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Defending Noncitizens Charged With Washington Hit and Run Offenses – RCW 9A.52.010-020¹

Hit and run unattended is immigration safe. Hit and run attended should also be immigration safe if you plead as suggested below.

STEP ONE: IDENTIFY IMMIGRATION STATUS & DEFENSE GOALS

Status	Goals
<p>Undocumented Person (UP):</p> <ul style="list-style-type: none"> • Entered illegally and 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 whether they have LPR/USC family. <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 waivers of deportation for UPs who have been in the U.S. for over 10 years or who entered as children.
<p>Lawful Permanent Residents (LPR or green card holders) & Refugees: Identify how long person has had lawful status.</p>	<ul style="list-style-type: none"> • Avoid triggering deportation and inadmissibility grounds. Also, a LPR can't apply for citizenship while on probation.
<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 HIT AND RUN CHARGES

Hit and Run Unattended – RCW 46.52.010

A misdemeanor conviction for Hit and Run Unattended is not a crime involving moral turpitude (CIMT). It should not trigger any grounds of deportation or inadmissibility, nor should it bar paths to lawful status. However, any conviction is a negative discretionary factor in any future application for immigration benefits (e.g. citizenship, LPR status).

- **Best Plea language:** (DO NOT DO AN 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.
- “The defendant failed to stop immediately and leave in a conspicuous place in the vehicle struck a written notice giving [his] [her] name and address.”
- **Safe Misdemeanor Alternatives:** Attempted malicious mischief³, disorderly conduct.

¹ This advisory is intended 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.

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).

³ See WDAIP's *Malicious Mischief Advisory*.

Hit and Run Attended (HRA) - RCW 46.52.020

Gross Misdemeanor

- Only property damage to vehicle
- Striking the body of a deceased person

Class C Felony

- Accident results in injury to any person

Class B felony

- Accident results in death

Immigration Consequences of Hit and Run Attended (HRA) - RCW 46.52.020

Crime involving moral turpitude (CIMT):

- While the result of the accident determines the penalty of HRA (ie. whether it's a gross misdemeanor or a felony) the four requirements, duties and obligations of the driver are the same. A violation of the statute occurs if any of the four statutory requirements are not met.
- Case law holds that the failure to give identifying information after HRA is *not* a CIMT (regardless of whether the accident resulted in property damage, injury or death).⁴ However, other violations of the statutory requirements do pose significant risk that an HRA conviction will be classified as a CIMT.
- Therefore, it is critical to either not specify which requirement your client failed to meet or specify that your client failed to provide the required information. This will ensure that it is not a CIMT.

Aggravated Felony (AF):

- **Crime of violence AF:** HRA, even with a 12 month sentence in the case of injury or death, should not be classified as an aggravated felony crime of violence because it lacks as an element the intentional use of force or violence.
- **Obstruction of justice AF:** It should not be an Obstruction of Justice AF either because it lacks any element of interference with judicial proceedings.

If you MUST plead to Hit and Run Attended

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.⁵ Elaborating additional specific facts is not required and should be avoided.

- "I failed to satisfy my obligation to fulfill all of the following duties" and then do not specify which duty s/he failed to satisfy.

Or, if you must specify, state the following:

- "I failed to give my [name], [or address], [or insurance company], [or insurance policy number, or vehicle license number], [or exhibit my driver's license] to any person attending any vehicle collided with."

Warning! If pleading to a Hit and Run Attended 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

Malicious Mischief (MM) (any degree):

- MM conviction per "physical damage to the property of another" prong is not a CIMT or an aggravated felony.

Assault 3rd under the (d) or (f) negligence prongs⁶:

- Because of negligence *mens rea*, cannot be classified as a CIMT or aggravated felony.

Disorderly Conduct under RCW 9A.52.070:

- Immigration-safe gross misdemeanor charge. OK to also plead along w/MM or (neg) Assault 3rd.

Hit and Run Unattended or Gross Misdemeanor Hit and Run Attended: See above.

⁴ See *Cerezo v. Mukasey*, 512 F.3d 1163 (9th Cir. 2008); *Latu v. Mukasey*, 547 F.3d 1070 (9th Cir. 2008).

⁵ *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).

⁶ See WDAIP's *Felony Assault Advisory*.