

## IMMIGRATION CONSEQUENCES OF SELECTED TEXAS OFFENSES A QUICK REFERENCE CHART

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Updated by Members of the Immigration & Nationality Law Section of the State Bar of Texas\*\*\*\*

This chart is provided as a general reference tool for attorneys and not the public. It should not be considered exhaustive nor a substitute for thorough legal research or professional judgment. Immigration and criminal laws are subject to change, and case outcomes may vary based on specific facts and recent case law. This chart is offered only on an “as is” basis without warranty of any kind, either express or implied, including without limitation warranties of merchantability, fitness for a particular purpose, or non-infringement. The information is periodically added, changed, and updated. Always verify the current status of laws and consult the latest legal resources to ensure accuracy before giving legal advice.

\*A Texas deferred adjudication is always a conviction for immigration purposes. *Madriz-Alvarado v. Ashcroft*, 383 F.3d 321 (5th Cir. 2004).

\*\* In some instances, a Texas pre-trial intervention agreement may qualify as a conviction for immigration purposes. *Matter of Mohamed*, 27 I. & N. Dec. 92, 92 (BIA 2017).

\*\*\* Defense counsel is constitutionally required to investigate and advise the noncitizen client about the possible immigration consequences of a plea before the client decides whether to accept the plea. *Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473 (2010). We advise all defense counsel to seek a *Padilla* letter from an immigration attorney experienced in analyzing the immigration consequences of Texas convictions to satisfy that constitutional requirement.

\*\*\*\*Nicolas Chavez and Amelia Ruiz Fischer added the last 18 offenses to the updated chart for purposes of their crimmigration panel at the University of Texas School of Law 48th Annual Conference on Immigration and Nationality Law held in October 2024.

Texas Offense	Elements of Offense	Aggravated Felony (AF)	Relating to Controlled Substance (CS)	Crime Involving Moral Turpitude (CIMT)	Dom. Violence, Child Abuse, Firearms, Etc.	Alternate Pleas & Practice Tips
Murder Tex. Penal Code § 19.02 First-Degree or Second-Degree Felony	A person commits an offense if he: (1) intentionally or knowingly causes the death of an individual; (2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or (3) commits or attempts to commit a felony, other than manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act, clearly dangerous to human life that causes the death of an individual.	Yes, per INA § 101(a)(43)(A), 8 U.S.C. § 1101(a)(43)(A). May be a crime of violence (“COV”) under INA § 101(a)(43)(M), if the use of force is a necessary element of the offense. See 18 U.S.C. § 16(a) and Tex. Pen. Code Ann. §19.02(b)(2).	N/A	Murder is a CIMT.	Could be crime of domestic violence under INA § 237(a)(2)(E)(i) if meets the COV definition and evidence of qualifying domestic relationship	Plead to §19.05 if possible, requiring only negligent conduct and less than one-year underlying sentence. Plead to a specific offense that does not involve moral turpitude, or an offense that requires intent of negligence or less, and ideally a six-month maximum possible sentence.
Manslaughter Tex. Penal Code § 19.04 Second Degree Felony	A person commits an offense if he recklessly causes the death of an individual.	Manslaughter is not specifically listed under INA §101(a)(43)(F)	N/A	Manslaughter is a CIMT.	Manslaughter is not a COV.	Plead to §19.05 if possible, requiring only negligent conduct and less than one-year underlying sentence. Plead to a specific offense that does not involve moral turpitude or an offense that requires intent of negligence or less, and ideally a six-month maximum.

Offense	Elements	AF	CS	CIMT	Other	Tips
Criminally Negligent Homicide  Tex. Penal Code § 19.05 State Jail Felony	A person commits an offense if he causes the death of an individual by criminal negligence.	Criminally Negligent Homicide is not specifically listed under INA §101(a)(43)(F).	N/A	Negligence falls below recklessness so arguably not a CIMT.	Criminally Negligent Homicide is not a COV.	Obtain underlying sentence of less than 1 year (preferably less than 180 days underlying sentence if possible).
Unlawful Restraint Tex. Penal Code § 20.02 Class A Misdemeanor	(a)(1) A person commits an offense if he/she intentionally; or knowingly (2) restrains (restricts a person's movement w/o consent)	Not a COV because force is not a necessary element of the offense. See 18 U.S.C. § 16(a).	N/A	Statute does not require turpitudinous conduct, so not a CIMT. Also, although knowledge is an element, statute does not require exposing another to serious bodily injury, which has been held to be CIMT.	Not a COV, so not a crime of domestic violence.	Unlawful restraint can be an alternate plea if the noncitizen faces kidnapping charges.
Unlawful Restraint  Tex. Penal Code §20.02(c)(1) State Jail Felony	20.02(a) elements and (3) Person restrained was a child younger than 17 years of age.	Not a COV because force is not a necessary element of the offense. See 18 U.S.C. § 16(a).	N/A	May be CIMT if the court finds that restraining an individual under 17 involves MT conduct.	Not a COV, so not a crime of domestic violence.	Alternate plea if noncitizen faces kidnapping charges. <b>Safety Note:</b> obtain sentence of less than 1 year.
Unlawful Restraint  Texas Penal Code § 20.02(c)(2) Third Degree Felony	20.02(a) elements, and: (4) Recklessly exposes victim to bodily injury or, (5) Knows that the victim is on-duty public servant, or (6) While in custody, restrains another individual.	Not a COV because force is not a necessary element of the offense. See 18 U.S.C. § 16(a).	N/A	Subsection 4 may be a CIMT because of the reckless exposure of another to a substantial risk of serious bodily injury. Argue low degree of harm is offset by a less culpable mental state. <i>Gomez-Perez</i> , 829 F.3d 323, 325, 328 (5th Cir. 2016); <i>Diaz Esparza v. Garland</i> , 23 F.4th 563 (5th Cir. 2022).	Not a COV, so not a crime of domestic violence.	Alternate plea could be unlawful restraint under 20.02(a)(1), i.e., offense that does not require a finding of bodily injury.

Offense	Elements	AF	CS	CIMT	Other	Tips
Kidnapping  Tex. Penal Code §§20.03 Third Degree Felony	(1) Intentionally; or Knowingly (2) Abducts – restrain person with intent to prevent his liberation by either (a) secreting or holding in a place where he is not likely to be found; or (b) using or threatening to use deadly force.	May not be a COV because the use or threatened use of deadly force is not an element, but a manner/means by which to abduct. See <i>Uddin v. State</i> , 503 S.W.3d 710, 716 (Tex. App. 2016) (“[A] person can be abducted by either of the two methods provided in the definition.”); If it is not an element, the statute is not divisible and would not be categorically a COV because it includes nonviolent force.	N/A	Generally held to be CIMT. <i>But see Hamdam v. INS</i> , 98 F.3d 183 (5th Cir. 1996) (Hamdan held that a LA conviction for simple kidnapping was not a CIMT) However, the TX statute is not as broad.	Is not likely a COV, so not a crime of domestic violence.	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).
Indecency with a Child  Tex. Penal Code § 21.11 Second or Third Degree Felony	1) Child younger than 17 2) Engages in sexual conduct or causes the child to engage in said conduct, 3) With the intent to arouse or gratify the sexual desire of any person. a) Exposes anus, any part of genitals, knowing the child is present or b) causes child to expose anus or any part of the genitals	Not under INA § 101(a)(43)(a)., because the offense is “categorically broader than the generic federal definition of ‘sexual abuse of a minor.’” <i>United States v. Sanchez-Arvizu</i> , 893 F.3d 312, 315 (5th Cir. 2018) (“[T]he Supreme Court in <i>Esquivel-Quintana v. Sessions</i> held that ‘in the context of statutory rape offenses focused solely on the age of the participants, the generic federal definition of ‘sexual abuse of a minor’ ... requires the age of the victim to be less than 16”)	N/A	Not likely to be a CIMT. See <i>Matter of Silva-Trevino</i> , 26 I. & N. Dec. 826, 836 (BIA 2016) (“Because section 21.11(a)(1) is broad enough to punish behavior that is not accompanied by the defendant’s knowledge that the victim was a minor, the offense does not necessarily involve moral turpitude.”)	Not a COV, so not a crime of domestic violence. But could be considered a “Crime of child abuse” INA § 237(a)(2)(E).	N/A

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