

This advisory is meant as a quick reference guide for defenders representing noncitizens. For case-specific analysis, defenders should [consult with the WDA’s Immigration Project](#) or a qualified

Defending Noncitizens Charged With Washington Hit and Run Offenses – RCW 9A.52.010 and .020

STEP ONE: IDENTIFY IMMIGRATION STATUS & DEFENSE GOALS

Status	Goals
<p>Undocumented Person (UP):</p> <ul style="list-style-type: none"> Entered illegally and 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 whether they have LPR/USC family. <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 waivers of deportation for UPs who have been in the U.S. for over 10 years or who entered as children.
<p>Lawful Permanent Residents (LPR or green card holders) & Refugees: Identify how long person has had lawful status.</p>	<ul style="list-style-type: none"> Avoid triggering deportation and inadmissibility grounds. Also, a LPR can’t apply for citizenship while on probation.
<p>Visa Holders (e.g. student & tourist visas): If current, goals = LPRs & refugees. If expired, goals = UPs. See above</p>	
<p>Deportation Is Permanent – Once removed, it is virtually impossible to legally obtain/regain lawful immigration status.</p>	
<p>Criminal History Critical – Obtaining complete criminal history is essential to provide accurate advice.</p>	

STEP TWO: DEFENSE STRATEGIES FOR HIT AND RUN CHARGES

Hit and Run Unattended - RCW 46.52.010

A misdemeanor conviction for Hit and Run Unattended is not a crime involving moral turpitude (CIMT). It should not trigger any grounds of deportability or inadmissibility, nor should it bar paths to lawful status. However, any conviction is a negative discretionary factor in any future application for immigration benefits (e.g. citizenship, LPR status).

- **Best Plea language:** (DO NOT DO AN *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. Elaborating additional specific facts is not required and should be avoided.
- “The defendant failed to stop immediately and leave in a conspicuous place in the vehicle struck a written notice giving [his] [her] name and address.”
- **Safe Misdemeanor Alternatives:** Attempted [Malicious mischief 3](#), [Disorderly conduct](#).

Hit and Run Attended (HRA) - RCW 46.52.020

Gross Misdemeanor <ul style="list-style-type: none"> Only property damage to vehicle Striking the body of a deceased person 	Class C Felony <ul style="list-style-type: none"> Accident results in injury to any person 	Class B felony <ul style="list-style-type: none"> Accident results in death
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Immigration Consequences of Hit and Run Attended (HRA) - RCW 46.52.020

Crime involving moral turpitude (CIMT): <ul style="list-style-type: none"> Case law holds that the failure to give identifying information after HRA is <i>not</i> a CIMT, regardless of whether the accident resulted in property damage, injury or death.¹ The various duties described in (3) are <i>means</i> of committing the offense, not elements, and so the offense as a whole is overbroad and should not be a CIMT regardless of the duty violated. However, in the absence of a case directly on point, see below for safest (ideal) plea language. 	Aggravated Felony (AF): <ul style="list-style-type: none"> Crime of violence AF: HRA, even with a sentence of a year or more (in the case of injury or death), cannot be an aggravated felony crime of violence because it lacks as an element the intentional use/threatened use of force or violence. Obstruction of justice AF: It cannot be an Obstruction of Justice AF either because it lacks any element of interference with judicial proceedings.
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If pleading to Hit and Run Attended

Best plea language (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. Elaborating additional specific facts is not required and should be avoided when possible.

Either:

- “I failed to give my [name], [or address], [or insurance company], [or insurance policy number, or vehicle license number], [or exhibit my driver’s license] to any person attending any vehicle collided with.”

Or:

- “I failed to satisfy my obligation to fulfill all of the following duties” and then do not specify which duty s/he failed to satisfy.

Travel Warning! Any noncitizen with a criminal history should consult an immigration attorney *prior* to traveling outside of the United States.

Better Alternatives

Malicious Mischief (MM) (any degree):

- MM is not a CIMT or an aggravated felony.

Assault 3 under the (d) or (f) negligence prongs:

- Because of negligence *mens rea*, cannot be classified as a CIMT or aggravated felony.

Disorderly Conduct

Hit and Run Unattended or Gross Misdemeanor Hit and Run Attended: See above.

¹ See *Cerezo v. Mukasey*, 512 F.3d 1163 (9th Cir. 2008); *Latu v. Mukasey*, 547 F.3d 1070 (9th Cir. 2008).