



Defending Noncitizens Charged With Assault in Fourth Degree¹

February 2022

RCW 9A.36.041, Assault in the Fourth Degree (A4), or any municipal code assault with the same common-law elements, should not by itself trigger a conviction-based ground 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 without inspection; never had status. Entered lawfully with temporary visa (e.g., student, tourist, employment) that expired. 	<ul style="list-style-type: none"> Avoid jail/risk of ICE encounter and enforcement¹ Preserve paths to obtain lawful status Preserve eligibility for relief from removal Avoid grounds of inadmissibility²
<p>Currently admitted in lawful status:</p> <ul style="list-style-type: none"> Lawful Permanent Resident (LPR) Asylee, Refugee Temporary Visa Holder (e.g., student, tourist, employment) 	<ul style="list-style-type: none"> Maintain lawful status and ability to renew status Preserve eligibility for relief from removal Preserve eligibility to become LPR or USC Avoid grounds of deportability and inadmissibility
DACA	Avoid bars to eligibility (one felony, one “significant misdemeanor,” or three or more misdemeanors)
Temporary Protected Status (TPS)	Avoid bars to eligibility (one felony, two or more misdemeanors)

¹ See RCW § 10.93.160, prohibiting jail employees’ compliance with ICE detainer requests.

² *Inadmissibility* grounds apply to noncitizens seeking admission into the U.S. and to anyone applying for immigration status. *Deportability* grounds apply to anyone who entered the U.S. lawfully, even if currently undocumented (e.g., status expired).

II. STEP TWO: MISDEMEANOR ASSAULT DEFENSE STRATEGIES

An A4 Conviction Will Not Trigger a Conviction-Based Ground of Removal
<ul style="list-style-type: none">• Ensure that plea is a straight plea (not <i>Alford</i> plea) that does not incorporate police reports, or the certification for determination of PC, nor stipulates to such as providing the factual basis (especially if those relate to a more serious, original charge); and
<ul style="list-style-type: none">• Obtain, if possible, a sentence of 180 days or less, regardless of time suspended. For A4 this is normally preferable, but <i>not</i> critical. However, if any client’s lifetime, aggregate total of all (non-concurrent) sentences, regardless of suspension, reaches 1825 days (5 years), it will trigger criminal inadmissibility.
<ul style="list-style-type: none">• Following the rule that it is always better to plead to the least culpable conduct under a statute, whenever possible ensure that the plea statement language is carefully crafted to an assault only by an “unconsented” or “offensive” touching; and
<ul style="list-style-type: none">• It is always preferable when possible to unlabel A4 as “DV,” if you can; and to leave out age of alleged victim if a minor.
<p style="text-align: center;">Safe (non-triggering) misdemeanor alternatives, include: criminal trespass, disorderly conduct, malicious mischief, obstructing, attempted A4</p>

On Felony Assault in the Fourth Degree:
<p style="text-align: center;">A4 can become a class C felony, with certain prior “DV” convictions.³</p>
<p>Because the elements of felony A4, other than recidivism, are the same common-law assault elements as for misdemeanor A4, the pleading advice should be essentially the same. (And, as noted above, the addition of a DV designation does not change the analysis.)</p>

³ “[W]here domestic violence was pleaded and proven after July 23, 2017, if the person has two or more prior adult convictions within ten years for any of the following offenses where domestic violence as defined in RCW 9.94A.030 was pleaded and proven after July 23, 2017.” RCW 9A.36.041(3).