IMMIGRATION CONSEQUENCES OF MARYLAND OFFENSES

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THIS CHART ATTEMPTS TO CAPTURE AND CONVEY INFORMATION IN AN EVER-CHANGING AND COMPLICATED AREA OF THE LAW. IT CAN BE A USEFUL TOOL, BUT IT IS **NOT A SUBSTITUTE FOR CONTEMPORANEOUS RESEARCH THAT IS SPECIFIC TO YOUR INDIVIDUAL CASE.**

Furthermore, it merely identifies the categories of immigration consequences that can arise from criminal convictions under Maryland law – ONLY ONE PIECE OF THE INFORMATION NEEDED TO GIVE COMPETENT ADVICE TO NONCITIZENS FACING CRIMINAL CHARGES. The consequences of crimes hinge not only on the statute and case law, but also on a defendant's prior criminal history *and* particular immigration status and eligibility for immigration relief. This chart is not to be used as a final authority on whether a given conviction would cause immigration consequences for an individual. **CONSULT AN IMMIGRATION PRACTITIONER FOR CASE-SPECIFIC ADVICE ON REPRESENTING YOUR IMMIGRANT CLIENT IN CRIMINAL PROCEEDINGS.**

This chart is intended for use by criminal practitioners representing immigrant clients and those advising them, and it therefore sometimes opts for a conservative interpretation of possible consequences. It does not reflect every possible argument that an immigration attorney might make before an immigration official or court to avoid consequences. The chart is organized numerically by section of the Maryland Code. Selected traffic offenses follow the criminal offenses.

Please see important warnings on page 2.

For the most up-to-date version of the chart, please go to:
http://www.law.umaryland.edu/faculty/Msweeney/ImmigrationConsequencesChart.pdf.
If you have information about specific case law to add to the chart, please contact Maureen Sweeney at msweeney@law.umaryland.edu.

W A R N I N G S

In order to give competent advice about the immigration consequences of criminal activity, an attorney must have broad knowledge of the immigration law. The immigration consequences of crimes hinge not only on a constantly changing area of the law, but also on a defendant's prior criminal history and particular immigration status and eligibility. The following *non-exclusive* list of warnings is especially noteworthy for criminal defenders in Maryland.

PROBATION BEFORE JUDGMENT IS A CONVICTION

A probation before judgment in Maryland, pursuant to Annotated Code of Maryland: Criminal Procedure (Md. CR) § 6-220(b), is a conviction for immigration purposes according to the federal statutory definition of a conviction. 8 U.S.C. §1101 (a)(48)(A).

TEMPORARY PROTECTED STATUS / Deferred Action for Childhood Arrivals (DACA) / Deferred Action for Parental Accountability (DAPA) / PROSECUTORIAL DISCRETION / ICE ENFORCEMENT PRIORITIES

Immigration consequences for those in the above programs and enforcement priorities depend largely on the number of misdemeanor or felony convictions an individual has, regardless of what the offenses are. The definitions of felony and misdemeanor also vary from program to program, as do the consequences of certain offenses that can be "safe" dispositions in other contexts, such as Driving Under the Influence. If your client participates in one of these programs or is potentially eligible for one, consult an immigration attorney. A DUI conviction will make an otherwise removable individual an ICE enforcement priority.

ATTEMPTS AND CONSPIRACIES OFTEN HAVE THE SAME CONSEQUENCES AS THE PRIMARY OFFENSE.

Attempts and conspiracies to commit crimes that are considered aggravated felonies are themselves aggravated felonies under INA 101(a)(43)(U). Any conviction for attempt or conspiracy to commit a crime involving moral turpitude (CIMT) is likewise a CIMT. There is an argument that Maryland's conspiracy offense does not meet the federal generic definition (because it does not require an overt act; *see United States. v. Garcia-Santana,* 743 F.3d 666, 672 (9th Cir. 2014)), but this argument needs to be litigated and should not be relied on by defense counsel to avoid consequences.

SUSPENDED SENTENCES COUNT FOR IMMIGRATION PURPOSES AS FULL SENTENCES TO INCARCERATION. 8 U.S.C. §1101(a)(48)(B).

It is sometimes better for a noncitizen to serve more active time than to take a long suspended sentence.

Immigration Consequences of Maryland Offenses

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR §1-301 Accessory After the Fact (formerly common law crime)	Yes, if sentence ≥ 1 year. (S) (Obstruction of Justice).[1]	Possibly, if underlying crime is a CIMT.[2]	Not a controlled substance offense;[3] likely not a firearms offense.	F 5 yrs; or max. poss. sentence of underlying F, whichever is less.	Keep sentence < one year to avoid aggravated felony. This is a good alternative plea to CR §4-204, CL§ 5-601(a)(2), CL§ 5-602, CL§ 5-604. In some circumstances, accessory after the fact can be a good alternate plea to avoid an aggravated felony or controlled substance or firearms offense, even if it is a CIMT. Consult an immigration attorney about your client.
CR § 2-201 Murder – First degree	Yes *under subsection (A) (murder)	Yes			
CR § 2-204 Murder – Second degree	Yes *under subsection (A) (murder)	Yes			
CR § 2-205 Murder – Attempt – First Degree	Yes *under subsection (U) (attempt to commit murder)	Yes			

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CR § 2-206 Murder – Attempt – Second Degree	Yes. *under subsection (U) (attempt to commit murder)	Yes.			
CR § 2-207 Manslaughter	Possibly. Voluntary manslaughter would likely be a crime of violence (and thus an aggravated felony if sentence ≥ 1 year)[4] *under subsection (F) (crime of violence). Involuntary manslaughter is not an aggravated felony.[5]	Yes.[6]			Where possible, plead specifically to involuntary manslaughter or keep the sentence less than a year to avoid an aggravated felony.
CR § 2-209 Manslaughter – by vehicle or vessel	No[7]	Yes[8]		F	
CR § 3-202 Assault – First degree	Likely, if sentence imposed ≥ 1 year[9] *under subsection (F) (crime of violence). Possibly divisible.	Yes[10]	Possible firearms ground[11]		Keep record clear of mention of use of firearm and preferably do not designate the subsection the person is convicted under. Alternate plea: Second degree assault (Md. CR § 3-203), which is neither a crime of violence nor a CIMT.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR § 3-203(a) Assault – Second degree	No.[12]	No. However, may be best to avoid where the victim is a family member, police officer, or child.[13]	Possible crime against a child.	M 10Y	If possible, avoid mention of the victim's age or identity if s/he is a child or family member to try to avoid CIMT or deportability for crime against a child.
CR § 3-203(c) Assault – second degree, felony assault on a police officer	No.[14]	Yes[15]		F 10 Y	Alternate plea: Second degree assault under Md. CR § 3-203(a) or under § 203 generally, without specifying a subsection.
CR § 3-204 Reckless Endangerment	No[16]	Yes[17]	Possibly a firearms offense – divisible statute[18]	M 5Y	Alternate plea: Second degree assault (Md. CR § 3-203). Alternate plea where vehicle is involved: Life-threatening injury by motor vehicle or vessel while under the influence/impaired (CR § 3 – 211(c)) or Reckless Driving under Md. Transp. §21-901.1. Plead specifically to §3-204(a)(1) to avoid a firearms offense.

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CR § 3 –211(c) Life-threatening injury by motor vehicle or vessel while under the influence of alcohol	No[19]	No[20]		M 3Y	Though DUI/ DWI offenses are not removable offenses, they weigh as heavy negatives for prosecutorial or IJ discretion and can make someone an enforcement priority. Avoid if possible.[21]
CR § 3 –211(d) Life-threatening injury by motor vehicle or vessel while impaired by alcohol	No[22]	No[23]		M 2Y	Though DUI/ DWI offenses are not removable offenses, they weigh as heavy negatives for prosecutorial or IJ discretion and can make someone an enforcement priority. Avoid if possible.[24]
CR § 3-211(e) Life-threatening injury by motor vehicle or vessel while impaired by drugs	No[25]	No[26]	Controlled substances offense	M 2Y	To avoid controlled substances violation, plead generally to § 3-211 without specifying this subsection or mentioning or identifying any drug or drug use. Though DUI/ DWI offenses are not removable offenses, they weigh as heavy negatives for prosecutorial or IJ discretion and can make someone an enforcement priority. Avoid if possible.[27]

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CR § 3-211(f) Life-threatening injury by motor vehicle or vessel while impaired by a CDS	No[28]	No[29]	Controlled substances offense	M 2Y	To avoid controlled substances violation, plead generally to § 3-211 without specifying this subsection or mentioning or identifying any drug or drug use. Though DUI/ DWI offenses are not removable offenses, they weigh as heavy negatives for prosecutorial or IJ discretion and can make someone an enforcement priority. Avoid if possible.[30]
CR § 3-303 Rape – First degree	Yes *under subsection (A) (rape)	Yes		F	Alternate plea: Second degree assault (Md. CR § 3-203).
CR § 3-304 Rape – Second degree	Yes[31] *under subsection (A) (rape, sexual abuse of a minor) or under subsection (F) (crime of violence) if sentence ≥ 1 year	Yes	Possible crime against a child	F	Alternate plea: Second degree assault (Md. CR § 3-203) to avoid both CIMT and aggravated felony. Alternate pleas: Child abuse (Md. CR §3-601) or Sexual abuse of a minor (Md. CR §3-602). The abuse offenses would be CIMTs but not aggravated felonies.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR § 3-305 Sexual Offense – First degree	Yes if sentence ≥ 1 year * under subsection (F) (crime of violence)[32]	Yes		F	Alternate plea: Second degree assault (Md. CR § 3-203) to avoid both CIMT and aggravated felony.
CR § 3-306 Sexual Offense – Second degree – sexual act by force or threat or with disabled person or child under 14	Divisible statute. Likely[33] if the sentence is ≥ 1 year * under subsection (F) (crime of violence).	Yes	Possible crime against a child or crime of domestic violence.	F 20Y	Alternate plea: Second degree assault (Md. CR § 3-203) to avoid both CIMT and aggravated felony. If trying to substitute a second degree assault charge, keep record of conviction clear of reference to victim's age or capacity.[34] Alternate plea: First degree assault (Md. CR §3-202) with a sentence < 1 year. This would be a CIMT, but not an aggravated felony if sentence < 1 year. Alternate pleas: Child abuse (Md. CR §3-601) or sexual abuse of a minor (Md. CR §3-602). These would be CIMTs and likely crimes against a child but not aggravated felonies.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-307 Sexual Offense – Third degree – sexual contact (1) without consent and with dangerous weapon, injury, threats, or assistance, or (2)-(5) with disabled or child victim or intercourse with 14-15 year old	Divisible statute.[35] Yes, if record shows offense was subsection (a)(5) *under subsection (A) (rape or sexual abuse of minor); or if record shows offense was (a)(1) and sentence is ≥ 1 year* under subsection (F) (crime of violence). Very possibly, other subsections as well.[36] Note: Convictions for sexual abuse of a minor are aggravated felonies regardless of sentence.	Yes	Possible crime against a child or crime of domestic violence.	F 10Y	Plead specifically to (a)(1) or (a)(2) and keep sentence less than 1 year to avoid aggravated felony. If possible, remove reference to victim's age from the record. Alternate plea: Second degree assault (Md. CR § 3-203).[37] Alternate plea: First degree assault (Md. CR §3-202) with a sentence < 1 year. This would be a CIMT, but not an aggravated felony. Alternate plea: Second degree child abuse (Md. CR §3-601(d)) or sexual abuse of a minor (Md. CR §3-602). These would be CIMTs and likely crimes against a child but not aggravated felonies.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 3-308 Sexual Offense – Fourth degree – sexual contact without consent or sexual conduct with 14-15 year old or with student	Divisible statute.[38] Yes, if record shows offense was subsection (b)(3) or (c)(2), *under subsection (A) (rape or sexual abuse of minor). Likely, under other subsections. Note: Sexual abuse of a minor is an aggravated felony regardless of length of sentence.	Yes	Possible crime against a child	M	To avoid aggravated felony, plead specifically to subsection (b)(1) and clear the record of reference to age of the victim.[39] Alternate plea: Second degree assault (Md. CR § 3-203).[40] Alternate plea: Second degree child abuse (Md. CR §3-601(d)) or sexual abuse of a minor (Md. CR §3-602). These would be CIMTs and likely crimes against a child but not aggravated felonies.
CR § 3-309 Rape – Attempt – First degree	Yes[41] *under subsection (A) (rape), (U) (attempt). Follows §3-303.	Yes		F	Alternate plea: Second degree assault (Md. CR § 3-203).

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CR § 3-310 Rape – Attempt– Second Degree	Yes[42] *under subsection (U) (attempt), subsection (A) (rape), subsection (F) (crime of violence) if sentence ≥ 1 year. Follows § 3-304.	Yes		F	Alternate plea: Second degree assault or attempt (Md. CR § 3-203). Keep record clear of reference to victim's minor age or capacity.[43] Alternate pleas: Child abuse (Md. CR §3-601) or Sexual abuse of a minor (Md. CR §3-602) or lesser sex offenses (*see* Md. CR §3-307 or 308). These would be CIMTs but not aggravated felonies.
CR § 3-311 Sexual Offense – Attempt – First Degree	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence), (U) (attempt). Follows §3-305.	Yes		F	Alternate plea: Second degree assault (Md. CR § 3-203) or attempt, to avoid both CIMT and aggravated felony.
CR § 3-312 Sexual Offense – Attempt – Second Degree	Likely, if sentence ≥ 1 year *under subsection (F) (crime of violence), (U) (attempt). Follows §3-306.	Yes	Possible crime against a child or crime of domestic violence	F	Alternate plea: Second degree assault (Md. CR § 3-203). Keep record clear of reference to victim's age or capacity.[44] See suggestions for §3-306.

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CR § 3-314 Sexual conduct between correctional or Div of Juv Justice employee and inmate	Divisible statute.[45] Yes, if record of conviction shows intercourse with a minor (*under subsection (A) sexual abuse of a minor).	Yes	Possible crime against a child	M 3Y	Alternate plea: Second degree assault (Md. CR § 3-203). If possible, keep record free of reference to victim's age.[46] If pleading to this offense, plead specifically to sexual contact and not intercourse. If minor victim, keep record clear of age and mention of intercourse.
CR § 3-315 Continuing course of conduct with child	Depends on the underlying constituent offenses. Follows §§3-303, -304, -305, -306, and/or -307.	Yes	Crime against a child	F 30 Y	See suggestions for §§3-303, -304, -305, -306, and/or -307.
CR § 3-323 Incest	No	No[47]		F 10Y	
CR § 3-402 Robbery	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence)	Yes		F	Keep sentence < 1 year to avoid the aggravated felony.
CR § 3-402 Robbery – Attempt	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence); (U) (attempt)	Yes		F	Keep sentence < 1 year to avoid the aggravated felony.

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CR § 3-403 Robbery with a dangerous weapon	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence)	Yes	No firearms offense[48]	F	Keep sentence < 1 year to avoid the aggravated felony. Keep record free of mention of a firearm, to be certain to avoid firearms offense.
CR §3-403 Robbery with a dangerous weapon – Attempt	Yes, if sentence ≥ 1 year *under subsection (F) (crime of violence), (U) (attempt)	Yes	No firearms offense[49]	F	Keep sentence < 1 year to avoid the aggravated felony. Keep record free of mention of a firearm, to be certain to avoid firearms offense.
CR §3-601 Child abuse	No[50]	Yes	Crime against a child	F 15-40Y	Alternate plea: Second degree assault (Md. CR § 3-203) keeping record of conviction free of reference to family relationship or age of victim.[51]
CR §3-602 Sexual abuse of a minor	No.[52]	Yes	Crime against a child	F	Alternate plea: Second degree assault (Md. CR § 3-203) keeping record of conviction free of reference to family relationship or age of victim.[53]
CR §3-602.1 Neglect of a minor	No	Yes[54]	Crime against a child	M 5 Y	
CR §3-604 Abuse or Neglect of a Vulnerable Adult in the first degree	No.[55]	Yes[56]		F 10 yrs, $10,000, or both	Alternate plea: Second degree assault (Md. CR § 3-203).

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CR §3-605 Abuse or Neglect of a Vulnerable Adult in the Second Degree	No.[57]	Yes[58]		F 5 yrs, $5,000, or both	Alternate plea: Second degree assault (Md. CR § 3-203).
CR § 3-802 Stalking	No.	Likely[59]	Crime of stalking (INA § 237(a)(2)(E))	M 5 Y	Alternate plea: Harassment (Md. CR § 3-803). Alternate plea: Second degree assault (Md. CR § 3-203).
CR § 3-803 Harassment	No	Likely, but defendant may qualify for petty crimes exception. (See suggestion)		M 90 days	Can be a safe plea if the defendant has no other criminal record, because it will fit within the "petty crimes" exception to the CIMT grounds of inadmissibility (8 U.S.C. §1182(a)(2)(ii)(II))) and removability (8 U.S.C. §1227(a)(2)(A)(i)(I)) if defendant has no prior CIMT.
CR § 4-101 Carrying a dangerous weapon – concealed or with intent to use[60]	No[61]	Possibly. Divisible statute.[62]	This is *not* a firearms offense, because it is overbroad and includes non-firearm weapons.[63]	M 3Y	Plead to § 4-101 generally or to subsection (c)(1), and keep record of conviction clear of reference to intent to use the weapon. A plea to subsection (c)(1) may be a good option for someone eligible to adjust to permanent residency. See note 62.

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CR § 4-203 Wearing, carrying or transporting a handgun	No[64]	Possibly. Divisible statute.[65]	Firearms offense	M 10Y	A plea to subsection (a)(1)(i) or (ii) of §4-203 will be a firearms offense, but may be a good option for someone eligible to adjust to permanent residency. See note 65.
CR § 4-204 Use of handgun or antique gun (or any firearm) in crime of violence	Yes, if sentence ≥ 1 year, *under subsection (F) (crime of violence)	Yes	Not a firearms offense because the definition of "firearm" in this offense is broader than the federal definition (explicitly includes antique guns, which are excluded from analogous federal statute).[66]	M 5 Y min - 20 Y	Plea to § 4-101 would avoid aggravated felony, firearms offense, and possibly CIMT. Plea to § 4-203 would avoid aggravated felony and possibly CIMT (but would be firearms offense). See note 65. Consider plea to CR §1-301, accessory after the fact and keep sentence to under one year. Immigration consequence of §1-301 depends on individual's criminal and immigration history. Consult an immigration attorney.

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CR § 5-601(a)(1) Controlled dangerous substance – ***anything other than marijuana*** -- Possessing or administering	No	No	YES! Controlled substances offense (unless you can avoid having the record of conviction specify the specific substance involved).[67] See suggestions.	M 4Y	If at all possible, avoid a conviction. Try for a stet or conditional stet. Alternate pleas: Trespass (§6-402 or §6-403); Disorderly conduct (§10-201). Alternate plea: Possession of paraphernalia (§5-619) – *only if you can keep the identity of the substance out of the record*.[68] If you have no choice but to plead to a CDS possession offense, plead generally to the statutory language and keep the identity of the controlled substance out of the record, and you may be able to avoid a controlled substance offense.[69]

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CR § 5-601(a)(1) Controlled dangerous substance – Marijuana -- Possessing or administering	No	No	YES! Controlled substances offense, *unless* it is a single offense for personal use involving less than 30 grams.[70] However, even if the amount <30g, it *will* be a ground of inadmissibility and could be problematic for anyone who travels outside the U.S. or may apply for permanent residence, though a waiver may be available.	M <10g civil offense ≥10g 1Y	If possible, negotiate dismissal and civil citation under § 5-601.1 for possession of <10g. Unless <30g, this criminal offense will subject the individual to removal proceedings. Specify that it was <30g and for personal use or keep amount of marijuana out of the record. This will avoid removability and may preserve the possibility of a waiver for inadmissibility (for anyone who travels or may apply for residence). If unable to keep within the <30 g exception, you could try to plead generally to statutory language and keep the identity of the controlled substance out of the record, which *may* avoid the controlled substance offense entirely. This is an untested strategy and likely to require a long legal battle. See note 67.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR § 5-601.1 Civil citation for possession of < 10g marijuana	No	No	No – not a criminal offense and therefore not a controlled substances conviction	fine	Not a criminal conviction. Does not carry immigration consequences.
CR § 5-601(a)(2) Controlled dangerous substance -- Obtaining by fraud or deceit	No	Yes	Controlled substances offense	M 4Y	Consider plea to CR §1-301, accessory after the fact and keep sentence to under one year. Immigration consequence depends on individual's criminal and immigration history. Consult an immigration attorney. Also see fn 67.
CR § 5-602 Controlled dangerous substance – Marijuana – manufacture, distribute, dispense or possession with intent	No[71]	Yes	Yes, Controlled substances offense	F up to 20Y	Plea to simple possession will avoid the CIMT but will still be a controlled substance offense. In some cases (depending on the individual's immigration history and situation), a plea to CR §1-301, accessory after the fact (with a sentence < 1 year), may be more advantageous, as it will still be a CIMT but can avoid the controlled substances offense. Consult an immigration attorney. Also see suggestions for §5-601(a)(1) and fn 67.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 5-602 Controlled dangerous substance – ***anything other than marijuana*** – manufacture, distribute, dispense or possession with intent	Likely[72]	Yes	Yes, Controlled substances offense	F up to 20Y	Plea to simple possession will avoid the aggravated felony and the CIMT but will still be a controlled substance offense. In some cases (depending on the individual's immigration history and situation), a plea to CR §1-301, accessory after the fact (with a sentence < 1 year), may be more advantageous, as it will still be a CIMT but can avoid the aggravated felony and controlled substances offense. Consult an immigration attorney. Also see suggestions for §5-601(a)(1) and fn 67.
CR § 5-604 Counterfeit Substance	Yes[73] *under subsection (B) (illicit trafficking in a controlled substance)	Yes[74]	Controlled Substances Offense	F up to 5 Y for 1st offense	Consider plea to CR §1-301, accessory after the fact and keep sentence to under one year. Applicability of immigration consequence depends on defendant's criminal and immigration history. Consult an immigration attorney. Also see controlled substances strategy for §5-601(a)(1) and fn 67.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR § 5-605 Keeping common nuisance	No	No[75]	Likely, but only if record identifies a specific controlled substance		Keep identity of the controlled substance out of the record.[76]
CR § 5-612 Volume dealer	Yes	Yes	Controlled substances offense	F Min 5Y	
CR § 5-613 Drug kingpin	Yes	Yes	Controlled substances offense	F 20-40Y	
CR § 5-617 Distributing faked controlled dangerous substance	Possibly, if construed as a fraud offense with loss that exceeds $10,000[77] *under subsection (M)(i) (fraud or deceit with loss to victim that exceeds $10,000)	Yes[78]	Controlled substances offense[79]	F 5Y	Should not be a drug trafficking aggravated felony, but will have other consequences. Alternate plea: Possession or purchase of non-controlled substance (Md. CR § 5-618). If loss (or potential loss) to victim is less than $10,000, put it on the record. If more, don't.
CR § 5-618 Possession or purchase of non-controlled substance	No	No	Possibly[80]	M 1Y	Do not identify the CDS that the defendant believed the non-controlled substance to be.[81]

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR § 5-619 Drug paraphernalia	No[82]	No	Controlled substances offense 1) if CDS is identified in the record[83] and 2) unless related to single offense of possession of <30g of marijuana for personal use.[84] However, even if the amount <30g, it *will* be a ground of inadmissibility and could be problematic for anyone who travels outside the U.S. or may apply for permanent residence, though a waiver may be possible.	M 2Y for 2nd or later conviction	Either 1) keep the record free of mention of any specific CDS or 2) specify that paraphernalia was related to possession of <30g marijuana for personal use, if possible. Alternate plea: Disorderly conduct (Md. CR §10-201). Alternate plea: Trespass or Wanton trespass (Md. CR §6-402 or §6-403).
CR § 5-621 Use or possession of a firearm in a drug trafficking crime	Yes *under subsection (B) (illicit trafficking in a controlled substance), (E) (firearms offense)	Yes	Controlled substance offense and Firearms offense[85]	F 20Y	Alternate plea: Possession of handgun (Md. CR § 4-203(a)(1)(i) or (ii)). This will avoid the aggravated felony and CIMT but will be a controlled substance and firearms offense.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR § 5-622 Felon in possession of firearm	Yes *under subsection (E) (firearms offense)	Possibly[86]	Probably not a firearms offense[87]	F 5Y	Alternate plea: Possession of handgun (Md. CR § 4-203(a)(1)(i) or (ii)). This would be a firearms offense but could be a good option for someone applying for permanent residence.
CR §§6-102 to -105 Arson/Malicious Burning in various degrees	Yes*under subsection (E)(arson) and likely (F) if sentence is ≥ 1 year (crime of violence) [88]	Yes[89]			Alternate plea: Reckless endangerment (Md CR §3-204) (avoids the aggravated felony but is still a CIMT). Alternate plea: Malicious destruction of property (Md CR §6-301) (avoids the aggravated felony and possibly the CIMT).
CR §6-106 Burning to defraud	Yes*under subsection (E)(arson)	Yes			
CR § 6-202 Burglary – First degree – breaking and entering a dwelling with intent to commit theft or a crime of violence.	Arguably, if sentence is ≥ 1 year *under subsection F (crime of violence)[90]	Yes, if intended crime is a CIMT.[91]		F 20Y	Keep sentence < 1 year. To avoid CIMT have the record reflect an intent to commit a crime that is not a CIMT. Alternate pleas: Third degree burglary with intent to trespass (Md. CR § 6-204) with sentence of < 1 year, or fourth degree burglary (Md. CR § 6-205).

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR § 6-203 Burglary – Second degree – breaking and entering storehouse with intent (a) to commit theft, violence, or arson or (b) to steal a firearm	Unlikely, but possibly, if sentence is ≥ 1 year[92] *under subsection (F) (crime of violence)	Yes, if intended crime is a CIMT.[93]	Possible firearms offense if convicted under § 6-203(b)	F 15Y	Keep sentence < 1 year. Have the record affirmatively reflect an intended crime that is not a CIMT (will be difficult given the elements of this sub-section). Avoid mention of firearm. Alternate pleas: Third degree burglary (Md. CR § 6-204) with intent to trespass and a sentence of < 1 year, or fourth degree burglary (Md. CR § 6-205).
CR § 6-204 Burglary – Third degree – breaking and entering a dwelling with intent to commit a crime	Arguably, if sentence is ≥ 1 year *under subsection (F) (crime of violence)[94]	Possibly[95]		F 10 Y	Keep sentence < 1 year to avoid aggravated felony. Have the record affirmatively reflect an intended crime that is not a CIMT (like trespass) or don't identify an intended crime to avoid the CIMT.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 6-205 Burglary – Fourth degree – breaking and entering (a) a dwelling or (b)storehouse or (c)being in dwelling/ storehouse with intent to commit theft or (d)possession of burglar's tools	Unlikely.[96]	Possibly – divisible statute.[97]		M 3Y	Plead to § 6-205 generally, not to subsection (a) or (c). Keep sentence < 1 year. Have the record affirmatively reflect facts that do *not* involve intent to commit theft or another possible CIMT. (Simple trespass is not a CIMT and would be a safe intended crime.)
CR § 6-206 Breaking and entering motor vehicle – rogue and vagabond – (a)possession of burglar's tools or (b) presence in another's vehicle with intent to commit theft of vehicle or property	No.	Possibly – divisible statute.[98]		3Y	Do not plead to subsection (b); rather plead to the section generally or to subsection (a).

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR §6-301 Malicious destruction of property	No.	Yes.[99]		>$500 F - 3 Y < $500 M - 60 D	Plead specifically to damage < $500. Conviction for M (< $500) can be safe (fits within CIMT petty crimes exceptions) if defendant has no other CIMTs. To be especially careful to avoid an aggravated felony (COV), keep sentence < 1 year.
CR § 6-402 to -403 Trespass/ Wanton trespass	No	No.[100]		M 90D &/or $500 fine	Trespass is generally a safe plea, unless defendant needs to avoid any misdemeanor conviction (for TPS, for example, or DACA/DAPA).
CR § 7-104 Theft – (a) Unauthorized control of property, (b) control by deception, (c) possession of stolen property, (d) control of property lost, mislaid, or delivered by mistake; or (e) theft of services	Arguably[101] *under subsection (G) (theft)	Arguably.[102]		< $100 – 90 days < $1000 – 18 Mo. < $10,000 – 10 Y < $100K – 15 Y And/or fines of $500 -- $25,000	Keep sentence < 1 year. Include fines or restitution as part of penalty and waive credit for time served, and/or stack separate counts. Pleading to <$100 can be a safe plea if the defendant has no other criminal record, because it will fit within the "petty crimes" exception to the CIMT grounds of inadmissibility and removability if defendant has no prior CIMT.

OFFENSE	IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) *	IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?	ARE THERE OTHER GROUNDS OF REMOVABILITY? (Such as controlled substance, domestic violence, firearms?)	POSSIBLE SENTENCE (Felony/ Misdemeanor Under Maryland Law)	SUGGESTIONS OR POSSIBLE ALTERNATE PLEA
CR § 7-105 Theft or unauthorized use of a motor vehicle	Possibly.[103]	No.[104]		F 5Y	To be cautious and avoid prosecution for an aggravated felony, keep sentence < 1 year. Alternate pleas: CR § 7-203, Unauthorized use of property; Transp. § 14-102, Use of vehicle without consent
CR § 7-203 Unauthorized removal of property (incl. vehicle)	No.[105]	No.[106]		M $100 fine +/or 6 mo (min) – 4Y	Alternate plea: Transp. § 14-102, Use of vehicle without consent
CR §8-103 Obtaining property or services by bad check	Likely, if loss to the victim > $10,000. *under subsection (M) (deceit w/ loss > $10K) [107]	No.[108]		< $100 M 90 days <$500 M 18 mo >$500 F 15Y	If the loss to the victim < $10,000, this should be a safe plea. Can be a good alternative to a theft charge.
CR § 8-204 Credit card theft - (a)(1)(i) – taking credit card without consent	No.[109]	No.[110]			Plead specifically to subsection (a)(1)(i).
CR § 8-204 Credit card theft - (a)(1)(ii) thru (d)	Possibly	Likely			Plead to §8-204(a)(1)(i) if possible.

OFFENSE	**IS IT AN AGGRAVATED FELONY (AF)? 8 U.S.C. § 1101 (a)(43) ***	**IS IT A CRIME INVOLVING MORAL TURPITUDE (CIMT)?**	**ARE THERE OTHER GROUNDS OF REMOVABILITY?** (Such as controlled substance, domestic violence, firearms?)	**POSSIBLE SENTENCE** (Felony/ Misdemeanor Under Maryland Law)	**SUGGESTIONS OR POSSIBLE ALTERNATE PLEA**
CR §9-101 to 9-102 Perjury/ Subornation of Perjury	Yes, if sentence ≥ 1 year[111] *under subsection (S) (obstruction of justice)	Yes[112]		M 10Y	Keep sentence < 1 year to avoid the aggravated felony.
CR § 9-306 Obstructing Justice	Yes, if sentence ≥ 1 year[113] *under subsection (S) (obstruction of justice)	Yes		M 5Y	Keep sentence < 1 year.
CR § 9-408 Resisting Arrest (formerly common law)	No.[114]	No.		M 3 Y	
CR §§9-501 to -503 False Statement to law enforcement	No, unless the misrepresentation results in a loss or attempted loss of > $10,000.[115] *under subsection (M)(i) (fraud or deceit with loss exceeding $10,000)	Possibly.[116] A plea to §9-503 may be safer because it does not include intent to deceive.		M: 6 Mo. or $500 fine	Any of these 3 offenses can be a safe plea *if the defendant has no other CIMTs on her record*, because it will fit within the "petty crimes" exception to the CIMT grounds of inadmissibility and removability.[117]
CR § 10-201 Disorderly conduct/ disturbing the peace	No	No.[118]		M: 60D	
CR § 11-107 Indecent exposure	No	No[119]		M: 3 Y	

[1] The BIA has held that the federal offense of Accessory after the Fact (18 U.S.C. § 4) is an aggravated felony on obstruction of justice grounds, if a sentence of one year or more is imposed. *Matter of Batista-Hernandez*, Int. Dec. 3321 (BIA 1997).

[2] *Matter of Rivens* 25 I & N Dec. 623 (BIA 2011) finding that accessory after the fact is a CIMT only if the underlying offense is such a crime; *Matter of Sanchez-Marin*, 11 I. & N. Dec. 264 (BIA 1965) (finding the crime of accessory after the fact was a CIMT where the underlying crime involved moral turpitude). *See also, Cabral v. I.N.S.*, 15 F.3d 193 (1st 1994) finding that accessory to murder constitutes a crime involving moral turpitude when the accessory is charged with knowing the murder has been committed and intentionally aiding the principle avoid apprehension or punishment).

[3] The BIA has held that the federal offense of Accessory after the Fact (18 U.S.C. § 4) does not significantly relate to a controlled substance offense, but is an aggravated felony on obstruction of justice grounds, if a sentence of one year or more is imposed. *Matter of Batista-Hernandez*, Int. Dec. 3321 (BIA 1997). Accessory after the fact may also be considered a CIMT. *Matter of Sanchez-Marin*, 11 I. & N. Dec. 264 (BIA 1965) (finding the crime of accessory after the fact was a CIMT where the underlying crime involved moral turpitude). It can be a useful disposition, however, when it is essential to avoid a controlled substances or firearms offense.

[4] Manslaughter is defined in Maryland by the common law and can be either voluntary or involuntary. Voluntary manslaughter is an intentional killing and will likely be found to be a *crime of violence* (and thus an aggravated felony if the sentence imposed is equal to or greater than one year). Immigration lawyers should argue voluntary manslaughter is not a crime of violence because it could encompass actions, such as poisoning, which would not involve the use of force. In addition, because manslaughter does not have an element of the use of force, it can only be a crime of violence under 8 U.S.C. §16(b). Section 16(b) itself may be void for vagueness, as it is very like the similar residual clause invalidated by the Supreme Court on vagueness grounds in *Johnson v. U.S.*, 2015 WL 2473450 (June 26, 2015). Until this is litigated, though, criminal defense counsel would be wise to avoid a conviction with a 1 year sentence, in order to avoid the aggravated felony. However, since many courts would likely find voluntary manslaughter to be a *crime of violence*, it is prudent to avoid a conviction if possible. Involuntary manslaughter is not a *crime of violence*. *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005). However, even though manslaughter is a divisible offense, the record of conviction is likely to indicate whether the manslaughter was voluntary or involuntary, and it is safest for the criminal defense attorney to consider any voluntary manslaughter a likely *crime of violence*.

[5] The Fourth Circuit in *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005), held that a Virginia involuntary manslaughter conviction did not constitute an aggravated felony since the offense required a mental state of only reckless disregard for human life, which did not rise to the level of intentionality required by the Supreme Court in *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004) to show the intentional "use of force" component of a *crime of violence*. Maryland's common law crime of involuntary manslaughter is analogous to Virginia's for these purposes.

[6] Any voluntary homicide is a CIMT. *See Delucia v. Flagg*, 297 F.2d 58 (7th Cir. 1961). Thus, voluntary manslaughter is a CIMT. Involuntary manslaughter in Maryland, which requires a *mens rea* of reckless disregard for human life, will also almost certainly be held to be a CIMT. Involuntary manslaughter in Maryland can be committed in three ways: (1) by doing some unlawful act (*malum in se)* endangering life but which does not amount to a felony, or by exercising gross negligence in either (2) doing some act lawful in itself, or (3) the omission to perform a legal duty. *State v. Pagotto*, 361 Md. 528, 548 (Md. 2000). In either the second or third case, the requisite *mens rea* is such that the defendant, "conscious of the risk," acted with "a wanton or reckless disregard of human life" constituting a "gross departure from what would be the conduct of an ordinary and prudent person so as to amount to a disregard of the consequences and indifference to the rights of others." *Id; State v. Gibson*, 4 Md. App. 236; 242 A.2d 575 (Md. Ct. Spec. App. 1968). aff'd at 254 Md. 399, 254 A.2d 691 (1969). This is almost precisely the *mens rea* held by the BIA to support a finding of a CIMT in *Matter of Franklin*, 20 I. & N. Dec. 867, 867-77 (BIA 1994) (finding manslaughter to be a CIMT where the *mens rea* required was recklessness, defined as a "conscious disregard of a substantial and unjustifiable risk" which constituted "a gross deviation from the

standard of care that a reasonable person would exercise in the situation."). Furthermore, Maryland courts have equated "gross negligence" with "recklessness." *Albrecht v. State*, 97 Md. App. 630, 632 A.2d 163 (Md. Ct. Spec. App. 1993), rev'd on other grounds, 336 Md. 475, 649 A.2d 336 (1994).

[7] *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005); *see also supra* note 5.

[8] This statute incorporates the "gross negligence" requirement of common law manslaughter in Maryland, *Faulcon v. State*, 211 Md. 249, 126 A.2d 858 (1956); *Connor v. State*, 225 Md. 543, 171 A.2d 699, cert. denied, 368 U.S. 906, 82 S. Ct. 186, 7 L. Ed. 2d 100 (1961), and thus a conviction under this statute is a CIMT. *See supra* note 5.

[9] First degree assault involves the intentional infliction of serious physical injury on another or assault with a deadly weapon. Under current BIA case law, a crime involving the intentional infliction of bodily harm is a *crime of violence*. *Matter of Martin*, 23 I. & N. Dec. 491 (BIA 2002). However, subsection (a)(1) does not include as an element the use of violent force and is therefore not a crime of violence under 18 USC §16(a). It could be found to be a crime of violence under 18 USC §16(b), but §16(b) may be void for vagueness, as it is very like the similar residual clause invalidated by the Supreme Court on vagueness grounds in *Johnson v. U.S.*, 2015 WL 2473450 (June 26, 2015). Immigration attorneys should challenge a crime of violence categorization for subsection (a)(1), but defense attorneys should NOT rely on this, as immigration judges are very likely to find this offense to be a crime of violence. Subsection (a)(2), involving assault with a firearm, will very likely be a crime of violence. To avoid the aggravated felony for either subsection, defense counsel should keep the sentence to under one year if possible.

[10] An assault with a deadly weapon or with intent to injure is a CIMT. *Matter of Logan*, 17 I. & N. Dec. 367 (BIA 1980); *Matter of P-*, 3 I&N Dec. 5 (BIA 1947).

[11] The "firearms" included within Md. CR § 3-202 specifically include antique firearms (defined at Md. CR § 4-201 to include antique guns and replicas). Use of an antique firearm does not violate the federal firearm statutes on which the ground of deportability for firearms offenses is based. Thus, § 3-202 is overbroad and should not be a firearms offense under the INA. To be cautious, defense attorneys should keep the record inconclusive as to whether a firearm was used at all and, if use of a firearm is included in the record, the attorney should keep the record inconclusive as to what type of firearm. Immigration attorneys should argue that the offense is overbroad and categorically not a firearms offense. *But see*, *Matter of Chairez*, 26 I. & N. Dec. 349 (BIA 2014) (involving a statute that did not specify whether or not antique firearms were included in the definition of firearms).

[12] *United States v. Royal*, 731 F.3d 333 (4th Cir. 2013) (Md CR §2-203 can involve any offensive touching, whether violent or not, and is therefore categorically not a crime of violence).

[13] Under the strict categorical approach, simple assault is not a CIMT. *Matter of Short*, 20 I&N Dec. 136 (BIA 1989). However, caution should be exercised in cases in which the victim of an assault is a family member or other person protected by domestic violence laws. The BIA has held in the past that it is proper to look to the criminal record to determine whether a conviction involves an assault against a domestic partner, a police officer or a child, and to find that assault against such individuals is a CIMT. *Matter of Ahortalejo-Guzman*, 25 I. & N. Dec. 465 (BIA 2011). This approach may be open to challenge under *Descamps* and the Attorney General's recission of *Matter of Silva-Trevino*, 26 I. & N. Dec. 550 (A.G. 2015), but where possible, counsel should avoid assault charges involving family members and/or keep the record free of mention of any domestic relationship or the age of a child victim.

[14] This subsection prohibits causing physical injury to a law enforcement officer, but it does not contain an element of the use of force. It would be possible to violate this section without physical force by poisoning an officer, for example.

[15] This subsection of the offense (§3-203(c)) will be considered a CIMT because it includes the intentional infliction of physical injury on a law enforcement officer.

[16] Recklessness does not rise to the level of intentionality to constitute the use of force for purposes of determining whether an offense is a crime of violence. *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005); *see* note 5, above.

[17] The *mens rea* for reckless endangerment is a gross and wanton deviation from reasonable conduct. *Albrecht v. State*, 97 Md. App. 630, 632 A.2d 163 (Md. Ct. Spec. App. 1993), rev'd on other grounds, 336 Md. 475, 649 A.2d 336 (1994). This is almost precisely the *mens rea* held by the BIA to support a finding of a CIMT in *Matter of Franklin*, 20 I. & N. Dec. 867, 867-77 (BIA 1994) (finding manslaughter to be a CIMT where the *mens rea* required was recklessness, defined as a "conscious disregard of a substantial and unjustifiable risk" which constituted "a gross deviation from the standard of care that a reasonable person would exercise in the situation."). Furthermore, Maryland courts have equated "gross negligence" manslaughter with "recklessness." *Pagotto v. State*, 127 Md. App. 271, 732 A.2d 920 (1999).

[18] CR §3-204(a)(2) prohibits discharging a firearm from a motor vehicle, which would be a firearms offense under 8 U.S.C. §1227(a)(2)(C).

[19] *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004); *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005).

[20] This offense requires a *mens rea* of negligence, and for this reason is not a CIMT.

[21] Immigration attorneys should look at the ICE prosecutorial discretion and enforcement prioirity memos for the nuances of these policies and for possible advocacy opportunities for clients with a DUI/ DWI conviction.

[22] *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004); *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005).

[23] This offense requires a *mens rea* of negligence, and for this reason is not a CIMT.

[24] Immigration attorneys should look at the ICE prosecutorial discretion and enforcement prioirity memos for the nuances of these policies and for possible advocacy opportunities for clients with a DUI/ DWI conviction.

[25] *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004); *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005).

[26] This offense requires a *mens rea* of negligence, and for this reason is not a CIMT.

[27] Immigration attorneys should look at the ICE prosecutorial discretion and enforcement prioirity memos for the nuances of these policies and for possible advocacy opportunities for clients with a DUI/ DWI conviction.

[28] *Leocal v. Ashcroft*, 125 S. Ct. 337 (2004); *Bejarano-Urrutia v. Gonzalez*, 413 F.3d 444 (4th Cir. 2005).

[29] This offense requires a *mens rea* of negligence, and for this reason is not a CIMT.

[30] Immigration attorneys should look at the ICE prosecutorial discretion and enforcement prioirity memos for the nuances of these policies and for possible advocacy opportunities for clients with a DUI/ DWI conviction.

[31] *See Matter of B-*, 21 I. & N. Dec. 287 (BIA 1996) (finding second degree (statutory) rape under former Maryland Art. 27, § 463(a)(3) to be an aggravated felony because it was considered a crime likely to result in the use of force). *See also, Wireko v. Reno*, 211 F.3d 833 (4th Cir. 2000) (finding a conviction under a Va.

misdemeanor sexual battery statute to be an aggravated felony). Immigration lawyers could argue that subsection (a)(2) (prohibiting intercourse with disabled person) does not necessarily involve the use of force and therefore, is not a *crime of violence* aggravated felony (an issue not addressed in *Wireko*), making the statute divisible. In addition, 18 USC §16(b), which includes in "crime of violence" any crime likely to result in the use of force, may be void for vagueness, as it is very like the similar residual clause invalidated by the Supreme Court on those grounds in *Johnson v. U.S.*, 2015 WL 2473450 (June 26, 2015). However, given BIA precedent and the likelihood that courts may find conduct under subsection (a)(2) to be a *crime of violence* under 18 U.S.C. §16(b) or the equivalent of rape, criminal defense attorneys should avoid a conviction under this section.

[32] This offense would not be sexual abuse of a minor in the 4th Cir. because it does not include an element of sexual gratification, which is required by the 4th Circuit for sexual abuse of a minor. *See U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (noting that the 4th Cir has defined generic sexual abuse of a minor to require a purpose of sexual gratification) and Md CR §3-301(e) (defining sexual act to include, among other things, an act "that can reasonably be construed to be for sexual arousal or gratification, *or* for the abuse of either party"). *However*, if the defendant travels outside the 4th Circuit, this offense could well be found to be sexual abuse of a minor. *Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015) (finding age differential of 3 years made statutory rape provision categorically sexual abuse of a minor).

[33] *See Matter of B-*, 21 I. & N. Dec. 287 (BIA 1996) (finding second degree (statutory) rape under former Maryland Art. 27, § 463(a)(3) to be an aggravated felony because it was considered a crime likely to result in the use of force). *See also, Wireko v. Reno*, 211 F.3d 833 (4th Cir. 2000) (finding a conviction under a Va. misdemeanor sexual battery statute to be an aggravated felony). Immigration lawyers could argue that subsection (a)(2) (prohibiting sexual act with disabled person) does not necessarily involve the use of force and therefore, is not a *crime of violence* aggravated felony (an issue not addressed in *Wireko*), making the statute divisible. In addition, 18 USC §16(b), which includes in "crime of violence" any crime likely to result in the use of force, may be void for vagueness, as it is very like the similar residual clause invalidated by the Supreme Court on vagueness grounds in *Johnson v. U.S.*, 2015 WL 2473450 (June 26, 2015). However, given BIA precedent and the likelihood that courts may find conduct under subsection (a)(2) to be a crime of violence under 18 U.S.C. §16(b) (as a crime likely to result in the use of force), criminal defense attorneys should avoid a conviction under this section.

Second degree sex offense under §3-306 will *not* constitute sexual abuse of a minor in the 4th Circuit because it does not necessarily include an element requiring that the act be committed for purposes of sexual gratification, which the 4th Circuit has held to be an element of generic sexual abuse of a minor. *See U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (noting that the 4th Cir has defined generic sexual abuse of a minor to require a purpose of sexual gratification) and Md CR §3-301(e) (defining sexual act to include, among other things, an act "that can reasonably be construed to be for sexual arousal or gratification, *or* for the abuse of either party"). *However*, if the defendant travels outside the 4th Circuit, this offense could well be found to be sexual abuse of a minor. *Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015) (finding age differential of 3 years made statutory rape provision categorically sexual abuse of a minor).

[34] *See* caution at note 13 above regarding assault against family members or children.

[35] This statute is currently treated as divisible. *But see, Biggus v. State*, 323 Md. 339, 346-50 (1991) (Court of Appeals holding that 3rd degree sex offense under the predecessor statute was intended by the legislature to be a single offense with enumerated alternative means of commission).

[36] Under current law, this offense is likely to be considered an aggravated felony. Subsection (a)(5) would be sexual abuse of a minor. Subsection (a)(1) would likely be a crime of violence (and thus an aggravated felony if the sentence were a year or longer), though immigration attorneys should argue that the provision is overbroad. Subsection (a)(2) could also arguably be a crime likely to result in the use of force, which would make it a crime of violence under 18 USC §16(b). However, §16(b) may be void for vagueness, as it is very like the similar residual clause invalidated by the Supreme Court on vagueness grounds in *Johnson v. U.S.*, 2015 WL 2473450 (June 26, 2015). There is a strong argument that (a)(3) and (a)(4) are not aggravated felony sexual abuse of a minor in the 4th Circuit, because they do not necessarily include an element requiring that the act be committed for purposes of sexual gratification, which the 4th Circuit has held to be an element of generic sexual abuse of a minor. *See U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (noting that the 4th Cir has defined generic sexual abuse of a minor to require a purpose of sexual gratification). Both "sexual contact" and "sexual act" can be committed for sexual gratification *or* the abuse of either party.

Md. CR §3-301(e) and (f). *However*, if the defendant travels outside the 4th Circuit, this offense could well be found to be sexual abuse of a minor. *Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015) (finding age differential of 3 years made statutory rape provision categorically sexual abuse of a minor). Because this is an area of unsettled law, criminal defense counsel should avoid a conviction where possible.

[37] *But see* caution at note 13 above regarding assault against family members or children.

[38] Section 3-308 is divisible with regard to whether it constitutes sexual abuse of a minor. If the record of conviction (ROC) indicates that the defendant was convicted of intercourse under subsections (b)(3) or (c)(2), it will be sexual abuse of a minor. However, a conviction for sexual contact or a sexual act with a minor under the other subsections may *not* constitute sexual abuse of a minor because they do not necessarily include an element requiring that the act be committed for purposes of sexual gratification, which the 4th Circuit has held to be an element of generic sexual abuse of a minor. *See U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (noting that the 4th Cir has defined generic sexual abuse of a minor to require a purpose of sexual gratification). Md CR §3-301(e) and (f) specifically defines sexual contact and a sexual act to include an act "that can reasonably be construed to be for sexual arousal or gratification, *or* for the abuse of either party." *However*, if the defendant travels outside the 4th Circuit, this offense could well be found to be sexual abuse of a minor. *Matter of Esquivel-Quintana*, 26 I&N Dec. 469 (BIA 2015) (finding age differential of 3 years made statutory rape provision categorically sexual abuse of a minor). Because this is an area of unsettled law, criminal defense counsel should avoid a conviction where possible.
This offense is categorically not a crime of violence. Victor Enrique Tally-Barrios, A041-736-376 (BIA unpub. Oct. 8, 2013) (finding the precursor statute to be nondivisible and categorically not a crime of violence).

[39] A specific plea to sexual contact or a sexual act (as opposed to intercourse) could also possibly avoid the aggravated felony of sexual abuse of a minor, but this argument has not been tested and it is better to avoid these offenses if possible.

[40] *But see* caution at note 13 above regarding assault against family members or children.

[41] An attempt to commit an aggravated felony constitutes an aggravated felony for immigration purposes. *See* INA § 101(a)(43)(U).

[42] An attempt to commit an aggravated felony constitutes an aggravated felony for immigration purposes. *See* INA § 101(a)(43)(U).

[43] *See* caution at note 13 above regarding assault against family members or children.

[44] *See* caution at note 13 above regarding assault against family members or children.

[45] Though this provision does not include any element of the use of force, it may very well be found to be a crime of violence under 18 U.S.C. §16(b) as an offense that is likely to result in the use of force. *Wireko v. Reno*, 211 F.3d 833 (4th Cir. 2000) (finding a conviction under a Va. misdemeanor sexual battery statute to be an aggravated felony); *Matter of B-*, 21 I&N Dec. 287 (BIA 1996) (finding second degree (statutory) rape under former Maryland Art. 27, § 463(a)(3) to be an aggravated felony as a crime likely to result in the use of force). Immigration lawyers could argue that subsection (b) (prohibiting correctional employee from having sex with inmate) involves neither the use of force nor a lack of consent therefore is neither a crime of violence aggravated felony (an issue not addressed in *Wireko*) nor rape. In addition, 18 USC §16(b), which includes in "crime of violence" any crime likely to result in the use of force, may be void for vagueness, as it is very like the similar residual clause invalidated by the Supreme Court on vagueness grounds in *Johnson v. U.S.*, 2015 WL 2473450 (June 26, 2015). However, given BIA precedent and the likelihood that courts may find a conviction under this subsection to be a crime of violence under 18 U.S.C. §16(b), it is advisable for criminal defense attorneys to avoid a conviction under this section or to keep the sentence under one year.
Section 3-314(c) is divisible with regard to whether it constitutes sexual abuse of a minor. If the record of conviction (ROC) indicates that the defendant was convicted of intercourse, it will be sexual abuse of a minor. However, a conviction for sexual contact or a sexual act with a minor will *not* constitute sexual abuse of a minor

because it does not necessarily include an element requiring that the act be committed for purposes of sexual gratification, which is an element of generic sexual abuse of a minor. *See U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (noting that the 4th Cir has defined generic sexual abuse of a minor to require a purpose of sexual gratification). Md CR §3-301(e) specifically defines sexual contact and a sexual act to include, among other things, an act "that can reasonably be construed to be for sexual arousal or gratification, *or* for the abuse of either party." They are therefore missing an element of the generic offense of sexual abuse of a minor.

[46] S*ee* caution at note 13 above regarding assault against family members or children.

[47] This statute is overbroad, prohibiting generally intercourse with individuals so closely related that it would be illegal for them to marry under Maryland law. These include parents and children, but also siblings. Crimes that arise out of a forbidden marital status between consenting adults are not CIMT's. *Matter of B-*, 2 I. & N. Dec. 617 (BIA 1946).

[48] A conviction under this section does not constitute a deportable firearms offense because the "dangerous weapon" does not have to be a gun, *Couplin v. State*, 37 Md. App. 567, 378 A.2d 197 (1977), cert. denied, 281 Md. 735 (1978), but could be a cord, *Bennett v. State*, 237 Md. 212, 205 A.2d 393 (1964); or a knife, *Hobbs v. Pepersack*, 301 F.2d 875 (4th Cir. 1962); *Bell v. State*, 5 Md. App. 276, 246 A.2d 286 (1968).

[49] A conviction under this section does not constitute a deportable firearms offense because the "dangerous weapon" does not have to be a gun, *Couplin v. State*, 37 Md. App. 567, 378 A.2d 197 (Md. Ct. Spec. App. 1977), cert. denied, 281 Md. 735 (1978), but could be a cord, *Bennett v. State*, 237 Md. 212, 205 A.2d 393 (1964); or a knife, *Hobbs v. Pepersack*, 301 F.2d 875 (4th Cir. 1962); *Bell v. State*, 5 Md. App. 276, 246 A.2d 286 (1968).

[50] *Gomez v. United States*, 690 F.3d 194, 201-03 (4th Cir. 2012) holds that second degree child abuse under the predecessor statute to § 3-601(d) is categorically not a crime of violence, and thus not an aggravated felony. For purposes of the analysis of a crime of violence, there is no substantive difference between the current first degree and second degree child abuse provisions.

[51] *See* caution at note 13 above regarding assault against family members or children.

[52] *Amos v. Lynch*, 2015 WL 3606848 (4th Cir. June 10, 2015) (predecessor statute held not to be sexual abuse of a minor because least culpable conduct includes failure to prevent abuse and requires no affirmative act of abuse); *see also, U.S. v. Cabrera-Umanzor*, 728 F.3d 347, 352 (4th Cir. 2013) (predecessor offense to §3-602 is categorically neither a crime of violence nor sexual abuse of a minor because it requires neither force nor an intent to gratify sexual urges).

[53] *See* caution at note 13 above regarding assault against family members or children.

[54] Md CR §3-602.1 includes the requirement that the failure to provide for a minor be "intentional." This is likely sufficient *mens rea* for this offense to be considered a CIMT.

[55] Md CR §3-604 is not a crime of violence because it does not require a use or threat of force and can be violated through simple neglect.

[56] Md CR §3-604(a) defines neglect for these purposes as the *intentional* failure to provide necessary assistance. This is likely sufficient *mens rea* for this offense to be considered a CIMT. *See, Shakirat Modupe Baruwa v. Caterisano*, 2010 U.S. Dist. LEXIS 60185 (D. Md. June 17, 2010) (holding that this offense qualifies as a CIMT).

[57] Md CR §3-605 is not a crime of violence because it does not require a use or threat of force and can be violated through simple neglect.

[58] Md CR §3-604(a) defines neglect for these purposes as the *intentional* failure to provide necessary assistance. This is likely sufficient *mens rea* for this offense to be considered a CIMT. *See, Shakirat Modupe Baruwa v. Caterisano*, 2010 U.S. Dist. LEXIS 60185 (D. Md. June 17, 2010) (holding that this offense qualifies as a CIMT).

[59] *Matter of Ajami*, 22 I. & N. Dec. 949 (BIA 1999) (holding a Mich. aggravated stalking statute was CIMT). §3-802(a) defines stalking as a malicious course of conduct, which likely is enough to make it a CIMT.

[60] This section does not apply to carrying a handgun. Md. CR §4-101(a)(5)(ii).

[61] *US v. Medina-Anicacio*, 325 F.3d 638, (5th Cir. 2003) (holding that carrying a concealed weapon is not a crime of violence and therefore not an aggravated felony).

[62] Subsection 4-101(c)(1) is not a CIMT. *Matter of Granados*, 16 I. & N. Dec. 726, 728 (BIA 1979) ("Conviction for possession of a concealed sawed-off shotgun is not . . . a crime involving moral turpitude . . . ."), *overruled on other grounds Matter of Hernandez-Casillas*, 20 I. & N. Dec. 262 (BIA 1990). However, subsection (c)(2), prohibiting carrying with intent to use the weapon to inflict harm, would likely be a CIMT. *See Matter of S-*, 8 I. & N. Dec. 344 (BIA 1959) (carrying concealed weapon with intent to use on another person held to be CIMT). Avoiding the CIMT could be important in the case of an individual who can adjust to permanent resident status, as a firearms offense is not a ground of inadmissibility and will not make her ineligible to obtain lawful permanent residence (as a CIMT would).

[63] Though the provision is divisible with regard to the intent to harm another (see preceding note), it is not divisible but rather simply overbroad as to its inclusion of non-firearms as dangerous weapons.

[64] *US v. Sandoval-Barajas*, 206 F.3d 853 (9th Cir. 2000) (holding that the offense of possession of handgun by alien was not an aggravated felony because the state offense was broader than enumerated federal statutes). There is no analogous federal statute outlawing simple possession of a handgun.

[65] This is a divisible statute for CIMT purposes (though it will still be a removable firearms offense in any case). Subsections (a)(1)(i) and (ii) are not CIMTs, while (iv) is definitely a CIMT and (iii) may be. In order to avoid the CIMT, plead to subsection (a)(1)(i) or (a)(1)(ii) specifically, or plead generally and make sure the record of conviction is free of any reference to intent to injure or kill another. Avoiding the CIMT could be important in the case of an individual who can adjust to permanent resident status, as a firearms offense is not a ground of inadmissibility and will not make her ineligible to obtain lawful permanent residence (as a CIMT would).

[66] Further support for the argument that the inclusion of antique firearms was deliberate by the General Assembly can be found in the contrast between this section's provisions and Md. Code Ann., Public Safety, Title 5, which regulates firearms and in several places specifically exempts antique firearms as defined in CR § 4-101. *But see*, *Matter of Chairez*, 26 I. & N. Dec. 349 (BIA 2014) (involving a state statute that did not specify whether or not antique firearms were included in the definition of firearms).

[67] Though this strategy is unproven in Maryland, you can *possibly* avoid a controlled substance offense if you can convince the court and the prosecution to agree to avoid identifying the specific substance in the record of conviction. Where a state list of controlled dangerous substances is broader than the federal list at 21 U.S.C. §802 (used to define a controlled substance offense for immigration purposes), a violation of the state statute is not categorically a removable offense. *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015); *Matter of Paulus*, 11 I. & N. Dec. 274, 276 (BIA 1965) ("Since the conviction here could have been for an offer to sell a substance which though a narcotic under California law is not a narcotic drug under federal laws, we cannot say that the Service has borne its burden of establishing that respondent has been convicted of a violation of a law relating to narcotic drugs."). *See also, Ruiz-Vidal v. Gonzales*, 473 F.3d 1072, 1076 (9th Cir. 2007) ("The plain

language of this statute requires the government to prove that the substance underlying an alien's state law conviction for possession is one that is covered by Section 102 of the CSA.").

Maryland's list of controlled substances may be broader than the federal list, as Maryland controls "bath salts" which are not controlled under federal law. *See*, COMAR 10.19.03.13 (D, E, F) (Schedule of "Additional Controlled Dangerous Substances" listing 4-Fluoromethcathinone, 3-Fluoromethcathinone, and 4-Methoxymethcathinone as CDS). *Cf.* 21 U.S.C. §802. For this reason, if the record of conviction does not identify the alleged controlled substance, the conviction should not support a finding of removal or inadmissibility for a controlled substances offense. There is an additional argument that, under *Descamps* and the categorical approach, an Immigration Court should not even have access to the ROC to identify the substance. However, both these arguments (and especially the second) are unproven in litigation under Maryland law, to the author's knowledge, and the much more prudent course for a defense attorney is to avoid any conviction for any offense relating to a controlled substance.

[68] *Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (conviction record for possession of paraphernalia that did not identify a substance controlled under the federal schedule of controlled substances could not support removal proceedings under the controlled substances ground of removal).

[69] *See* fn 67.

[70] INA § 237(a)(2)(B)(i).

[71] Maryland law defines distribution to include simple transfer or delivery from one person to another, whether or not any remuneration is paid and regardless of quantity. Md. Code Ann., Crim. Law § 5-101(h) and (l) (West). Under the Supreme Court's decision in *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1686-87 (2013), an offense that includes non-remunerative sharing of small quantities of marijuana is not a drug trafficking offense because it is not punishable as a felony under the federal Controlled Substances Act. Maryland's distribution offense is overly broad and is not a categorical match for the federal offense, at least with regard to marijuana. It is therefore not an aggravated felony.

[72] *See* fn 71 regarding the *Moncrieffe* decision relating to distribution of marijuana. There is an argument that the case's logic extends to all controlled substances, but this argument is unproven and ICE continues to prosecute distribution of non-marijuana CDS as an aggravated felony.

[73] Counterfeit substances are controlled dangerous substances as defined by the Maryland Code. *See* Md. Code, Crim. Law, § 5-604(a). A violation of § 5-604 is a felony under the Maryland Code and punishable under the Controlled Substances Act. *See* 21 U.S.C. §§ 841(a)(2) & 843(a)(5). Therefore, § 5-604 is a drug trafficking crime under INA § 101(a)(43)(B) and an aggravated felony. Immigration attorneys may want to make an argument that the definition of "counterfeit substances" in this provision includes labeling and labeling equipment, which may bring it outside of the definition of "drug trafficking" and controlled substances. This strategy is untested.

[74] "Where fraud or forgery is involved, it is clear that a finding of moral turpitude is required." *Matter of A*--, 5 I. & N. Dec. 52, 53 (BIA 1953) (citing *Jordan v. George*, 341 U.S. 223 (1951) (holding where fraud is a component of the crime, the crime involves moral turpitude)).

[75] There is no *mens rea* required by the statute, and it appears that the the common law crime of nuisance could be committed through negligence alone. *Baltimore & Y. Tpk. Rd. v. State*, 63 Md. 573, 581-82, 1 A. 285, 287 (1885) (describing offender's "neglect of duty" that created nuisance).

[76] *See, Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (conviction record for possession of paraphernalia that did not identify a substance controlled under the federal schedule of controlled substances could not support removal proceedings under the controlled substances ground of removal). *See also*, fn 67.

[77] A violation of this section would not be a drug trafficking crime because it does not involve controlled dangerous substances and is not punishable under the relevant federal drug trafficking statutes . The relevant language of § 5-617 states that "[a] person may not distribute, attempt to distribute, or possess with intent to distribute a *noncontrolled substance*...." (emphasis added). *Matter of Sanchez-Cornejo*, 25 I. & N. Dec. 273 (BIA 2010)(holding that TX statute prohibiting delivery of a simulated controlled substance is not punishable under the Controlled Substances Act and therefore not a drug trafficking aggravated felony).
However, it could be interpreted as a crime involving fraud or deceit. *See* INA § 101(a)(43)(M) (a crime involving fraud and losses greater than $10,000 is an aggravated felony); *See also Nijhawan v. Holder*, 129 S.Ct. 2294, 2298 (2009) (the $10,000 threshold "applies to the specific circumstances surrounding an offender's commission of a fraud and deceit crime on a specific occasion" and thus the provision requires a "circumstance-specific" interpretation that looks at the facts of the case, not simply at the elements of the statutory offense).

[78] "Where fraud or forgery is involved, it is clear that a finding of moral turpitude is required." *Matter of A*--, 5 I. & N. Dec. 52, 53 (BIA 1953) (citing *Jordan v. George*, 341 U.S. 223 (1951) (holding where fraud is a component of the crime, the crime involves moral turpitude)).

[79] The controlled substances ground of removability applies to any offense "relating to a controlled substance." 8 U.S.C. §1227(a)(2)(B). This has been interpreted very broadly and has been found to apply to delivery of a controlled simulated or "look-alike" substance. *Matter of Sanchez-Cornejo*, 25 I. & N. Dec. 273 (BIA 2010); *Desai v. Mukasey*, 520 F.3d 762, 765 (7th Cir. 2008).

[80] Although by definition this provision involves non-controlled substances, the broad language of the INA making crimes "relating to a controlled substance" grounds for removal and inadmissibility has been read to include delivery of "look-alike" substances, and the same logic could be applied to this offense. *Matter of Sanchez-Cornejo*, 25 I. & N. Dec. 273 (BIA 2010); *Desai v. Mukasey*, 520 F.3d 762, 765 (7th Cir. 2008).

[81] *See, Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (conviction record for possession of paraphernalia that did not identify a substance controlled under the federal schedule of controlled substances could not support removal proceedings under the controlled substances ground of removal). *See also,* fn 67.

[82] The statute punishes possession, use, or intent to use, but *not* distribution of paraphernalia. Since the three federal drug statutes that define drug trafficking punish only distribution of paraphernalia, this offense is not classified as a drug-trafficking crime nor does it come within the common meaning of drug-trafficking, since possession of paraphernalia has nothing to do with distribution. Because this offense neither involves the common meaning of drug-trafficking nor is punishable under the three relevant federal drug laws, felony possession of paraphernalia does not qualify as an aggravated felony under either test, even if it is a felony. *Lopez v. Gonzalez*, 549 U.S. 47 (2006).

[83] *See, Mellouli v. Lynch*, 135 S.Ct. 1980 (2015) (conviction record for possession of paraphernalia that did not identify a substance controlled under the federal schedule of controlled substances could not support removal proceedings under the controlled substances ground of removal). *See also,* fn 67.

[84] INA § 237(a)(2)(B)(i).

[85] This section does not explicitly define "firearm". Depending on the definition found to apply and whether that definition explicitly includes antique firearms, it may be overbroad and therefore not a firearms offense.

[86] This provision has no intent requirement and furthermore could be applied to a person convicted in a different jurisdiction of an underlying offense that might not be a felony in that jurisdiction and where there might be no such restriction on the right to carry a gun.

[87] The definition of firearm in this section explicitly includes antique firearms, which are excluded from the federal definition of a firearms offense. Further support for the argument that the inclusion of antique firearms was deliberate by the General Assembly can be found in the contrast between this section's provisions and Md. Code Ann., Public Safety, Title 5, which regulates firearms and in several places specifically exempts antique firearms as defined in CR § 4-101. *But see*, *Matter of Chairez*, 26 I. & N. Dec. 349 (BIA 2014) (involving a state statute that did not specify whether or not antique firearms were included in the definition of firearms).

[88] *Espinal-Andrades v. Holder*, 777 F.3d 163 (4th Cir. 2015). *See also*, *Matter of Palacios-Pinera*, 22 I. & N. Dec. 424 (BIA 1998) (finding arson to be a crime of violence and therefore an aggravated felony under INA § 101(a)(43)(F), 8 USC § 1101(a)(43)(F)). *See also U.S. v. Lee*, 726 F.2d 128 (4th Cir. 1984) (finding arson to be a *crime of violence* under 18 U.S.C. 1952(a)(2)).

[89] *Matter of S-*, 3 I. & N. Dec. 617, 618 (BIA 1949) ("…[A]rson or attempt to commit arson involves an act committed purposely with an evil intention and constitutes an offense involving moral turpitude."). Cf. *Jorge Hernandez-Hernandez*, A045 582 968 (BIA unpub. May 20, 2014) (fourth degree arson under N.Y.P.L. 150.05 not a CIMT because perpetrators need not have malicious intent or specific intent to damage property)

[90] This offense is not an aggravated felony burglary offense because it falls outside the federal generic definition of burglary in that it involves breaking and entering a "dwelling" which, under Maryland law, includes non-buildings like recreational vehicles. *Henriquez v. Holder*, 757 F.3d 144 (4th Cir. 2014). However, because it involves breaking and entering a dwelling, it has been considered a crime of violence under 18 USC §16(b), as a crime likely to result in the deliberate use of force. *See Leocal v. Ashcroft*, 125 S. Ct. 337 (2004). *See also*, *US v. Avila*, 770 F.3d 1100 (4th Cir. 2014) (finding Cal. burglary statute to be crime of violence under 18 USC §16(b)). However, there are strong arguments against this interpretation. For one thing, the Maryland definition of dwelling would include breaking into a car, which does not create the same risk of violence as breaking into a house. In addition, section 16(b) itself may be void for vagueness, as it is very like the similar residual clause invalidated by the Supreme Court on vagueness grounds in *Johnson v. U.S.*, 2015 WL 2473450 (June 26, 2015). Until this is litigated, though, criminal defense counsel would be wise to avoid a conviction with a 1 year sentence, in order to avoid the aggravated felony.

[91] Where burglary is committed with the intent to commit a CIMT, then burglary itself has been held to be a CIMT. There is an argument being litigated that Maryland's consolidated theft statute at CR §7-104 is not a CIMT. If this argument prevails, burglary to commit theft under §7-104 would not be a CIMT. Immigration attorneys should argue this.

[92] Second degree burglary under Md. CR § 6-203 should not constitute the aggravated felony of burglary because it does not meet the "generic" federal definition of burglary under *Taylor v. U.S.*, 495 U.S. 575 (1990). *Taylor* requires unlawful entry into a building or "structure," which does not include a vehicle, *Matter of Perez*, 22 I&N Dec. 1325 (BIA 2000). Section 6-203, however, includes entry into a "storehouse," which in turn includes vessels, railroad cars, trailers and aircraft (Md. CR § 6-201), none of which would qualify as a structure under *Taylor* and *Perez*. Since there is conduct prohibited by § 6-203 that is not encompassed within the federal definition of the aggravated felony of burglary, § 6-203 cannot be the basis for an aggravated felony burglary offense. *However*, a court could find that second degree burglary is a *crime of violence* under 18 USC § 16(b) as a crime likely to result in the use of force. *See Leocal v. Ashcroft*, 125 S. Ct. 337 (2004). Immigration attorneys should argue that § 6-203 can be distinguished from the crime of burglary referred to by the *Leocal* court because this section does not involve unlawful entry into a dwelling and thus does not involve the same degree of risk of encounter with an occupant and, therefore, likelihood of the use of force. Furthermore, 18 USC § 16(b) itself may be void for vagueness, as it is very like the similar residual clause invalidated by the Supreme Court on vagueness grounds in *Johnson v. U.S.*, 2015 WL 2473450 (June 26, 2015). Nonetheless, given the uncertainty of the law in this area and the possibility that a violation could be held to be a crime of violence aggravated felony, defense attorneys should avoid a conviction under this section or keep the sentence to under one year.

[93] An offense that includes as an element the intent to commit a CIMT is itself a CIMT. While it is likely that an immigration court would find any of the intended crimes in this subsection to be CIMTs, there is an (unproven) argument that §7-104 is not a CIMT, and not all crimes of violence are CIMTs, so an immigration attorney may have room to argue the CIMT issue. Best for defense counsel to avoid a conviction if possible.

[94] This offense could be arguably be a crime of violence under 18 USC 16(b), so it is best to keep the sentence under a year. *But see* fn 90 regarding arguments against this interpretation for immigration advocates.

[95] Burglary is a CIMT if the crime the defendant intended to commit after the illegal entry is a CIMT. *Matter of G-*, 1 I. & N. Dec. 403 (1943)(finding entry must be made with the intent to commit a crime involving moral turpitude). Courts may also find that burglary with intent to commit a certain crime constitutes an attempt to commit that crime (which would also be a CIMT if the underlying crime is a CIMT).

[96] Subsections (a) through (d) are not aggravated felony burglary because they do not meet the *Taylor* generic definition of burglary (495 U.S. 575 (1990)). Likewise, (b) through (d) should not be found to be *crimes of violence* under 18 USC §16(b) because they do not involve breaking into a dwelling. There is an argument that (a) is not a crime of violence under 18 USC §16(b) because the Maryland definition of dwelling would include breaking into a car, which does not create the same risk of violence as breaking into a house. In addition, section 16(b) itself may be void for vagueness, as it is very like the similar residual clause invalidated by the Supreme Court on vagueness grounds in *Johnson v. U.S.*, 2015 WL 2473450 (June 26, 2015). *But see, US v. Avila*, 770 F.3d 1100 (4th Cir. 2014) (finding Cal. burglary statute to be crime of violence under 18 USC §16(b)). Until this is litigated, criminal defense counsel would be wise to avoid a conviction under subsection (a) with a 1 year sentence, in order to avoid the aggravated felony.

[97] Subsections (a), (b) and (d) are not CIMTs. *Matter of G-*, 1 I. & N. Dec. 403 (BIA 1943); *Matter of M-*, 2 I. & N. Dec. 721 (BIA 1946)(no moral turpitude where there was no evidence of intent to commit a CIMT in the record of conviction); *see also, US v. Martin*, 753 F.3d 485 (4th Cir. 2014) (finding this offense can be committed with a negligent *mens rea*). Possession of burglary tools has been held not to be a CIMT where intent to commit a CIMT is not an element of the offense or evident in the record of conviction. *Matter of S-*, 6 I. & N. Dec. 769 (BIA 1955). A conviction under subsection (c) would likely be a CIMT because the offense includes intent to commit theft, which is generally a CIMT. However, there is an (as yet unproven) argument that theft under Md CR §7-104 is not a CIMT, and immigration attorneys may want to argue that (c) is therefore not a CIMT.

[98] Subsection (a) is not a crime of moral turpitude; subsection (b) is, because of the intent to commit theft. However, there is an (as yet unproven) argument that theft under Md CR §7-104 is not a CIMT, and immigration attorneys may want to argue that (c) is therefore not a CIMT.

[99] The BIA has held this offense to be a CIMT in an unpublished decision. *Bilal Shaikh*, A90-646-350 (BIA, 3/22/2006). The offense requires deliberate intention to damage property *and* malice. *In re Taka C.*, 331 Md. 80 (1993). At the same time, Maryland courts have held it not to be a crime of moral turpitude and to require an intent of nothing more than "a property-endangering state of mind without justification, excuse or mitigation." *Duncan v. State*, 5 Md. App. 440 (1968). Immigration attorneys may want to challenge a CIMT designation, but defense counsel should avoid a conviction or keep it within the petty offense exception.

[100] Simple trespass does not involve moral turpitude and is not a CIMT. *See Matter of M-*, 2 I. & N. Dec. 721, 723 (BIA 1946) (finding that breaking and entering another's property without the intent to commit a CIMT on the premises is not itself a CIMT). *See also Matter of L-V-C-*, 22 I. & N. Dec. 594 (BIA 1999) (holding that the language of a statute must require an evil intent to constitute a CIMT); *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013, 1018 (9th Cir. 2005) (Acknowledging the BIA's finding that "trespass may be deemed to involve moral turpitude only if accompanied by the intent to commit a morally turpitudinous act after entry"). Sections 6-402 and -403 do not require intent to commit a morally turpitudinous act.

[101] The BIA has held in an unpublished decision that this consolidated theft statute is nondivisible and sweeps more broadly than the generic federal definition of theft and that it therefore cannot be an aggravated felony. *In re: Clayton Hugh Anthony Stewart*, A043-399-408 (BIA, Feb. 11, 2015). *See also, US v. Lopez-Collado*, CR-ELH-14-00486, at 41 (D.Md. May 11, 2015) (finding no aggravated felony in the context of an illegal reentry prosecution). However, ICE continues to charge and prosecute these offenses as aggravated felonies, which subjects respondents to mandatory detention. Criminal defense attorneys should thus protect their clients by avoiding a conviction under § 7-104 where possible or keeping the sentence to less than one year to avoid an aggravated felony. For sample filings on the aggravated felony issue, see http://www.law.umaryland.edu/programs/clinic/initiatives/immigration/resources.html.

[102] Theft is generally considered a CIMT, but there is an (as yet unproven) argument that §7-104 is a nondivisible statute and overbroad for CIMT purposes because it includes conduct that is nonturpitudinous. For example, it includes theft of services with no intent requirement, and use of property knowing the use "probably will" deprive the owner of the property. Though these may not meet the CIMT requirement of an intent to permanently deprive the owner of property, these arguments have yet to be recognized in case law, and ICE continues to prosecute §7-104 convictions as CIMTs, so it is best to consider them to be. .

[103] This offense does not explicitly require any intent to deprive the owner of the property (the motor vehicle) even temporarily. *McGrath v. State*, 736 A.2d 1067, 1071 (Md. 1999). It therefore does not meet the federal generic definition of theft, which requires the intent to deprive the owner of the property. *Matter of García-Madruga*, 24 I&N Dec. 436, 440 (BIA 2008). It is also unlikely to be an aggravated felony in the 4th Circuit because it includes *de minimis* deprivations of property and is analogous to the VA statute found by the 4th Circuit to categorically *not* be a theft offense. *Castillo v. Holder*, 776 F.3d 262 (4th Cir. 2015) (finding VA §18.2-102, unauthorized use of a motor vehicle, not to be an aggravated felony theft offense). Because this interpretation has not yet been recognized by any courts, however, criminal defense attorneys should still protect their clients by avoiding a conviction under § 7-105 where possible *or* keeping the sentence to less than one year to avoid an aggravated felony.

[104] *See* fn 103. A CIMT theft offense requires an intent to permanently deprive the owner of the property, which this offense does not require.

[105] This statute is unlikely to be an aggravated felony in the 4th Circuit because it includes *de minimis* deprivations of property and is analogous to the VA statute found by the 4th Circuit to categorically *not* be a theft offense. *Castillo v. Holder*, 776 F.3d 262 (4th Cir. 2015) (finding VA §18.2-102, unauthorized use of a motor vehicle, not to be an aggravated felony theft offense).

[106] This offense requires no permanent intent to deprive the owner of property, a required element of a CIMT theft offense. *In re Lakeysha P.*, 106 Md. App. 401, 415, 665 A.2d 264, 271 (1995) (The "Unauthorized Use Statute" [has] *no element of "an intent permanently to deprive the possessor of the item taken.*").

[107] This offense has been held by the Md. Court of Appeals to involve misrepresentation. *Attorney Grievance Comm'n of Maryland v. Shaffer*, 305 Md. 190, 195-96, 502 A.2d 502, 505 (1986). It is therefore a crime involving deceit, and if the record of conviction reveals that the loss to the victim exceeds $10,000, it will be an aggravated felony. It is clear from the statute that it is *not* a theft offense. Md. CR §7-107(a) requires an additional deception for obtaining property by bad check to be considered theft. *Murphy v. State*, 100 Md. App. 131, 135, 640 A.2d 230, 232 (1994).

[108] In order to find a CIMT for a bad check offense, the BIA requires that a specific intent to defraud be an element of the offense. *Matter of Balao*, 20 I. & N. Dec. 440, 444 (BIA 1992)(" with regard to worthless check convictions, moral turpitude is not involved if a conviction can be obtained without prior proof that the convicted person acted with intent to defraud."); *Matter of Zangwill*, 18 I. & N. Dec. 22 (BIA 1981)(no CIMT without intent to defraud despite element of "knowing" issuance of worthless checks); *Matter of Stasinski*, 11 I. & N. Dec. 202 (BIA 1965)(no CIMT where statute included no intent to defraud and provided that "intent not to pay" element could be inferred from insufficient funds at the time the check was presented). Md. CR §8-103 does not include a specific intent to defraud. *Attorney Grievance Comm'n of Maryland v. Shaffer*, 305 Md. 190, 196, 502 A.2d 502, 505 (1986). In fact, an intent to defraud element was *removed* from a predecessor statute. *Id.* Furthermore, the Md. statute, like the statute in *Stasinski, supra*, also provides for an inference of intent not to pay from insufficient funds when check presented within 30 days. CR §8-104(b)(2).

[109] This offense does not require any intent to deprive the owner of property and is therefore not a theft offense. See unpublished IJ decision at: http://www.law.umaryland.edu/programs/clinic/initiatives/immigration/resources.html.

[110] *See* fn 109.

[111] INA § 101(a)(43)(S), 8 USC § 1101(a)(43)(S).

[112] *Matter of Martinez-Recinos*, 23 I. & N, Dec. 175 (BIA 2001) (finding that perjury is a CIMT).

[113] INA § 101(a)(43)(S), 8 USC § 1101(a)(43)(S).

[114] *United States v. Aparicio-Soria*, 740 F.3d 152 (4th Cir. 2014) (en banc) (holding that resisting arrest under Md CR § 9-408 and Maryland common law are categorically not crimes of violence).

[115] *See* INA § 101(a)(43)(M) , 8 USC § 1101(a)(43)(M) (stating that crimes involving fraud for which the loss is greater than $10,000 are aggravated felonies). *See also Nijhawan v. Holder*, 129 S.Ct. 2294, 2298 (2009) (the $10,000 threshold "applies to the specific circumstances surrounding an offender's commission of a fraud and deceit crime on a specific occasion" and thus the provision requires a "circumstance-specific" interpretation).

[116] It is unclear whether the various offenses of false statements to law enforcement will be held to be CIMTs. Section 9-503 is likely the safest plea because it does not require any intent to deceive. Sections 9-501 and 9-502 include an "intent to deceive," which would normally indicate turpitude. *See*, e.g., *Padilla v. Gonzales*, 397 F.3d 1016 (7th Cir. 2005)

At any rate, where an individual has no other CIMTs on her record, these false statement offenses fall within the "petty crime" exceptions to the CIMT provisions because their maximum penalty is 6 months imprisonment. 8 U.S.C. §1227(a)(2)(A)(i)(I) (exception for inadmissibility). 8 U.S.C. §1182(a)(2)(ii)(II) (exception for removability). The petty crime exception applies only if the individual has no prior CIMTs.

[117] 8 U.S.C. §1182(a)(2)(ii)(II) (petty offense exception to CIMT ground of inadmissibility); and 8 U.S.C. §1227(a)(2)(A)(i)(I) (petty offense exception to removability).

[118] Disorderly conduct is a regulatory offense and not a crime involving moral turpitude. 9 U.S. Dep't of State, *Foreign Affairs Manual (FAM)*, § 40.21(a) N.2.3-2(b); *Lewis v. Frick*, 189 F. 146 (D. Mich. 1911), rev'd on other grounds, 195 F. 693 (6th Cir. 1911), aff'd, 233 U.S. 291, 58 L.Ed. 967 (1914) (disorderly conduct not CIMT where non-sexual offense of housebreaking).

[119] In order to be a CIMT, indecent exposure must require a lewd or lascivious intent. *Matter of Cortes Medina*, 26 I&N Dec. 79, 82-83 (BIA 2013). The elements of Maryland's offense of indecent exposure are established by common law. It is a general intent crime that requires only that a person expose him- or herself at such a time and place that a reasonable person should know the act would be observable by others. *Ricketts v. State*, 291 Md. 701, 709, 436 A.2d 906, 910-11 (1981). Intent in the Md offense can range from specific intent to negligence. *Id.*