

Selected Immigration Consequences of Certain Massachusetts Offenses

Dan Kesselbrenner and Wendy Wayne
on Behalf of the Defending Immigrants Partnership*

INTRODUCTION

1. USING THE CHART. The chart analyzes the potential deportability that may flow from conviction of selected Massachusetts offenses. For certain offenses, it offers suggestions about how to reduce the likelihood of the potential consequences. **Note that additional immigration consequences not listed here may arise from these offenses, such as the denial of naturalization, inadmissibility, or the denial of discretionary relief.** The chart is organized numerically by statute. The "Key Concepts" box below describes the immigration significance of certain state dispositions, sentences, and crime classifications.
2. SENDING COMMENTS ABOUT THE CHART. Please contact us if you disagree with an analysis, see a relevant new case, want to suggest other offenses for us to discuss, or want to propose other alternate "safer" pleas, want to suggest improvements, or have general comments. Please send your comments to dan@nationalimmigrationproject.org.
3. DISCLAIMER AND NOTE TO USERS. Immigration consequences of crimes are a complex, unpredictable, and constantly changing area of law where there are few guarantees. Practitioners should use this chart as a starting point rather than as a substitute for legal research. For a more detailed analysis of offenses and arguments, see Kesselbrenner and Rosenberg, *Immigration Law and Crimes* available (available at: http://west.thomson.com/store/product.asp?product_id=13514773) and *Massachusetts Criminal Practice*, ch. 42, Blumenson, Fisher, Kanstroom, eds., Lexis 2003.

KEY CONCEPTS - Immigration Significance of Certain State Dispositions, Sentences, & Crime Classifications

- * **Avoid an aggravated felony (AF) conviction if at all possible.** See 8 U.S.C. 1101(a)(43) for definition. A noncitizen with an AF conviction, even a longtime legal permanent resident, will be held in mandatory detention, has virtually no defense or relief to deportation, and will be barred from returning to the U.S. for life. Crimes of violence, theft offenses, and certain other categories of offenses require a conviction AND a sentence of one year or more to constitute an AF. Other categories of offenses, such as "drug trafficking," murder, rape, sexual abuse of a minor, and fraud over \$10,000 require only a conviction to constitute an AF.
- * The definition of a "conviction" for immigration purposes is at 8 U.S.C. §1101(a)(48)(A). A "continued without a finding" (CWO) is considered a conviction under this definition. Pre-trial probation is not. A "guilty filed" disposition is not considered a conviction if it is not in exchange for any prior completed conditions. See *Griffiths v. INS*, 243 F.3d 45 (1st Cir. 2001). Dispositions of eligible offenses under MGL c.276, §55 (accord and satisfaction) and MGL c.277, §70C would not be treated as convictions.
- * Pursuant to 8 U.S.C. 1101(a)(48)(B), a "sentence" is any period of incarceration ordered by the court which is imposed or suspended in whole or in part. A term of probation is not relevant to the length of the sentence (Example 1, "6 months suspended for 18 months" is considered a 6-month sentence; Example 2, "18 months, 6 months to serve, balanced suspended for 2 years" is considered an 18-month sentence).

(continued on next page)

*Acknowledgments

Dan Kesselbrenner and Wendy Wayne are the principal authors of the chart.

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KEY CONCEPTS - Immigration Significance of Certain State Dispositions, Sentences, & Crime Classifications (*continued*)

- * If a defendant pleads to multiple counts of the same offense, immigration authorities treat the sentence for each count separately. A theft offense with a sentence of 1 year or more is an aggravated felony. A noncitizen defendant who receives 11 months for 3 counts of theft has not been convicted of an aggravated felony because the defendant did not receive a year's sentence for any of the theft convictions.
- * The prohibition against *ex post facto* laws does not apply to immigration proceedings.
- * Juvenile adjudications are not considered convictions for immigration purposes. A delinquency finding on a deportable offense, therefore, will not cause a juvenile to be deported. There is a possibility that youthful offender convictions may be considered convictions for immigration purposes (there is no published decision by a court or the Board of Immigration Appeals analyzing the Massachusetts youthful offender statute). Juvenile adjudications, however, can cause other immigration consequences. They can be used to prevent a finding of "good moral character," which is a requirement for naturalization and for certain forms of relief from removal. Juvenile adjudications on crimes of violence that would be considered felonies in adult court may also affect benefits under the Family Unity Act.

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	COMMENTS
Motor Vehicle Offenses					
MGL c.90,§23	Operating a motor vehicle after suspension	No	No	No	Avoid pleading to this offense and OUI at the same time.
MGL c.90,§24	Operating under influence (alcohol)	No	No	No ¹	
MGL c.90,§24	Operating under influence (controlled substance)	No	No	Yes, under controlled substance ground of deportability. ²	
MGL c.90,§24(a1/2)	Leaving scene after causing personal injury	Possibly if sentence of one year or more	No	No	Keep sentence under one year.
MGL c.90, §24(h)(2)(a)	Using a motor vehicle without authority	Possibly if sentence of one year or more ³	No	No	Keep sentence under one year.
MGL c.90,§24G	Motor vehicle homicide (negligently)	No ⁴	No		
MGL c.90,§24G	Motor vehicle homicide (recklessly)	Probably not	Yes ⁵		Pleading to negligently causing death rather than recklessly causing death is a much safer plea.
MGL c.90,§24L	OUI with serious injury	No ⁶	No	No	
Controlled Substance Offenses					
MGL c.94C,§27	Possession of hypodermic needle	No	Probably not	Probably inadmissible and deportable offense.	May be better to plead to this than other drug offense, except 1st offense possession of marijuana (30g or less).

¹ Matter of Lopez-Meza, 22 I. & N. Dec. 1188 (BIA 1999) (holding that Arizona felony conviction for DUI while being prohibited from driving was a crime involving moral turpitude) *but see* Hernandez-Martinez v. Ashcroft, 329 F.3d 1117 (9th Cir. 2003) (reaching opposite conclusion about same Arizona statute).

² 8 U.S.C. § 1227(a)(2)(C).

³ See In re Brevia, 23 I.&N. Dec. 766 (BIA 2005).

⁴ Leocal v. Ashcroft, 125 S.Ct. 377 U.S. (2004).

⁵ An offense that involves recklessness and serious bodily injury is a crime involving moral turpitude. Matter of Fualaau, 21 I. & N. Dec. 475 (BIA 1996).

⁶ Leocal v. Ashcroft, 125 S.Ct. 377 U.S. (2004).

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Controlled Substance Offenses (continued)					
MGL c.94C,§34	Possession of a controlled substance	No, if 1st offense. Maybe, if prior drug conviction. Probably, if prosecuted as subsequent offense.	No	Yes, is both a deportable and inadmissible offense. There is an exception to deportability for a single conviction of possessing 30g or less of marijuana.	For undocumented immigrants, may not be any available relief. Not deportable offense if record does not identify the drug. Avoid conviction, especially if government prosecuting as subsequent offense.
MGL c.94C,§32-32E	Trafficking, distribution, possession with intent to distribute a controlled substance	Yes, except for slight possibility that possession with intent to distribute class E under MGL c.94C,§32D(a) might not be an aggravated felony.	Probably	Yes, is deportable offense under controlled substance ground of deportability ⁷ and inadmissible offense under controlled substance ground of inadmissibility. ⁸	Reduce to straight possession. Avoid conviction.
MGL c.94C,§35	Presence where heroin kept	No	No	Yes, is deportable offense under controlled substance ground of deportability ⁹ and inadmissible offense under controlled substance ground of inadmissibility. ¹⁰	This offense is a misdemeanor under both federal and state classification schemes and does not involve the distribution of a controlled substance so a conviction under this offense is a good way to avoid an aggravated felony.

⁷ 8 U.S.C. § 1227(a)(2)(B).

⁸ 8 U.S.C. § 1182(a)(2)(C).

⁹ 8 U.S.C. § 1227(a)(2)(B).

¹⁰ 8 U.S.C. § 1182(a)(2)(C).

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	COMMENTS
Crimes Against the Person					
MGL c.265,§1	Murder – 1st & 2nd degree	Yes	Yes		
MGL c.265,§13	Manslaughter (voluntary)	Yes, if sentence of a year or more	Yes ¹¹		If possible, plead to involuntary manslaughter. See Comment regarding “Manslaughter (involuntary).”
MGL c.265,§13	Manslaughter (involuntary)	Probably a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F). ¹²	Possibly		If possible, plead to committing an unintentional killing during the commission of a battery instead of during wanton or reckless conduct.
MGL c.265,§13A(a)	Assault	Probably a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F). ¹³	No	If victim is family member, may be deportable offense for “crime of domestic violence.”	Keep sentence less than a year. Keep record clear of any domestic relationship.
MGL c.265,§13A(a)	Assault and battery	Probably a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F). ¹⁴	No.	If victim is family member, may be deportable offense for “crime of domestic violence.”	Keep sentence less than 1 year. Keep record clear of any domestic relationship.

¹¹ Matter of Franklin, 20 I. & N. Dec. 867 (BIA 1994) (treating involuntary manslaughter as a crime involving moral turpitude where conviction required a conscious disregard of a substantial risk).

¹² See Matter of Alcantar, 20 I. & N. Dec. 801 (BIA 1994); Commonwealth v. Flynn, 420 Mass. 810 (1995).

¹³ But see Flores v. Ashcroft, 350 F.3d 666 (7th Cir. 2003). The Supreme Court applies the “ordinary meaning” of the word force to determine whether an offense is a crime of violence. Leocal v. Ashcroft, 543 U.S. 1, 11 (2004) (describing the term “crime of violence” as covering “a category of violent, active crimes”).

¹⁴ See note 13.

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Crimes Against the Person (continued)					
MGL c265§13A(b)	Aggravated assault and battery (serious injury pregnant or restraining order)	Probably, a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	Probably ¹⁵	If victim is family member, may be deportable offense for "crime of domestic violence."	Keep sentence less than a year. Keep record clear of any domestic relationship.
MGL c.265,§13B	Indecent assault and battery on a child under 14	Yes, sexual abuse of a minor aggravated felony under 8 U.S.C. §1101(a)(43)(A).	Yes	Probably a deportable offense under child abuse ground of deportability. ¹⁶	Amend to simple assault and battery, but may still be deportable for child abuse. If amended, keep sentence less than a year.
MGL c.265,§13D	Assault and battery on a public official	Probably a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	Probably ¹⁷		
MGL c.265,§13H	Indecent assault and battery on a person over 14 years old	Yes, crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F). If victim is under 18, may be sexual abuse of a minor aggravated felony, regardless of sentence.	Yes		If victim is under 18, keep this out of the record of conviction. Keep sentence less than a year.

¹⁵ An offense that involves recklessness and serious bodily injury is a crime involving moral turpitude. Matter of Fualaau, 21 I. & N. Dec. 475 (BIA 1996). There is an argument that the mental state for this offense is less than recklessness. A domestic assault is a crime involving moral turpitude. Matter of Tran, 21 I. & N. Dec. 291 (BIA 1996).

¹⁶ 8 U.S.C. §1227(a)(2)(E).

¹⁷ Matter of Danesh, 19 I. & N. Dec. 669 (BIA 1994) (treating assault on a police officer as a crime involving moral turpitude); but see Ciambelli ex rel. Maranci v. Johnson, 12 F.2d 465 (D. Mass. 1926).

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Crimes Against the Person (continued)					
MGL c.265,§13J	Assault and battery on a child	Probably a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	Probably ¹⁸	Probably a deportable offense under child abuse ground of deportability.	Keep sentence less than a year. Amend to simple assault and battery with no mention on record of domestic relationship or age of victim.
MGL c.265,§13L	Reckless endangerment to children	Possibly sexual abuse of minor aggravated felony pursuant to 8 U.S.C. §1101(a)(43)(A), regardless of sentence and possibly a crime of violence pursuant to 8 U.S.C. §1101(a)(43)(F) if the defendant receives a sentence of a year or more.	Possibly ¹⁹	Probably under child neglect or child abuse ground of deportability.	Avoid pleading to sexual abuse of a minor. If there is a factual basis for such a plea, plead to recklessly failing to take steps is the least likely to trigger adverse immigration consequences.
MGL c.265,§14	Mayhem	Probably a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	Yes		Although unlikely, try to keep sentence less than 1 year.

¹⁸ A likely extension of Matter of Tran, 21 I. & N. Dec. 291 (BIA 1996) (holding that a domestic assault is a crime involving moral turpitude because it constitutes a breach of the special relationship between a parent and child).

¹⁹ Compare Matter of Fualaau, 21 I. & N. Dec. 475 (BIA 1996) (requiring both recklessness and serious bodily injury for an assault crime to involve moral turpitude) with Matter of Tran, 21 I. & N. Dec. 291 (BIA 1996) (treating a domestic assault conviction as a crime involving moral turpitude because it violates special relationship between parent and child).

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Crimes Against the Person (continued)					
MGL c.265,§15A(b)	Aggravated assault and battery with a dangerous weapon	Probably a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	Probably	If record of conviction establishes that weapon is a firearm, then defendant would be deportable as a firearm offender. ²⁰	Keep sentence less than a year.
MGL c.265,§16	Attempted murder	Yes, pursuant to 8 U.S.C. §1101(a)(43)(U)	Yes		
MGL c.265,§17	Armed robbery	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F)&(G).	Yes, regardless of sentence.	If record of conviction establishes that weapon is a firearm, then defendant would be deportable as a firearm offender.	Keep sentence less than a year.
MGL c.265,§19(b)	Unarmed robbery	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F)&(G).	Yes, regardless of sentence.		Keep sentence less than 1 year.
MGL c.265,§22(a)	Aggravated rape	Yes, rape aggravated felony ground under 8 U.S.C. §1101(a)(43)(A) regardless of sentence.	Yes, regardless of sentence.		

²⁰ 8 U.S.C. § 1327(a)(2)(C).

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Crimes Against the Person (continued)					
MGL c.265,§22(b)	Rape	Yes, ²¹ under rape ground pursuant to 8 U.S.C. §1101(a)(43)(A) regardless of sentence.	Yes, regardless of sentence.		If digital rape, make very clear on the record to preserve argument for immigration attorney.
MGL c.265,§22A	Rape of child with force	Yes, under rape ground pursuant to 8 U.S.C. §1101(a)(43)(A) regardless of sentence.	Yes		
MGL c.265,§23	Statutory rape of child	Yes, under rape ground pursuant to 8 U.S.C. § 1101(a)(43)(A) regardless of sentence.	Yes ²²		If possible, avoid conviction on this offense in exchange for conviction on non-deportable offense.

²¹ An argument exists that digital rape is not an aggravated felony.

²² Matter of Dingena, 11 I. & N. Dec. 723 (BIA 1966).

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Crimes Against the Person (continued)					
MGL c.265,§24	Assault with intent to commit rape	Likely under rape ground pursuant to 8 U.S.C. § 1101(a)(43)(A) regardless of sentence, and under crime of violence aggravated felony ground pursuant to 8 U.S.C. § 1101(a)(43)(F) if defendant receives sentence of a year or more.	Yes		
MGL c.265,§25	Extortion by threat	Yes, under extortion aggravated felony ground pursuant to 8 U.S.C. §1101(43)(H) regardless of sentence.	Yes ²³		
MGL c.265,§26	Kidnapping (with ransom demand)	Yes, under extortion aggravated felony ground pursuant to 8 U.S.C. §1101(43)(H) regardless of sentence and under 8 U.S.C. §1101(a)(43)(F) if defendant receives a sentence of 1 year or more.	Yes		

²³ See Matter of P, 5 I. & N. 444 (BIA 1953).

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Crimes Against the Person (continued)					
MGL c.265,§26	Kidnapping (without ransom demand)	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	Yes		Keep sentence less than 1 year.
MGL c.265,§26A	Custodial interference by relative	Probably not	Probably not		If conviction under first section, and sentence is 6 months or less, is exception to inadmissibility.
MGL c.265,§43(a)	Stalking	Probably a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. 1101(a)(43)(F).	Probably	Probably a deportable offense violence under 8 U.S.C. §1227(a)(2)(E)(i) if evidence in record that victim is covered under domestic violence laws.	Keep sentence to less than 1 year to avoid aggravated felony. Plead to stalking a non-protected victim to avoid deportability for domestic violence offense
MGL c.265,§43(b)	Stalking in violation of restraining order	Probably a crime of violence pursuant to 8 U.S.C. 1101(a)(43)(F).	Probably	Yes. Deportability for domestic violence under 8 U.S.C. §1227(a)(2)(E)(ii).	Avoid conviction.
MGL c.209A,§7	Violation of restraining order	No	No	Yes. Deportability for domestic violence under 8 U.S.C. §1227(a)(2)(E)(ii).	If there is a factual basis for violating child visitation section of order it would preserve an argument for immigration court that violation does not render noncitizen deportable under the domestic violence ground of deportability.

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Crimes Against Property					
MGL c.266,§1	Arson of a dwelling house	Yes, a crime of violence, if sentence of one year or more. ²⁴	Yes ²⁵		Amend to negligence in cases of fire, MGL ch.266, §8. Keep sentence less than a year.
MGL c.266,§8	Negligence in cases of fire	No	No		
MGL c.266,§14	Armed burglary with person therein	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	Yes, if record of conviction reveals intent to commit larceny.		Avoid identifying underlying offense as a larceny.
MGL c.266,§16	Breaking and entering in night time with intent to commit felony	Yes, if building is broken into, and sentence of one year or more ²⁶	Yes, if record of conviction establishes intent to commit offense that is a crime of moral turpitude.		Keep sentence less than a year. Avoid identifying underlying offense as a crime of moral turpitude. Avoid identifying that break was into a building.
MGL c.266,§20	Larceny in building	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. § 1101(a)(43)(G).	Yes		Keep sentence less than a year.
MGL c.266,§25	Larceny from the person	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. § 1101(a)(43)(G).	Yes ²⁷		Keep sentence less than a year.

²⁴ Matter of Palacios, 22 I. & N. Dec. 434 (BIA 1998).

²⁵ Matter of S, 3 I. & N. Dec. 617 (BIA 1949).

²⁶ 8 U.S.C. §1101(a)(43)(G). This offense is not a burglary for immigration purposes if a vessel or vehicle is broken into. Matter of Perez, 22 I. & N. Dec. 1325 (BIA 2000).

²⁷ Matter of Grazley, 14 I. & N. Dec. 330 (BIA 1973).

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Crimes Against Property (continued)					
MGL c.266,§28	Receiving stolen motor vehicle	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. § 1101(a)(43)(G).	Yes		Keep sentence less than a year.
MGL c.266,§28	Larceny of a motor vehicle	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. § 1101(a)(43)(G).	Yes		Try to plead to use without authority instead of this offense, but, in either case, keep sentence less than a year.
MGL c.266,§30	Larceny	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. § 1101(a)(43)(G).	Yes		Keep sentence less than 1 year. If larceny of \$250 or less and sentence is six months or less, is petty offense exception to inadmissibility.
MGL c.266,§30A	Shoplifting	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(G).	Yes, but if first or second offense, is petty offense exception.		Keep sentence less than 1 year (incarceration only possible for third offense).
MGL c.266,§37	Larceny by check	Yes, under aggravated felony fraud ground where loss to the victim exceeds \$10,000 ²⁸ , and possibly theft offense if sentence of one year or more.	Yes		Plead to a specific loss amount that equals \$10,000 or less. Keep sentence less than a year. If \$250 or less and sentence is six months or less, is petty offense exception to inadmissibility.

²⁸ 8 U.S.C. §1101(a)(43)(M)(i).

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Crimes Against Property (continued)					
MGL c.266,§49	Making, holding or using burglarious tools	Possibly an attempted theft under to 8 U.S.C. §1101(a)(43)(U) if defendant receives a sentence of a year or more and if record of conviction indicates that the underlying offense was to steal.	Yes, if record of conviction indicates that the underlying offense was stealing.		Plead to making, using or holding tools with intent to commit an unnamed offense or keep sentence less than 1 year to avoid an aggravated felony. Keep record of conviction clear of evidence that the underlying offense was a theft offense to avoid a conviction for a crime involving moral turpitude.
MGL c.266,§60	Receiving stolen property	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(G).	Yes		Keep sentence less than 1 year.
MGL c.266,§102A	Carrying a dangerous weapon	Possibly a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	No	Possibly a firearm offense if record of conviction establishes that weapon was a gun.	
MGL c.266,§120	Trespassing	No	No	No	Plead to this offense in exchange for dismissal on other offenses with immigration consequences.
MGL c.266,§127	Willful and malicious destruction of property	Probably a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	Yes, but if value of property is \$250 or less, is petty offense exception.	No	See wanton destruction of property below. Keep sentence less than 1 year or plead to wanton destruction if judge inclined to sentence defendant to 1 year or more.

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Crimes Against Property (continued)					
MGL c.266,§127	Wanton destruction of property	Possibly a crime of violence if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(F).	Possibly, but if value of property is \$250 or less, is petty offense exception.	No	See willful and malicious destruction of property above.
MGL c.266,§139	Removing a vehicle identification number	Probably an aggravated felony under 8 U.S.C. §1101(a)(43)(R) if the sentence is a year or more or an aggravated felony under 8 U.S.C. §1101(a)(43)(M)(i) where loss to the victim exceeds \$10,000.	Yes, for those offenses for which the record of conviction includes fraud as an essential element.		Avoid sentence of a year or more and plead to a specific loss finding of \$10,000 or less.
Forgery and Crimes Against the Currency					
MGL c.267,§1	Forgery of records	Yes, under forgery aggravated felony ground pursuant to 8 U.S.C. §1101(a)(43)(R) if defendant receives a sentence of a year or more.	Yes ²⁹		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.

²⁹ Jordan v. DeGeorge, 341 U.S. 223 (1951) (holding that any offense that has fraud as an element is a crime involving moral turpitude).

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Forgery and Crimes Against the Currency (continued)					
MGL c.267,§10	Passing counterfeit note	Yes, under counterfeiting aggravated felony ground pursuant to 8 U.S.C. §1101(a)(43)(R) if defendant receives a sentence of a year or more.	Yes ³⁰		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.
Crimes Against Public Justice					
MGL c.268,§1	Perjury	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. §1101(a)(43)(S).	Yes, regardless of sentence.		Keep sentence less than 1 year.
MGL c.268,§16	Escape	Likely, under 8 U.S.C. §1101(Q) if defendant escaped while serving a sentence for an underlying offense punishable by five years, or under 8 U.S.C. § 1101(T) if defendant escaped before trial and is facing felony charges for which a sentence of two or more years may be imposed.	No ³¹		

³⁰ Jordan v. DeGeorge, 341 U.S. 223 (1951) (holding that any offense that has fraud as an element is a crime involving moral turpitude).

³¹ Matter of Z, 2 I. & N. 871 (BIA 1947).

Selected Immigration Consequences of Certain Massachusetts Offenses
Kesselbrenner & Wayne - Defending Immigrants Partnership

07/06

STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	COMMENTS
Crimes Against Public Justice (continued)					
MGL c.268,§32B	Resisting arrest	Yes, if sentence of 1 year or more, pursuant to 8 U.S.C. § 1101(a)(43)(F).	Probably ³²		Keep sentence less than 1 year.
MGL c.276, §82A	Failure to appear	Yes, if before trial for felony with potential sentence of 2 years or more, 8 U.S.C. § 1101(T), or if for failing to appear to serve sentence on offense punishable by 5 years or more, 8 U.S.C. § 1101(T)	No		Avoid conviction on this offense if it qualifies as an aggravated felony.
Crimes Against Public Peace					
MGL c.269,§10(c)	Possession of a sawed off shotgun	No	No ³³	Yes, under firearm ground. ³⁴	Possession of ammunition MGL c.269, §10(h) is probably not a deportable offense – if possible, plead to this instead. Is not inadmissible offense.
MGL c.269,§10(h)	Possession of firearm	No	No	Yes, under firearm ground.	Possession of ammunition MGL c.269, §10(h) is probably not a deportable offense – if possible, plead to this instead. Is not inadmissible offense.

³² Matter of Danesh, 19 I. & N. Dec. 669 (BIA 1994).

³³ Matter of Hernandez-Casillas, 20 I. & N. 262 (A.G. 1990).

³⁴ 8 U.S.C. §1227(a)(2)(C).

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	COMMENTS
Crimes Against Public Peace (continued)					
MGL c.269,§10(h)	Possession of a firearm without a FID card	No	No	Yes, under firearm ground.	Possession of ammunition MGL c.269, §10(h) is probably not a deportable offense – if possible, plead to this instead. Is not inadmissible offense.
MGL c.269,§10(h)	Possession of ammunition	No	No	Possibly	
Crimes Against Morality, Decency...					
MGL c.272,§6	Maintaining a house of prostitution	Yes, under managing a prostitution business aggravated felony ground pursuant to 8 U.S.C. §1101(a)(43)(K)(i), regardless of sentence.	Probably ³⁵		
MGL c.272,§28	Dissemination of obscene matter to minors	Yes, under child pornography aggravated felony ground under 18 U.S.C. §1101(a)(43)(I), regardless of sentence.	Yes		
MGL c.272,§29	Dissemination of obscene matter	No	Probably		The aggravated felony ground for pornography deals with child pornography only.

³⁵ Matter of P, 3 I. & N. Dec. 20 (BIA 1947).

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	COMMENTS
Crimes Against Morality, Decency... (continued)					
MGL c.272,§29C	Possession of child pornography	Yes, under child pornography aggravated felony ground under 18 U.S.C. §1101(a)(43)(I), regardless of sentence.	Probably		
MGL c.272,§53	Disturbing the peace	No	No	No	Plead to this instead of other offenses that have adverse immigration consequences.
MGL c.272, §53A	Prostitution	No	Yes, but qualifies under petty offense exception.	No, but see comments.	Engaging in prostitution is also ground of inadmissibility.

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STATUTE	OFFENSE	AGGRAVATED FELONY?	CRIME INVOLVING MORAL TURPITUDE?	OTHER GROUNDS OF DEPORTABILITY?	COMMENTS
Attempts, Conspiracies					
MGL c.274,§6	Attempt	Divisible offense. 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). ^{36 37}	Yes, where underlying offense involves moral turpitude or where offense involves fraud. ³⁸	Firearm, controlled substance, or other criminal ground where underlying offense would make a noncitizen deportable. ³⁹	If possible, plead to conspiracy to commit an offense that does not involve fraud or trigger other immigration consequences.
MGL c.274,§7	Conspiracy	Divisible offense. 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). ⁴⁰	Yes, where underlying offense involves moral turpitude or where offense involves fraud. ⁴¹	Firearm, controlled substance, or other criminal ground where underlying offense would make a noncitizen deportable. ⁴²	If possible, plead to conspiracy to commit an offense that does not involve fraud or trigger other immigration consequences.

³⁶ Kamagate v. Ashcroft, 385 F.3d 144 (2d Cir. 2004). In Matter of Onyido, 22 I. & N. Dec. 552 (BIA 1999), the Board held that a noncitizen who received nothing for his attempted fraud was still deportable where the amount sought exceed \$10,000.

³⁷ See, e.g., Kuhali v. Reno, 266 F.3d 93 (2d Cir. 2001) (regarding conviction for conspiracy to export firearms without a license).

³⁸ Jordan v. De George, 341 US 223 (1951) (treating as a crime involving moral turpitude any conviction for an offense that has fraud as an essential element).

³⁹ See, e.g., Kuhali v. Reno, 266 F.3d 93 (2d Cir. 2001) (holding that conviction for conspiracy to export firearms is a firearm offense because it involves a conspiracy to commit a firearm offense).

⁴⁰ Kamagate v. Ashcroft, 385 F.3d 144 (2d Cir. 2004).

⁴¹ Jordan v. De George, 341 US 223 (1951) (treating as a crime involving moral turpitude any conviction for an offense that has fraud as an essential element).

⁴² See, e.g., Kuhali v. Reno, 266 F.3d 93 (2d Cir. 2001) (holding that conviction for conspiracy to export firearms is a firearm offense because it involves a conspiracy to commit a firearm offense).