



Washington Defender Association's
Immigration Project
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Defending Noncitizens Charged With Washington Felony Assault Offenses

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Assault 3rd under the (f) negligence prong is the best felony assault to plead to, and will not trigger any grounds of inadmissibility or deportation even with a DV designation.

I. 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 US 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. Felony assault convictions could make them ineligible for these paths.
<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>Criminal History Critical – Obtaining complete criminal history is essential to provide accurate advice.</p>	
<p>Deportation Is Permanent – Once removed, it is virtually impossible to legally obtain/regain lawful immigration status.</p>	

II. STEP TWO: DEFENSE STRATEGIES FOR FELONY ASSAULT CHARGES²

A. Assault 1st Degree (RCW 9A.36.011)

Since the standard range for an Assault 1st degree begins at over 12 months, a conviction will be classified as a crime of violence (COV) aggravated felony. Aggravated felonies have the most severe immigration consequences including virtually automatic deportation, even for LPRs. Therefore, Assault 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.

² For information on the immigration consequences of a sexual motivation enhancement, see WDAIP's Sexual Motivation advisory.

B. Assault 2nd Degree (RCW 9A.36.021)

Immigration Consequences of Assault 2nd Degree (RCW 9A.36.021)		
<p>Crime involving moral turpitude (CIMT): virtually all provisions of assault 2nd will be classified as CIMT.</p> <ul style="list-style-type: none"> • LPRs: <i>One</i> CIMT conviction will <i>not</i> trigger the CIMT deportation ground for LPRs/Refugees, <i>unless</i> the 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. • UP: Even a single CIMT will bar paths to lawful status. 	<p>Crime of Violence 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 unlawfully. 	<p>Crime of DV (with a DV designation): With a DV designation, all provisions of assault 2nd will trigger the Crime of DV ground of deportation.</p> <ul style="list-style-type: none"> • LPRs: Your client may still be eligible for a waiver of deportation if they don't have an aggravated felony. • UPs: Triggering this ground will bar paths to lawful status.
If you MUST plead to Assault 2nd Degree (RCW 9A.36.021)		
<p>To mitigate the risk of a CIMT:</p> <ul style="list-style-type: none"> • Plead to “(e) With intent to commit a felony, assaults another.” • If possible, do not specify the intended felony. If you must specify, identify a felony that is not a CIMT (e.g. Mal. Misch.2nd). • Plead explicitly to an assault by “offensive touching.” 	<p>To Avoid an AF:</p> <ul style="list-style-type: none"> • Avoid one year or more sentence. • 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.
<p>Best plea language: “On [date] I offensively touched [a/v] with the intent to commit a felony [or felonious Malicious Mischief]” with a sentence imposed of less than 12 months.</p>		
Best Alternative to Avoid Immigration Consequences		
<p>Assault 3rd under the (d) or (f) negligence prongs: See § C below.</p>		

C. Assault 3rd Degree RCW 9A.36.031 under §§ (d), (f) and (g)³

Immigration Consequences of Assault 3rd Degree Under § (g) - Assaulting a Law Enforcement Officer	
<p>Crime involving moral turpitude (CIMT): An assault against an officer risks being classified as a CIMT.</p> <ul style="list-style-type: none"> • See impact of CIMT on LPRs & UPs above. 	<p>Crime of Violence Aggravated Felony (AF): If a sentence of 12 months or more is imposed, this will be an AF.</p> <ul style="list-style-type: none"> • See impact of AF on LPRs & UPs above.
Assault 3rd Degree Under §§ (d) & (f) - Best Alternative to Avoid Immigration Consequences	
<p>Assault 3rd under the (d) or (f) negligence prongs:</p> <ul style="list-style-type: none"> • Because of negligence <i>mens rea</i>, these prongs cannot be classified as a CIMT or aggravated felony-COV or as a Crime of DV. As such, they do not trigger grounds of inadmissibility or deportation (even if designated DV). • If pleading to §(d), it is best that D does not plead to carrying a firearm. 	

³ If your client has been charged under §§ (a), (b), (c), (e), (h), (i), (j) or (k) of this statute, contact WDAIP staff for further guidance.