



Washington Defender Association's  
Immigration Project  
[www.defensenet.org/immigration-project](http://www.defensenet.org/immigration-project)

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## Defending Noncitizens Charged With Patronizing a Prostitute - RCW 9A.88.110<sup>1</sup>

**This offense will be classified as a crime involving moral turpitude (CIMT)**

### STEP ONE: IDENTIFY IMMIGRATION STATUS & DEFENSE GOALS

Status	Goals
<p><b>Undocumented Person (UP):</b></p> <ul style="list-style-type: none"> <li>• Entered illegally and has never had status.</li> <li>• Came lawfully with a temporary visa (e.g. student or tourist) that has since expired.</li> <li>• Identify how long they have been in the U.S. and any U.S. citizen or LPR family members.</li> <li>• Identify criminal history.</li> </ul> <p>Note: many UPs (except those w/prior deportations) have avenues for obtaining lawful status.</p>	<ul style="list-style-type: none"> <li>• Avoid ICE apprehension by getting/staying out of jail. While many counties are no longer honoring ICE detainers, avoiding ICE is still an important goal.</li> <li>• Preserve avenues to obtain lawful status. There are paths for UPs married to U.S. citizens (USCs), and for those who have been in U.S. for over 10 years, or who entered as children. Certain convictions could make them ineligible for these legal remedies.</li> </ul>
<p><b>Lawful Permanent Residents (LPR or green card holders) &amp; Refugees:</b> Face permanent loss of their lawful status and deportation. Identify how long person has had lawful status.</p>	<ul style="list-style-type: none"> <li>• Avoid conviction that triggers deportation. Even if you do, advise clients not to leave the U.S. or apply for LPR status/citizenship without first consulting an immigration attorney.</li> <li>• If this is not possible, preserve avenues for relief from deportation. There are waivers of deportation available to LPRs with 7 years of residency<sup>2</sup>, and refugees/asylees who've not yet become LPRs.</li> </ul>
<p><b>Visa Holders (e.g. student &amp; tourist visas):</b> If current, goals = LPRs &amp; refugees. If expired, goals = UPs. See above.</p>	
<p><b>Criminal History Critical</b> – <i>Obtaining complete criminal history, with sentences, is essential</i> to provide accurate advice.</p>	
<p><b>Deportation Is Permanent</b> – Once removed, it is virtually impossible to legally obtain/regain lawful immigration status.</p>	

<sup>1</sup> 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.

<sup>2</sup> See WDAIP Quick Guide to "LPR Cancellation" at <http://www.defensenet.org/immigration-project/immigration-resources>

**STEP TWO: DEFENSE STRATEGIES FOR PATRONIZING (RCW 9A.88. 110) CHARGES**

<b>Immigration Consequences of Patronizing a Prostitute violation<sup>3</sup></b>		
<p><b><u>Crime Involving Moral Turpitude (CIMT):</u></b></p> <p>Patronizing will always be classified as a CIMT.<sup>4</sup></p> <ul style="list-style-type: none"> <li>• <i>One</i> WA simple misdemeanor CIMT conviction <i>will not trigger</i> CIMT deportation ground or inadmissibility ground. for LPRs/Refugees.</li> <li>• Any 2 CIMTs will trigger a deportation ground and the CIMT inadmissibility ground.               <ul style="list-style-type: none"> <li>○ <b>LPRs:</b> This results in triggering deportation proceedings, and in obstacles to gaining U.S. citizenship and re-entering the country.</li> <li>○ <b>UPs:</b> This would bar paths to lawful status and likely result in deportation.</li> </ul> </li> </ul>	<p><b><u>DACA &amp; TPS Eligibility</u></b></p> <p>If your client has or is eligible for either Deferred Action for Childhood Arrivals (DACA) or Temporary Protected Status (TPS), any second (in the case of TPS) or third (for DACA) misdemeanor would bar these paths to status.</p> <ul style="list-style-type: none"> <li>• If your client is DACA<sup>5</sup> eligible, it is critical to avoid this conviction.</li> </ul>	<p><b><u>NOT an Aggravated Felony</u></b></p> <p>There is an aggravated felony ground relating to the owning and management of a prostitution business, but merely patronizing a sex-worker does not trigger this ground.</p>
<b>If you MUST plead to patronizing a prostitute</b>		
<p><b>Patronizing a prostitute will always be a CIMT, but do the following to mitigate this conviction as a negative discretionary factor.</b></p> <ul style="list-style-type: none"> <li>• Do not let the factual basis for the conviction be more than minimum conduct.</li> <li>• Do not stipulate to CDPC or police report to provide factual basis.</li> <li>• Do not stipulate to a pattern or course of conduct.</li> <li>• Plead to an alternative.</li> </ul>		
<p><b>Best plea language: DO NOT DO AN ALFORD PLEA.</b></p> <p>“He or she solicits or requests another person to engage in sexual conduct with him or her in return for a fee.”</p> <ul style="list-style-type: none"> <li>• A plea statement setting forth the elements of the statute provides a sufficient factual basis to make the plea knowing, voluntary &amp; intelligent under WA law.<sup>6</sup> Elaborating additional specific facts is <u>not required</u> and should be avoided.</li> </ul>		
<p><b>Warning! If you plead to patronizing a prostitute, advise <i>all</i> noncitizen clients (undocumented and LPRs, etc.) not to leave the U.S. or apply for LPR status/citizenship without first consulting an immigration attorney.</b></p>		
<b>Best Alternatives to Avoid Immigration Consequences</b>		
<ul style="list-style-type: none"> <li>• Immigration safe Stipulated Order of Continuance or dispositional continuance. Consult WDAIP’s immigration safe deferred adjudications advisory.</li> <li>• Disorderly conduct: does not trigger criminal immigration grounds.</li> <li>• Criminal trespass: does not trigger criminal immigration grounds.</li> </ul>		

<sup>3</sup> There is a ground of inadmissibility for “engaging in prostitution” which does not require a conviction, but it does not cover acts of solicitation of prostitution. *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 554 (BIA 2008).

<sup>4</sup> *Rohit v. Holder*, 670 F.3d 1085 (9th Cir. 2012).

<sup>5</sup> For DACA eligibility, see WDAIP advisory on the WDA website.

<sup>6</sup> *In re Pers. Restraint of Thompson*, 141 Wash.2d 712, 720-721 (2000) (citing *In re Personal Rest. of Hews (Hews II)*, 108 Wash.2d 579, 589 (1987)). *State v. Codiga*, 162 Wash.2d 912, 923-924 (2008); *State v. Zhao*, 157 Wash.2d 188, 200 (2006); *In re Pers. Restraint Hews*, 108 Wash.2d at 590-591. *State v. Schaupp*, 111 Wash.2d 34 (1988). See also, R.C.W. 9.94A.450(1).