

## Defending Noncitizens Charged with Washington Taking Motor Vehicle Without Permission (TMVWOP)(RCW 9A.56.070, .075)<sup>1</sup>

### STEP ONE: IDENTIFY IMMIGRATION STATUS & DEFENSE GOALS

Status	Goals
<b>Undocumented Person (UP):</b> <ul style="list-style-type: none"> <li>Entered without inspection; never had status.</li> <li>Entered lawfully with temporary visa (e.g. student, tourist, employment, etc.) that expired.</li> </ul>	<ul style="list-style-type: none"> <li>Avoid jail/risk of ICE encounter and enforcement.</li> <li>Preserve paths to obtain lawful status.</li> <li>Preserve eligibility for relief from removal.</li> <li>Avoid grounds of inadmissibility.</li> </ul>
<b>Lawfully admitted and still in status:</b> <ul style="list-style-type: none"> <li>Lawful Permanent Residents (LPR)</li> <li>Asylees, Refugees</li> <li>Temporary visa holders (e.g. student, tourist, employment, etc.)(status still current)</li> </ul>	<ul style="list-style-type: none"> <li>Maintain lawful status, ability to renew status.</li> <li>Preserve eligibility for relief from removal.</li> <li>Preserve eligibility to become LPR or USC.</li> <li>Avoid grounds of deportability and inadmissibility.</li> </ul>
<b>DACA</b>	Avoid eligibility bars: one felony, one “significant misdemeanor,” or three or more misdemeanors.
<b>Temporary Protected Status (TPS)</b>	Avoid eligibility bars: one felony, two or more misdemeanors.

### STEP TWO: IDENTIFY IMMIGRATION CONSEQUENCES

Immigration Consequences
<p><b><u>CRIME INVOLVING MORAL TURPITUDE (CIMT)</u></b></p> <p><b>TMVWOP 1<sup>st</sup> Degree</b> is a CIMT.</p> <p><b>TMVWOP 2<sup>nd</sup> Degree</b> is not a CIMT.</p> <p><u>CIMT Consequences:</u></p> <ul style="list-style-type: none"> <li>A single felony CIMT will not trigger <b>deportability</b> unless it was <i>committed</i> within five years of admission. Two or more CIMTs of any type at any time will trigger deportability.</li> <li>A single felony CIMT triggers <b>inadmissibility</b>: for UPs, may bar paths to lawful status. LPRs and others may be denied re-admission after travel abroad – do not travel without first consulting immigration attorney.</li> </ul>
<p><b><u>AGGRAVATED FELONY</u></b></p> <p>With a sentence of one year or more:</p> <p><b>TMVWOP 1</b> risks being deemed an aggravated felony.</p> <p><b>TMVWOP 2</b> should not be an aggravated felony</p> <p><u>Aggravated Felony (Ag Fel) Consequences:</u> SEVERE, always avoid if possible. Results in virtually certain removal (without a hearing if undocumented); loss of LPR status; permanent bar on returning to U.S.; ineligible for any discretionary relief; barred from citizenship, etc.</p>

<sup>1</sup> This is intended to serve as a quick-reference guide for criminal defense attorneys representing noncitizens. Defenders are encouraged to [consult with WDA’s Immigration Project](#) in every case involving a noncitizen client.

## **STEP THREE: DEFENSE STRATEGIES**

### **Plea Alternatives**

- **Plead TMV 1<sup>st</sup> degree down to TMV 2<sup>nd</sup> degree.**
- **Attempted TMV 2<sup>nd</sup> Degree (GM):** Not a CIMT (but see plea language below). Obtain 180 day sentence imposed (regardless of suspended time) as precaution (CIMT “petty offense” exception).
- **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.
- **Theft (any degree):** Generally safe because does not require intent to permanently deprive of property. Keep sentence under one year, or, if sentence of one year or more, plead to “theft of services.”<sup>2</sup>
- **Criminal Trespass 1<sup>st</sup> Degree under RCW 9A.52.070:** Immigration-safe gross misdemeanor charge.

### **Pleading Strategies**

**TMVWOP 2:** 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 permanently deprive or substantially erode the owner’s property rights* [or *with the intent to temporarily deprive*].

E.g. “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].

**TMVWOP 1:** Keep sentence under one year. Consider multiple counts with consecutive sentences, forfeiting CFTS, or putting higher sentence on safe count (such as mal misch).

### **TRAVEL WARNING!**

If pleading to TMVWOP 1<sup>st</sup> degree, warn all noncitizen clients, regardless of status, NOT to leave the U.S. or submit any applications to immigration (e.g. for citizenship, legal status, etc.) without first consulting an immigration attorney.

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<sup>2</sup> See WDA Immigration Project [Practice Advisory on Theft Offenses](#).