

**REFERENCE CHART FOR DETERMINING IMMIGRATION CONSEQUENCES
OF SELECTED NEW MEXICO CRIMINAL OFFENSES***

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OFFENSE & STATUTE	AGGRAVATED FELONY [AF]	MORAL TURPITUDE [MT]	ALTERNATE PLEAS & PRACTICE TIPS	OTHER ISSUES
CRIMES INVOLVING MOTOR VEHICLES				
DUI (all) § 66-8-102	No	No		
Homicide by Vehicle § 66-8-101	No	No		
Auto Burglary § 66-3-504	No	No * DO NOT admit intent to steal.	Only allocute to “broke into vehicle to commit crime”	
Receiving/Transferring Stolen Motor Vehicle § 66-3-505	Possibly	Yes	Plea to non-MT crime or avoid plea. [PPP]; Try to get sentence of 364 days or less ¹ .	
Driving on a Suspended / Revoked Driver’s License; § 66-5-39 (misd.)	Possibly	Yes	Try to get sentence of 180/364 days or less. ¹ Find alternative plea that does not have mens rea of the Suspended License; Avoid Plea if possible.	
CRIMES AGAINST PROPERTY				
Larceny §30-16-1	Possibly	Yes	Sentence <1 year actual incarceration avoids AF Plea to non-MT crime or avoid plea. [PPP]	
Robbery §30-16-2	Yes	Yes	Plea to non-MT crime or avoid plea. [PPP]. Sentence <1 year actual incarceration avoids AF but does not avoid MT	
Residential Burglary §30-16-3	Yes	Possibly	Must be a structure to qualify as burglary for immigration purposes. Only allocute to “broke into structure to commit crime.” Sentence <1 year actual incarceration avoids AF	
Fraud § 30-16-6	Possibly	Yes	Keep Amount <\$10,000 to avoid AF. Plea to non-MT crime or avoid plea. [PPP]	
Forgery §30-16-10	Possibly	Yes	Sentence <1 year actual incarceration avoids AF. Plea to non-MT crime or avoid plea. [PPP].	
Breaking & Entering §30-14-8	Possibly	Possibly	Sentence <1 year actual incarceration avoids AF. Plea to non-MT crime or avoid plea. [PPP]. Don’t admit “by fraud or deception.”	Would be MT if by fraud or deception otherwise not – keep record silent.
Shoplifting §30-16-19	Possibly	Yes	Plea to non-MT crime or avoid plea. [PPP]. Sentence <1 year actual incarceration avoids AF	
Fraudulent use of credit card §30-16-33	Possibly	Yes	Same as above	
Receiving Stolen Property; §30-16-11	Possibly	Yes	Same as above	
CRIMES AGAINST THE PERSON				
Homicide (1 st & 2 nd) § 30-2-1	Yes	Yes		
Voluntary Manslaughter § 30-2-3(A)	Possibly	Yes	Sentence <1 year actual incarceration avoids AF.	
Involuntary Manslaughter § 30-2-3 (B)	Possible	No	Sentence <1 year actual incarceration avoids AF.	
CSP § 30-9-11	Yes	Yes	Keep age of minor out of court record.	Deportable as a child abuse crime.
CSC § 30-9-12 (a) (misd.)	No	Yes	Plea to non-MT crime, avoid plea, or try to get sentence of 180 days or less. ¹	
CSC § 30-9-12 (c)	Yes	Yes	Sentence <1 year actual incarceration avoids AF.	
CSC Minor § 30-9-13	Yes	Yes	Keep age of minor out of court record.	Deportable as a child abuse crime.
Assault §30-3-1 (misd.)	No	Possibly	Subsection (B) may be MT. Plea to non-MT crime, avoid plea or try to get sentence of 180 days or less. ¹	
Agg. Assault §30-3-2	Possibly	Yes	Sentence <1 year actual incarceration avoids AF. Plea to non-MT crime or avoid plea. [PPP]. If assault was w/gun, just have record say “DW” and not that it was a firearm.	
Battery §30-3-4 (misd.)	No	No		
Agg Battery §30-3-5	Possibly	Yes	Sentence <1 year actual incarceration avoids AF. Plea to non-MT crime or avoid plea. [PPP]. If assault was w/ gun, just have record say “DW” and not that it was a firearm.	
Kidnapping §30-4-1	Possibly	Yes	Sentence <1 year actual incarceration avoids AF. Plea to non-MT crime or avoid plea. [PPP]	
False Imprisonment §30-4-3	Possibly	Yes	Sentence <1 year actual incarceration avoids AF. Plea to non-MT crime or avoid plea. [PPP].	
Stalking; §30-3A-3 (misd.)	Possibly	Yes	Plea to non-MT crime or avoid plea. [PPP].	Qualifies as DV crime, deportable

¹ A sentence of 180 days or less to a MT misdemeanor, where the maximum sentence is 364 or less, will make the client eligible for a waiver of inadmissibility under the petty offense exception; a sentence of 364 days or less will make the crime not an aggravated felony, although some other basis for removability may exist.

OFFENSE & STATUTE	AGGRAVATED FELONY [AF]	MORAL TURPITUDE [MT]	ALTERNATE PLEAS & PRACTICE TIPS	OTHER ISSUES
Agg Stalking; §30-3A-3.1	Yes	Yes	Sentence <1 year actual incarceration avoids AF. Plea to non-MT crime or avoid plea. [PPP].	Same as above
Assault HHM; § 30-3-12 (misd.)	No	Yes	Avoid crime against a person, plea to offense not including HHM; don't identify relationship on the record. Avoid plea or plea to non-MT. Keep record vague.	Qualifies as DV crime, deportable.
Battery HHM; §30-3-15 (misd.)	No	Yes	Same as above, plus try to get sentence of 180 days or less. ¹	
Agg. Assault HHM; § 30-3-13	Possibly	Yes	Same as above.	Same as above.
Agg. Batt HHM; §30-3-16	Yes	Yes	Same as above, plus try to get sentence of 180 days or less. ¹	Same as above.
Violation of Restraining Order § 40-13-6	No	Yes	Conviction irrelevant, a civil court finding of violation is sufficient.	Same as above.
Prostitution §30-9-2 (misd.)	No	Yes	Plea no contest, being a prostitute is enough. Try to get sentence of 180 days or less. ¹	
Patronizing Prostitute §30-9-3 (misd.)	No	Yes	Plea to non-MT crime or avoid plea.	AF to be a madam or pimp.
CRIMES	INVOLVING	CONTROLLED	SUBSTANCES	
Possession §30-31-23 (1 oz. or less of marijuana) (misd.)	No	No	Avoid plea. Waiver available for a first offense. Do not admit to being addict or user.	Deportable as a drug crime.
Possession § 30-31-23 (felony)	Yes	Yes	Do not admit to being addict or user. Must be Federally listed controlled substance or not valid, see list §21 USC 802.	Same as above.
Possession of Drug Paraphernalia §30-31-25.1	Unlikely	No	Do not admit to being addict or user. AF only if elements mirror federal paraphernalia statute. § 21-USC 863.	Same as above
Trafficking §30-31-20	Yes	Yes	Do not admit to being addict or user. Inadmissible even without conviction – “reason to believe engaged in trafficking.”	Same as above.
Imitation Controlled Substances §30-31A-1 to §30-31A-15	No	Yes	Avoid plea (PPP). Do not admit to being addict or user. Sentence <1 year actual incarceration.	Likely also a drug offense.
CRIMES	INVOLVING	GUNS		
Negligent use of a firearm §30-7-4 (misd.)	No	No	No contest plea, do not admit firearm, record must be vague as to what kind of firearm. Plea to crime w/o gun. If client is undocumented s/he is also subject to prosecution as illegal alien in possession of firearm. §18 USC 922 (g) (5)	Not inadmissible but Deportable.
Felon in Possession of a Firearm or Destructive device § 30-7-16	Possibly	No	Do not admit “firearm.” Record must be vague as to what kind of firearm. Plea to crime w/o gun.	Same as above
Shooting at or from a motor vehicle § 30-3-8(B)	Possibly	Yes	If 4 th degree keep actual incarceration < 1 year. AF if 2 nd or 3 rd degree.	Same as above.
Firearm enhancement § 31-18-16	Probably	Depends on underlying crime.	Get FE dropped; will make a crime of violence AF; also will make offense a firearms offense, a separate basis for removability.	
INCHOATE	CRIMES			
Attempt §30-28-1; Accessory § 30-1-13 Conspiracy §30-28-2 Solicit a Crime §30-28-3	Same as substantive offense	Same as substantive offense	Same as substantive offense	
ENHANCEMENTS				
Old age, habitual offender).	No	No	Only deportable for substantive offense. See, ITMO Rodriguez-Cortes, 20 I&NDec 587 (BIA 1992)	

INEFFECTIVE ASSISTANCE OF COUNSEL: if 1. You affirmatively misadvise; 2. You fail to advise; 3. You fail to mitigate; 4. You fail to defend, i.e., if court sentences defendant to 1 year, you must argue for 364 days.

See the following federal statutes for lists of offenses with immigration consequences: Aggravated Felonies, § 8 USC 1101 (a)(43); Deportability, § 8 USC 1227 (a); Inadmissibility, § 8 USC 1182 (a).

** The lists contain different offenses. A conviction may make the person inadmissible but not deportable, or be an aggravated felony but not a ground of inadmissibility. **

PPP = Pre-prosecution Probation; Keeps case out of court record. Client on probation for 12 months then case dismissed or similar informal agreement used in your jurisdiction.

LPR = lawful permanent resident (green card holder).

RULE: Any non-citizen with one MT crime with potential sentence of a year or more w/in 5 years of entry, and 2 crimes at any time, regardless of sentence, so long as they did not arise out of a single scheme of criminal misconduct makes an individual deportable.

** Disclaimer: This brief guide is intended as an introductory tool for criminal defense attorneys representing noncitizen defendants. This guide does not purport to provide legal advice or to give an opinion as to the immigration consequences that might result from a criminal disposition in a particular case. The analysis and suggestions offered do not create a lawyer-client relationship and are not a substitute for the individual research and personalized representation that is essential to every case. Immigration consequences of crimes are a complex, unpredictable and constantly changing area of law in which there are few guarantees. Accordingly, defense practitioners should consult with an expert and obtain up-to-date information upon which to rely.*