

## Appendix 1: Analyzing the Immigration Consequences

In each case in which a client is a noncitizen, defense counsel should consult the following “road map,” to assist in determining the immigration consequences of criminal conduct:

1. Determine the immigration status of the client. If a U.S. citizen, stop – (**but verify**). The immigration laws do not apply to U.S. Citizens. If not:
2. Determine the client’s exact immigration status and all potential routes to U.S. citizenship or any other immigration status;
3. Obtain the client’s complete prior criminal record, from every jurisdiction;
4. Make sure you are aware of and understand all pending charges;
5. Determine if any prior criminal charges, even if they did not result in conviction, could affect the client’s current or potential immigration status; if so, consider all possible ways to vacate, withdraw pleas, appeal, attack collaterally, revise, revoke, etc.;
6. Analyze the potential effects of pending charges on immigration status, making sure to think about the specific threats of inadmissibility and removal from the United States as well as denial of future benefits like other noncitizen status and U.S. citizenship;
7. Consider a plea or otherwise structured disposition that would avoid immigration consequences. Some examples include: 1) Is there a possible disposition that is not a conviction (e.g., pretrial probation); 2) Can the complaint/indictment be amended to an offense that causes less severe immigration consequences; 3) Can the defendant negotiate a sentence with less drastic immigration consequences (e.g., less than a one year sentence on a theft offense or crime of violence, or consecutive (on and after) sentences of less than one year on multiple such offenses); or, 4) Are there multiple charges, only some of which cause immigration consequences? If so, can a disposition be negotiated in which convictions and/or sentences of one year or more are only received on the offenses that do not carry immigration consequences for such convictions and/or sentences;
8. **Always try to avoid an “aggravated felony” conviction;**
9. Consider whether any waivers are or will be available to the client in immigration court to mitigate immigration consequences;
10. Consider all possible post-conviction strategies;
11. **Discuss the client’s goals related to immigration** (e.g. does the client care more about the immigration consequences or more about avoiding jail time);
12. Advise the client not to leave the U.S., apply for any immigration benefit or attempt naturalization without consulting with an immigration specialist.



## Appendix 2: Summary Chart of Inadmissibility and Deportability

Grounds of Inadmissibility 8 U.S.C. §1182(a)(2)	Grounds of Deportability 8 U.S.C. §1227(a)(2)
<p><b>CRIME INVOLVING MORAL TURPITUDE</b></p> <p>Conviction or admission of sufficient facts for one CIMT makes one inadmissible <i>unless</i></p> <ul style="list-style-type: none"> <li>• 1 crime committed under 18 and at least 5 years before admission, OR</li> <li>• Maximum <i>possible</i> penalty is 1 year or less AND <i>sentence</i> is 6 months or less</li> </ul>	<p><b>CRIME INVOLVING MORAL TURPITUDE</b></p> <p>Conviction for one CIMT makes one deportable if</p> <ul style="list-style-type: none"> <li>• Conviction is within 5 years of admission where a <i>sentence</i> of at least one year <i>may</i> be imposed</li> </ul> <p>Conviction for 2 CIMTs at any time, not arising out of a single scheme of criminal conduct makes person deportable.</p> <p>NB: the definition of conviction for immigration law differs from state law.</p>
<p><b>CONTROLLED SUBSTANCES</b></p> <ul style="list-style-type: none"> <li>• Conviction or admission of any crime/acts relating to a controlled substance as defined by 21 USC §802.</li> <li>• Reason to believe person is a drug trafficker</li> <li>• Currently a drug abuser or addict as found by a doctor</li> </ul>	<p><b>CONTROLLED SUBSTANCES</b></p> <ul style="list-style-type: none"> <li>• Conviction of any drug offense except 1 offense of 30 grams or less of marijuana</li> <li>• Includes conspiracy or attempt</li> <li>• If found to be a drug abuser or addict at ANY time after admission.</li> </ul>
<p><b>MULTIPLE OFFENSES</b></p> <ul style="list-style-type: none"> <li>• One is inadmissible if CONVICTED of 2 or more crimes (of any type – even if in a common scheme) in which the aggregate sentence was 5 years or more</li> </ul>	N/A
<p><b>PROSTITUTION</b> See 8 USC 1182(a)(2)(D)</p> <p>Not a separate inadmissible offense</p>	<p>Not separate deportable charge, but check CIMT.</p> <p><b>FIREARM OFFENSES</b></p> <ul style="list-style-type: none"> <li>• Conviction for any crime of buying, selling, using, owning, possessing or carrying any firearm or destructive device (18 USC §921).</li> <li>• Includes conspiracy and attempt</li> <li>• May include crimes for which possession or use is an element</li> </ul>

<p>Not a separate inadmissible offense</p>	<p>DOMESTIC VIOLENCE – conviction for:</p> <ul style="list-style-type: none"> <li>• DV</li> <li>• Stalking</li> <li>• Child abuse</li> <li>• Child neglect</li> <li>• Child abandonment</li> <li>• Violation of criminal or civil protective orders (conviction not necessary)</li> <li>• Applies to spouses, household members, children, and others.</li> </ul>
	<p>AGGRAVATED FELONY – 8 U.S.C. § 1227 (a)(2)(A)(iii) [agg. Fel. is defined at 8 U.S.C. 1101(a)(43)]</p> <p><b>Common Aggravated Felonies:</b></p> <p><u>Requires only a conviction:</u></p> <ul style="list-style-type: none"> <li>• murder, rape, sexual abuse of a minor</li> <li>• drug trafficking</li> <li>• firearms trafficking</li> <li>• running a prostitution business</li> <li>• fraud or tax evasion where the loss is \$10,000.</li> <li>• failure to appear by a defendant for service of sentence (underlying crime must be punishable by 5 years or more)</li> <li>• failure to appear in court to answer/dispose of a felony charge.</li> </ul> <p><u>Requires a conviction and a sentence of imprisonment for 1 year or more:</u></p> <ul style="list-style-type: none"> <li>• crime of violence (as defined by 18 USC §16)</li> <li>• theft offense</li> <li>• obstruction of justice</li> <li>• document (passport) fraud</li> </ul>
<p>MISC (8 U.S.C. §1182)</p> <ul style="list-style-type: none"> <li>• aliens involved in serious criminal activity who have asserted immunity from prosecution.</li> <li>• Human trafficking</li> <li>• Money laundering</li> <li>• Security related grounds</li> <li>• Terrorist activity</li> <li>• Aliens previously removed</li> <li>• Etc...</li> </ul>	<p>MISC (8 U.S.C. §1227)</p> <ul style="list-style-type: none"> <li>• Smuggling of aliens</li> <li>• Marriage fraud</li> <li>• Espionage, sabotage, treason, sedition.</li> <li>• Terrorist activities</li> <li>• Selective service violations</li> <li>• Falsification of docs</li> </ul>

## **Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart**

DISCLAIMER: This document is meant for **criminal defense attorneys ONLY** and is not intended for use by immigration practitioners, Homeland Security attorneys, or Immigration Judges. The analysis of offenses is deliberately conservative, because criminal defense practitioners must be conservative in their immigration advice to their noncitizen clients. For some offenses, viable arguments may exist to contest removability in immigration proceedings that are contrary to our analysis, but it is beyond the scope and purpose of this chart. In order to protect defendants to the fullest extent, the most conservative analysis is required.

Furthermore, this chart analyzes individual offenses in a vacuum. The actual impact of an offense will vary dramatically depending on the client's immigration status, prior criminal record, and other pending charges. Because immigration consequences of crimes is a complex and ever-evolving area of law, practitioners should use this chart in conjunction with the attached article, "*Immigration Consequences of Massachusetts Criminal Convictions*" and only as a starting point. These documents are not a substitute for legal research.

© Committee for Public Counsel Services Immigration Impact Unit, June 2013. The original version of this chart was published by Dan Kesselbrenner and Wendy Wayne in July 2006. Dan Kesselbrenner, Executive Director of the National Immigration Project of the National Lawyers Guild, contributed significantly to this version and we thank him for his invaluable input.

## HOW TO USE THIS CHART:

For each criminal offense listed, the chart is divided into three categories: aggravated felony, crime involving moral turpitude (CIMT) and other grounds of inadmissibility or deportability. The chart then indicates the likelihood that an offense would be deemed to be an aggravated felony, CIMT, and/or some other specified crime-related ground of inadmissibility or deportability under immigration law.

To clarify the likelihood of an offense being an aggravated felony, CIMT or other ground, we will use the terminology as defined below:

1. **YES**—The immigration statute and/or case law clearly deem this offense to constitute an aggravated felony, CIMT and/or any additional grounds identified under column 5.
2. **LIKELY**—The immigration statute and/or case law may not be directly on point or clearly indicate that this offense is an aggravated felony, CIMT, etc. However, analyzed in the context of relevant immigration case law, the offense is likely to be deemed as such by immigration officials and/or the immigration courts.
3. **POSSIBLE**—The immigration statute and/or case law are unclear as to whether this offense would constitute an aggravated felony, CIMT, etc., and there are unresolved legal issues both for and against such classification. Such a finding may be avoidable, depending upon such factors as how defense counsel structures a plea agreement, or under which particular prong of the offense defendant is convicted.
4. **UNLIKELY**—The immigration statute and/or case law may not be directly on point or clearly indicate that this offense is *not* an aggravated felony, CIMT, etc. However, analyzed in the context of relevant immigration case law, the offense is not likely to be deemed as such by immigration officials and/or immigration courts.
5. **NO**—The statute and/or case law clearly indicate that this offense is *not* an aggravated felony, CIMT, etc.

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
<b>Motor Vehicle Offenses</b>					
Operating a motor vehicle after suspension	MGL c.90, §23	No	No	No	Avoid pleading to this offense and OUI at the same time.
Operating under influence (alcohol)	MGL c.90, §24	No	No	No	Pending legislation may make OUI-3 <sup>rd</sup> an aggravated felony.
Operating under influence (controlled substance)	MGL c.90, §24	No	No	Inadmissible and deportable offense as crime related to a controlled substance. <sup>8</sup> U.S.C. §1182(a)(2)(A); 8 U.S.C. § 1227(a)(2)(B).	Not deportable offense if record of conviction does not identify drug. There is an exception to deportability for a single conviction for possessing 30 g or less of marijuana for own use. If relevant, make clear on record.  See pp. 18, 21

<sup>139</sup> For a general discussion of aggravated felonies, see “*Immigration Consequences of Massachusetts Criminal Convictions*” at p. 15

<sup>140</sup> For information on crimes involving moral turpitude and their consequences, see “*Immigration Consequences of Massachusetts Criminal Convictions*” at pp. 12-14, 17, and 21.

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Leaving the Scene after causing personal injury	MGL c.90, §24(a1/2)	Unlikely, but try to avoid sentence of one year or more under 8 U.S.C. §1101(a)(43)(F) (crimes of violence).	Likely, if record of conviction or police report show knowledge that D had caused injury.	No	See p. 16, fn. 68  For information on the record of conviction see p.13, fn. 45
Negligent operation of a motor vehicle	MGL c.90, §24(2)(a)	No	No	No	
Using a motor vehicle without authority	MGL c.90, §24(1)(2)(a)	Likely, if sentence of one year or more under 8 U.S.C. §1101(a)(43)(F) (crimes of violence).	No	No	See p. 16, fn. 68
Motor vehicle homicide (negligently)	MGL c.90, §24G	No	No	No	
Motor vehicle homicide (recklessly)	MGL c.90, §24G	Unlikely	Yes	No	Pleading to negligently causing death rather than recklessly causing death is much safer plea.



## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPTITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
OUI with serious injury	MGL c.90, §24L	No	No	No	Pending federal legislation may make OUI-3 <sup>rd</sup> an aggravated felony.
<b>Controlled Substance Offenses<sup>141</sup></b>					
Sale of Drug Paraphernalia	MGL c. 94C § 32I (a) and (b)	Yes, unless charged with possession with intent to sell/distribute.	Yes	Inadmissible and deportable offense as crime related to a controlled substance. 8 U.S.C. § 1182(a)(2)(A); 8 U.S.C. § 1227(a)(2)(B).	See pp. 16, 18, 21 To avoid the aggravated felony, plead to possession with intent to distribute.
Possession of a controlled substance	MGL c. 94C, § 34	No, unless prosecuted as a subsequent offense (prior offense is pled and proven), or if possession of flunitrazepam, under 8 U.S.C. §1101(a)(43)(B).	No	Inadmissible and deportable offense as crime related to a controlled substance. 8 U.S.C. § 1182(a)(2)(A); 8 U.S.C. § 1227(a)(2)(B).	Not deportable offense if record of conviction does not identify drug. There is an exception to deportability for a single conviction for possessing 30g or less of marijuana for own use. See pp. 16, 18, 21

<sup>141</sup> For a general discussion of the consequences of controlled substance offenses see “*Immigration Consequences of Massachusetts Criminal Convictions*” at pp. 18, 21.

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Trafficking, distribution, possession with intent to distribute a controlled substance	MGL c. 94C, §§ 32-32E	Yes, under 8 U.S.C. §1101(a)(43)(B).	Yes	Inadmissible and deportable offense as crime related to a controlled substance. 8 U.S.C. §1182(a)(2)(A); 8 U.S.C. §1227(a)(2)(B). May also form basis for inadmissibility for controlled substance traffickers, 8 U.S.C. §1182(a)(2)(C).	Reduce to straight possession (but see possession, above).  See pp. 16, 18, 21
Presence where heroin kept	MGL c. 94C, § 35	No	No	Inadmissible and deportable offense as crime related to a controlled substance. 8 U.S.C. §1182(a)(2)(A); 8 U.S.C. §1227(a)(2)(B).	May be marginally less risky than pleading to simple possession.  Because this offense does not involve distribution or trafficking, it is one option for avoiding an aggravated felony.  See pp. 18, 21

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
<b>Crimes against the Person</b> <sup>142</sup>					
Violation of restraining order	MGL c. 209A, § 7	Unlikely	Yes	Yes, ground of deportability under 8 U.S.C. § 1227 (a)(2)(E)(violation of a protective order).	See pp. 19-20
Murder, 1 <sup>st</sup> or 2 <sup>nd</sup> degree	MGL c. 265, § 1	Yes, under 8 U.S.C. § 1101(a)(43)(A) (murder) OR, if sentence of 1 year or more, § 1101(a)(43)(F) (crime of violence).	Yes	Deportable offense if crime of domestic violence or child abuse under 8 U.S.C. § 1227 (a)(2)(E).	
Manslaughter (voluntary)	MGL c. 265, § 13	Yes, if sentence of 1 year or more under 8 U.S.C. § 1101(a)(43)(F) (crime of violence).	Yes	Deportable offense if crime of domestic violence or child abuse under 8 U.S.C. § 1227 (a)(2)(E).	
Manslaughter (involuntary)	MGL c. 265, § 13	Likely, if sentence of 1 year or more under 8 U.S.C. § 1101(a)(43)(F) (crime of violence).	Yes	Deportable if crime of domestic violence or child abuse under 8 U.S.C. § 1227 (a)(2)(E).	If possible, make the record of conviction clear that conviction was based on a reckless failure to act. This may avoid an aggravated felony conviction.

<sup>142</sup> Many offenses in this category can cause a noncitizen to be deportable if domestic in nature. For a discussion of crimes of domestic violence, see p. 19-20.

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Assault	MGL c.265, §13A(a)	Likely, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crimes of violence).	Unlikely	Deportable if crime of domestic violence under 8 U.S.C. §1227 (a)(2)(E).	May preserve arguments in imm. court if record shows no physical force used, attempted or threatened. See p. 16, fn. 68
Assault and battery (A&B)	MGL c.265, §13A(a)	Likely, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crime of violence).  May preserve arguments for imm. court if record of conviction shows no physical force used, attempted or threatened. Try to plead to de minimus touching. See p. 15, fn. 68	Unlikely	Deportable if crime of domestic violence under 8 U.S.C. §1227 (a)(2)(E).	NOTE: Although case law indicates that A&B with de minimus touching may not be a crime of violence, it is still regularly charged as such in immigration court and thus currently may still be an aggravated felony despite the case law.
Aggravated A&B	MGL c.265, §13A(b)	Likely, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crime of violence). See p. 15, fn. 68	Likely	Deportable if crime of domestic violence under 8 U.S.C. §1227 (a)(2)(E).	
Indecent A&B under 14	MGL c.265, §13B	Yes, under 8 U.S.C. §1101(a)(43)(A) (sexual abuse of a minor).	Yes	Deportable as crime of child abuse under 8 U.S.C. §1227 (a)(2)(E).	Amend to simple assault and battery, see A&B above. If amended, keep sentence under a year.

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Assault and battery on a public official	MGL c.265, §13D	Likely, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F)(crime of violence).	Likely	No	
Indecent A&B over 14	MGL c.265, §13H	Yes, if victim is under 18 under 8 U.S.C. §1101(a)(43)(A) (sexual abuse of a minor) .  Yes if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Yes	Deportable <u>if</u> crime of domestic violence or child abuse under 8 U.S.C. §1227 (a)(2)(E).	If victim is under 18, keep this out of the “record of conviction.” See p. 13, fn. 45  Amend to simple assault and battery, see A&B above. If amended, keep sentence under a year.
A&B on a child	MGL c.265, §13J	Likely, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F)(crime of violence) unless convicted of wantonly or recklessly permitting injury to child.	Likely	Deportable as a crime of child abuse under 8 U.S.C. §1227 (a)(2)(E).	Amend to simple assault and battery, see A&B above. If amended, keep sentence under a year.  OR  Make clear on record of conviction that client was convicted of wantonly or recklessly permitting injury.

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Reckless endangerment of children	MGL c.265, §13L	Possibly, if crime involves sexual abuse. 8 U.S.C. §1101(a)(43)(A) (sexual abuse of a minor).	Likely	Deportable as crime of child abuse/neglect/abandonment under 8 U.S.C. §1227 (a)(2)(E).	
Mayhem	MGL c.265, §14	Likely, if sentence is 1 year or more and based on conduct, not a failure to act. 8 U.S.C. §1101(a)(43)(F) (crime of violence),			
Assault with intent to murder	MGL c.265, §15	Yes, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Yes	Deportable <u>if</u> crime of domestic violence under 8 U.S.C. §1227 (a)(2)(E).	
A&B with a dangerous weapon	MGL c.265, §15A	Yes, under 8 U.S.C. §1101(a)(43)(U) (attempted murder); if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Likely	Deportable <u>if</u> crime of domestic violence under 8 U.S.C. §1227 (a)(2)(E). (continued...) If record shows weapon	Amend to simple assault and battery, see A&B above. If amended, keep sentence under a year.  See p. 19, fn. 85

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Assault with a dangerous weapon	MGL c.265, §15B	Yes, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Yes	Deportable if crime of domestic violence under 8 U.S.C. §1227 (a)(2)(E).  If record shows weapon was a firearm, deportable under 8 U.S.C. §1227(a)(2)(C).	Amend to simple assault, see assault above. If amended, keep sentence under a year.  See p. 19, fn. 85
Attempted murder	MGL c.265, §16	Yes, under 8 U.S.C. §1101(a)(43)(U) (attempt), or if sentence is 1 year or more, under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Yes	Deportable if crime of domestic violence under 8 U.S.C. §1227 (a)(2)(E).	Note that assault to murder is treated as attempted murder.
Armed robbery	MGL c.265, §17	Yes, if sentence of 1 year or longer, under 8 U.S.C. §1101(a)(43)(F) (crime of violence) or 8 U.S.C. §1101(a)(43)(G) (theft).	Yes	If firearm involved, deportable under 8 U.S.C. §1227 (a)(2)(E).	
Unarmed robbery	MGL c.265, §19(b)	Yes, if sentence of 1 year or longer, under 8 U.S.C. §1101(a)(43)(F) (crime of violence) or 8 U.S.C.	Yes	No	

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
		§ 1101(a)(43)(G) (theft).			
Rape	MGL c. 265, § 22(b)	Yes, under 8 U.S.C. § 1101(a)(43)(A) (rape).	Yes	Deportable if crime of domestic violence under 8 U.S.C. § 1227(a)(2)(E).	Digital rape may not be an aggravated felony.
Rape of child with force	MGL c. 265, § 22A	Yes, under 8 U.S.C. § 1101(a)(43)(A) (rape, sexual abuse of a minor).	Yes	Deportable as crime of child abuse under 8 U.S.C. § 1227(a)(2)(E).	
Statutory rape	MGL c. 265, § 23	Yes, under 8 U.S.C. § 1101(a)(43)(A) (rape, sexual abuse of a minor).	Yes	Deporable as crime of child abuse under 8 U.S.C. § 1227(a)(2)(E).  Depending on victim's identity, may also be deportable under domestic violence ground at 8 U.S.C. § 1227(a)(2)(E).	
Assault with intent to commit rape	MGL c. 265, § 24	Yes, under 8 U.S.C. § 1101(a)(43)(A) (rape), and 8 U.S.C. § 1101(a)(43)(F) (crime of violence) if sentence is 1 year or more.	Yes	Depending on victim's identity, may also be deportable under domestic violence ground at 8 U.S.C. § 1227(a)(2)(E).	Amend to simple assault and battery, see A&B above. If amended, keep sentence under a year.



### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Kidnapping, no ransom demand	MGL c.265, §26	Yes, if sentence of 1 year or longer, under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Likely	Deportable if crime of domestic violence or child abuse under 8 U.S.C. §1227 (a)(2)(E).	
Kidnapping, ransom demand	MGL c. 265, §26	Yes, under 8 U.S.C. § 1101(a)(43)(H) (extortion), OR if sentence of 1 year or longer, under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Yes	Deportable if crime of domestic violence or child abuse under 8 U.S.C. §1227 (a)(2)(E).	
Custodial interference by relative	MGL c.265, §26A	Unlikely	Unlikely	Deportable as crime of child abuse under 8 U.S.C. §1227 (a)(2)(E).	Could fall under petty offense exception to inadmissibility.
Assault with intent to commit a felony	MGL c.265, §29	Likely, if sentenced to 1 year or more, under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Yes	Deportable if crime of domestic violence under 8 U.S.C. §1227 (a)(2)(E).	See p. 21
Stalking and stalking in violation of a restraining order	MGL c.265, §43(a) and (b)	Likely, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Likely	Crime of stalking under 8 U.S.C. § 1227(a)(2)(E)(i). If violated restraining order, then also deportable as violator of protection order, 1227(a)(2)(E)(ii).	

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Threat to commit a crime	MGL c.275, §2	No, because cannot get sentenced to a year or more of imprisonment under this statute.	Yes, if the crime threatened involved any type of bodily harm or is otherwise a CIMT.	Deportable if crime of domestic violence or child abuse under 8 U.S.C. §1227 (a)(2)(E).	Meets the petty offense exception to inadmissibility and deportability if it is the only CIMT.  See pp. 17, 21
<b>Crimes against Property</b>					
Arson of a dwelling house	MGL c. 266, §1	Yes, under 8 U.S.C. §1101(a)(43)(E)(i).	Yes	No	Amend to negligence in cases of fire, MGL c.266, §8.
Negligence in cases of fire	MGL c. 266, §8	No	No	No	
Armed Burglary with person therein	MGL c.266, §14	Yes, if sentence of 1 year or more. 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Yes	Deportable offense if weapon is a firearm.	See p. 19, fn. 85

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Breaking & Entering in the night time with intent to commit a felony	MGL c.266, §16	Yes, if building broken into and sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(G) (theft offense); Likely, if ship, vessel, or vehicle broken into and sentence of 1 year or more under 8 U.S.C. § 1101(a)(43)(F)(crime of violence).	Yes, if intent to commit offense that is a CIMT.	No	Keep sentence less than a year and plead affirmatively to a non-turpitudinous underlying crime.
Breaking and Entering with intent to commit a misdemeanor	MGL c.266, §16A	No	Yes, if intent to commit offense that is a CIMT.		Meets the petty offense exception for inadmissibility and deportability if it is the only CIMT. See pp. 17, 21
Larceny in a building	MGL c. 266, §20	Yes, if sentence of one year or more under 8 U.S.C. §1101(a)(43)(G) (theft offense).	Yes	No	
Larceny from the person	MGL c.266, §25	Yes, if sentence of one year or more under 8 U.S.C. §1101(a)(43)(G) (theft offense).	Yes	No	

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Receiving stolen motor vehicle	MGL c. 266, §28	Yes, if sentence of one year or more under 8 U.S.C. §1101(a)(43)(G) (theft offense).	Yes	No	
Larceny of a motor vehicle	MGL c. 266, §28	Yes, if sentence of one year or more under 8 U.S.C. §1101(a)(43)(G) (theft offense).	Yes	No	Try to plead to use without authority instead of this offense, but in either case, keep sentence less than a year
Larceny	MGL c. 266, §30	Yes, if sentence of one year or more under 8 U.S.C. §1101(a)(43)(G) (theft offense).	Yes	No	Larceny under \$250 can fall into petty offense exception to inadmissibility if it is the only CIMT and sentence is 6 months or less. See p. 21
Shoplifting	MGL c.266, §30A	Yes, if sentence of one year or more, under 8 U.S.C. §1101(a)(43)(G) (theft offense).	Yes	No	1 <sup>st</sup> offense, if under \$100, falls under the petty offense exception to inadmissibility and deportability. See pp. 17, 21
Larceny by check	MGL c. 266, §37	Yes, where loss to the victim exceeds \$10,000. 8 U.S.C. §1101(a)(43)(M)(i). This offense is unlikely to	Yes	No	Plead to a specific amount that is \$10,000 or less. Larceny under \$250 may fall within petty offense

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Trespassing	MGL c.266, §120	No	No	No	
Vandalism	MGL c.266, §126A	Likely, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F)(crime of violence).	Yes	No	
Willful and malicious destruction of property	MGL c.266, §127	Likely, if sentence of 1 year or more under 8 U.S.C. § 1101 (a)(43)(F) (crime of violence).	Yes	No	If under \$250 and the only CIMT, falls within petty offense exception to inadmissibility and deportability. See pp. 17, 21
Wanton destruction of property	MGL c.266, §127	Possibly, if sentence of one year or more under 8 U.S.C. § 1101 (a)(43)(F) (crime of violence).	Likely	No	If under \$250 and the only CIMT, falls within the petty offense exception to inadmissibility and deportability. See pp. 17, 21

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Possession of burglarious tools	MGL c.266, §49	Yes as an attempted theft under 8 U.S.C. §1101(a)(43)(U) if defendant receives a sentence of 1 year or more AND if record of conviction indicates that the underlying offense was to steal.	Yes, if record reveals an intent to commit an offense that is a CIMT (i.e. stealing).	No	Plead to possession of burglarious tools with intent to commit an unnamed offense. Keep record of conviction clear of evidence that the underlying offense was a theft offense. See p. 13, fn. 45
Receiving stolen property	MGL c.266, §60	Yes, if sentence of 1 year or more, under 8 U.S.C. §1101(a)(43)(G) (theft offense).	Yes	No	
Carrying a dangerous weapon	MGL c. 269, §10(b)	Likely, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	No	Deportable offense if weapon is a firearm.	See p. 19, fn. 85

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Failure to Register as a Sex Offender	MGL c.6, §178H	No	Yes	No	Is better to plead to this offense rather than a substantive sex offense.
Perjury	MGL c.268, §1	Yes, if sentence 1 year or more, under 8 U.S.C. §1101(a)(43)(S) (obstruction of justice).	Yes	Inadmissible and deportable offense if perjury is related to immigration fraud.	
Providing False Name or Social Security Number to Police	MGL c.268, § 34A	No	Likely	No	If the only CIMT may fall within the petty offense exception to inadmissibility only.
Intentional or knowing False report of a crime.	MGL c.269, §13A	Yes, under 8 U.S.C. §1101(a)(43)(S) (obstruction of justice), if sentence of 1 year.	Likely	No	See pp. 21

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Removing a vehicle identification number	MGL c.266, §139	Likely, if the sentence is 1 year or more, under 8 U.S.C. §1101 (a)(43)(R) (forgery, etc) OR, (forgery, etc)  If the loss to the victim exceeds \$10,000, under 8 U.S.C. §1101 (a)(43)(M)(i).	Yes, for those offenses involving fraud.	No	Plead to a specific loss finding of \$10,000 or less.
<b>Forgery and Crimes Against Currency</b>					
Forgery of records	MGL c.267, §1	Yes, if sentenced to 1 year or more under 8 U.S.C. §1101(a)(43)(R) (forgery, etc).	Yes	No	If defendant pleads to intent to injure rather than intent to defraud, there is small chance that it would no longer be a crime involving moral turpitude.
Passing counterfeit note	MGL c.267, §10	Yes, if sentenced to a year or more under 8 U.S.C. §1101(a)(43)(R) (counterfeiting).	Yes	No	See p. 14, fn. 57
<b>Crimes Against Public Justice</b>					



### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Escape	MGL c.268, §16	Likely, if: a) defendant escaped while serving a sentence for an underlying offense punishable by five years, 8 U.S.C. §1101 (a)(43)(Q); or b) if the defendant escaped before trial and is facing felony charges for which a sentence of two or more years may be imposed, §1101(a)(43)(T); or c) if sentenced to a year or more, §1101(a)(43)(F) or (S) (crime of violence; obstruction of justice).	No	No	
Resisting arrest	MGL c. 268, §32B	Likely, if sentence of 1 year or more under 8 U.S.C. §1101(a)(43)(F) (crime of violence).	Possibly. Keep any injury to the police officer out of the record of conviction. See p. 13, fn. 54.	No	

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Witness intimidation	MGL c. 268, §13B	Yes, if sentence is 1 year or more under 8 U.S.C. §1101 (a)(43)(F) (crime of violence) or (S) (obstruction of justice).	Yes	Deportable offense if crime of domestic violence under 8 U.S.C. §1227 (a)(2)(E).	
Failure to appear	MGL c. 276, §82A	Yes, if: a) failed to appear to serve sentence on offense punishable by 5 years or more (8 U.S.C. §1101(a)(43)(Q)); or b) failed to appear before trial for felony with potential sentence of 2 years or more (§1101(a)(43)(T)); or c) sentenced to 1 year or more imprisonment, under §1101(a)(43)(S) (obstruction of justice).	No	No	

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
<b>Crimes against Public Peace<sup>143</sup></b>					
Possession of firearm	MGL c. 269, §10(a)	No, unless charged under MGL c. 269, §10(d) for subsequent possession of a firearm.	No	Yes, under firearm ground of deportability. 8 U.S.C. §1227 (a)(2)(C).	
Possession of a machine gun	MGL c. 269, §10(c)	Yes, under 8 U.S.C. §1101(a)(43)(E) (firearms).	No	Yes, under firearm ground of deportability. 8 U.S.C. §1227 (a)(2)(C).	
Possession of a sawed-off shotgun	MGL c.269, §10(c)	No	No	Yes, under firearm ground of deportability. 8 U.S.C. §1227 (a)(2)(C).	
Possession of firearm; possession of firearm without FID	MGL c. 269, §10(h)(1)	No	No	Yes, under firearm ground of deportability. 8 U.S.C. §1227 (a)(2)(C).	
Possession of ammunition	MGL c. 269, §10(h)	No	No	Unlikely a firearm offense under 8 U.S.C. § 1227(a)(2)(C). See p. 18, fn.85	Pleading to this offense instead of possession of a firearm may avoid deportability.

<sup>143</sup> For a discussion of firearms offenses, see “Immigration Consequences of Massachusetts Criminal Convictions” at p. 18.

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
<b>Crimes against Morality, Decency, etc.</b>					
Maintaining a house of prostitution	MGL c. 272, §6	Yes, under 8 U.S.C. §1101(a)(43)(K) (managing a prostitution business).	Likely	Engaging in prostitution or procuring prostitutes is also a ground of inadmissibility under 8 U.S.C. §1182(a)(2)(D) that does not require a criminal conviction.	See pp. 22 and fn. 94
Open and gross lewdness and lascivious behavior	MGL c.272, §16	Unlikely, but if minor involved, keep age of the victim out of the record of conviction.	Yes	No	Try to plead to indecent exposure instead.
Dissemination of harmful matter to minors	MGL c. 272, § 28	Possibly, under 8 U.S.C. §1101(a)(43)(A) (sexual abuse of a minor).	Likely	A deportable offense under child abuse ground at 8 U.S.C. § 1227(a)(2)(E).	Pleading to possession with intent to disseminate may reduce the risk of triggering the aggravated felony ground and the child abuse ground.  Preferable to plead to an offense under MGL c. 272, § 29; still a CIMT, but not an aggravated felony.

### Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Dissemination of obscene matter	MGL c. 272, § 29	No	Likely	No	The pornography aggravated felony ground relates to child pornography only.
Possession of child pornography	MGL c. 272, § 29C	Yes, under 8 U.S.C. §1101(a)(43)(D) (child pornography).	Yes	No	
Disturbing the peace, disorderly person, disorderly house	MGL c. 272, §53	No	No	No	Plead to this instead of other offenses that have adverse immigration consequences.
Lewd, wanton and lascivious person	MGL c. 272, §53	Unlikely, but if minor involved, keep age of the victim out of the record of conviction.	Yes	No	Try to plead to indecent exposure instead.
Indecent exposure	MGL c. 272, §53	Unlikely, but if minor involved, keep age of the victim out of the record of conviction.	No	No	
Engaging in sexual conduct for a fee	MGL c. 272, § 53A(a)	No	Yes	Engaging in prostitution is also a conduct-based ground of inadmissibility under 8 U.S.C. §1182(a)(2)(D) that	Falls within the petty offense exception to inadmissibility. See pp. 22 and fn. 94

## Appendix 3: Immigration Consequences of Selected Massachusetts Offenses Reference Chart

OFFENSE	STATUTE	AGGRAVATED FELONY? <sup>139</sup>	CRIME INVOLVING MORAL TURPITUDE? <sup>140</sup>	OTHER GROUNDS OF DEPORTABILITY OR INADMISSIBILITY?	NOTES & REFERENCE
Attempts, Conspiracies					
Attempt	MGL c.274, §6	If substantive offense is aggravated felony then conviction for attempt to commit the offense will be an aggravated felony under 8 U.S.C. §1101(a)(43)(U).	Yes, where underlying offense involves moral turpitude or where offense involves fraud.	Firearm, controlled substance, or other criminal ground where underlying offense would make a noncitizen deportable.	If possible, plead to attempt to commit an offense that does not involve fraud or trigger other immigration consequences.
Conspiracy	MGL c.274, §7	If substantive offense is an aggravated felony then a conviction for conspiracy to commit the offense will be an aggravated felony under 8 U.S.C. §1101(a)(43)(U).	Yes, where underlying offense involves moral turpitude or where offense involves fraud.	Firearm, controlled substance, or other criminal ground where underlying offense would make a noncitizen deportable.	If possible, plead to conspiracy to commit an offense that does not involve fraud or trigger other immigration consequences.