



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 Washington Taking a Motor Vehicle<sup>1</sup>

**All Taking a Motor Vehicle (TMV) offenses with a 12 month+ sentence will be aggravated felonies for immigration purposes, which will result in deportation for virtually all clients. TMV 1st degree is a crime involving moral turpitude (CIMT) but TMV 2nd degree is not. TMV 2nd degree with a sentence of less than 12 months is thus a “safe” conviction for all non-citizen clients.**

### 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> </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 avenues for UPs who are married to U.S. citizens or have been in the U.S. for over 10 years or who entered as children. Burglary convictions can be crafted to avoid bars to lawful status.</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 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.</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, 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>Deportation Is Permanent</b> – Once removed, it is virtually impossible to legally obtain/regain lawful immigration status.</p>	
<p><b>Criminal History Critical</b> – Obtaining complete criminal history is essential to provide accurate advice.</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.

## STEP TWO: DEFENSE STRATEGIES FOR TMV CHARGES

### Immigration Consequences of TMV<sup>1st</sup> Degree (RCW 9A.56.070) & TMV 2<sup>nd</sup> Degree (RCW 9A.56.075)

#### Crime involving moral turpitude (CIMT):

TMV 1st degree will *always* be a CIMT.

- **LPRs:** *One* CIMT conviction will *not* trigger the CIMT deportation ground for LPRs/Refugees, *unless* the felony 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.

TMV 2nd Degree is *not* a CIMT.

#### Aggravated Felony (AF):

For either TMV 1<sup>st</sup> or 2<sup>nd</sup> degree, if a sentence of 12 months or more is imposed, the conviction will be an AF.

**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 lawfully.

### If you MUST plead to TMV 1<sup>st</sup> degree or TMV 2<sup>nd</sup> degree

TMV 1st degree will always be a CIMT.

**While TMV 2nd degree is not a CIMT, we still recommend that defenders try and do the following:**

- Plead using the “riding in” rather than “taking or driving” language.
- Specify that the vehicle was “intentionally taken or driven away” *without the intent to deprive* [or *with the intent to temporarily deprive*].

#### To Avoid an AF:

- Avoid one year or more sentence. If you cannot avoid a 1 year sentence it is critical to plead to an alternative.
- Consider multiple counts with consecutive sentences (<1 yr each) vs. concurrent sentences.

**Best plea language for TMV 2<sup>nd</sup> degree:** (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.<sup>2</sup> Elaborating additional specific facts is not required and should be avoided.

- “The defendant voluntarily rode in/upon a motor vehicle which was the property of another. The motor vehicle had been intentionally driven away without permission of the owner. At the time of the riding the defendant knew that the motor vehicle was unlawfully taken, but did not have the intent to deprive the owner [or had the intent to temporarily deprive].

**Warning!** If you plead to TMV 1<sup>st</sup> degree, 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

- **Plead TMV 1<sup>st</sup> degree down to TMV 2<sup>nd</sup> degree, if possible.**
- **Attempted TMV 2<sup>nd</sup> Degree (GM):** Not a CIMT, but follow the plea suggestions above. Obtaining 180 days sentence imposed (regardless of suspended time) is a good precaution, but not critical.
- **Theft (any degree):** RCW theft does not require intent to permanently deprive and should no longer be deemed a CIMT. To avoid “theft offense” aggravated felony (AF), keep the sentence under 12 months.
- **Malicious Mischief (MM) (any degree):** MM convictions per “physical damage to the property of another” prong is not CIMT and will not be an aggravated felony even with a 12 month sentence.
- **Criminal Trespass 1<sup>st</sup> Degree under RCW 9A.52.070:** Immigration-safe gross misdemeanor charge.

<sup>2</sup> *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. Schapp*, 111 Wash.2d 34 (Wash. 1988) .See also, R.C.W. 9.94A.450(1).