



Washington Defender Association's  
Immigration Project  
[www.defensenet.org/immigration-project](http://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 Washington Misdemeanor Assault January 2014<sup>1</sup>

**Assault 4<sup>th</sup> should not trigger any grounds of inadmissibility or deportation even with a DV designation. It is now "immigration safe."**

### I. 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 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 whether they have LPR/USC family.</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. A UP who goes to jail for even one day risks exposure to ICE, getting a detainer imposed, and ending up in ICE custody &amp; removal proceedings.</li> <li>• 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.</li> </ul>
<p><b>Lawful Permanent Residents (LPR or green card holders) &amp; Refugees:</b> Identify how long person has had lawful status.</p>	<ul style="list-style-type: none"> <li>• An Assault 4th degree conviction will not trigger deportation or inadmissibility. But a LPR can't apply for citizenship while on probation.</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> – Obtaining complete criminal history is essential 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>	

### II. STEP TWO: DEFENSE STRATEGIES FOR MISDEMEANOR ASSAULT CHARGES

#### A. Assault 4<sup>th</sup> Degree (RCW 9A.36.041)

Under recent U.S. Supreme Court case law, an Assault 4<sup>th</sup> degree conviction should not trigger any grounds of deportation or inadmissibility and should not bar paths to lawful status, even with a DV designation.<sup>2</sup> We still recommend defenders try and do the following:

- Ensure that the plea is a straight plea (not an Alford plea) that does not incorporate police reports, or the certification for determination of probable cause into it; and
- Ensure that the plea statement language is carefully crafted to an assault only by an "unconsented" or "offensive" touching; and
- Obtain a sentence of 180 days or less, regardless of time suspended (this will ensure that in the rare instance it is classified as a crime involving moral turpitude (CIMT), it falls under the "petty offense" exception for single CIMTs).
- **Safe Misdemeanor Alternatives:** criminal trespass, disorderly conduct, malicious mischief, attempted assault 4<sup>th</sup>

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