



Washington Defender Association's
Immigration Project
www.defensenet.org/immigration-project

Ann Benson, Directing Attorney
abenson@defensenet.org (360) 385-2538
Enoka Herat, Staff Attorney
enoka@defensenet.org (206) 623-4321 x 105
Jonathan Moore, Immigration Specialist
jonathan@defensenet.org (206) 623-4321 x.103

Defending Noncitizens Charged with RCW 9A.88.030 Prostitution

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

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 legal 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. • <i>Identify full criminal history.</i> <p>Note: many UPs (except those w/prior deportations) have avenues for obtaining lawful status.</p>	<ul style="list-style-type: none"> • Avoid removal proceedings by getting/staying out of jail. While ICE detainer policy is in flux, jail still increases risk of ICE encounters. • 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 or proof of <i>conduct</i> (e.g.: “engaged in prostitution”) could also make UPs ineligible for these legal remedies.
<p>Lawful Permanent Residents (LPR or green card holders) & Refugees:</p> <p>Face permanent loss of their lawful status and deportation.</p> <p><i>Identify how long person has had lawful status.</i></p>	<ul style="list-style-type: none"> • 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. • If this is not possible, preserve avenues for relief from deportation. There are waivers of deportation available to LPRs with 7 years of residency², 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>Criminal History Critical – Obtaining complete criminal history, with sentences, is <i>essential</i> to obtain accurate advice.</p>	

¹ For Patronizing, see separate advisory at: <http://www.defensenet.org/immigration-project/immigration-resources/sex-related-crimes>. This advisory does not treat Promoting or Permitting Prostitution. WDAIP advisories are to serve as quick-reference guides for defenders representing noncitizens. Defenders are advised to consult with WDA’s Immigration Project on individual cases.

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

Deportation Is Permanent – Once removed, it is virtually impossible to legally obtain/regain lawful immigration status.

FYI: A non-LPR who is a victim of trafficking may have a path to legal status. In that case please contact WDAIP.
STEP TWO: DEFENSE STRATEGIES FOR PROSTITUTION (RCW 9A.88.030) CHARGES

Immigration Consequences of Prostitution Conviction

<u>Crime Involving Moral Turpitude (CIMT):</u>	<u>DACA/DAPA or TPS Eligibility</u>	<u>NOT an Aggravated Felony</u>
Prostitution will always be classified as a CIMT. ³ <ul style="list-style-type: none"> • 1 RCW simple misd. CIMT conviction <i>will not trigger</i> CIMT deportation or inadmissibility ground. • Any 2 CIMTs will trigger CIMT deportation and inadmissibility grounds: <ul style="list-style-type: none"> ○ LPRs: Triggers deportation proceedings, obstacles to gaining U.S. citizenship and to re-entering the US. ○ UPs: Bars paths to lawful status and likely result in deportation. 	<u>Deferred Action for Childhood Arrivals (DACA)</u> or for parents (<u>DAPA</u>); or <u>Temporary Protected Status (TPS)</u> , are barred by: any 2nd (for TPS) or any 3rd (DACA/ DAPA) misdemeanor. If DACA/ DAPA-eligible, may need to avoid even one such conviction. ⁴	There is a deportable aggravated felony for owning or managing a prostitution business, but having been a sex-worker does not trigger that ground.

Inadmissibility without a conviction for the conduct of having “engaged in prostitution.”

This ground of inadmissibility bars anyone coming to the US “solely, principally, or incidentally to engage in prostitution, or [who] **has engaged in prostitution** within 10 years of the date” of an application for a visa or status. This ground does not require a criminal conviction so CDPCs and police reports may be viewed.

The federal definition of prostitution is restricted to engaging in *promiscuous intercourse for hire*.⁵ It must be based on continuity and regularity, showing a pattern of behavior primarily for financial or material gain, not casual or isolated acts.⁶ A carefully crafted plea can prevent the conviction *by itself* from conclusively providing proof of inadmissibility under this ground, although non-conviction evidence may still be used by the govt. (Some applications for UPs require showing “good moral character” within a certain period. Indicia of any kind of sex-work could prevent this.)

This ground can apply to permanent residents or visa-holders who depart the US and re-enter or seek to re-enter.

If You MUST Plead to Prostitution

Prostitution will always be a CIMT, but if you cannot plead a safer alternative, do the following to mitigate this conviction as a negative discretionary factor or inadmissibility ground.

- Do not let the factual basis for the conviction be more than minimum conduct. It is important that the sexual conduct **not** be specified as intercourse and **not** to admit to multiple acts or conduct.
- Do not stipulate to CDPC or police report as factual basis.
- Do not stipulate to a pattern or course of conduct. Restrict plea to a single act.

Best plea language (No ALFORD Pleas):

“I engaged in sexual conduct other than intercourse on one occasion, in return for a fee.” A plea statement setting forth statutory elements provides sufficient factual basis to make a plea knowing, voluntary & intelligent under WA law.⁷ Admitting additional specific facts is not required and should be avoided.

Warning! If pleading to RCW 9A.88.030, 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.

³ *Rohit v. Holder*, 670 F.3d 1085 (9th Cir. 2012).

⁴ For DACA, see WDAIP website advisory. A misd. of “sexual abuse or exploitation” is a DACA bar; unknown if applies to this.

⁵ See *Kepilino v. Gonzales*, 454 F.3d 1057 (9th Cir. 2006); 22 CFR § 40.24(b). Cf. RCW §§ 9A.44.010(1)(c), (2) (“Sexual contact” means any touching of the sexual or other intimate parts of a person” for gratification, and so is broader than federal definition.)

⁶ 22 C.F.R. § 40.24(b) (emphasis added) (State Department visa regulations)

⁷ *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).

Best Alternatives to Avoid Immigration Consequences

- Disorderly conduct; Criminal trespass; or Obstructing do not trigger criminal immigration grounds.
- Massage without a license. (Pure licensing offense is not a CIMT, but observe above plea precautions, as applicable. Keep out indicia of sexual conduct. A suspended sentence of 180 days or less is preferable here.)
- Immigration-safe Stipulated Order of Continuance or dispositional continuance. Consult WDAIP's immigration safe deferred adjudications advisory.