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What Every Maryland Criminal Defense Attorney Should Know About Immigration

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Consequences and Categories of Convictions (part 2)

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5 **Crimes of Domestic Violence**

- INA §237(a)(2)(E)
- "Crime of domestic violence" defined as crime of violence (under 18 USC §16) against
  - Spouse, former spouse
  - Other parent of person's child
  - Current or past live-in partner
  - Individual similarly situated to spouse under the jurisdiction's domestic violence laws
  - Individual protected under domestic violence laws of US or state or local government

6 **Categorical analysis of domestic violence offenses**

- Court should look only to the elements of the crime to determine whether
  - it is a crime of violence (involving the use of force or a risk of the use of force) AND
  - a domestic relationship is an element of the crime.
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- If charge includes some conduct that is and some that isn't, the *modified* categorical approach allows court to look to the record of conviction.
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7 **Maryland domestic violence charges are brought under general assault and battery provisions.**
- Case may not be identified as domestic.
- In the 4th Circuit, courts may look to the record of conviction to see whether 2d degree assault under (Md Crim Law § 3-203) is a crime of violence. *Kirksey,* 138 F3d 120 (4th 1998)
- As a practical matter, court will also look to information regarding the victim.

8 **Consequences of a crime of domestic violence**
- Removable under §237(a)(2)(E)
  - Potential waiver only for primary victim of abuse
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- May or may not also be a crime of moral turpitude (CMT)
  - Any intent to harm will make it a CMT.
  - Simple assault in domestic context may not be.
  - ➢CMT would be inadmissible under §212(a)(2)
    - ➢No entry or re-entry to US
    - ➢Unable to adjust status/ get green card
    - ➢Subject to mandatory detention
  - ➢CMT would be unable to show good moral character

9 **Consequences of a crime of domestic violence (cont.)**
- May also be an aggravated felony
  - If sentence imposed ≥ 1 year
  - ➢Subject to all the consequences for an ag fel
    - Removable
    - Permanently barred from reentering
    - Mandatory detention
    - Barred from asylum, showing good moral character
- Likely will be found to lack good moral character
  - ➢Ineligible for naturalization/ citizenship

10 **Strategies for domestic violence offenses**
- Keep the record clear of references to family or domestic relationship.
- Negotiate a re-papering by the state to avoid damaging facts in the charging documents.

11 **Other offenses included with domestic violence in §237(a)(2)(E)**
- Stalking
- Violation of a protective order
- Child abuse
- Child neglect
- Child abandonment
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➢All make the individual removable.

12 **Firearms Offenses**
- Violation of any law of
  - Purchasing
  - Selling
  - Offering for sale
  - Exchanging
  - Using
  - Owning
  - Possessing

- Carrying…..

13 **Firearms Offenses (cont.)**

- …. of a weapon, part or accessory which is a
  - Firearm or
  - Explosive device (as defined by 18 USC 921(a))
  -
  - Does NOT include an antique firearm.
  - Includes attempts and conspiracy to violate any of the above laws.

14 **BEWARE**

- A firearms offense may also be an aggravated felony:
  -
  - Trafficking in firearms or destructive devices
  - Receipt of stolen firearm
  - Use of firearm in a felony
  - Transfer of firearm, knowing it will be used in a felony
  - Possession of firearm by:
    - Convicted felon
    - Fugitive
    - Unlawful user of controlled substance
    - Adjudicated mentally ill
    - "illegal alien" or non-immigrant
-

15 **Examples for firearms offense**

Md Crim Law § 4-203.

Wearing, carrying, or transporting handgun

- Prohibited

(a)(1) Except as provided in subsection (b) of this section, a person may not:

(i) wear, carry, or transport a handgun, whether concealed or open, on or about the person….

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16 **Analysis of Md. Crim. L. §4-203**

- Not an aggravated felony
  - Possession or carrying is not analogous to federal offenses listed in INA §101(a)(43)
  - State statute does not require proof of immigration status (so not analogous to 18 USC 922(g)(5)
- Not a CIMT
  - regulatory offense, no intent to use to harm
- YES, it is a firearms offense – a law of carrying or possessing a firearm.
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17 **Firearms example 2:**

Md Crim Law § 3-202:

Assault in the first degree

- Prohibited

(a)(1) A person may not intentionally cause or attempt to cause serious physical injury to another.

(2) A person may not commit an assault with a firearm, including:

- (i) a handgun, antique firearm, rifle, shotgun, short-barreled shotgun, or short-barreled rifle, as those terms are defined in §4-201 of this article….
- (ii) assault pistol…
- (iii) machine gun…

18 **Analysis of Md. Crim. L. §4-203**

- Aggravated felony
  - IF sentence ≥ 1 year.
- CIMT
  - intent to injure or assault with deadly weapon.
- Firearms offense?
  - Divisible, because it includes antique firearm
  - Modified categorical approach allows court to look to record of conviction to see if facts alleged necessarily include firearms offense w/in federal definition

19 **Consequences of firearms offense**

- Requires a conviction (not just an admission)
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- ➢ Removability/ deportability (§237(a)(2)(C))
  - May be able to adjust status to "waive" offense
  - May be eligible for cancellation of removal
  -
- ➢ Mandatory detention

20 **Consequences of firearms offenses (cont.)**

- ➢ May also be aggravated felony:
  - Trafficking in firearms or destructive devices
  - Receipt of stolen firearm
  - Use of firearm in a felony
  - Transfer of firearm, knowing it will be used in a felony
  - Possession of firearm by:
    - Convicted felon
    - Fugitive
    - Unlawful user of controlled substance
    - Adjudicated mentally ill
    - "illegal alien" or non-immigrant
- ➢ Subject to all the consequences of an aggravated felony

21 **Consequences of firearms offenses (cont.)**

- NOT a CMT, nor statutory bar to good moral character
  - BUT could be a discretionary factor in green card application or naturalization
- NOT a bar to asylum, but may be discretionary factor
- NOT a bar to naturalization
  - though resulting incarceration during the statutory 3 or 5 years could be
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