

AB 988 (BROWNLEY, 2009) Certification of Training and POST Training on U-VISA

AB 988 provides a certification process for training of human trafficking caseworkers. The training is needed for the caseworker and client to be able to invoke a confidentiality privilege for their communications. The law already provides for this privilege when a caseworker completes certified training, but fails to designate who will certify the training. This issue was recognized in the Final Report of the California Alliance to Combat Trafficking and Slavery Task Force in October 2007. The Task Force was created by Assembly Bill 22 (Lieber, 2005) and Senate Bill 180 (Kuehl, 2005) to analyze California's response to human trafficking. The final product was the report, also known as the "Safe State" report.

This privilege also exists for sexual assault caseworkers. The law provides that the Department of Finance will designate an agency to certify the training as acceptable. Currently, the California Emergency Management Agency is the designated agency for certifying sexual assault caseworker training. As CalEMA is already well versed in these issues, which has considerable overlap with human trafficking issues, AB 988 mirrors those provisions to have CalEMA certify the human trafficking training. The cost should be minimal as CalEMA is not required to perform the training, but simply certify it. Nongovernmental organizations currently perform the training, typically using grant or federal monies. This language has been temporarily removed from the bill while discussions are occurring regarding the cost of the certification.

Additionally, AB 988 provides for Peace Officer Standards and Training (POST) training of law enforcement to update the training materials to include training on the U Visa. The U Visa is available to noncitizen crime victims when they are cooperating with law enforcement to investigate and prosecute crimes, including human trafficking. It allows the victim to legally stay in the United States while they are cooperating with law enforcement.

While AB 988 is providing an avenue to ensure the caseworker privilege for victim's discussions with their caseworker, this is not mutually exclusive with the victim cooperating with law enforcement. In order for the victim to speak freely with the caseworker, which could lead to a decision to work with law enforcement, the victim must feel safe to talk with the caseworker. In the victim's land of origin, there may be police corruption or other reason to distrust law enforcement or the government. This is an issue the caseworker can work through with the victim.

If the victim chooses to work with law enforcement, they would be giving up the privilege. That would be part of the decision the victim would make when deciding to cooperate in the criminal case. However, many cases are not criminally prosecuted, and the privilege would be necessary to protect the victim in any civil suit the victim might bring against the trafficker.