



Washington Defender Association's
Immigration Project
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Defending Noncitizens Charged With Washington Burglary Offenses¹

All burglary offenses with a 12 month+ sentence will be aggravated felonies for immigration purposes, which will result in deportation for virtually all clients. Residential burglary with a DV label will be a deportable crime of domestic violence. Defenders can avoid Burglary 2nd degree and Residential Burglary from being crimes involving moral turpitude (CIMT) by carefully crafting the plea statement.

STEP ONE: IDENTIFY IMMIGRATION STATUS & DEFENSE GOALS

Status	Goals
<p>Undocumented Person (UP):</p> <ul style="list-style-type: none"> • Entered illegally and has never had status. • Came lawfully with a temporary visa (e.g. student or tourist) that has since expired. • Identify how long they have been in the U.S. and any U.S. citizen or LPR family members. <p>Note: many UPs (except those w/prior deportations) have avenues for obtaining lawful status.</p>	<ul style="list-style-type: none"> • Avoid ICE apprehension by getting/staying out of jail. A UP who goes to jail for even one day risks exposure to ICE, getting a detainer imposed, and ending up in ICE custody & removal proceedings. • Preserve avenues to obtain lawful status. There are avenues for UPs who are married to US citizens or have been in the U.S. for over 10 years or who entered as children. Burglary convictions can be crafted to avoid bars to lawful status.
<p>Lawful Permanent Residents (LPR or green card holders) & Refugees: Face permanent loss of their lawful status and deportation. Identify how long person has had lawful status.</p>	<ul style="list-style-type: none"> • Avoid a conviction that triggers deportation. Even when you do, advise clients not to leave the U.S. or apply for LPR status/citizenship without first consulting an immigration attorney. • If this is not possible, preserve avenues for relief from deportation. There are waivers of deportation available to LPRs with 7 years of residency, and refugees/asylees who've not yet become LPRs.
<p>Visa Holders (e.g. student & tourist visas): If current, goals = LPRs & refugees. If expired, goals = UPs. See above</p>	
<p>Deportation Is Permanent – Once removed, it is virtually impossible to legally obtain/regain lawful immigration status.</p>	
<p>Criminal History Critical – Obtaining complete criminal history is essential to provide accurate advice.</p>	

STEP TWO: DEFENSE STRATEGIES FOR BURGLARY CHARGES

Burglary 1st degree

Since the standard range for a Burglary 1st degree begins at over 12 months, a conviction will be classified as an aggravated felony. Aggravated felonies have the most severe immigration consequences including virtually automatic deportation, even for LPRs. Therefore, Burglary 1st degree conviction is not safe for your client.

¹ This advisory is intended to serve as a quick-reference guide for defenders representing noncitizen defendants. Whenever possible, defenders are advised to consult specifically with WDA's Immigration Project on individual cases.
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Immigration Consequences of Burglary 2nd Degree (RCW 9A.52.030) & Residential Burglary (RCW 9A.52.030)

<p>Crime involving moral turpitude (CIMT): Pleading to Burg 2 and ResBurg using the language below will ensure that neither is classified as CIMT. If possible, plead down from ResBurg to Burg2.</p> <ul style="list-style-type: none"> • LPRs: <i>One CIMT conviction will not trigger the CIMT deportation ground for LPRs/Refugees, unless felony offense was committed within 5 years of admission. However, any two CIMTs will trigger a deportation ground. CIMT inadmissibility ground still triggered, resulting in obstacles for applying for citizenship and re-entering the country.</i> • UP: Even a single felony CIMT will bar paths to lawful status. 	<p>Aggravated Felony (AF): If a sentence of 12 months or more is imposed, the conviction will be an AF.</p> <ul style="list-style-type: none"> • LPRs & UP: An AF will result in virtually automatic deportation, even for LPRs, as well as a permanent bar to ever re-entering the country lawfully. 	<p>Crime of DV (with a DV designation): With a DV designation, Burg 2 likely triggers the DV ground of deportation. ResBurg will <i>definitely</i> trigger the DV ground of deportation.</p> <ul style="list-style-type: none"> • LPRs: Your client will be placed into removal (deportation) proceedings if they trigger this deportation ground. They may still be eligible for a waiver of deportation if they don't have an aggravated felony conviction. • UPs: Triggering this DV ground of deportation will bar paths to lawful status.
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If you MUST plead to Burglary 2nd Degree or Residential Burglary

<p>To mitigate the risk of a CIMT:</p> <ul style="list-style-type: none"> • Specify that the burglary was not of a dwelling or residence; if that's not possible, specify that the dwelling was unoccupied. • Do not specify what the intended crime was (the intended crime is not an element of the offense). • If you must specify, identify a property crime that is not a CIMT (Mal. Misch). 	<p>To Avoid an AF:</p> <ul style="list-style-type: none"> • Avoid one year or more sentence - critical. • Consider multiple counts with consecutive sentences (<1 yr each) vs. concurrent sentences. 	<p>To Avoid Crime of DV:</p> <ul style="list-style-type: none"> • Try to negotiate to remove the "DV" designation. • If that is not possible, pleading to Burg2-DV is safer than pleading to ResBurg-DV.
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Best plea language (Do NOT do Alford plea): A plea statement setting forth the elements of the statute provides a sufficient factual basis to make the plea knowing, voluntary & intelligent under WA law.² Elaborating additional specific facts is not required and should be avoided.

- "I entered or remained unlawfully in a building [or unoccupied dwelling] with intent to commit a crime against property therein". (Seek sentence imposed of less than 12 months and no DV designation.)

Warning! If pleading to a burglary offense, advise *all* noncitizen clients (undocumented and LPRs, etc.) not to leave the U.S. or apply for LPR status/citizenship without first consulting an immigration attorney.

Best Alternatives to Avoid Immigration Consequences

- Theft (any degree):**
- RCW theft does not require intent to permanently deprive and should no longer be deemed a CIMT. To avoid "theft offense" aggravated felony (AF), keep the sentence under 12 months.
- Malicious Mischief (MM) (any degree):**
- MM conviction per "physical damage to the property of another" prong is not a CIMT & avoids DV deportation ground
- Assault 3rd under the (d) or (f) negligence prongs:**
- Because of negligence *mens rea*, cannot be classified as a CIMT or aggravated felony & avoids DV deportation ground.
- Criminal Trespass 1st Degree under RCW 9A.52.070:**
- Immigration-safe gross misdemeanor charge, even w/ DV label. OK to also plead along w/MM or (neg) Assault 3rd.
- Making or Having Burglary Tools RCW 9A.52.060:**
- Should not be a CIMT. If no CIMT priors, key to obtain 180 day sentence imposed (regardless of suspended time).

² *In re Personal Rest. of Hews (Hews II)*, 108 Wash.2d 579, 589 (Wash. 1987); *In re Pers. Restraint of Thompson*, 141 Wash.2d 712, 720-721 (Wash. 2000); *State v. Codiga*, 162 Wash.2d 912, 923-924 (Wash. 2008); *State v. Zhao*, 157 Wash.2d 188, 200 (Wash. 2006); *State v. Schaupp*, 111 Wash.2d 34 (Wash. 1988) .See also, R.C.W. 9.94A.450(1).