

# Quick Reference Chart

## For Determining The Immigration Consequences of Selected New Jersey Criminal Offenses<sup>1</sup>

### Abbreviations:

Degree of Intent	Degree of Harm	Other Abbreviations
K=knowing(ly)	BI=bodily injury	CDS=controlled dangerous substance
P=purpose(ly)	SBI=serious bodily injury	DW=deadly weapon
N=negligent(ly)		MV=motor vehicle
R=reckless(ly)		

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>INCHOATE CRIMES</b>				
<b>Criminal attempt</b>	2C:5-1	An attempt to commit an AF would also be deemed an AF.	An attempt to commit a CIMT would probably be considered a CIMT.	Conviction would be considered a CSO or FO if the underlying offense is a CSO or FO.
<b>Conspiracy</b>	2C:5-2	A conspiracy to commit an AF would also be deemed an AF.	A conspiracy to commit a CIMT would probably be considered a CIMT.	Conviction would be considered a CSO or FO if the underlying offense is a CSO or FO.

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This chart is intended to warn criminal defense lawyers about the possible negative immigration consequences of a particular plea to assist them in counseling their non-citizen clients. However, in order to properly counsel a non-citizen client about a plea, additional factors such as whether the client is undocumented or a lawful permanent resident, and whether the client has any prior criminal record must also be taken into account. Advocates should also be aware that in many cases there are strong counter-arguments that a particular disposition should not trigger deportability or inadmissibility. For additional information on these arguments and strategies for avoiding the immigration consequences of criminal convictions, please refer to: Dan Kesselbrenner and Lory D. Rosenberg, *Immigration Law and Crimes* (West Group 2005), Norton Tooby, *Criminal Defense of Immigrants, 3d Ed.* (Law Offices of Norton Tooby 2003), and Manuel D. Vargas, *Representing Noncitizen Criminal Defendants in New York State, 3d. Ed.* (New York State Defenders Association 2003). In addition, please check frequently for updates and practice advisories on the websites of the Immigrant Legal Resource Center, the New York State Defenders Association Immigrant Defense Project, the National Lawyers Guild National Immigration Project, and the National Legal Aid and Defender Association.

Comments on this chart are welcome and may be sent to [kgottesm@camden.rutgers.edu](mailto:kgottesm@camden.rutgers.edu).

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>CRIMINAL HOMICIDE</b>				
<b>Murder</b> First degree	2C:11-3(a)	Yes.	Yes, for convictions under subsections (1) or (2). Whether conviction under subsection (3) is a CIMT may depend on whether the underlying offense is a CIMT.	If the victim was a current or former spouse, or similarly situated individual, a conviction might be considered a CODV. Conviction might also be considered a FO if the record of conviction establishes that the offense involved a firearm (as defined in 18 U.S.C. § 921(a)).
<b>Manslaughter</b> First degree	2C:11-4	If term of imprisonment of at least one year is imposed, would probably be deemed a “crime of violence” AF.	Conviction under subsection (a) would probably considered a CIMT; conviction under (b)(1) would probably be considered a CIMT; and under (b)(2) and (3) might be considered a CIMT.	
<b>Death by auto or vessel</b> (b)(1), (2) Second degree (b)(3) First degree	2C:11-5	If term of imprisonment of at least one year is imposed, would probably be deemed a “crime of violence” AF.	Would probably be considered a CIMT.	
<b>Knowingly leaving scene of motor vehicle accident resulting in death</b> Third degree	2C:11-5.1	If term of imprisonment of at least one year is imposed, might be deemed a “crime of violence” AF.	Might be considered a CIMT.	

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<b>Aiding suicide</b> Second or fourth degree	2C:11-6	Probably NOT.	Might be considered a CIMT.	
<b>ASSAULT, RECKLESS ENDANGERING, THREATS</b>				
<b>Simple assault</b> Disorderly persons offense	2C:12-1(a)	NO.	Conviction might be considered a CIMT, however if convicted under (a)(1) and the record reflects R, would probably NOT be considered a CIMT.	If the victim was a current or former spouse, or similarly situated individual, a conviction might be considered a CODV. Conviction under subsection (a)(2) might also be considered a FO if the record of conviction establishes that the offense involved a firearm (as defined in 18 U.S.C. § 921(a)).
<b>Aggravated assault</b> (b)(1), (6) Second degree (b)(2),(7),(9), (1) Third degree (b)(3),(4) Fourth degree (b)(5) Third or fourth degree (b)(8) Second or third degree (b)(11) Third degree	2C:12-1(b)	If term of imprisonment of at least one year is imposed, convictions under subsections (1-4) or (7-10) would probably be deemed a “crime of violence” AF. Conviction under subsections (5-6) or (11) might be deemed a “crime of violence” AF. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Conviction under subsections (1-4) or (7-10) would probably be considered a CIMT. Conviction under (5-6) or (11) might be considered a CIMT.	If the victim was a current or former spouse, or similarly situated individual, a conviction might be considered a CODV. Conviction under subsections (4), (9) and (11) would probably be considered a FO; conviction under subsections (2) or (3) might also be considered a FO if the record of conviction establishes that the offense involved a firearm (as defined in 18 U.S.C. § 921(a)).
<b>Assault by auto or vessel</b> Second, third or fourth degree, or disorderly persons offense	2C:12-1(c)	If term of imprisonment of at least one year is imposed, would probably be deemed a “crime of violence” AF. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Conviction under subsection (1), (2) and (3) would probably be considered a CIMT if record of conviction establishes that offense caused SBI.	If the victim was a current or former spouse, or similarly situated individual, a conviction might be considered a CODV.
<b>Knowingly leaving scene of a motor vehicle accident resulting in serious bodily injury</b> Fourth degree	2C:12-1.1	If term of imprisonment of at least one year is imposed, might be deemed a “crime” of violence AF. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Might be considered a CIMT.	

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<b>Endangering an injured victim</b> Third degree	2C:12-1.2	If term of imprisonment of at least one year is imposed, might be deemed a “crime of violence” AF. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Might be considered a CIMT.	If the victim was a current or former spouse, or similarly situated individual, a conviction might be considered a CODV.
<b>Recklessly endangering another person</b> Third or fourth degree	2C:12-2	If term of imprisonment of at least one year is imposed, conviction under subsection (a) would probably be deemed a “crime of violence” AF. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Conviction under (a) might be considered a CIMT. Conviction under (b)(2) would probably be considered a CIMT.	If the victim was a current or former spouse, or similarly situated individual, a conviction might be considered a CODV.
<b>Terroristic threats</b> Third degree	2C:12-3	If term of imprisonment of at least one year is imposed, conviction would probably be deemed a “crime of violence” AF.	Would probably be considered a CIMT.	If the victim was a current or former spouse, or similarly situated individual, a conviction might be considered a CODV.
<b>Stalking</b> (b) Fourth degree (c), (d), (e) Third degree	2C:12-10	If term of imprisonment of at least one year is imposed, conviction would probably be deemed a “crime of violence” AF. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Would probably be considered a CIMT.	A conviction would probably trigger deportability as a “crime of stalking,” or if the victim was a current or former spouse, or similarly situated individual, a conviction might also be considered a CODV.
<b>Disarming law enforcement or corrections officer</b> First or second degree	2C:12-11	Conviction under subsection (a) might be deemed a “crime of violence” AF; conviction under subsection (b) would probably be deemed a “crime of violence” AF.	Conviction under subsection (a) or (b) would probably be considered a CIMT.	Conviction would probably also be considered a FO.
<b>Throwing bodily fluid at department of correction employees deemed aggravated assault</b> Third or fourth degree	2C:12-13	Probably NOT.	Might be considered a CIMT.	

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<b>KIDNAPPING AND RELATED OFFENSES</b>				
<b>Kidnapping</b> First or second degree	2C:13-1	If term of imprisonment of at least one year is imposed, conviction might be deemed a "crime of violence" AF depending on what the record of conviction establishes (see definition at 18 U.S.C. § 16). Conviction under subsection (b)(1) might be deemed an "obstruction of justice" AF.	Would probably be considered a CIMT.	If the victim was a current or former spouse or similarly situated individual, a conviction might be considered a CODV.
<b>Criminal restraint</b> Third degree	2C:13-2	If term of imprisonment of at least one year is imposed, conviction might be deemed a "crime of violence" AF depending on what the record of conviction establishes (see definition at 18 U.S.C. § 16).	Would probably be considered a CIMT.	
<b>False imprisonment</b> Disorderly persons offense	2C:13-3	NO.	Might be considered a CIMT.	If the victim was a current or former spouse or similarly situated individual, a conviction might be considered a CODV.
<b>Interference with custody</b> Second, third or fourth degree	2C:13-4	If term of imprisonment of at least one year is imposed, conviction might be deemed a "crime of violence" AF depending on what the record of conviction establishes (see definition at 18 U.S.C. § 16). If term of imprisonment of at least one year is imposed, conviction under subsection (a)(2) or (a)(3) might be deemed an "obstruction of justice" AF. See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	Might be considered a CIMT.	Because the victim would usually be a current or former spouse or similarly situated individual, a conviction might be considered a CODV.

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<b>Criminal coercion</b> Third or fourth degree	2C:13-5	If term of imprisonment of at least one year is imposed, conviction under subsection (a)(1) would probably be deemed a "crime of violence" AF depending on what the record of conviction establishes (see definition at 18 U.S.C. § 16), and conviction under other subsections might be deemed a "crime of violence" AF depending on what the record of conviction establishes. Conviction under subsection (a)(2) or (a)(6) might be deemed an "obstruction of justice" AF. See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	Might be considered a CIMT.	If the victim was a current or former spouse or similarly situated individual, a conviction might be considered a CODV.
<b>Luring, enticing child</b> Third degree	2C:13-6	If term of imprisonment of at least one year is imposed, conviction might be deemed a "crime of violence" AF depending on what the record of conviction establishes (see definition at 18 U.S.C. § 16); conviction might also be deemed a "sexual abuse of a minor" AF.	If underlying offense is a CIMT, conviction would probably be considered a CIMT.	If record of conviction shows purpose to commit child abuse, child neglect, or child abandonment, might be considered a CAC.

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<b>SEXUAL OFFENSES</b>				
<b>Aggravated sexual assault</b> First degree	2C:14-2 (a)	Conviction under subsections (1) or (2) would probably be deemed a "sexual abuse of a minor" AF and conviction under subsections (1)-(7) might be deemed a "rape" AF, especially if record of conviction establishes sexual intercourse between the offender and victim. If later removal proceedings are held outside the Third Circuit and record of conviction establishes that the victim was a minor, conviction under subsections (3)-(7) might also be deemed a "sexual abuse of a minor" AF. <u>See Singh v. Ashcroft</u> 383 F. 3d 144 (3d Cir. 2004) (holding that a conviction under a Delaware statute that did not include the age of the victim as an element was not a "sexual abuse of a minor" AF even though the record showed that the victim was a minor). If term of imprisonment of one year or more is imposed, conviction under subsections (4), (5) or (6) would probably be deemed a "crime of violence" AF and conviction under subsection (3) might be deemed a "crime of violence" AF depending on the underlying circumstances.	Would probably be considered a CIMT.	If the victim was a current or former spouse or similarly situated individual, a conviction might be considered a CODV. Conviction under subsection (1) and (2) would probably also be considered a CAC.
<b>Sexual assault</b> Second degree	2C:14-2(b)	Would probably be deemed a "sexual abuse of a minor,"AF.	Would probably be considered a CIMT.	If the victim was a current or former spouse or similarly situated individual, a conviction might be considered a CODV. Conviction would probably also be considered a CAC.

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<b>Sexual assault</b> Second degree	2C:14-2(c)	Conviction under subsection (3) or (4) would probably be deemed a "sexual abuse of a minor" AF. If later removal proceedings are held outside the Third Circuit and record of conviction establishes that the victim was a minor, conviction under subsections (1) and (2) might also be deemed a "sexual abuse of a minor" AF. <u>See Singh v. Ashcroft</u> 383 F. 3d 144 (3d Cir. 2004) (holding that a conviction under a Delaware statute that did not include the age of the victim as an element was not a "sexual abuse of a minor" AF even though the record showed that the victim was a minor). Conviction under any subsection would probably be deemed a "rape" AF, especially if record of conviction establishes sexual intercourse between the offender and victim. If term of imprisonment of at least one year is imposed, conviction under subsection (1) would probably be deemed a "crime of violence" AF and conviction under subsection (2), (3) or (4) might be deemed a "crime of violence" AF.	Would probably be considered a CIMT.	If the victim was a current or former spouse or similarly situated individual, a conviction might be considered a CODV. Conviction under subsection (3) or (4) would probably also be considered a CAC.



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<b>Aggravated criminal sexual contact</b> Third degree	2C:14-3(a)	Conviction would probably be deemed a "sexual abuse of a minor" AF if record shows that the crime was committed under the circumstances set forth in subsection (2) of 2C:14-2(a) If later removal proceedings are held outside the Third Circuit and record of conviction establishes that the victim was a minor, conviction under circumstances set forth in other subsections of 2C:14-2(a) might also be deemed a "sexual abuse of a minor" AF. See note on <u>Singh</u> above. If term of imprisonment of at least one year is imposed, would probably be deemed a "crime of violence" AF if record shows the crime was committed under circumstances set forth in subsections (4), (5) or (6) of 2C:14-2(a), and might be deemed a "crime of violence" AF if record of conviction shows the crime was committed under circumstances set forth in subsection (3) depending on the underlying offense.	Would probably be considered a CIMT.	If the victim was a current or former spouse or similarly situated individual, a conviction might be considered a CODV. If the record of conviction shows that the victim was a child, conviction would probably be considered a CAC.

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<b>Criminal sexual contact</b> Fourth degree	2C:14-3(b)	Conviction might be deemed a "sexual abuse of a minor" AF if record shows that the crime was committed under circumstances set forth in subsection (3) and (4) of 2C:14-2(c). If later removal proceedings are held outside the Third Circuit and record of conviction establishes that victim was a minor, conviction under circumstances set forth in subsections (1) and (2) of 2C:14-2(c) would probably be deemed a "sexual abuse of a minor" AF. See note on <u>Singh</u> above. If term of imprisonment of at least one year is imposed, and if conviction under circumstances set forth in subsection (1) of 2C:14-2(c) requiring the use of physical force, would probably be deemed a "crime of violence" AF. See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	Would probably be considered a CIMT.	If the victim was a current or former spouse or similarly situated individual, a conviction might be considered a CODV. If the record of conviction shows that the victim was a child, conviction would probably be considered a CAC.
<b>Lewdness</b> Disorderly persons offense	2C:14-4(a)	NO.	Might be considered a CIMT.	
<b>Lewdness</b> Fourth degree	2C:14-4(b)	Conviction under subsection (1) might be deemed a "sexual abuse of a minor" AF.	Would probably be considered a CIMT.	Conviction under subsection (1) might be considered a CAC.
<b>ROBBERY</b>				
<b>Robbery</b> First or second degree	2C:15-1	If term of imprisonment of at least one year is imposed, conviction under subsections (a)(1) or (2) would probably be deemed a "theft" or "crime of violence" AF; conviction under subsection (a)(3) would probably be deemed a "theft" AF; and, depending on the crime committed or threatened, might fall into another AF category.	Yes.	If conviction as crime of the first degree is based on charge that the defendant is armed with, or uses or threatens the immediate use of a deadly weapon, conviction might be considered a FO if record of conviction establishes that offense involved a firearm.

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<b>Carjacking</b> First degree	2C:15-2	If term of imprisonment of at least one year is imposed: conviction under subsections (a)(1) or (2) would probably be deemed a "theft" or "crime of violence" AF; conviction under subsection (a)(3) would probably be deemed a "theft" AF and, depending on the crime committed or threatened, might fall into another AF category; and conviction under subsection (a)(4) would probably be deemed a "theft" AF.	Would probably be considered a CIMT.	
<b>ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DESTRUCTION</b>				
<b>Aggravated arson</b> Second degree	2C:17-1(a)	If term of imprisonment of at least one year is imposed, would probably be deemed a "crime of violence" AF; if loss to the victim exceeds \$10,000, conviction under subsection (3) might also be deemed a "fraud" AF.	Would probably be considered a CIMT.	Conviction might be considered a FO (or destructive device offense) if record of conviction establishes that offense involved a "destructive device" (as defined in 18 U.S.C. § 921(a)). If the victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV.
<b>Arson</b> Third degree	2C:17-1(b)	If term of imprisonment of at least one year is imposed, would probably be deemed a "crime of violence" AF depending on what the record of conviction establishes (see definition at 18 U.S.C. §16); if loss to the victim exceeds \$10,000, conviction under subsection (3) might also be deemed a "fraud" AF.	Conviction under subsection (3) or (4) would probably be considered a CIMT; conviction under subsection (1), (2), or (5) might be considered a CIMT.	Conviction might be considered a FO (or destructive device offense) if record of conviction establishes that offense involved a "destructive device" (as defined in 18 U.S.C. § 921(a)).
<b>Failure to control or report dangerous fire</b> Fourth degree	2C:17-1(c)	Probably NOT.	Might be considered a CIMT.	
<b>Paying or accepting consideration to commit arson</b> First degree	2C:17-1(d)	Probably NOT.	Would probably be considered a CIMT.	

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<b>Causing or risking widespread injury or damage</b> (a) Second or third degree (b) Third degree (c) Fourth degree (d) Fourth degree	2C:17-2	If term of imprisonment of at least one year is imposed, conviction might be deemed a "crime of violence" AF depending on what the record of conviction establishes (see definition at 18 U.S.C. § 16). See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	Conviction under subsection (a) or (b) would probably be considered a CIMT, however if record of conviction shows R only, conviction under subsection (a)(2) might not be considered a CIMT. Conviction under subsection (c) or (d) might be considered a CIMT.	
<b>Criminal mischief</b> Third or fourth degree	2C:17-3	If term of imprisonment of at least one year is imposed, conviction might be deemed a "crime of violence" AF depending on what the record of conviction establishes (see definition at 18 U.S.C. § 16). See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	If record of conviction establishes P or K intent element, as opposed to R or N, might be considered a CIMT.	Conviction under subsection (a)(1) might be considered a FO (or destructive device offense) if record of conviction establishes that offense involved a "destructive device" (as defined in 18 U.S.C. § 921(a)).
<b>Certain alternations of motor vehicle trademarks, identification numbers, prohibited</b> Third or fourth degree, or disorderly persons offense	2C:17-6	If term of imprisonment of at least one year is imposed, might be deemed a "vehicle trafficking" AF; if term of imprisonment of at least one year is imposed and record of conviction establishes purpose related to theft, conviction might also be deemed a "theft" AF.	If record of conviction establishes purpose related to theft or other unlawful purpose involving moral turpitude might be considered a CIMT.	
<b>BURGLARY &amp; OTHER CRIMINAL INTRUSION</b>				
<b>Burglary</b> Second or third degree	2C:18-2	If term of imprisonment of at least one year is imposed and conviction is in the second degree or if record of conviction establishes unlawful entry into a dwelling, would probably be deemed a "crime of violence" AF; if term of imprisonment of at least one year is imposed and record of conviction establishes unlawful entry into a dwelling (see <u>Taylor v. U.S.</u> , 495 U.S. 575 (1990)), would probably also be deemed a "burglary" AF.	Would be considered a CIMT if record of conviction establishes that the offense intended to be committed was a CIMT.	If conviction of crime of the second degree is based on charge that the defendant was armed with or displayed what appeared to be explosives or a DW, conviction might be considered a FO if record of conviction establishes that explosive was a destructive device (as defined in 18 U.S.C. § 921 (a)) or that DW was a firearm.

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<b>Criminal trespass - unlicensed entry of structures</b> Fourth degree (school, school property, dwelling or research facility) or disorderly persons offense	2C:18-3(a)	If term of imprisonment of at least one year is imposed, might be deemed a “crime of violence” AF if record of conviction establishes unlicensed entry into a dwelling. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Probably NOT.	
<b>Criminal trespass - defiant trespasser</b> Disorderly persons offense	2C:18-3(b)	NO.	NO.	
<b>Criminal trespass - peering into windows or other openings of dwelling places</b> Fourth degree	2C:18-3(c)	Probably NOT.	Might be considered a CIMT.	
<b>Riding on lands; damaging property on lands</b> Third or fourth degree, or disorderly persons offense (depending on amount of loss).	2C:18-5	If term of imprisonment of at least one year is imposed <i>and</i> if record of conviction shows loss to the victim exceeds \$10,000, would probably be deemed an AF. <u>See Nugent v. Ashcroft</u> , 367 F.3d 162 (3d Cir. 2004). However, if later removal proceedings are held outside the Third Circuit, then conviction might be deemed an AF if either of the above conditions is met. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	If record of conviction reflects K, conviction under subsection (b) might be considered a CIMT.	
<b>THEFT AND RELATED OFFENSES</b>				
<b>Theft by unlawful taking or disposition</b>	2C:20-3	If term of imprisonment of at least one year is imposed, would probably be deemed a “theft” AF.	Would probably be considered a CIMT.	
<b>Theft by deception</b>	2C:20-4	If term of imprisonment of at least one year is imposed, <i>and</i> if record of conviction shows loss to the victim exceeds \$10,000 would probably be deemed an AF. <u>See Nugent v. Ashcroft</u> , 367 F.3d 162 (3d Cir. 2004). However, if later removal proceedings are held outside the Third Circuit, then conviction might be deemed an AF if <i>either</i> of the above conditions is met.	Would probably be considered a CIMT.	

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<b>Theft by extortion</b>	2C:20-5	If term of imprisonment of at least one year is imposed, would probably be deemed a “theft” offense; or conviction under subsection (a) might also be deemed a “crime of violence” AF. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Would probably be considered a CIMT.	
<b>Theft of property lost, mislaid, or delivered by mistake</b>	2C:20-6	If term of imprisonment of at least one year is imposed, would probably be deemed a “theft” AF.	Would probably be considered a CIMT.	
<b>Receiving stolen property</b>	2C:20-7	If term of imprisonment of at least one year is imposed, would probably be deemed a “theft” AF.	Would probably be considered a CIMT.	
<b>Fencing</b>	2C:20-7.1	If term of imprisonment of at least one year is imposed, might be deemed a “theft” AF; if record of conviction also shows that the “property” is a vehicle the identification number of which has been altered, conviction under subsection (b) might be deemed a “vehicle trafficking” AF.	Might be considered a CIMT.	
<b>Theft of services</b>	2C:20-8	If term of imprisonment of at least one year is imposed, might be deemed a “theft” AF.	Conviction under subsection (a),(b),(h),(i) or (j) would probably be considered a CIMT; conviction under subsection (c)-(g) might be considered a CIMT.	
<b>Theft by failure to make required disposition of property received</b>	2C:20-9	If term of imprisonment of at least one year is imposed, might be deemed a “theft” offense.	Might be considered a CIMT.	
<b>Unlawful taking of means of conveyance</b> Disorderly persons offense	2C:20-10(a)	NO.	Probably NOT a CIMT.	

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Unlawful taking of means of conveyance</b> Fourth degree	2C:20-10(b)	If term of imprisonment of at least one year is imposed, might be deemed a "theft" AF.	Might be considered a CIMT.	
<b>Unlawful taking of means of conveyance</b> Third degree	2C:20-10(c)	If term of imprisonment of at least one year is imposed, might be deemed a "theft" or "crime of violence" AF.	Might be considered a CIMT.	
<b>Unlawful taking of means of conveyance</b> Fourth degree	2C:20-10(d)	Probably NOT.	Might be considered a CIMT.	
<b>Shoplifting</b>	2C:20-11	If term of imprisonment of at least one year is imposed, would probably be deemed a "theft" AF.	Would probably be considered a CIMT.	
<b>Operation of facility for sale of stolen automobile or parts</b> Second degree	2C:20-16	If term of imprisonment of at least one year is imposed, might be deemed a "theft" AF; or if record of conviction reflects that identification numbers have been altered, would probably be deemed a "vehicle trafficking" AF.	Would probably be considered a CIMT.	
<b>Use of juvenile in theft of automobiles</b> Second degree	2C:20-17	If term of imprisonment of at least one year is imposed, would probably be deemed a "theft" AF.	Would probably be considered a CIMT.	
<b>Leader of auto theft trafficking network</b> Second degree	2C:20-18	If term of imprisonment of at least one year is imposed, would probably be deemed a "theft" or "trafficking in vehicles" AF.	Would probably be considered a CIMT.	
<b>Computer theft</b>	2C:20-25	Probably NOT.	Would probably be considered a CIMT.	

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Unauthorized use of ATP card or food stamp coupons with value of \$150 or more</b> Fourth degree	2C:20-36	If term of imprisonment of at least one year is imposed, might be deemed a “theft” offense; or if record reflects loss to the government in excess of \$10,000, might be deemed a “fraud” AF. <u>But see Nugent v. Ashcroft</u> , 367 F.3d 162 (3d Cir. 2004) for arguments that a conviction under this section would only be an AF if term of imprisonment of at least one year is imposed <i>and</i> if record of conviction reflects loss to the victim in excess of \$10,000.	Would probably be considered a CIMT.	
<b>FORGERY AND FRAUDULENT PRACTICES</b>				
<b>Forgery and related offenses</b> Third or fourth degree	2C:21-1	If sentenced to a term of imprisonment of at least one year, would probably be deemed a “forgery” AF; or if the loss to the victim(s) exceeds \$10,000, might be deemed a “fraud” AF.	Yes.	
<b>Criminal simulation</b> Fourth degree	2C:21-2	If sentenced to a term of imprisonment of at least one year, would probably be deemed a “forgery” AF; or if the loss to the victim(s) exceeds \$10,000, might be deemed a “fraud” AF.	Yes.	
<b>Driver’s license or other document issued by governmental agency to verify identity or age simulation</b> (a) Third degree (b) Third degree (c) Fourth degree (d) Disorderly persons offense	2C:21-2.1	If sentenced to a term of imprisonment of at least one year, would probably be deemed a “forgery” AF.	Would probably be considered a CIMT.	
<b>Frauds related to public records and recordable instruments</b> (a) Third degree (b) Disorderly persons offense	2C:21-3	If the loss to the victim(s) exceeds \$10,000, conviction might be deemed a “fraud” AF, especially if record shows intent to deceive (as opposed to intent to injure).	Would probably be considered a CIMT.	



Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Bad checks</b> Second, third or fourth degree, or disorderly persons offense (depending on amount)	2C:21-5	If the loss to the victim(s) exceeds \$10,000, conviction might be deemed a "fraud" AF, or if term of imprisonment of at least one year is imposed, might be deemed a "theft" AF. <u>But see Nugent v. Ashcroft</u> , 367 F.3d 162 (3d Cir 2004) for arguments that a conviction under this section would only be an AF if term of imprisonment of at least one year is imposed <i>and</i> if record of conviction reflects loss to the victim in excess of \$10,000.	Would probably not be considered a CIMT.	
<b>Credit cards</b>	2C:21-6	If the loss to the victim(s) exceeds \$10,000, conviction under subsection (b), (c)(2),(4),(5), (6),(d),(e) or (h), requiring intent to defraud, would probably be deemed a "fraud" AF, or if term of imprisonment of at least one year is imposed, conviction under subsection (c)(1),(2),(4), or(5) might be deemed a "theft" AF. <u>But see Nugent v. Ashcroft</u> , 367 F.3d 162 (3d Cir 2004) for arguments that a conviction under these subsections would only be AF if term of imprisonment of at least one year is imposed <i>and</i> if record of conviction reflects loss to the victim in excess of \$10,000.	Conviction under subsection (b), (c)(2),(4),(5), (6),(d),(e) or (h), requiring intent to defraud, would be considered a CIMT, conviction under other subsections might be considered a CIMT.	
<b>Deceptive business practices</b> Fourth degree or disorderly persons offense	2C:21-7	If loss to the victim exceeds \$10,000, conviction under subsection (h) or (i) might be deemed a "fraud" AF.	Conviction under subsection (h) or (i) might be considered a CIMT.	
<b>Impersonation</b>	2C:21-17	If loss to the victim exceeds \$10,000, convictions under subsections (a)(1) - (a)(4) would probably be deemed "fraud or deceit" AF, especially if record of conviction reflects intent to defraud (as opposed to intent to injure, obtain a benefit or services, or avoid payment of a debt, etc. ); conviction under subsection (b) might be deemed a "fraud" AF.	Conviction would probably be considered a CIMT.	

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Financial facilitation of criminal activity</b>	2C:21-25	If the value of the property exceeds \$10,000, conviction under subsection (b) might be deemed a state analog to federal "money laundering" AF listed at 8 U.S.C. §1101 (a)(43)(D).	If the underlying criminal activity involves moral turpitude, might be considered a CIMT.	
<b>OFFENSES AGAINST THE FAMILY, CHILDREN AND INCOMPETENTS</b>				
<b>Endangering the welfare of children</b> Second or third degree depending on relationship with child	2C:24-4	Especially if defendant is more than four years older than victim and record shows sexual conduct with victim, conviction under subsection (a) would probably be deemed a "sexual abuse of a minor" AF and conviction under subsection (b)(3) and (4) might be deemed a "sexual abuse of a minor" AF. Conviction under subsections (b)(3),(4), or (5), might also be deemed a "child pornography" AF.	Conviction would probably be considered a CIMT.	Conviction would probably be considered a CAC.
<b>Willful nonsupport</b> Fourth degree	2C:24-5	NO.	Might be considered a CIMT.	Might be considered "child neglect or abandonment" CAC.
<b>Endangering the welfare of an incompetent person</b> Disorderly persons offense	2C:24-7	NO.	Might be considered a CIMT.	
<b>Endangering welfare of elderly or disabled persons</b> Third degree	2C:24-8	NO.	Probably NOT.	
<b>Use of 17-Year-Old or younger to commit criminal offense</b> One degree higher than underlying offense	2C:24-9	Might be considered a AF if underlying offense is an AF.	Might be considered a CIMT if underlying offense involves MT.	
<b>PERJURY AND OTHER FALSIFICATION IN OFFICIAL MATTERS</b>				
<b>Perjury</b> Third degree	2C:28-1	If term of imprisonment of at least one year is imposed, would probably be deemed a "perjury" AF.	Would probably be considered a CIMT.	

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>False swearing</b> Fourth degree	2C:28-2	If term of imprisonment of at least one year is imposed, might be deemed a “perjury or obstruction of justice” AF, or if the loss to any victim(s) exceeds \$10,000, might be deemed a “fraud or deceit” AF. (Unlike federal definition of perjury, no requirement that the false swearing is on a “material matter”).	Would probably be considered a CIMT.	
<b>Unsworn falsification to authorities</b> (a) Fourth degree (b) Disorderly persons offense	2C:28-3	If term of imprisonment of at least one year is imposed, might be deemed a “perjury or obstruction of justice” AF, or if the loss to any victim(s) exceeds \$10,000, might be deemed a “fraud or deceit” AF.	Might be considered a CIMT.	
<b>OBSTRUCTING GOVERNMENTAL OPERATIONS; ESCAPES</b>				
<b>Obstructing administration of law or other governmental function.</b> (a) Disorderly persons offense (b) Fourth degree	2C:29-1	If term of imprisonment of at least one year is imposed, might be deemed a “crime of violence” AF, or an “obstruction of justice” AF depending on what the record reflects. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Probably NOT.	
<b>Resisting arrest; Eluding officer</b> (a)(1) Disorderly persons offense (a)(2) Fourth degree (a)(3) Third degree (b) Second or third degree	2C:29-2	If term of imprisonment of at least one year is imposed, conviction under subsection (a)(3), or of a second degree offense under subsection (b), would probably be deemed a “crime of violence” AF. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Conviction under subsection (a)(3)(a) or of a second degree offense under subsection (b) might be considered a CIMT.	
<b>Hindering apprehension or prosecution</b> Second, third, or fourth degree or disorderly persons offense	2C:29-3	If term of imprisonment of at least one year is imposed, would probably be deemed an “obstruction of justice” AF.	Might be considered a CIMT.	
<b>Bail jumping</b> Third or fourth degree, disorderly persons or petty disorderly persons offense	2C:29-7	If convicted of the offense in the third degree, would probably be deemed a “failure to appear” AF.	No.	

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Contempt</b> (a) Fourth degree (b) Fourth degree or disorderly persons offense.	2C:29-9	If term of imprisonment of at least one year is imposed, might be deemed an "obstruction of justice" or a "crime of violence" AF depending on what the record of conviction established (see definition at 18 U.S.C. §16). See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	Might be considered a CIMT.	Might be considered a CODV or trigger deportability under "violation of protection order" provision.
<b>RIOT, DISORDERLY CONDUCT, AND RELATED OFFENSES</b>				
<b>Riot; Failure to disperse</b> (a)(1), (2) Fourth degree (a)(3) Third degree (b) Disorderly persons offense	2C:33-1	If term of imprisonment of at least one year is imposed, conviction under subsection (a) might be deemed "crime of violence" AF depending on what the record of conviction established (see definition at 18 U.S.C. §16). See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	Conviction under subsection (a)(3) would probably be considered a CIMT, or if underlying offense involves moral turpitude, conviction under (a)(1) might be considered CIMT.	Conviction under subsection (a)(3) would probably be considered a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)).
<b>Disorderly conduct</b> Petty disorderly persons offense	2C:33-2	NO.	NO.	
<b>Wandering, remaining in or prowling public places with purpose of obtaining or selling controlled substances</b> Disorderly persons offense	2C:33-2.1	NO.	NO.	Might be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.
<b>False public alarms</b> (a) Third degree (b) Third degree (c) Second degree (e) Disorderly persons offense	2C:33-3	Probably NOT.	Might be considered a CIMT.	

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Harassment</b> (a)-(d) Petty disorderly persons offense (e) Fourth degree	2C:33-4	If a term of imprisonment of at least one year is imposed, conviction under subsection (e), would probably be deemed a “crime of violence” AF if record of conviction shows that basis of conviction was for an offense under subsection (b). See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Might be considered a CIMT.	If victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV, or trigger deportability under CODV clause regarding “crime of stalking.”
<b>Obstructing highways or public passages</b> Petty disorderly persons offense	2C:33-7	NO.	NO.	
<b>Causing fear of unlawful bodily violence</b> Third degree	2C:33-10	If term of imprisonment of at least one year is imposed, might be deemed a “crime of violence” AF.	Might be considered a CIMT, particularly if record reflects P or K intent.	If victim was a current or former spouse or similarly situated individual, conviction might be considered a CODV.
<b>Maintaining a nuisance</b> (a),(b) Disorderly persons offense (c) Fourth degree	2C:33-12	Conviction under subsection (c) might be deemed a “prostitution business” AF.	Conviction under subsection (a) or (b) might be considered a CIMT, particularly if under subsection (a) record reflects K intent and under (b) the underlying offense involves moral turpitude; conviction under subsection (c) would probably be considered a CIMT.	Conviction under subsection (c) might trigger “prostitution or commercialized vice” inadmissibility.
<b>Sexually oriented business</b> Fourth degree	2C:33-12.2	Probably NOT (risk that might be deemed a “prostitution business” AF less than with respect to conviction under 2C:33-12(c) because no express prostitution element).	Might be considered a CIMT.	Conviction might trigger “prostitution or commercialized vice” inadmissibility.
<b>Interference with transportation</b> Second, third or fourth degree or disorderly persons offense	2C:33-14	If term of imprisonment of at least one year is imposed, conviction under subsection (c), (d) or (e) might be deemed a “crime of violence” AF. See note on New Jersey 4 <sup>th</sup> degree offenses and “crimes of violence” at end of chart.	Conviction under subsection (c) or (d) might be considered a CIMT if record reflects purposeful or knowing intent; conviction under subsection (e) would probably be considered a CIMT.	

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Possession or consumption of alcoholic beverage by person under legal age</b> Disorderly persons offense	2C:33-15	NO.	NO.	
<b>Solicitation, recruitment to join street gang</b> (a) Fourth degree (b) Third degree (c) Second degree	2C:33-28	If term of imprisonment of at least one year is imposed, conviction under subsection (b) or (c) would probably be deemed "crime of violence" AF. See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	Conviction might be considered CIMT, particularly if underlying criminal conduct involves moral turpitude.	
<b>PUBLIC INDECENCY</b>				
<b>Prostitution and related offenses</b> (b)(1) First time: disorderly persons offense; subsequent: fourth degree (b)(2) Third or fourth degree (b)(3), (4) Second degree (b)(5), (6), (7) Third degree	2C:34-1	Conviction under subsections (b)(2)-(6) might be deemed "prostitution business" AF. Conviction under subsection (b)(3), (4) and (7) might also be deemed "sexual abuse of a minor" AF.	Conviction would probably be considered CIMT.	Might trigger "prostitution" inadmissibility. Conviction under subsection (b)(3), (4), or (7) might also be considered a CAC.
<b>Loitering for the purpose of engaging in prostitution</b> Disorderly persons offense	2C:34-1.1	NO.	Might be considered a CIMT.	Might trigger "prostitution" inadmissibility."
<b>Obscenity for persons 18 years of age or older</b> Fourth degree	2C:34-2	Might be deemed a "child pornography" AF if record reflects an offense as described in 18 U.S.C. §§ 2251, 2251A, or 2252.	Might be considered a CIMT.	
<b>Obscenity for persons under 18</b> Third degree	2C:34-3	Conviction under subsection (b) might be deemed a "child pornography" AF if record reflects an offense as described in 18 U.S.C. §§ 2251, 2251A, or 2252. Conviction might also be deemed "sexual abuse of a minor" AF.	Might be considered a CIMT.	

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>CONTROLLED DANGEROUS SUBSTANCES</b>				
<b>Leader of narcotics trafficking network</b> First degree	2C:35-3	If record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, would be deemed “drug trafficking” AF.	Would probably be considered a CIMT.	Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.
<b>Maintaining or operating a controlled dangerous substance production facility</b> First degree	2C:35-4	If record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, would be deemed a “drug trafficking” AF.	Would probably be considered a CIMT.	Would be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.
<b>Booby traps in manufacturing or distribution facilities; Fortified premises</b> (b) First or second degree (c) Third degree	2C:35-4.1	If record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, might be deemed a “drug trafficking” AF. If term of imprisonment of at least one year is imposed, conviction under subsection (b) might also be deemed a “crime of violence” AF.	Might be considered a CIMT.	Might be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802. Might also be considered a FO if record of conviction establishes that “booby trap” is a firearm or “destructive device” (as defined in 18 U.S.C. § 921(a)).
<b>Manufacturing, distributing or dispensing</b> First, second, third or fourth degree (Depending on substance and amount)	2C:35-5	If record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, would be deemed a “drug trafficking” AF. However, if conviction is for distribution of a small amount of marijuana, and the record of conviction does not establish remuneration, may not be considered an AF. <u>Wilson v. Ashcroft</u> , 350 F.3d 377 (3d Cir. 2003); <u>Steele v. Blackman</u> , 236 F.3d 130 (3d Cir. 2001). Please see more detailed note at end of chart.	Would probably be considered a CIMT.	Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.
<b>Employing a juvenile in a drug distribution scheme</b> Second degree	2C:35-6	If record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, would be deemed a “drug trafficking” AF.	Would probably be considered a CIMT.	Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Controlled dangerous substances near or on school property</b> Third degree	2C:35-7	If record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, would be deemed a “drug trafficking” AF. However, if conviction is for distribution of a small amount of marijuana, and the record of conviction does not establish remuneration, may not be considered an AF. <u>Wilson v. Ashcroft</u> , 350 F.3d 377 (3d Cir. 2003); <u>Steele v. Blackman</u> , 236 F.3d 130 (3d Cir. 2001). Please see more detailed note at end of chart.	Would probably be considered a CIMT.	Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.
<b>Distributing, dispensing or possessing within 500 feet of certain public property</b> Second or third degree	2C:35-7.1	If record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, would be deemed a “drug trafficking” AF. However, if conviction is for distribution of a small amount of marijuana, and the record of conviction does not establish remuneration, may not be considered an AF. <u>Wilson v. Ashcroft</u> , 350 F.3d 377 (3d Cir. 2003); <u>Steele v. Blackman</u> , 236 F.3d 130 (3d Cir. 2001). Please see more detailed note at end of chart.	Would probably be considered a CIMT.	Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.
<b>Strict liability for drug induced deaths</b> First degree	2C:35-9	If record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802, would be deemed a “drug trafficking” AF.	Would probably be considered a CIMT.	Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.



Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<p><b>Possession, use or being under the influence of or failure to make lawful disposition</b> Third or fourth degree, or disorderly persons offense</p>	2C:35-10(a)	<p>Would probably NOT be deemed a “drug trafficking” AF under current Third Circuit case law, unless conviction is for possession of more than 5g of cocaine base or any amount of flunitrazepam, in which case might be deemed “drug trafficking” AF (see <u>Gerbier v. Holmes</u>, 280 F.3d 297 (3d Cir. 2002), <u>Steele v. Blackman</u>, 236 F.3d 130 (3d Cir. 2001)). If later removal hearing takes place outside the Third Circuit, however, conviction for possession of a controlled substance as defined in 21 U.S.C. § 802, unless as a disorderly persons offense, would probably be deemed a “drug trafficking” AF (see <u>Yanez-Garcia</u>, 23 I.&amp; N. Dec. 390 (BIA 2002)). Please see the note at the end of this chart for a more detailed discussion of the issues raised by a conviction under this section.</p>	<p>Would probably NOT be considered a CIMT.</p>	<p>Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.</p>

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Obtaining by fraud</b> Third degree	2C:35-13	<p>If record reflects conviction under provision regarding obtaining a CDS by misrepresentation, etc., would probably NOT be deemed a “drug trafficking” AF under current Third Circuit case law, unless conviction is for possession of more than 5g of cocaine base or any amount of flunitrazepan, in which case might be deemed “drug trafficking” AF (see <u>Gerbier v. Holmes</u>, 280 F.3d 297 (3d Cir. 2002), <u>Steele v. Blackman</u>, 236 F.3d 130 (3d Cir. 2001)). If later removal hearing takes place outside the Third Circuit, however, conviction under this provision would probably be deemed a “drug trafficking” AF (see <u>In Re Yanez-Garcia</u>, 23 I.&amp; N. Dec. 390 (BIA 2002). Please see the note at the end of this chart for a more detailed discussion of the issues raised by a conviction under this section. If record reflects conviction under provision regarding obtaining a CDS by misrepresentation, etc., AND if loss to any victim(s) exceeds \$10,000 would probably also be deemed a “fraud or deceit” AF. If record reflects conviction under provision regarding obtaining a forged or fraudulent certificate AND if term of imprisonment of at least one year is imposed, would probably be deemed a “forgery” AF.</p>	Would probably be considered a CIMT.	Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.
<b>Possession of certain prescription drugs</b> Disorderly persons offense	2C:35-24	Probably NOT an AF.	Probably NOT a CIMT.	Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>FIREARMS, OTHER DANGEROUS WEAPONS AND INSTRUMENTS OF CRIME</b>				
<b>Prohibited weapons and devices</b> (a) Third degree (b) Third degree (c) Fourth degree (d) Fourth degree (e) Fourth degree (f) Fourth degree (h) Fourth degree (j) Fourth degree (k) Disorderly persons offense	2C:39-3	If record of conviction establishes an offense akin to one described in 18 U.S.C. § 922 (g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. § 924 (b) or (h), or 26 U.S.C. § 5861, conviction under subsection (a), (b), (c), or (d) would probably be deemed a "firearm offense" AF. If term of imprisonment of at least one year is imposed, conviction under subsection (a)-(j) might also be deemed a "crime of violence" AF. See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	Because statute does not require intent to use, conviction would probably not be considered a CIMT.	Conviction under subsections (a),(b),(c) or (d) would be considered a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)).
<b>Possession of weapons for unlawful purposes</b> (a) Second degree (b) Second degree (c) Second degree (d) Third degree (e) Fourth degree	2C:39-4	If record of conviction establishes an offense akin to one described in 18 U.S.C. § 922 (g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. § 924 (b) or (h), or 26 U.S.C. § 5861, conviction under subsection (a)-(c) would probably be deemed a "firearm offense" AF. If term of imprisonment of at least one year is imposed, conviction under subsection (a)-(d) might also be deemed a "crime of violence" AF.	Conviction under subsections (a)-(d) would probably be considered a CIMT; conviction under subsection (e) might be considered a CIMT.	Conviction under subsection (a)-(c) would be considered a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)).
<b>Possession of weapons during commission of certain crimes</b> Second degree	2C:39-4.1(a)	If record of conviction establishes an offense akin to one described in 18 U.S.C. § 922 (g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. § 924 (b) or (h), or 26 U.S.C. § 5861, conviction would probably be deemed "firearm offense" AF. If underlying offense is considered a "crime of violence" (as defined in 18 U.S.C. § 16) and sentenced to term of imprisonment of at least one year, conviction might also be deemed "crime of violence" AF.	If the underlying offense involved MT, would probably be considered a CIMT.	Would be considered a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)). Might be considered a CSO if record of conviction establishes that underlying offense involved a controlled substance as defined in 21 U.S.C. § 802.
<b>Possession of weapons during commission of certain crimes</b> Second degree	2C:39-4.1(b)	If sentenced to a term of imprisonment of at least one year, would probably be deemed a "crime of violence" AF.	Would probably be considered a CIMT.	Might be considered a CSO if record of conviction establishes that underlying offense involved a controlled substance as defined in 21 U.S.C. § 802.

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Possession of weapons during commission of certain crimes</b> Second degree	2C:39-4.1(c)	If underlying offense would be considered a "crime of violence" (as defined in 18 U.S.C. § 16) and sentenced to a term of imprisonment of at least one year, might be deemed a "crime of violence" AF.	If underlying offense involved MT, conviction would probably be considered a CIMT.	Might be deemed a CSO if record of conviction establishes that underlying offense involves a controlled substance as defined in 21 U.S.C. § 802.
<b>Unlawful possession of weapons</b> (a), (b), (c), (e) Third degree (d) Fourth degree	2C:39-5(a)	If record of conviction establishes an offense akin to one described in 18 U.S.C. § 922 (g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. § 924 (b) or (h), or 26 U.S.C. § 5861, conviction would probably be deemed a "firearm offense" AF. If sentenced to a term of imprisonment of at least one year, might also be deemed a "crime of violence" AF.	Because no intent to use the weapon required, would probably NOT be considered a CIMT.	Would be considered a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)). Note that the text of subsection (d) does not specify a type of weapon and should NOT be considered a FO unless record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)).
<b>Certain persons not to have weapons</b> (a) Fourth degree (b) Second degree.	2C:39-7	If record of conviction establishes an offense akin to one described in 18 U.S.C. § 922 (g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. § 924 (b) or (h), or 26 U.S.C. § 5861, conviction would probably be deemed a "firearm offense" AF. If sentenced to a term of imprisonment of at least one year, might also be deemed a "crime of violence" AF. See note on New Jersey 4 <sup>th</sup> degree offenses and "crimes of violence" at end of chart.	Because no intent to use the weapon required, would probably NOT be considered a CIMT.	Would probably be considered a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)).

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<p><b>Manufacture, transport, disposition and defacement of weapons and dangerous instruments and appliances</b></p> <p>(a) Third degree (machine guns)            (b) Third degree (sawed-off shotguns)            (c) Fourth degree (firearm silencers)            (d) Fourth degree (weapons)            (e) Fourth degree (defaced firearms)            (f) Fourth degree (armor penetrating bullets)            (g) Third degree (assault firearms)            (h) Fourth degree (large capacity ammunition magazines)</p>	2C:39-9(a)	<p>If record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)), or an explosive device (as defined in 18 U.S.C. § 841(c), would probably be deemed an “illicit trafficking” AF; or if record of conviction establishes an offense akin to one described in 18 U.S.C. § 922 (g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. § 924 (b) or (h), or 26 U.S.C. § 5861, conviction would probably be deemed a "firearm offense" AF. If sentenced to a term of imprisonment of at least one year, might also be deemed a "crime of violence" AF. See note on New Jersey 4<sup>th</sup> degree offenses and “crimes of violence” at end of chart.</p>	<p>Because no intent to use the weapon required, conviction under subsections (a),(b), (c),(g), would probably NOT be considered a CIMT. Conviction under subsection (d) might be considered a CIMT if record of conviction demonstrates that the conviction is under the provision requiring intent to use. Conviction under subsection (f) or (h) might be considered a CIMT depending on what record reflects regarding intended purpose.</p>	<p>Would probably be considered a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)).</p>
<p><b>Sale of handcuffs to a person under 18</b> Disorderly persons offense</p>	2C:39-9.2	Probably NOT.	NO.	
<p><b>Pawnbrokers; loaning on firearms</b></p> <p>(a) Third degree            (b) Disorderly persons offense</p>	2C:39-11	<p>Conviction under subsection (a) might be deemed an “illicit trafficking” AF; or if record of conviction establishes an offense akin to one described in 18 U.S.C. § 922 (g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. § 924 (b) or (h), or 26 U.S.C. § 5861, conviction might be deemed a "firearm offense" AF.</p>	<p>Would probably NOT be considered a CIMT.</p>	<p>Conviction under subsection (a) might be deemed a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)).</p>

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Training, practice or instruction in use, application or making of firearm, explosive device or technique capable of causing injury for illegal activity</b> Second degree	2C:39-14	If sentenced to a term of imprisonment of at least one year, might be deemed a "crime of violence" AF; or if record of conviction establishes an offense akin to one described in 18 U.S.C. § 922 (g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r), 18 U.S.C. § 924 (b) or (h), or 26 U.S.C. § 5861, conviction would probably be deemed a "firearm offense" AF.	Might be considered a CIMT.	Might be deemed a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)).
<b>Leader of firearms trafficking network</b> First degree	2C:39-16	If record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)), or an explosive device (as defined in 18 U.S.C. § 841(c), would probably be deemed an "illicit trafficking" AF. If sentenced to a term of imprisonment of at least one year, might also be deemed a "crime of violence" AF.	Would probably be considered a CIMT.	Would probably be considered a FO if record of conviction establishes that offense involved a firearm or destructive device (as defined in 18 U.S.C. § 921(a)).
<b>VEHICLE AND TRAFFIC OFFENSES</b>				
<b>Operating motor vehicle with controlled dangerous substance or prescription legend drug in possession or in motor vehicle</b>	39:4-49.1	NO.	Would probably NOT be considered a CIMT.	Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.

Offense	New Jersey Code Section	Aggravated Felony (AF)?	Crime Involving Moral Turpitude (CIMT)?	Other Grounds: Controlled Substance Offense (CSO) Crime Against Children (CAC) Crime of Dom. Viol., Etc. (CODV) Firearm Offense (FO) Prostitution
<b>Driving while intoxicated</b>	39:4-50	Probably NOT, especially if any term of imprisonment imposed is less than one year.	Without any aggravating circumstances, would probably NOT be considered a CIMT; however might be considered CIMT if record of conviction establishes circumstance such as driving while knowing license suspended or revoked due to prior conviction for driving under influence of alcohol or drugs. <u>See Matter of Lopez-Meza</u> , Int. Dec. 3423 (BIA 1999).	Would probably be considered a CSO if record of conviction establishes a controlled substance as defined in 21 U.S.C. § 802.
<b>Reckless driving</b>	39:4-96	NO.	Would probably NOT be considered a CIMT.	
<b>Careless driving</b>	39:4-97	NO.	Would probably NOT be considered a CIMT.	
<b>Driving or operating a motor vehicle in an unsafe manner</b>	39:4-97.2	NO.	Would probably NOT be considered a CIMT.	

## **Note Regarding Convictions Under N.J.S.A. §2C:35-10(a)**

While immigration judges in the Third Circuit should find that a New Jersey defendant convicted of simple drug possession under N.J.S.A. §2C:35-10(a) has not been convicted of a “trafficking” Aggravated Felony, this may not be the outcome for a New Jersey defendant who is placed in removal proceedings in another circuit.

### **The Board of Immigration Appeals’ Approach**

The reason for this potentially divergent result is a 2002 Board of Immigration Appeals’ decision that declined to adopt a uniform legal standard for determining when a state drug conviction constitutes a “trafficking” Aggravated Felony. Instead, the Board ruled that it would follow the law of the circuit in which the immigration case arose. Matter of Yanez Garcia, 23 I&N Dec. 390 (BIA 2002). Where a circuit court had not previously decided the issue, it would follow the interpretation of the majority of circuits. The majority of circuit courts had determined that a state drug offense classified as a felony under state law was a “trafficking” Aggravated Felony when it was also punishable under one of certain specified federal statutes (the Controlled Substances Act, the Controlled Substances Import and Export Act, or the Maritime Drug Law Enforcement Act). The Board then followed the majority rule in Matter of Yanez-Garcia to find that the respondent’s Illinois conviction for simple drug possession was a “trafficking” Aggravated Felony because it was classified as a felony in Illinois and punishable under the Controlled Substances Act.

### **The Third Circuit Court of Appeals’ Approach**

In contrast to the majority rule, the Third Circuit Court of Appeals has established a different two-pronged test for determining whether a state drug conviction constitutes a “trafficking” Aggravated Felony. Gerbier v. Holmes, 280 F.3d 297 (3d Cir. 2002). Under this approach, a state drug conviction is an Aggravated Felony if it is either: (1) a state law felony containing a “trafficking element” (unlawful trading or dealing); or (ii) punishable as a felony under the federal Controlled Substances Act (CSA). The defendant in Gerbier had been convicted of drug possession, which while a felony under Delaware law, did not contain a “trafficking” component and was not punishable as a felony under the CSA. Therefore, the Court of Appeals found that it was not a “trafficking” Aggravated Felony. Similarly, because N.J.S.A. §2C:35-10(a) does not contain a “trafficking element” and is not punishable as a felony under the CSA (unless the conviction is for more than five grams of cocaine base or any amount of flunitrazepam) it should not be deemed a “trafficking” Aggravated Felony in the Third Circuit. While a subsequent state simple possession offense will also not be deemed punishable as a felony under the CSA in the Third Circuit under Steele v. Blackman, 236 F.3d 130 (3d Cir. 2001), this may not be the case in other circuits. See e.g. U.S. v. Simpson, 319 F.3d 81 (2d Cir. 2002, as amended Jan. 23, 2003).

### **Professional Responsibility of New Jersey Criminal Defense Attorneys**

Because the law of the circuit where the immigration proceeding is held will dictate the outcome, New Jersey criminal defense lawyers should warn their clients about the possible risk of an Aggravated Felony determination when they plead to third or fourth degree simple drug possession, or to any conviction under N.J.S.A. §2C:35-10(a), including a disorderly persons offense, if it would follow a prior controlled substance offense conviction. In addition, when entering a plea to this section, it may be



advisable to ensure that the record reflects the non-citizen defendant's reliance on the Court of Appeals' decisions in Gerbier v. Holmes and/or Steele v. Blackman. This may preserve defenses for an immigration attorney representing the non-citizen in a later removal proceeding in another jurisdiction.

### **Additional Resources**

For the statutory definition of an “illicit trafficking” Aggravated Felony, see I.N.A. §101(a)(43)(B). For additional information regarding this complicated issue, please refer to the practice alerts found on the website of the New York State Defenders Association Immigrant Defense Project at: [http://www.nysda.org/NYSDA\\_Resources/Immigrant\\_Defense\\_Project/03\\_IMMIGRANTDEFENSEALERT\\_DrugAlertsCombined\\_.pdf](http://www.nysda.org/NYSDA_Resources/Immigrant_Defense_Project/03_IMMIGRANTDEFENSEALERT_DrugAlertsCombined_.pdf)

### **Note Regarding Convictions for Possession with Intent to Distribute Small Amounts of Marijuana Without Remuneration**

In Wilson v. Ashcroft, 350 F.3d 377 (3d Cir. 2003), the Third Circuit Court of Appeals found that Appellant's conviction under N.J.S.A. 2C35-5 for possession of twenty-eight grams of marijuana with intent to distribute was not a conviction of an aggravated felony under the "hypothetical felony" approach laid out in Gerbier v. Holmes, *supra*. The Court reasoned that because the offense does not involve sale for remuneration as an element, under 21 U.S.C. Sec. 841(b) it may be punishable under federal law as a misdemeanor. The Court then remanded the case to determine whether or not the offense should be deemed an aggravated felony under the state felony approach laid out in Gerbier. While the final outcome is still unclear, there is a possibility that because sale for remuneration is not a required element, the courts may find that the offense does not contain a "trafficking element" and therefore is not an Aggravated Felony under this approach.

### **Note Regarding New Jersey 4<sup>th</sup> Degree Offenses and “Crime of Violence” Aggravated Felonies**

Criminal defense attorneys representing New Jersey defendants accused of certain fourth degree offenses should be aware of some important arguments concerning the “crime of violence” category of Aggravated Felonies. The immigration statute does not include a definition of a “crime of violence” Aggravated Felony. 8 U.S.C. § 1101(a)(43)(F). Instead, it refers to the definition of “crime of violence” set forth in 18 U.S.C. § 16. According to this section, a “crime of violence” is: (a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. 18 U.S.C. § 16. Thus, when considering a plea to New Jersey fourth degree crime that does not meet the requirements of subsection (a) of the definition of “crime of violence,” but which may meet the requirements of subsection (b), it is critical to determine whether such a crime may be characterized as a “felony.”

The answer to the question of whether a New Jersey fourth degree offense is a “felony” for purposes of the “crime of violence” Aggravated Felony definition is not simple. Felonies have traditionally been defined as crimes punishable by more than one year in prison. See, e.g. 18 U.S.C. §

3559. Under this definition, New Jersey crimes in the fourth degree, which subject the defendant to up to 18 months in prison would be considered felonies. However, in Francis v. Reno, 269 F.3d 162 (2001), the Third Circuit Court of Appeals reversed the Board of Immigration Appeals' (BIA) ruling that a Pennsylvania misdemeanor conviction for vehicular homicide was a "crime of violence" Aggravated Felony even though this Pennsylvania misdemeanor carried a potential sentence of over one year. The Court found that where "the offense is categorized as a misdemeanor under state law, it is excluded [from the definition of a "crime of violence" Aggravated Felony] unless it involves force and falls under subsection 16(a). Thus, by relying upon state law to provide the categorization, we eliminate the redundancy that would otherwise result from including both a maximum of one year imprisonment under §1101(a)(43)(F) and the condition precedent of "felony" in § 16(b) that is expressly incorporated into § 1101(a)(43)(F)." Id. At 170. Therefore, under Francis, an advocate could argue that a New Jersey fourth degree offense is not a "felony," even if a sentence of one year or more is imposed, because under New Jersey law, a fourth degree offense is characterized as equivalent to a "misdemeanor." See N.J.S.A. §2C:1-4 (d) and N.J.S.A. §2C:43-1.

In spite of the strong arguments that a conviction of a New Jersey fourth degree offense should not be considered a "crime of violence" Aggravated Felony under 18 U.S.C. § 16 (b) according to Francis, criminal defense attorneys should still be cautious when considering a plea to a fourth degree offense that may be found "by its nature, [to involve] a substantial risk that physical force against the person or property of another may be used." 18 U.S.C. § 16 (b). Courts in this jurisdiction have not specifically addressed New Jersey fourth degree offenses in this context so it is unclear what weight would be given to the characterizations in N.J.S.A. §2C:1-4 (d) and N.J.S.A. §2C:43-1. In addition, your client may be placed in removal proceedings in another jurisdiction which does not follow the approach used in Francis. For these reasons, if an offense might be considered a "crime of violence" it is still advisable to try to avoid a sentence of one year or more.