

IMMIGRATION CONSEQUENCES OF SELECTED TEXAS OFFENSES:

A QUICK REFERENCE CHART

By Jodi Goodwin and Thomas Esparza, Jr. Immigration Specialists

| TEXAS OFFENSE | ELEMENTS OF OFFENSE | AGGRAVATED FELONY (AF) | CRIME INVOLVE MORAL TURPITUDE (CIMT) | DOMESTIC VIOL., CHILD ABUSE, FRAUD FIREARMS, ETC | ALTERNATE PLEAS AND PRACTICE TIPS |
|--|--|---|---|---|--|
| Murder § 19.02 First or Second Degree Felony | 1) Intentionally, knowingly 2) Causes individual death 3) Intends to cause serious bodily injury & commits act clearly dangerous to life 4) Commits felony (except manslaughter) and in course of . . .commits act clearly dangerous to life | Yes, per INA 101(a)(43)(A), 8 USC 101(a)(43)(A) | Murder is a CIMT | | Plead to §19.05 if possible. But, a willful omission or neglect to perform duty resulting in death may be murder. |
| Manslaughter § 19.04 Second Degree Felony | 1) Recklessly 2) Causes individual's death A person is reckless when he is aware of but consciously disregards a substantial and unjustifiable risk that the result will occur. (TX Penal Code Ann §6.03(c)) <u>Matter of Franklin</u> , 20 I&N Dec. 867(BIA1994) | No. Not 101(a)(43)(F) crime of violence –as defined by 18 USC 16 as no substantial risk force would be used (16(b)). <u>U.S. v. Vargas -Duran</u> , 319 F.3d 194 (5 th Cir. 2003); <u>U.S. v. Calderon-Pena</u> , 2004 WL 1888407 (5 th Cir.). | Probably. Presence or absence of a corrupt mind or evil intent is not controlling; criminally reckless acts are sufficient. <u>Matter of Medina</u> , 15 I&N Dec. 611, 614 (BIA1976) | | |
| Criminally Negligent Homicide § 19.05 State Jail Felony | 1) Causes individual's death 2) By criminal negligence. Criminally neg. homicide requires defendant should have been aware of risk but failed to perceive it. <u>Avila v. State</u> 954 S.W.2d 830. (App.8 Dist. 1997) | No. Not murder, COV - force not element of the crime, and no substantial risk that force could be used. (<u>US v. Dominguez-Ochoa</u> , 386 F.3d 639 (5 th Cir. 2004)) | No 'evil intent', so it is arguably not a CIMT. Although criminally reckless behavior may constitute CIMT, criminally negligent behavior generally does not. | | Crim.neg. hom. committed by omission, <u>Dowdenv.State</u> , 758 S.W.2d 264 (Cr.App.1988) <i>Safety Note: obtain sentence of less than 1yr.</i> |
| Unlawful Restraint, § 20.02 Class A Misdemeanor | 1) Intentionally, Knowingly 2) Restrains (Restricts a person's movement w/o consent) | No. Not a COV b/c force is not a necessary element of the offense (18 USC § 16(a)) | Statute on its face does not require that turpitudinous conduct occur, so not likely CIMT. Also, although it requires knowledge, it does not require exposing another to serious bodily injury, which has been held to be CIMT. | No. Not a crime of violence, and therefore not a crime of DV | Unlaw restraint -- alternate plea if noncitizen faces kidnap charges |
| Unlawful Restraint, §20.02(c)(1) State Jail Felony | 20.02(a) elements and 3) Person restrained was less than 17yrs old | No. Likely not an agfel; COV analysis under 18 USC § 16(b) would not change b/c of age of restrained person | May be CIMT if the court finds that restraining an individual under 17 is turpitudinous | Not a crime of violence, and therefore not a crime of DV | Unlaw. restraint – alternate plea if noncitizen faces kidnap charges <i>Safety Note: obtain sentence of less than 1yr.</i> |
| Unlawful Restraint, | 20.02(a) elements and 4) Recklessly exposes victim | No. Not a COV, as no | Probably CIMT because of the reckless | Maybe Aggravating | Divis. statute – clarify record is |

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| <p>§ 20.02(c)(2)) Third Degree Felony</p> | <p>to substantial risk of serious bodily injury or, 5) Knows that the victim is on-duty public servant, or 6) While in custody restrains another individual</p> | <p>element or risk of force; categorical analysis. (See <u>Chapa-Garza</u>, <u>Vargas-Duran</u>, <u>Calderon-Pena</u>.)</p> | <p>exposure to another to a substantial risk of serious bodily injury.</p> | <p>factors also increase the likelihood of being labeled a crime of DV</p> | <p>devoid of force to avoid any argument that substantial risk of seriousbodily injury in sec. #4 requires force. See <u>U.S. v. Taylor</u>, 495 U.S. 575 (1990).</p> |
| <p>Kidnapping, §20.03 Third Degree Felony</p> | <p>1) Intentionally or knowingly 2) Abducts (restrain with intent to prevent liberation by: a) secreting or holding, OR b) using or threatening to use deadly force); a person</p> | <p>Maybe. If charged under sec. 2(b) (using or threatening deadly force) it is a COV (16(a)). May not be a COV under 16(b) given the various ways one can kidnap.</p> | <p>Generally held to be CIMT. But see <u>Hamdam v. INS</u>, 98 F.3d 183 (5th Cir. 1996). <u>Hamdan</u> held that a LA conviction for simple kidnapping was not a CIMT. However, the TX statute is not as broad.</p> | <p>See crime of violence analysis in agfel column</p> | <p>Keep factors unspecified on record if facing an aggravated kidnap charge. Divis. statute: could support argument that it is not a COV under 16(a) or (b). See <u>US v. Taylor</u>.</p> |
| <p>Indecency with a Child, § 21.11 Second or Third Degree Felony</p> | <p>1) Child younger than 17 2) Engages in sexual conduct, 3) With the intent to arouse or gratify a) Exposes anus, any part of genitals, or b) causes child to expose anus or any part of genitals</p> | <p>Yes, per INA 101 (a)(43)(A) (F), 8 USC 1101(a)(43) (A), (F) Indecent exposure sufficient. Actual, physical contact not necessary. The act is 'abusive' due to psych. harm irrespective of physical injury. <u>U.S. v. Zava -la-Sustaita</u>, 214 F.3d 601,605 (5th Cir 2000). Indecency w/ sexual conduct entails a subst. risk that physical force may be used vs. the victim, <u>U.S v. Velazquez-Overa</u>, 100F3d 418 (5th Cir. 1996). <u>U.S. v. Rivera Perez</u>, 322 F3d 350 (5th Cir. 2003)</p> | <p>CIMT because improper sexual conduct with minors is considered to be against the accepted morals of society and inherently turpitudinous.</p> | | <p><u>Safety Note:</u> <i>obtain sentence of less than 1yr.</i> for crime of violence. But note that obtaining less than a 1 yr sentence does not affect agfel for sexual abuse of minor.</p> |
| <p>Assault (simple), § 22.01 Misdemeanor</p> | <p>1) Intentionally, knowingly, or recklessly a) Causes bodily injury to another 2) Intentionally or knowingly a) Threatens another with imminent bodily injury; or 3) intentionally or knowingly a) Causes physical contact with another when person knows or should reasonably believe that the other will regard the contact as offensive or provocative</p> | <p>NO. <u>US v. Villegas Hernandez</u>, 468 F.3d 874 (5th Cir. 2007); <u>US v. Zuniga Soto</u>, 527 F.3d 1110 (5th Cir. 2008) Use of force is not an element of assault under 22.01.</p> | <p>Not a CIMT as per <u>Matter of Fualaau</u> Where recklessness is an element of the statute, a crime of assault, can be, but is not per se, a crime involving moral turpitude. <u>Matter of Fualaau</u>, 21 I&N Dec.475 (BIA 1996). However, willful</p> | <p>Maybe.</p> | <p><u>Safety Note:</u> <i>obtain sentence of less than 1yr.</i> The Fifth circuits' decisions on this statute have gone both ways, thus keeping the sentence to less than a year should be safe.</p> |

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| | | | infliction of corporal injury on a family member has been held to constitute a CIMT. | | |
| Sexual Assault, § 22.011 Second Degree Felony | Detailed elements.. | Is an aggfel as per INA § 101(a)(43)(A) | Forcible, non-consensual sexual physical contact is held to be CIMT. | Sexual assault of a minor is “sexual abuse of a minor.” <u>US v. Izaguirre-Flores</u> , 405 F.3d 270 (5 th Cir. 2005). | |
| Aggravated Assault, § 22.02 First or Second Degree Felony | Elements in 22.01 and 1) Causes serious bodily injury to another, or 2) Uses or exhibits deadly weapon during the commission of an assault | Is an aggfel as per INA 101(a)(43)(F). Meets def’n under 18 USC 16(b). | Most likely a CIMT under both the serious bodily injury element and deadly weapon element. | | |
| Aggravated Sexual Assault, § 22.021 | Detailed elements | Is an aggfel as per 101(a)(43)(A). | Again, forcible, non-consensual sexual physical contact is held to be CIMT. Also contains more aggravating factors which would also result in CIMT determination. | | |
| Injury to a Child, Elderly Individual, or Disabled Individual, § 22.04 | 1) Intentionally, knowingly, recklessly, or with criminal negligence, by act or 2) Intentionally, knowingly, or recklessly by omission, 3) Causes to a child, elderly individual, or disabled individual a) Serious bodily injury b) Serious mental deficiency, impairment, or injury c) Or bodily injury | Maybe. Not an aggfel b/c not a crime of violence based on <u>Gracia</u> precedent dealing omissions, but see <u>Perez Mun oz v. Keisler</u> , 507 F.3d 357 (5 th Cr. 2007) (intentionally causing bodily injury to a child requires physical force and is a COV). 5 th Cir holds that b/c the injury to a child often stems from omission, rather than the intentional use of force, it is not a “crime of violence” under sentencing guidelines; a crime based on criminally negligent conduct is generally not considered a crime of violence under the USSG, <u>U.S v. Gracia-Cantu</u> 302 F.3d 308 (5 th Cir. 2002) | Likely to be a CIMT because even though the injury may occur by omission, the omitted act may be deemed contrary to accepted social morals. However, criminally negligent injury may not constitute a CIMT under <u>Matter of Sweester</u> . | Will not be a crime of DV b/ not a crime of violence based on <u>Gracia</u> | |

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| <p>Abandoning or Endangering a Child, § 22.041</p> | <p>1) having custody, care, or control of a child younger than 15 years</p> <p>2) intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm. Or</p> <p>3) intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.</p> | <p>Is not an aggfel because it is not a COV. Does not meet def'n of 16(a) or (b).</p> | <p>Abandonment has been held a CIMT if requires willfulness on the part of the parent and the destitution of the child. Texas statute would likely constitute CIMT because of intentional <i>mens rea</i> and the exposure of the child to an unreasonable risk of harm.</p> <p>Endangering has been held a CIMT even though it can be done recklessly. <u>Rodriguez Castro v. Gonzales</u>, 427 F3d 316 (5th Cir. 2005); <u>In Re Paulino-Ramirez</u> (unpublished BIA decision).</p> | | |
| <p>Terroristic Threat, § 22.07(a)(1) or 22.07(a)(2)</p> <p>Class B Misdemeanor</p> | <p>1) Threatens to commit any offense involving violence to any person or property with the intent to</p> <p>2) Cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies OR</p> <p>3) Place any person in fear of imminent serious bodily injury</p> | <p>Would be a crime of violence, but would not be an aggfel, b/c the maximum jail time for a Class B is 180 days, and a crime of violence has to have a sentence of a year or more in order for it to be an aggfel</p> <p>Convictions under TX statutes proscribing reckless conduct and terroristic threats were not convictions of a “crime of domestic violence,” and thus could not serve as predicate convictions for the charged offense <u>United States v. White</u> 258 F.3d 374 (5th Cir. 2001)</p> | <p>Does not require evil intent, or a corrupt state of mind, so may arguably not be a CIMT.</p> | <p>Note the definition in <u>White</u> is different than the one used here.</p> | |
| <p>OFFENSE</p> | <p>ELEMENTS</p> | <p>AGG FEL</p> | <p>CIMT</p> | <p>COV, OTHER</p> | <p>ALT. PLEA</p> |
| <p>Terroristic Threat, § 22.07(a)(3)</p> <p>Class A Misdemeanor</p> | <p>1) Threatens to commit any offense involving violence to any person or property</p> <p>1) With intent to, prevent or interrupt</p> <p>2) The occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place</p> | <p>Could possibly be an aggfel if the sentence is a year or more; Most likely suffices the crime of violence definition as stated in 18 USC § 16(a)</p> | <p>Does not require evil intent, or a corrupt state of mind, so may arguably not be a CIMT.</p> | <p>Likely to be a crime of violence as per the crime of DV definition</p> | <p>Try to plea down to a Class B or C Misdemeanor if possible. If you must plea to a Class A, try to get less than a year jail time</p> |

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| <p>Terroristic Threat, § 22.07(a)(4) Third Degree Felony</p> | <p>1) Threatens to commit any offense involving violence to any person or property 2) With intent to 3) Cause impairment or interruption of public communications, public transportation, public water, gas or power supply or other public service</p> | <p>Will be an aggfel if sentenced to one year, because it satisfies the crime of violence definition in 18 USC § 16(b). Note that a deferred adjudication is not a sentence to a term of imprisonment, therefore a deferred for longer than a year would not be an aggfel COV.</p> | <p>Does not require evil intent, or a corrupt state of mind, so may arguably not be a CIMT.</p> | <p>Will likely be a Crime of DV b/c it is a crime of violence as per 8 USC §16(b)</p> | <p>Try to plead down to the lesser Class B and C misdemeanors</p> |
| <p>Criminal Nonsupport, § 25.05</p> | <p>1) Intentionally and knowingly 2) Fail to provide child support for a child under 18 or otherwise under court order to support</p> | <p>Not an aggfel.</p> | <p>Not a CIMT because statute does not require the child be in destitute circumstances, be in need of the support of the parent, have become or is likely to become a public charge, or that the health or the life of the child has been impaired.</p> | | |
| <p>Violation of Protective Order or Magistrate's Order, § 25.07</p> | <p>Detailed Elements</p> | <p>Offense not aggfel because does not meet def'n of 16(a) or (b).</p> | <p>Divisible statute: section describing family violence or threats to a protected individual would most likely constitute CIMT; section describing going to a particular place arguably not a CIMT because of lack of evil intent. However, intentional and knowing <i>mens rea</i> may defeat this argument.</p> | | |
| <p>Arson, § 28.02</p> | <p>Detailed Elements</p> | <p>Because courts take a broad view of what "offense described in" means, arson may be an aggravated felony. See 18 U.S.C. 844 (f) and (i). Should argue that state offense is not "described in" 844, but there is a possibility that argument won't work.</p> | <p>Generally held to constitute CIMT because of evil intent.</p> | | |
| <p>Criminal Mischief, § 28.03</p> | <p>1) Person w/o effective consent of the owner; 2) Intentionally or knowingly 3) Damages or destroys tangible property owner, or 4) Tamper w/ tangible property owner and causes pecuniary</p> | <p>Not an aggfel b/c not a crime of violence; not a violation of 18 U.S.C §16(a) Defendant's conviction for violation of Texas</p> | <p>Not likely to be a CIMT, because the crime does not have an evil intent, nor does it demonstrate an action that is contrary to our social morals. Also,</p> | <p>Not likely to be Crime of DV, because not a crime of violence</p> | |

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| | loss or substantial inconvenience to the owner or a third person 5) Makes markings, including inscriptions, slogans, drawings, or paintings, on tangible property owner. | "criminal mischief" statute was not a "crime of violence" for the purposes of sentencing guidelines, <u>U.S v. Landeros-Gonzales</u> 262 F.3d 424 (5 th Cir. 2001) | statute does not require maliciousness, so it is not inherently base and vile. | | |
| OFFENSE | ELEMENTS | AGG FEL | CIMT | COV, OTHER | ALT. PLEA |
| Reckless Damage, § 28.04 | 1)without the effective consent of the owner, 2)recklessly damages or destroys property of the owner | Not an aggfel. | Does not appear to be a CIMT because it lacks both an intentional harm element and any harm to another person. | | |
| Graffiti, § 28.08 | Detailed Elements | Not an aggfel. | Does not appear to be a CIMT. | | |
| Robbery, § 29.02 | 1)in the course of committing theft as defined in Chapter 31 and 2)with intent to obtain or maintain control of the property, he: 3) intentionally, knowingly, or recklessly causes bodily injury to another; or 4) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death. | Is an aggfel as per 101(a)(43)(F) and (G). With both of these sections, the sentence to a term of imprisonment has to be at least one year to be an aggfel, so a deferred adjudication for this offense would NOT be and aggfel (or any term of imprisonment less than one year). | CIMT: <u>Matter of Martin</u> , 18 I&N Dec. 226 (BIA 1982). | | |
| Aggravated Robbery, § 29.03 | Detailed Elements | See analysis of Robbery above. | CIMT: <u>Matter of Martin</u> , 18 I&N Dec. 226 (BIA 1982). | | |
| Burglary, § 30.02 State Jail Felony; First and Second Degree Felony | 1) Person without effective consent of the owner 2) Enters a habitation, or a building (or any portion of a building) not then open to the public 3) With intent to commit a felony, theft or an assault, or; 4) Remains concealed, with intent to commit a felony, theft, or any assault, in a building or habitation; or 5) Enters a building or habitation and commits a felony, theft or an assault | Burglary is an aggfel as long as a one year sentence is imposed. Burglary of a building is not a crime of violence for sentence enhancement purposes; Although violent confrontations may occur in the course of the offense, it does not require the actual, attempted or threatened use of physical force as a necessary element, <u>U.S v. Rodriguez-Rodriguez</u> 323 F.3d 317 (5 th Cir 2003) Burglary is a crime of | Burglary is a CIMT if committed with the intent to commit theft. If committed with the intent to commit a felony, only a CIMT if underlying felony is a CIMT. If committed with intent to commit and assault, only a CIMT if underlying assault is a CIMT. | | Note: try to negotiate less than a year sentence |

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| | | <p>violence under the definition stated in 18 U.S.C § 16 if a one year prison sentence (even if it is suspended) is imposed, <u>U.S v. Guardado</u> 40 F.3d 102 (5th Cir 1994) <u>U.S. v. Garcia Mendez</u>, 420 F3d 454 (5th Cir. 2005)</p> | | | |
| <p>Burglary of Vehicles, § 30.04</p> <p>Class A Misdemeanor</p> | <p>1) A person without effective consent of owner; 2) Breaks into or enters a vehicle or any part of vehicle 3) With intent to commit any felony or theft</p> | <p>Is an aggfel if a sentence of one year is imposed</p> <p>Burglary of a vehicle is "crime of violence," <u>Santos v. Reno</u> 228 F.3d 591 (5th Cir. 2000)</p> <p>Conviction for burglary of vehicle was an "aggravated felony" within meaning of Sentencing Guidelines, <u>U.S v. Ramos-Garcia</u> 95 F.3d 369 (5th Cir. 1996)</p> <p>A vehicle theft conviction is not a crime of violence b/c it does not pose a risk of injury to people (as defined by the US Sentencing guidelines § 4B1.2(a)) <u>U.S v. Charles</u> 301 F.3d 309 (5th Cir. 2002)</p> <p>Conviction did not require a finding that the had actually <i>committed</i> theft, but rather mere <i>intent to commit</i> was sufficient; therefore this does not satisfy the theft definition as per IIRIRA; Lopez was convicted of burglary of a vehicle not of a building, therefore he</p> | <p>Burglary of a vehicle with intent to commit theft if a CIMT.</p> | | <p>Try to negotiate a sentence of less than one year</p> |

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| | | did not commit 'burglary' for purposes of IIRIRA; therefore the INS' charge of burglary is invalid; burglary of a vehicle IS a 'crime of violence', <u>Lopez-Elias v. Reno</u> , 209 F.3d 788, (5 th Cir 2000) | | | |
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| OFFENSE | ELEMENTS | AGG FEL | CIMT | COV, OTHER | ALT. PLEA |
| Criminal Trespass, § 30.05 | 1) enters or remains on or in property, including an aircraft or other vehicle, of another 2) without effective consent or 3) enters or remains in a building of another without effective consent and 4) had notice that the entry was forbidden; or 5) received notice to depart but failed to do so. | Not an aggfel. | Probably not a CIMT as does not require evil intent. | | |
| Theft, § 31.03 | 1) unlawfully appropriates property 2) with intent to deprive the owner of property. | Is aggfel under 101(a)(43)(G) if sentenced to at least one year. Deferred is not a sentence. | Theft is a CIMT if statute has as an element the intent to permanently deprive the owner of his property. | | |
| Unauthorized Use of a Vehicle, § 31.07 State Jail Felony | 1) Intentionally or knowingly 2) Operates another's boat, airplane or motor-propelled vehicle without the effective consent of the owner | Not a COV as per 18 USC § 16(a), possibly a COV as per 18 USC 16(b) Unauthorized use of a motor vehicle is not a crime of violence for sentence enhancement purposes; Although violent confrontations may occur in the course of the offense, it does not require the actual, attempted or threatened use of physical force as a necessary element <u>U.S v. Rodriguez-Rodriguez</u> 323 F.3d 317 (5 th Cir 2003) The risks of physical force being exerted during the commission of the burglary of a vehicle are | Not a CIMT because no permanent taking is required. | | Try to negotiate a sentence of less than one year |

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| | | <p>substantially similar to the risks of such force occurring while operating a vehicle without the owner's consent, court hold that the offense of unauthorized use of motor vehicle is a crime of violence within 18 U.S.C. § 16. <u>U.S v. Galvan-Rodriguez</u> 169 F.3d 217 (5th Cir 2000)</p> <p>But see, analysis pursuant to Vargas-Duran, Calderon-Pena, and Salazar-Ramirez, M-03-290, Slip Op. (S.D. Tex. September 20, 2004); Texas conviction under 31.07(a) is a crime of violence. <u>Matter of Brieve</u>, 23 I. & N. Dec. 766 (BIA 2005).</p> | | | |
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| OFFENSE | ELEMENTS | AGG FEL | CIMT | COV, OTHER | ALT. PLEA |
| Tampering with Identification Numbers, § 31.11 | Detailed elements. | Is an aggfel as per 101(a)(43)(R) if sentenced to a term of imprisonment of at least one year. Deferred is not a term of imprisonment. | May not constitute CIMT as no evil intent is required. However, statute does require knowingly and intentionally altering identification markings, and acting knowingly and intentionally has been held to be sufficient for a CIMT determination. | | |
| Forgery, § 32.21 | 1)forges a writing 2)with intent to defraud or harm another | Is an aggfel as per 101(a)(43)(R) if sentenced to a term of imprisonment for at least one year. Deferred is not a term of imprisonment. | CIMT because contains an intent to defraud or harm another as an element. | | |
| Credit Card Abuse, § 32.31 | Detailed elements. | May be an aggfel as per 101(a)(43)(M) if the loss exceeds \$10,000. | CIMT because contains the element of intent to obtain a benefit fraudulently. | | |
| Fraudulent Transfer of a Motor Vehicle, § 32.34 | Detailed elements | May be an aggfel as per 101(a)(43)(M) if the vehicle is worth more than \$10,000. | Divisible statute: sections requiring the intent to defraud are CIMT's; other two sections are arguably | | |

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| | | | not CIMT's because do not contain an intent to defraud. | | |
| Issuance of Bad Check, § 32.41 | 1)issues or passes a check or similar sight order 2)for the payment of money 3)knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance. | May be an aggfel as per 101(a)(43)(M) if the loss to the victim is more than \$10,000. | Not a CIMT unless statute requires intent to defraud as an element, even if statute requires knowledge of insufficient funds. | | |
| Commercial Bribery, § 32.43 | Detailed elements | Is an aggfel as per 101(a)(43)(R) if sentenced to a term of imprisonment of at least one year. Deferred is not a term of imprisonment. | Any bribery conviction involves moral turpitude. | | |
| Fraudulent use or possession of identifying information, § 32.51 | 1)obtains, possesses, transfers, or uses 2)identifying information of another person 3)without the other person's consent and 4)with intent to harm or defraud another. | Is an aggfel as per 101(a)(43)(M) if the loss to the victim exceeds \$10,000. | Likely CIMT as it includes the element of intent to defraud or harm another. | | |
| Unauthorized use of telecommunications service, § 33A.02 | Detailed elements. | Not an aggfel | Does not seem to require an evil intent, so arguably not a CIMT. | | |
| Theft of communications service, § 33A.04 | Detailed elements | Is an aggfel as per 101(a)(43)(G) if sentenced to at least one year. Is an aggfel as per 101(a)(43)(M) if loss to victim is more than \$10,000. | CIMT only if evidence shows that a permanent taking was required or involved fraud. | | |
| Money Laundering, § 34.02 | 1)knowingly 2) acquires or maintains an interest in, receives, conceals, possesses, transfers, or transports 3) the proceeds of criminal activity; or 4) conducts, supervises, or facilitates a transaction 5) involving the proceeds of criminal activity; or 6) invests, expends, or receives, or offers to invest, expend, or receive, | Is an aggfel as per 101(a)(43)(D) if the loss is more than \$10,000. | CIMT because it involves a knowing <i>mens rea</i> regarding the proceeds of criminal activity. <u>Smalley v. Ashcroft</u> , 354 F.3d 332 (5 th Cir. 2003) (analyzing federal statute) | | |

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| | 7) the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity. | | | | |
| Insurance Fraud, § 35.02 | Detailed elements | Is an aggfel as per 101(a)(43)(M) if the loss to the victim exceeds \$10,000. | CIMT because it includes the element of intent to defraud or deceive. <u>Martinez v. Mukasey</u> , 508 F.3d 255 (5 th Cir. 2005). | | |
| OFFENSE | ELEMENTS | AGG FEL | CIMT | COV, OTHER | ALT. PLEA |
| Bribery, § 36.02 | Detailed elements | Is an aggfel as per 101(a)(43)(S) if the person bribed was a witness and the term of imprisonment is at least one year. Deferred is not a term of imprisonment. Also, The TX statute is divisible. See <u>U.S. v. Taylor</u> . | All bribery offenses are CIMT's. | | |
| Retaliation , §36.06 | Detailed elements | Retaliation is not an aggravated felony crime of violence. <u>U.S. v. Martinez Mata</u> , 343 F.3d 625 (5 th Cir. 2004). | | | |
| Perjury, § 37.02 | 1)with intent to deceive 2)and with knowledge of the statement's meaning: 3)makes a false statement 4) under oath or 5)swears to the truth of a false statement previously made and 6)the statement is required or authorized by law to be made under oath; or 7)makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code. | Is an aggfel as per 101(a)(943)(S) if the term of imprisonment is at least one year. Deffered is not a term of imprisonment. | Perjury has been held to be CIMT only if contains materiality as an element. Texas perjury statute does not contain materiality element. However, does contain intent to deceive, so may nonetheless be a CIMT. Note: Texas aggravated perjury statute does contain materiality element. | | |
| Resisting Arrest, § 38.03 | 1)intentionally prevents or 2) obstructs 3)person he knows is a peace officer or 4)a person acting in a peace officer's presence and 5)at his direction 6)from effecting an arrest, search, or transportation of the actor or another 7)by using force against the | Is an aggfel as per 101(a)(43)(F) if sentenced to a term of imprisonment of at least one year. Deferred is not imprionment. | No evil intent required, and so not likely to be CIMT. | | |

Immigration Law and Select Texas Crimes

Prepared for the City of Austin Commission on Immigration Affairs & Human Rights Commission

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| | peace officer or another. | | | | |
| Evading Arrest or Detention, § 38.04 | 1)intentionally flees 2)from a person he knows is a peace officer 3)attempting lawfully to arrest or detain him | Not an aggfel. | Does not require the use of force or fraud and so not likely a CIMT. | | |
| Escape, § 38.06 | Detailed elements | Not an aggfel. | Not likely CIMT since statute does not involve force or fraud. | | |
| Bail jumping and failure to appear, § 38.10 | 1)intentionally or knowingly 2)fails to appear in accordance with the terms of his release | May be an aggfel as per 101(a)(43)(T) if the underlying charge is a felony for which a sentence of 2 years MAY be imposed. | No evil intent required, but does require intentional and knowingly failing to appear, so may be considered turpitudinous. | | |
| Failure to stop or report aggravated sexual assault of a child, § 38.17 | Detailed elements. | Not an aggfel. | Would likely be considered CIMT because against societal morals. | | |
| Harassment, § 42.07 | Detailed elements | Not an aggfel. | Divisible statute: section (2) most likely to be CIMT, while other sections are arguably not CIMT's | | |
| Stalking, § 42.072 | Detailed elements | Not an aggfel. | Most likely a CIMT | | |
| Cruelty to Animals, § 42.09 | Detailed elements | Not an aggfel | Divisible statute: most sections not likely to constitute CIMT's | | |
| Dog Fighting, § 42.10 | Detailed elements | Not an aggfel. | Divisible statute: most sections not likely to constitute CIMT's | | |
| Prostitution, § 43.02 | 1)knowingly 2)offers to engage, agrees to engage, or engages in sexual conduct 3)for a fee; or 4) solicits another 5)in a public place 6)to engage with him in sexual conduct 7)for hire . | Not an aggfel. | CIMT | | |
| Promotion of Prostitution, § 43.03 | 1)acting other than as a prostitute receiving compensation for personally rendered prostitution services 2)knowingly: 3) receives money or other property 4)pursuant to an | Is an aggfel as per 101(a)(43)(K). | CIMT | | |

IMMIGRATION CONSEQUENCES OF SELECTED TEXAS OFFENSES:

A QUICK REFERENCE CHART

By Jodi Goodwin and Thomas Esparza, Jr. Immigration Specialists

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| | agreement to participate in the proceeds of prostitution; or 5) solicits another to engage in sexual conduct with another person 6)for compensation. | | | | |
| Possession or promotion of child pornography, § 43.26 | 1)knowingly or intentionally 2)possesses 3)visual material 4)that visually depicts a child 5)younger than 18 years of age 6)at the time the image of the child was made 7)who is engaging in sexual conduct; and 8)the person knows 9)that the material depicts the child as described by Subdivision (1). | Is an aggfel as per 101(a)(43)(I). | Most likely CIMT because of child engaging in sexual conduct | | |
| Unlawful Carrying of Weapons, § 46.02 Third Degree Felony | 1) Intentionally, knowingly or recklessly 2) Carries on or about his person a handgun, illegal knife or a club | Not an aggfel b/c no substantial risk that physical force against person or property of another may be used 46.02(c) is not crime of violence within the meaning of 18 U.S.C. § 16(b) <u>U.S v. Hernandez-Neave</u> 291 F.3d 296 (5 th Cir 2001) | Not likely to be a CIMT because no intent to use against the person of another. District Court held NOT a CIMT for purposes of mandatory detention. <u>Ramos Serrano v. Estrada</u> , 201 F. Supp. 2d 714 (n.D. Texas May 13, 2002). | | |
| OFFENSE | ELEMENTS | AGG FEL | CIMT | COV, OTHER | ALT. PLEA |
| Prohibited Weapons, § 46.05 Third Degree Felony or Class A Misdemeanor | 1) Intentionally or knowingly possesses, manufactures, transports, repairs or sells 2) A list of prohibited weapons (see statute) | Conflicting case law, not sure how this would be interpreted The unlawful possession of an unregistered firearm should be considered a crime of violence under §16(b)- <u>U.S v. Rivas-Palacios</u> 244 F.3d 396 (5 th Cir 2001) Possession of a short barrel firearm is not a crime of violence- <u>U.S v. Diaz-Diaz</u> 327 F.3d 410 (5 th Cir. 2003) | Not likely to be a CIMT because no intent to use against the person of another; more of a regulatory offense | | If charged under §46.05(a)(5) or (a)(6), try to negotiate a sentence of less than a year |
| Public Intoxicatio | 1)appears in a public place 2)while intoxicated | Not an aggfel. | Not a CIMT | | |

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| n, § 49.02 | 3)to the degree that the person may endanger the person or another | | | | |
| Driving While Intoxicated, § 49.04 Class B Misdemeanor | Intoxication while operating a motor vehicle in a public place | Not an aggfel | Not a CIMT | | |
| Driving While Intoxicated, § 49.09(b)(2): Third Degree Felony | 1) Intoxication while operating a motor vehicle in a public place 2) If two Misdemeanor violations, the offense is a Third degree felony | Not an aggfel. Not a crime of violence as per <u>Chapa-Garza</u> Court held that the felony offense of driving while intoxicated does not constitute a crime of violence under 18 U.S.C. § 16(b), <u>U.S v. Chapa-Garza</u> 243 F.3d 921 (5 th Cir 2001) | Not a CIMT based on <u>Torres-Varela</u> Under AZ law, aggravated DUI is not a CIMT, unless aggravating factor, such as driving with suspended license, exists. <u>Matter of Torres-Varela</u> , 23 I&N Dec. 78 (BIA 2001) | | |
| Intoxication Assault, § 49.07 Third Degree Felony | 1) Person by accident or mistake 2) While operating an aircraft, watercraft, or amusement ride while intoxicated, by reason of that intoxicating 3) Causes serious bodily injury to another OR 4) As a result of assembling a mobile amusement ride while intoxicated a) Causes serious bodily injury to another | 5 th Cir held in <u>Vargas-Duran</u> that intoxication assault is a not crime of violence. See also <u>US v. Villegas Hernandez</u> , 468 F.3d 874 (5 th Cir. 2006). Because the Texas offense of intoxication assault requires proof that an intoxicated offender "cause[] serious bodily injury to another," we conclude that it has as an element the <i>use</i> of force against the person of another, <u>U.S v. Vargas-Duran</u> 319 F.3d 194 (5 th Cir 2003) rehearing en banc (5 th Cir. January 28, 2004) (court held no INTENTIONAL use of force is required to commit intoxication assault, therefore, not a COV) | Likely not a CIMT because can be committed by accident or mistake, and so no evil intent required. | No COV. See <u>Vargas-Duran</u> . | |
| OFFENSE | ELEMENTS | AGG FEL | CIMT | COV, OTHER | ALT. PLEA |
| Possession of | | No. At least for single offense. <u>Lopez v.</u> | PCS offenses are generally held not be | | |

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| Controlled Substance s, § 481.115, 481.116, 481.117, 481.119(b) , 481.121 | | <u>Gonzalez</u> , 127 S. Ct. 625 (2006). | CIMT's because statutes don't usually contain an intent element. However, the Texas statute does require knowing or intentional possession so ICE may attempt to argue possession is a CIMT. | | |
| Manufacture re or Delivery of a Controlled Substance, § 481.112, 481.1121, 481.113, 481.114, 481.120 | | Yes, meets the common ordinary meaning of drug trafficking. | Likely CIMT because of knowing and intent elements. | | |

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I was born in South Texas to immigrant parents, the late Dr. Thomas Esparza, Sr. and Esther LaMadrid Esparza, my teachers and mentors. A graduate of Texas A&M and the University of Texas Law School; I joined the American Immigration Lawyer's Association (AILA) in 1980. A member of the National Lawyer's Guild National Immigration Project, I am past Chair of the Texas, Oklahoma, New Mexico Chapter of AILA and the Vice-Chairman of the Austin Commission on Immigrant Affairs. I also serve on the steering committee of the Immigrant Services Network of Austin (ISNA). I lecture for the University of Texas, the State Bar of Texas, the Travis County Bar, and AILA. I contribute immigration law articles to both English and Spanish language media. I answer email at tom@tomesparza.com. I honor my mentors Attorneys Laurier McDonald of Edinburg, Texas, Bob Shivers of San Antonio, Harry Gee and Charles Foster of Houston and Harry Joe of Dallas, pioneers in immigration law. I am married to the former Minerva Gonzalez of Bryan and the father of a son, Alex, who just got his driver's license, and growing up to way to twins Carina and Helena. My faith, my family, my clients have given me all I have. I am so blessed.