



Immigration Status and Court Hearings in Washington State

In 2020, Washington State passed a new law called the “Courts Open to All Act” (House Bill 2567). The Washington Supreme Court also made changes to its court rules (GR 38 and RPC 4.4).

These changes are to keep people from being arrested by immigration agents (ICE or Border Patrol) when they come to a courthouse. They are also to protect people from having their immigration status shared or disclosed in connection with a court proceeding. If federal immigration agents continue to arrest people who come to court, they will be breaking these state laws and rules.

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- ❖ If you are concerned about being arrested by immigration agents when you go to court, talk with a lawyer. See below for information about how to talk with a lawyer.
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I have to go to court. Can ICE pick me up if I show up at the courthouse?

ICE should only be able to detain you if they have an arrest warrant or a court order signed by a judge. Talk to a lawyer if you have concerns. If you want someone to accompany you to court, call the [Washington Immigrant Solidarity Network](#) at 1-844-724-3737.

Can ICE pick me up on my way to the courthouse or leaving the courthouse?

ICE should not be able to pick you up within one mile of the courthouse. Talk to a lawyer if you have concerns. If you want someone to accompany you to court, call the [Washington Immigrant Solidarity Network](#) at 1-844-724-3737.

I am a victim or a witness in a criminal trial. Can I be asked about my immigration status during the trial?

The person charged with the crime (the **defendant**) will have a defense attorney (a “**public defender**” in many cases). If the defendant believes you may be bringing criminal charges or testifying as a witness in order to help with an application to get legal immigration documents (such as a U visa), they can ask the judge to allow the defendant’s lawyer to ask you questions about this at trial. These questions may include questions about your immigration status. The judge will decide if the defense attorney can ask you these questions at trial.

As a victim or witness, you might also be deposed (asked questions under oath) before a trial takes place. If you have questions about this, ask the prosecutor, or if there is one in your county, the victim/witness coordinator.

What if I am the defendant in a criminal case?

The judge can only allow evidence of your immigration status if it is needed to prove part of the crime (an “**element**” of the crime) you are being charged with, or if it is needed to prove your defense to the charge. **It is very important that you tell your defense attorney or public defender that you are not a US citizen. They must keep this information confidential.** However, your attorney needs to know this information to protect you and defend your rights, and to try to work out the criminal charges so that you do not get deported.

I am a party in a family or other civil (non-criminal) court case. Can they ask about my immigration status?

A lawyer for another party can only ask about this if it is needed to prove their case.

How does a judge decide whether to allow evidence about my immigration status?

The party who wants to ask about your immigration status must file a confidential written request (**motion**) asking the judge permission to do so. The judge will hold a private hearing in the judge’s office, not in the courtroom, before making a decision.

If I am involved in a court case, can the other side's lawyer report me to ICE?

Lawyers can only practice law if they have been given a license by the Washington State Bar Association. If a lawyer violates rules for lawyers (called the **Rules of Professional Conduct**), the Bar Association can take away their license or give them other penalties.

If a lawyer reports someone involved in a legal case to ICE, that is a violation of the rules for lawyers. If you are worried that a lawyer in the case might report you to ICE, ask to talk to a lawyer on your side of the case.

How can I talk to a lawyer about this?

- This depends on whether you have been charged with a crime. **If you have been charged with a crime, you might qualify for a free lawyer (a public defender).**

- ❖ If you are charged with a crime and you are low income, you have a right to get a lawyer free of charge, no matter what your immigration status is. At or before your first court appearance, you will be asked if you want a free lawyer (public defender). You will have to fill out some forms so the court can determine if your income is low enough to qualify you for a public defender. If you qualify, the court will appoint a public defender to represent you in your criminal case. The court will not ask you about your citizenship or immigration status when they make this determination, and you should not volunteer this information to the court. However, you should tell your public defender if you are not a US citizen.

- ❖ If you are ever arrested, you should tell the law enforcement officer, **before** they start asking you any questions, that you want to talk to a lawyer. Free court-appointed lawyers are always on-call for this purpose.

- **If you have not been charged with a crime**, and you are going to court for a civil (non-criminal) matter, or because you are a victim or a witness in a criminal matter you may be able to get legal advice in one of these ways:
 - If you are a victim or witness in a criminal case, contact the Prosecutor's office. You may be referred to someone called a "**victim/witness coordinator**" who works in the Prosecutor's office, but these coordinators are not usually lawyers. Ask to talk to a *lawyer* in the Prosecutor's office to discuss your concerns.

- If you are involved in a civil (non-criminal) case, and you have a low income, you may qualify to talk to a lawyer for free through the Northwest Justice Project's CLEAR line, at 1-888-201-1014. Call between 9:15 AM – 12:30 PM to ask for help.

Where can I find the rules and laws about this?

[Washington Court General Rule 38](#)

(https://www.courts.wa.gov/court_rules/pdf/GR/GA_GR_38_00_00.pdf) and the [Open Access to Courts Act \(House Bill 2567\)](#) (<https://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/2567-S.PL.pdf#page=1>) are about ICE and Border Patrol not being able to pick you up when you are at a courthouse without a judicial warrant or lawful court order.

[Washington Court Rule of Professional Conduct 4.4](#)

(https://www.courts.wa.gov/court_rules/pdf/RPC/GA_RPC_04_04_00.pdf) is about lawyers not reporting people to ICE and Border Patrol, or using questions about immigration status to harass, intimidate, or interfere with their legal rights.

[Rule of Evidence 413](#)

(http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ER&ruleid=GAER0413) is about when information about a person's immigration status can be allowed in court trials.

[General Rule 15](#)

(http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=GR&ruleid=gagr15) is about sealing court records.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice.

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