complete Form I-918B after receiving a request from a victim or victim's representative, unless the agency could not determine if the applicant was a victim of a qualifying crime. Additional requirements would include a process for expedited completion of Form I-918B under certain circumstances (including if the victim is in removal proceedings, or if the victim or his or her derivative family member will soon "age out"),⁵³ and publicly available procedures for U visa certification requests for each law enforcement agency.⁵⁴

Comparison to California Law

As the Illinois General Assembly contemplates a bill regarding U visa certifications, it is useful to consider California's U visa law: SB 674. The law created uniform procedures for how law enforcement agencies in California must respond to U visa certification requests.⁵⁵ The law requires designated certifying officials to complete the request within 90 days (unless the applicant is in removal proceedings, in which

⁵³ "Age out" refers to the age of the principal victim or his/her qualifying derivative family member. See 8 C.F.R. 214.14(a)(10).

⁵⁴ Illinois General Assembly, "Bill Status of SB0032 *100th General Assembly*," <http://ilga.gov/legislation/BillStatus.asp?DocNum=32&GAID=14&DocTypeID=SB&LegId=98875&SessionID=91&GA=100>

⁵⁵ California Legislative Information, "SB-674 Victims of crime: nonimmigrant status," https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB674

case the request must be completed within 14 days). The law creates a rebuttable presumption that the victim has met the helpfulness requirement. Additionally, beginning on January 1, 2017, law enforcement agencies were required to report to the legislature the number of U visa certification requests received and how many were approved or denied. These records, however, are not publicly available. In implementing SB 674, then-Attorney General Kamala Harris and the California Department of Justice released a law enforcement bulletin to provide guidance about the U visa law.⁵⁶

Only one year of data about U visa certification approvals and denials has been collected by the California legislature. *The Desert Sun* obtained records of 36 law enforcement agencies, which received a total of 7,108 U visa certification requests.⁵⁷ The majority of requests (2,284) were submitted to the Los Angeles Police Department. Overall, law enforcement agencies approved 5,356 requests and denied 1,489. On average, law enforcement agencies denied 27.8% of U visa certification requests. The San Diego Police Department (SDPD) denied 41.7% U visa certification requests, the highest denial rate in the state. The data also demonstrate that SDPD was slightly more likely to deny U visa certification requests for domestic violence victims than victims of other crimes. According to *the Desert Sun*, legal representatives have noticed improved education among certifying officials and a reduction of fear in immigrant communities regarding law enforcement.

The authors of this report also contacted advocates in California regarding SB 674. One advocate described SB 674 as an “overwhelming success.” Specifically, this advocate believes the time limit “has been really crucial.” She believes this provides an “incredible tool” for advocates, because they can use SB 674 to show law enforcement agencies that certification is their responsibility and they have been in violation of the law. In this advocate’s experience, most of the failure to comply with SB 674 is related to the time limit. This advocate believes failure to comply is probably related to a lack of education in most instances. For example, she shared that legal representatives generally receive responses relatively quickly when they alert certifying agencies that they are not following the law. The only enforcement mechanism for SB 674 is the requirement for annual reporting. In the experience of this advocate, failure to submit reports is unrelated to U visa certification practices that conflict with the federal U visa statute. For instance, a law enforcement agency may have U visa certification practices which comport with the federal U visa statute but not submit their report in a timely manner. In this advocate’s opinion, the difficulties related to reporting stem from the fact that there is not a set form for the reporting process, so law enforcement agencies do not know what information they are required to submit.

⁵⁶ California Department of Justice Division of Law Enforcement, “Information Bulletin to All California State and Local Law Enforcement Agencies Subject: New and Existing State and Federal Laws Protecting Immigrant Victims of Crime,” https://oag.ca.gov/system/files/attachments/press_releases/dle-2015-04.pdf

⁵⁷ Gustavo Solis, “U Visa data gives glimpse into local law enforcement-immigrant relationship,” *The Desert Sun*, updated February 8, 2017, <http://www.desertsun.com/story/news/2017/02/08/new-data-shows-how-california-law-helps-undocumented-immigrants-obtain-legal-status/97454834/>

A second advocate believes SB 674 has changed the conversation between legal representatives and law enforcement agencies. SB 674 framed access to U visa certifications as an issue of equity which would increase the rights of victims. SB 674 also impelled certain agencies to improve their practices regarding U visa certifications. For instance, law enforcement agencies can no longer use a lack of resources as a justification for not completing U visa certification requests. SB 674 includes a mechanism for reimbursement and requires law enforcement agencies to respond as U visa certifications are no longer discretionary. SB 674 has also reduced barriers to receiving U visa certifications. For example, law enforcement agencies are no longer allowed to charge fees to victims requesting U visa certifications or refuse to sign based on the victim's alleged gang affiliation.

This advocate believes SB 674 has been successful because of the support of the California Attorney General and because certain law enforcement agencies have acted as role models. The Attorney General's Office distributed a bulletin explaining SB 674 to law enforcement agencies and appointed an employee in the Civil Rights Office as a point person for enforcement of SB 674. When asked about best practices, the advocate spoke about the police department in a major city in California. This police department initially followed arbitrary standards which conflicted with the federal U visa statute. After meetings with domestic violence advocates, this department created an internal policy for responding to U visa certification requests, which included a deadline for issuing responses and hiring a coordinator to work with non-profits, USCIS, and the designated certifiers in the department. The actions of this department demonstrated that improvements are possible and serves as a model for other law enforcement agencies.

This advocate also noted a few areas which still need improvement. For instance, not all law enforcement agencies have submitted their reports about approval and denial rates. Without accurate reporting, it is difficult to evaluate the effectiveness of SB 674. Some agencies that have submitted reports indicated that they did not approve any U visa certification requests. The advocate also explained that the deadline for responding to U visa certification requests in SB 674 does not include exceptions for applicants with derivative children about to age-out. (Children, who are considered "derivatives" on the U visa application of their parent, may 'age-out' when they become too old to be eligible for a U visa through their parent.⁵⁸) In such cases, the law enforcement agency's response time may determine if the applicant's derivative children are eligible for a U visa.

⁵⁸ U.S. Citizenship and Immigration Services, "Age-Out Protection for Derivative U Nonimmigrant Status Holders: Pending Petitions, Initial Approvals, and Extensions of Status," October 24, 2012, <https://www.uscis.gov/sites/default/files/USCIS/Outreach/Feedback%20Opportunities/Interim%20Guidance%20for%20Comment/U-Visa-Age-Out-Interim-PM.pdf> ("In order for a derivative of a principal U nonimmigrant to be considered a qualifying family member, the qualifying relationship between the principal and the derivative must: (1) exist at the time the principal files the petition; (2) continue to exist at the time the derivative's petition is adjudicated; and, (3) continue to exist at the time of the derivative's subsequent admission to the United States.¹ Therefore, a derivative child must meet the definition of "child" under the INA, which is an unmarried person under 21 years of age, at the time his or her derivative petition is filed, adjudicated, and admitted.")

This advocate also reports that some law enforcement agencies do not understand the rebuttable presumption of helpfulness in SB 674. Law enforcement agencies must provide evidence to demonstrate that the victim was unhelpful. Without evidence demonstrating unhelpfulness, the victim should be assumed to be helpful. This evidence should be made available to legal representatives in case there are any discrepancies. For instance, a law enforcement agency may claim a victim was unhelpful because she did not return phone calls. However, the victim's advocate could explain she had been living at a domestic violence shelter without access to her regular phone.

Though implementation has not been perfect, SB 674 is an important model for U visa legislation in Illinois. SB 674 has positively influenced the conversation about U visas between legal representatives and law enforcement agencies, which has resulted in more victims receiving access to federal protections in a more just and equal manner.

CONCLUSION

The U visa program is an important tool to increase public safety and ensure immigrant victims of crimes can access justice and protection. The role of law enforcement agencies in the U visa application process has caused confusion among some agencies, which has prevented many eligible victims from receiving the U visa certification they need for their application. Since 2014, there have been positive and negative changes in the informal policies and practices of law enforcement agencies in Illinois. However, a lack of oversight continues to lead to limited accountability. As a result of this limited accountability, it is difficult to ensure that all victims are treated equally and without bias. Additionally, the lack of documented policy and standardized training among law enforcement agencies continues to lead to changes in U visa certification practices without notice. This lack of directives results in local practices which do not comport with the intentions of the federal U visa statute. Based on the experiences of advocates, these local practices indicate that law enforcement agencies do not fully understand the nuances of definitions and requirements in the federal U visa statute. Ultimately, disparities in these practices undermines trust in law enforcement among immigrant communities and threaten public safety.

In order for Illinois to increase public safety and trust in law enforcement, disparities in U visa certification practices must be eliminated. For instance, standardized training by DHS for local law enforcement agencies and community-based organizations could dispel misconceptions about the U visa application process. Additionally, a uniform statewide model for U visa certification practices and state legislation would reduce disparities. If these disparities could be reduced, access to justice and U visa certifications for crime victims would no longer be determined by their geographic locale.

ADDENDUM: SURVEY QUESTIONS

Q1: How many U Visa I-918B Certifications have you attempted to have certified since January 1, 2015? (estimates or ranges are acceptable)

Q2: Have you encountered any agencies which have refused to certify I-918B forms under all circumstances (i.e. “a blanket policy of not certifying”)?

Q3: If you answered yes to question #2, please list the full name of any agencies which in your experience refuse to certify I-918B forms in all circumstances.

Q4: Are there law enforcement agencies that you would otherwise work with but choose not to work with because of their policy (written or unwritten) of not certifying I-918B forms? If so, please describe the effect of this on your work.

Q5: Have you encountered police departments that refer all certification requests to the state’s attorney office instead of responding to requests internally?

Q6: If you answered yes to question #5, please list the full names of any agencies that in your experience refer all certification requests to the state’s attorney’s office.

Q7: Have you encountered any agencies that have refused to certify I-918B forms under particular circumstances? (for example: only certifies certain crimes, does not certify for cases more than a certain number of years old)

Q8: If you answered yes to question #7, please list the full name of any agencies that in your experience refuse to certify I-918B forms in certain circumstances.

Q9: Please list for which types of circumstances the certifying agencies in your response to question #8 will not sign. (for example: only certifies certain crimes, does not certify for cases more than a certain number of years old)

Q10: Have you encountered any agencies which have refused to certify I-918B forms for particular types of applicants? (for example: does not certify for applicants in gang databases or with a criminal history, does not certify for applicants still in relationships with their assailants)

Q11: If you answered yes to question #10, please list the full name of any agencies that in your experience refuse to certify I-918B forms for certain types of applicants.

Q12: Please list for which types of applicants the certifying agencies listed in your response to question #11 will not sign. (for example: does not certify for applicants in gang databases or with a criminal history, does not certify for applicants still in relationships with their assailants)

Q13: Have you encountered law enforcement agencies that have an internal appeals process in the event the request for a certification is denied?

Q14: If you answered yes to question #13, please list the agency and briefly describe the policy.

Q15: In your experience, which agencies always or almost always certify I-918B forms for applicants who are a victim of a qualifying crime and meet the helpfulness requirement?

Q16: Are you able to share detailed examples of cases that reflect the best practices of certifying agencies? (If you prefer to be contacted by email or phone in order to provide these narratives, please provide your contact information.)

Q17: Are you able to share detailed examples of cases that reflect the worst practices of certifying agencies? (If you prefer to be contacted by email or phone in order to provide these narratives, please provide your contact information.)

Q18: Is there anything else you would like to share which you would believe would be helpful for our analysis of the legal and policy implications of law enforcement U Visa certification practices?

Q19: May we contact you with follow-up questions? If yes, please provide your contact information below.