

Criminal Offenses and Immigration Consequences

CRIMINAL OFFENSE¹	IMMIGRATION CONSEQUENCES²
OFFENSES AGAINST THE PERSON	
Assault, 3° (120.00; A/M); 2° (120.05; C/F); 1° (120.10; B/F)	A Misdemeanor, "Simple Assault" is generally not considered a CIMT. Felony Assault is a CIMT and an AF if a sentence of 1 yr. or more is imposed; Could be a Crime Against Children (CAC) or Crime Of Domestic Violence (CODV) if it involves an attack against a child, spouse or domestic partner
Reckless Endangerment 2° (120.20; A/M); 1° (120.14; D/F)	CIMT; Could be a COC or CODV if attack is against a child or spouse or domestic partner
Criminally negligent homicide (125.10; E Felony)	Not CIMT or AF
Vehicular Manslaughter 2° (125.12; D/F); 1° (125.13; C/F)	Not CIMT or AF
Manslaughter 2° (125.15; C/F); 1° (125.20; B/F)	CIMT; AF/ Crime of Violence if sentence of 1 yr. or more is imposed
Murder	CIMT and AF
SEX OFFENSES	
Sexual Misconduct (130.20; A/M)	CIMT; could be a COC or CODV if it involves an attack against a child, spouse or domestic partner and AF if sentence of 1 yr. or more is imposed;
Rape 3° (130.25 E/F); 2° (130.30 D/F); 1° (130.35 E/F)	CIMT; All rape offenses are considered AF's by USDHS, including statutory rapes
Sodomy 3° (130.40 E/F); 2° (130.45 D/F) 1° (130.50 E/F)	CIMT; Any of these offenses will be AF's if: (1) the victim is a minor or (2) the sentence imposed exceeds 1 yr. Could also be a COC or CODV if it involves an attack against a child, spouse or domestic partner.
Sexual Abuse 3° (130.55 B/M); 2° (130.60 A/M); 1° (130.65 D/F)	
Aggravated Sexual Abuse 4° (130.65-a; E/F); 3° (130.66 D/F); 2° (130.67 C/F); 1° (130.70 B/F)	
OFFENSES AGAINST PROPERTY	
Burglary 3° (140.20; D/F); 2° (140.25; C/F); 1° (140.30; B Felony)	All burglary offenses are CIMTs and will be AFs if defendant is sentenced to incarceration of 1 year or more.
Criminal Mischief 4° (145.00; A/M); 3° (145.05; E/F); 2° (145.10; D/F); 1° (145.12; B/F)	All offenses are CIMT's but Not AF's within the Second Circuit. Other circuits have found AF's (Crime of Violence) if sentence is 1 yr. or more.
Petit Larceny (155.25; A/M)	CIMT. May be AF (Theft) if sentence of 1 yr. is imposed.
Grand Larceny 4° (155.30; E/F); 3° (155.35; D/F) 2° (155.40; C/F); 1° (155.42; B/F)	All larcenies are CIMT's. Could also be an AF if (1) a 1 yr. sentence is imposed or (2) the loss to the victim exceeds \$10,000 regardless of sentence.
Robbery 3° (160.05; D/F); 2° [160.10; C/F]; 1° (160.15; B/F)	All robberies are CIMT's. Could also be an AF (Crime of Violence) if a 1 yr. sentence is imposed
CPSP 5° [165.40; A/M]; 4° [165.45; E/F]; 3° [165.50; D/F]; 2° [165.52; C/F]; 1° [165.54; B Felony]	All larcenies are CIMT's. Could also be an AF if (1) a 1 yr. sentence is imposed or (2) the loss to the victim exceeds \$10,000 regardless of sentence.
DRUG OFFENSES	
CPCS 7 th ° [220.03; A/M]; 5° (220.06; D/F); 4° (220.09; C/F); 3° [220.16; B/F]; 2° (220.18; A-II/F); 1° (220.21; A-I/F)	Although possession offenses are not generally considered CIMT's, felony drug possession offenses are Controlled Substance Offenses (CSO) and will be AF's, if the drug is listed as a controlled substance under federal law. Conviction of a drug offense will also divest the U.S. Circuit court of appellate review
CSCS 5° (220.31; D/F); 4° (220.34; C/F); 3° (220.39; B/F); 2° (220.41; A-II/F); 1° (220.43; A-I/F)	CIMT, CSO, and AF, if the drug is considered a controlled substance under federal law. Any drug conviction involving sale is likely to be a "drug trafficking" AF; Conviction of a drug offense will also divest the U.S. Circuit Court of appellate review.
Unlawful Possession of Marihuana (221.05; Vio)	NOT CSO, AF or CIMT for deportation purposes. Would render alien inadmissible, though NOT deportable for 1 st offense involving less than 30 grams.
Criminal Possession Marihuana 5 th ° (221.10 B/M); 4° (221.15; A/M)	CSO; NOT AF or CIMT; Would render alien inadmissible, but NOT deportable for 1 st offense involving less than 30 grams

CPM, 3° (221.20; E/F); 2° (221.25; D/F); 1° (221.30; C/F)	CSO; Probably not a CIMT, but would be an AF/ Drug Trafficking Offense unless removal proceedings were held in Third Circuit Court of Appeals
CSM 5° (221.35; B Mis); 4° (221.40; A/M) 3° (221.45; E/F); 2° (221.50; D/F) 1° (221.55; C/F)	CSO; CIMT, and AF/ Drug Trafficking Offense
FIREARMS OFFENSES	
CPW 4° (265.01; A/M); 3° (265.02; D/F); 2° (265.03; C/F); 1° (265.04; B/F)	Would be considered an FO (Firearms Offense) if the record shows that a firearm was involved. Would be a CIMT as a felony. Could be AF/COV if a sentence of 1 yr. was imposed
MISCELLANEOUS OFFENSES	
Prostitution	Prostitution offenses are CIMT's and could make the alien inadmissible even if not deportable. Would only be an AF if (1) a minor was involved or (2) involved "owning, controlling, managing or supervising a prostitution business."
Disorderly Conduct (240.20; Violation)	No immigration consequences
Harassment 1° (240.25; B/M); 2° (240.26; Vio); Aggravated Harassment 2° (240.30; A/M); 1° (240.31; E/F)	All menacing offenses are CIMT's. Could also be CIMT; Could be a COC or CODV if it involves an attack against a child, spouse or domestic partner and AF if sentence of 1 yr. or more is imposed;
Driving While Impaired/Intoxicated VTL 1192(1); VTL 1192(2); VTL 1192(3)	Not CIMT or AF

Notes:

¹ U.S. immigration law defines an "alien" as "any person not a citizen or national of the United States." Aliens granted permission to live permanently in the U.S. are referred to as "lawful permanent residents" (LPR's). They are provided a document commonly referred to as a "green card."

² The key criminal provisions are found at 8 USC § 1101(a)(43) [Aggravated Felonies]; 8 USC 1182(a)(2)[Inadmissible Aliens]; 8 USC §1226(c) [Mandatory Detention]; 8 USC 1227(a)(2)[Deportable Aliens].

³ The U.S. Supreme Court, in *INS v. St. Cyr*, 533 U.S. 289, 121 S Ct. 2271 (2001) held that the abolition of a waiver, known as 212(c) in the immigration reform act of 1996 could not be applied retroactively to pleas taken before April 1, 1997. The Court said nothing about convictions after trial.

⁴ The normal procedure is for immigration officials to place a "hold" on the alien while in custody. That hold is only valid for 48 hours after the alien's scheduled release.

⁵ References are to NY Penal Law unless otherwise indicated. A/M = A Misdemeanor; C/F = C Felony

⁶ Crime Involving Moral Turpitude (CIMT); Aggravated Felony (AF); Firearms Offense (FO); Controlled Substance Offense (CSO); Crime Against Children (CAC); Crime of Domestic Violence (CODV), Crime of Violence (COV).